AGENDA
SPECIAL MEETING
BANNING CITY COUNCIL

July 14, 2015
3:00 p.m.

Banning Civic Center
Large Conference Room
99 E. Ramsey St.

I. CALL TO ORDER

- Roll Call – Council Members Miller, Moyer, Peterson, Welch, Mayor Franklin

II. CLOSED SESSION

1. One case of significant exposure to litigation pursuant to Government Code Section 54956.9 (d)(2).

2. One case of potential initiation of litigation matter pursuant to Government Code Section 54956.9 (d)(4).

3. Existing Litigation pursuant to Government Code Section 54956.9 (d)(1): (a) Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council, et al. – Case Nos. RIC 1409829 and RIC 1409037.

4. Real Property Negotiations pursuant to Government Code Section 54956.8 to confer with its real property negotiator, Dean Martin, in regards to:
   a) Letter of Interest to Purchase 1.38 acres of land 300 S. Highland Springs Ave. (APN 419-140-041)
   b) Proposed Verizon Wireless Installation-Repplier Park 201 W. George St. (APN: 540-00-014)
   c) Banning Chamber of Commerce – 60 E. Ramsey

5. Labor Negotiations pursuant to the provisions of Government Code Section 54957.6.
   a) City is represented by City Attorney. Negotiations are with Banning Police Officers Association (BPOA) and Banning Police Management Association (BPMA).
   b) Executive Salary & Benefits – Negotiator – Dean Martin
   (Unrepresented Positions: Police Chief, Community Services Director, Electric Utility Director, Public Works Director, Community Development Director and Administrative Services Director)

6. Personnel Matters pursuant to Government Code Section 54957 with regards to:
   a) Recruitment of City Manager
   b) City Attorney Evaluation

A. Opportunity for Public to Address Closed Session Items.
B. Convene Closed Session

III. ADJOURNMENT

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

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

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

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

AGENDA
SPECIAL MEETING
BANNING CITY COUNCIL

July 14, 2015
3:00 p.m.

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99 E. Ramsey St.

ADDENDUM

II. CLOSED SESSION

4. d) Real property negotiations pursuant to Government Code § 54956.8 to enable the City Council to consider negotiations with Dr. David M. Birman, HydroResolve, and to give direction to its negotiators the City Attorney and Community Development Director regarding that certain real property commonly known as "Jensen Canyon" at the base of the San Jacinto Mountains, near the City of Cabazon, California.

Date: July 9, 2015
5:30 p.m.

AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

July 14, 2015
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

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

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

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

APPOINTMENTS

1. Designation of Voting Delegates and Alternates to the League of California Cities Annual Conf. – Sept. 30 – Oct. 2, 2015, San Jose **1**

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

IV. 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 8
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 – 06/16/15 *(Closed Session)*. 5
2. Approval of Minutes – Special Meeting – 06/16/15 *(Workshop.* 7
3. Approval of Minutes – Special Meeting – 06/23/15 *(Closed Session)*. 15
4. Approval of Minutes – Regular Meeting – 06/23/15. 17
5. Authorization to Enter Into an Enterprise Licensing Agreement with Microsoft and authorizing the Interim City Manager to Execute the Related Enrollment Agreement for a three-year agreement total of $144,690.24. 47
6. Resolution No. 2015-25, Resolution No. 2015-25, Approving Amendments to the Professional Services Agreement with LSA Associates, Inc. for Services Related to the Banning Circulation element and for the Update of the Traffic Fee Component of the Development Fee Program in an amount of $48,000 for a total contact amount of $286,000.00 51
7. Resolution No. 2015-66, Approving an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan in an amount not to exceed $25,000.00. 134
8. Resolution No. 2015-69, Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line "D-2" Stage 1 and Stage 2. 190

- **Open for Public Comments**
- **Make Motion**

V. REPORTS OF OFFICERS

1. Classification Plan Amendments

Staff Report. 212

Recommendation: **That the City Council adopt Resolution No. 2015-70, Amending the Classification and compensation plan and the amending of Part-Time Resolution No. 2015-71 to include new classifications and changes to salary ranges and job descriptions.**

2. Animal Control Services Contract

Staff Report. 248

Recommendation: **That the City Council approve the Agreement to Provide Animal Control Field Services Contract for FY 16 (July 1, 2015 through June 30, 2016).**

3. City Manager Signing Authority

Staff Report. 254

Recommendations: **1) Require a monthly written report to the City Council of the contracts signed under the sole authority of the City Manager; 2) Eliminate the provision within the City's standard professional service Contracts that allow for exceedance of the Council approved contraet amounts; 3) Require City Council approval for contract that are renewed on an annual basis which in the aggregate will exceed $25,000.**

4. Resolution No. 2015-64, Authorizing the Purchase of Two (2) El Dorado National CNG Powered EZ-Rider II Buses from Creative Bus Sales Utilizing the California Association for Coordinated Transportation (CALACT) Competitive Bid Award for a Total of $888,681.06.

Staff Report. 256

Recommendations: **That the City Council adopt Resolution No. 2015-64.**

5. Resolution No. 2015-67, Approving the Increase of Hangar Rents and Access Fees at the Banning Municipal Airport and Amending Resolution No. 2005-44 and Resolution No. 2006-114.

Staff Report. 260

Recommendations: **That the City Council adopt Resolution No. 2015-67.**

6. Resolution No. 2015-68, Approving a Professional Services Agreement with Aspen Environmental Group to Provide Environmental and Permitting Services Related to the Flume.

Staff Report. 280

Recommendations: **That the City Council: 1) adopt Resolution No. 2015-68 Approving a Professional Services Agreement with Aspen Environmental Group of Agoura Hills, CA in the amount of $82,098.00 to Provide Environmental and Permitting Services Related to the Flume; 2) Authorizing the Interim Administrative Services Director to make necessary budget adjustments and appropriations and transfers related to the project; and 3) Authorizing the Interim City Manager to Execute the Professional Services Agreement with Aspen Environmental Group.**

7. Resolution No. 2015-65, Approving the Exit from the San Juan Generating Station.

Staff Report. 362

Recommendation: **That the City Council adopt Resolution No. 2015-65, Approving the Exit from the San Juan Generating Station and authorizing the Electric Utility Director to work with the Southern California Public Power authority ("SCAPPA") to execute and complete any and all required obligations to effect said divestiture.**

8. Resolution No. 2015-72, Declaring that there is a Need for a Parking Authority to Function in the City, Declaring that the City Council Shall Be the Parking Authority, and Designating an Interim Chairman of the Parking Authority.

Staff Report. 652

Recommendation: **That the City Council adopt Resolution No. 2015-72.**

Recess Regular City Council Meeting and CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING PARKING AUTHORITY.

VI. CONSENT ITEM

1. Resolution No. 2015-01 PA, Authorizing the Execution and Delivery of Two Separate Amendments to Joint Exercise of Powers Agreements and Taking Certain Other Actions In Connection Therewith **660**

Adjourn Joint Meeting of the Banning City Council and the Banning Parking Authority and CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY.

VII. CONSENT ITEM

1. Resolution No. 2015-05 SA, Authorizing the Execution and Delivery of Two Separate Amendments to Joint Exercise of Powers Agreement and Taking Certain Other Actions In Connection Therewith **664**

Adjourn Joint Meeting of the Banning City Council and the City Council Sitting In Its Capacity of a Successor Agency and RECONVENE the regular City Council Meeting.

VIII. CONSENT ITEM

1. Resolution No. 2015-73, Authorizing the Execution and Delivery of Two Separate Amendments to Joint Exercise of Powers Agreements and Taking Certain Other Actions In Connection Therewith **678**

Recess Regular City Council Meeting to SCHEDULED MEETINGS of the City of Banning Utility Authority, and a Joint Meeting of the Banning Financing Authority and City Council.

IX. BANNING UTILITY AUTHORITY (BUA)

Call to Order: Chairperson Deborah Franklin
Roll Call: Boardmembers Miller, Moyer, Peterson, Welch, Chairperson Franklin

CONSENT ITEMS:

1. Resolution No. 2015-10 UA, Approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and Annual Membership Dues **692**
2. Resolution No. 2015-12 UA, Approving an Amendment to the Professional Services Agreement with Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study **700**

- **Open for Public Comments**
- **Make Motion**

REPORTS OF OFFICERS

1. Approval of the Attached Resolution Approving the Economic Refunding of the Banning Utility Authority Water Enterprise Revenue Bonds Refunding and Improvement Projects, 2005 Series.

Staff Report. 780

Recommendation: **That the Banning Utility Authority adopt Resolution No. 2015-11UA, Authorizing the Issuance Its Water Enterprise Revenue Bonds, Refunding and Improvement Projeets, 2015 Series in the Aggregate Prineipal Amount Not to Exceed $35,000,000; Approving an Indenture of Trust, An Escrow Agreement, A Bond Purchase Agreement, A Continuing Disclosurc Agreement and a Preliminary Official Statement; and Authorizing Certain Other Actions in Connection Therewith.**

BUA ADJOURNMENT - Next regular meeting: Tuesday, August 25, 2015 at 5:00 p.m., Banning City Hall Council Chambers. *(There will be no meetings on July 28 and August 11, 2015)*

X. BANNING FINANCING AUTHORITY (BFA) –JOINT MEETING WITH CITY COUNCIL

Call to Order: Chairperson Deborah Franklin
Roll Call: Boardmembers Miller, Moyer, Peterson, Welch, Chairperson Franklin

REPORTS OF OFFICERS

1. Approval of the Attached Resolution Approving the Economic Refunding of the Banning Financing Authority Revenue Bonds (Electric System Project, Series 2007.

Staff Report. **966**

Recommendation: **That the Banning Financing Authority adopt Resolution No. 2015-02 FA, Authorizing the Issuance of Note to Exceed $50,000,000 Principal Amount of Its Refunding Revenue Bonds (Electric System Project) Series 2015; Approving an Indenture of Trust, An Installment Sale Agreement, A Bond Purchase Agreement; An Escrow Agreement and A Preliminary Official Statement Related Thereto; and Approving the Taking of Certain Other Actions in Connection Therewith.**

2. Resolution No. 2015-74, Authorizing and Approving an Indenture of Trust, an Installment Sale Agreement, a Continuing Disclosure Agreement, A Bond Purchase Agreement, an Escrow Agreement, and a Preliminary Official Statement, and the Taking of Certain Other Actions In Connection Therewith **1194**

Recommendation: **That the City Council adopt Resolution No. 2015-74.**

BFA ADJOURNMENT - Next regular meeting: Tuesday, August 25, 2015 at 5:00 p.m., Banning City Hall Council Chambers. *(There will be no meetings on July 28 and August 11, 2015)*

RECONVENE BANNING CITY COUNCIL REGULAR MEETING

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

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

XII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(6/2015)*
2. Discussion regarding Animal Control Services *(7/2015)*
3. Discussion regarding change in time for Council Meetings
4. Fee Study
5. Discussion of City Manager authority to give a contract of $25,000.
6. Review Consent Calendar policy.
7. Discussion of vacant properties where people are discarding furniture.
8. Report on Banning Chamber of Commerce Utility Bill Issue

(Note: Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

XIII. 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, 7 a.m. to 5 p.m.

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LEAGUE OF CALIFORNIA CITIES

1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Council Action Advised by July 31, 2015

May 29, 2015

TO: Mayors, City Managers and City Clerks

RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 30 – October 2, San Jose

The League's 2015Annual Conference is scheduled for September 30 – October 2 in San Jose. An important part of the Annual Conference is the Annual Business Meeting *(at the General Assembly)*, scheduled for noon on Friday, October 2, at the San Jose Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, September 18, 2015. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.

- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one voter must be present at the

-over-

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.

- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the San Jose Convention Center, will be open at the following times: Wednesday, September 30, 8:00 a.m. – 6:00 p.m.; Thursday, October 1, 7:00 a.m. – 4:00 p.m.; and Friday, October 2, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, September 18. If you have questions, please call Kayla Gibson at (916) 658-8247.

Attachments:

- 2015 Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

Annual Conference Voting Procedures
2015 Annual Conferenee

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.

2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.

3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.

4. **Signing Initiated Resolution Petitions**. Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.

5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.

6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.

7. **Resolving Disputes**. In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.

LEAGUE OF CALIFORNIA CITIES

CITY: _____

2015 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to the League office by Friday, September 18, 2015. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ E-mail _____

Mayor or City Clerk _____ Phone: _____
(circle one) (signature)

Date: _____

Please complete and return by Friday, September 18, 2015

League of California Cities
ATTN: Kayla Gibson
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: kgibson@cacities.org
(916) 658-8247

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/16/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on June 16, 2015 at 2:00 p.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager/Interim Administrative Services Dir.
Marie A. Calderon, City Clerk

CLOSED SESSION

Mayor Franklin said the closed session item is in regards to Personnel Matters pursuant to Government Code §54957: Recruitment of City Manager and Interim City Manager pursuant to

Mayor Franklin opened the closed session item for public comments; there were none.

Meeting went into closed session at 2:02 p.m. and reconvened at 3:05 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 3:05 p.m.

Marie A. Calderon, City Clerk

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/16/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on June 16, 2015 at 3:17 p.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager/Interim Administrative Services Dir.
David J. Aleshire, City Attorney
John McQuown, City Treasurer
Fred Mason, Electric Utility Director
Brian Guillot, Acting Community Development Dir.
Alex Diaz, Police Chief
Heidi Meraz, Community Services Director
Arturo Vela, Acting Public Works Director
Tim Chavez, Battalion Chief
Oliver Mujica, Contract Planner
Michelle Green, Deputy Finance Director
Rita Chapparosa, Deputy Human Resources Director
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – *On Items Not on the Agenda*

Mayor Franklin asked if there were any public comments; there were none.

WORKSHOP REPORTS

Goal Setting and Policy Objectives

Interim City Manager Martin said in regards to the policy goals that Council developed and a fifth goal was added by staff. The four that the Council developed were: 1) Economic Development, 2) Beautification, 3) Effective Communication, 4) Public Health and Safety, and the one that staff added was 5) Administrative Efficiency. Staff then took those five and added some additional verbiage to give more content to the policy goal. For example, Economic Development, the

additional verbiage added is, "Enhance the economic vitality of the community through measures targeted towards redevelopment and business retention, expansion and attraction resulting in increased revenue generation and job creation." This covers all of the main areas that Council felt needed to be covered by economic development when this was originally discussed. The next step that staff did was to add some framework and developed policy objectives. Council can take a look at them and can use them, tweak them, or throw them out and put in what you feel would be appropriate. Under Economic Development staff came up with six policy objectives and he uses the term "policy" because these are designed to be broad and high-level and once you agree on what these policy objectives are staff will come back with a work plan or specific department objectives that are designed to meet your policy objectives and ultimately your policy goals.

Acting City Manager Martin went over the goals and the six policy objectives created as follows:

Goal 1 – Economic Development – Enhance the economic vitality of the community through measures targeted towards redevelopment and business retention, expansion and attraction resulting in increased revenue generation and job creation.

1. Develop methodologies and practices that will facilitate the city's Economic Development programs consistent with the city's existing ordinances.
2. Develop promotional programs that will build a positive image of the city targeted at potential and existing residents and businesses.
3. Develop incentives that will encourage builders and developers to pursue projects within city limits whose business model would create revenue generation and job creation consistent with the city's existing demographics.
4. Make appropriate use of city-owned assets to maximize return on investments.
5. Pursue partnerships in both the public and private sector that benefit the economic development of the city.
6. Leverage City and surrounding area attractions to stimulate economic development.

Acting City Manager Martin said so basically we took your core idea and we just expanded on it and added some context to it. The idea was just to help give some framework to the discussion.

Goal 2 – Beautification – Achieve beautification of the City through major arterial improvements, aggressive code enforcement and promotion of programs that leverage the City's "small town" feel combined with a focus on sustainability and smart growth.

1. Create a welcoming environment at the City's points of entry
2. Maximize the appearance of the City by improving major thoroughfares.
3. Ensure City facilities, including open spaces, reflect positively on the City's image.
4. Maximize City resources to ensure that private properties reflect positively on the City's image.
5. Adopt policies that encourage sustainability and smart growth consistent with state law and federal requirements.

Goal 3 – Effective Communication – Ensure that communication is effectively and regularly used to inform and educate citizens, businesses, employees and regional partners about city programs and initiatives and do so in a manner that will enhance the City's image.

1. Maintain regular and ongoing direct communication with citizens and businesses.
2. Develop collaborative communication strategies building positive relationships with local and regional media.
3. Utilize and encourage use of electronic and social media to promote and enhance the City's image.
4. Communicate regularly with public agencies and other regional partners and collaborate on mutually beneficial activities and programs.

Goal 4 – Public Health & Safety – Create a secure and healthy environment within the City in which our citizens feels safe and which promotes the City as a location of choice for living, working, and playing.

1. Effectively manage the City's water resources to ensure system reliability and regulatory compliance.
2. Provide opportunities for healthier living through city-sponsored programs.
3. Support regional programs that enhance social services for the distressed population.
4. Provide cost effective public safety services to safeguard the community.
5. Facilitate community based programs encouraging safe and secure neighborhoods
6. Promote safe and secure neighborhoods and businesses by encouraging community based programs and vigorous law enforcement.
7. Promote and support programs that improve the quality of life and wellbeing for the City's young adults and senior citizens.

Goal 5 – Administrative Polices – Implement administrative policies, procedures, and best practices which will result in efficient and cost effective management of City resources.

1. Ensure Administrative Policies are current and consistent with state, federal regulations and City's ordinances.
2. Ensure taxpayer dollars are used in a manner which is fiscally responsible and transparent to the citizens.
3. Ensure the City uses state of the practice technology and infrastructure for administration of city programs.
4. Create a working environment that attracts and retains quality employees.
5. Promote professional development and training of the employees to enhance their skill levels.
6. Foster an environment of trust and mutual respect among elected officials and employees.
7. Promote excellence of work product among employees through participation in professional evaluation programs.

There was Council discussion and public comments on the policy objectives to all the goals and there was consensus to the following changes by the City Council:

Goal 1 – Economic Development

1. Develop methodologies and practices that will facilitate the city's Economic Development programs consistent with the city's ordinances.

3. Improve City's competitive position by developing incentives that will encourage builders and developers to pursue projects within city limits whose business model would create revenue generation and job creation.
7. Improve the City's competitive position relative to comparable market.

Goal 2 – Beautification

Achieve beautification of the City through major arterial improvements, aggressive code enforcement and promotion of programs that leverage the City's "small town" feel combined with a focus on sustainability and growth.

1. Create a welcoming environment at the City's freeway frontages and points of entry.
3. Ensure City facilities, including open spaces, reflect positively on the City's image by making them more attractive.
5. Adopt policies that encourage sustainability and growth consistent with state law and federal requirements.
6. Encourage citizen pride and involvement.

Goal 3 – Effective Communication

1. Maintain regular and ongoing direct communication with employees, citizens and businesses.
5. Effective communication with residents to encourage volunteerism and civic engagement.

Goal 4 – Public Health & Safety – Create a secure and healthy environment within the City in which our citizens feel safe and which promotes the City as a location of choice for living, working, and playing.

5. Facilitate community based programs encouraging safe and secure neighborhoods
6. Promote safe and secure neighborhoods and businesses by encouraging community based programs and vigorous law enforcement. *(Combine No. 5 and 6)*
7. Promote and support programs that improve the quality of life and wellbeing for the City's residents.

Goal 5 – Administrative Efficiency and Effectiveness

FY16 Mid-Cycle Budget Overview

Michelle Green, Deputy Finance Director passed out to the Council the FY16 Mid-Cycle Budget Overview explaining that this is a revised Fund Summary Report for all the City-wide funds *(staff report is on file in the City Clerk's Office)*. She said that staff has reviewed Fiscal Year 15 although it is not completed but they have updated it for information throughout the year and revised those numbers, included any adjustments that they included in Mid-Cycle 16 and it shows any structural deficit for 2016 and also shows a revised projected balance for the end of 2016. Keep in mind that we do have an adopted budget for 2016 so staff is in the process of revising the budget that has already been adopted. Also when they did adopt the original Fiscal Year 15/16 budget it was adopted with $130,000 structural deficit in the General Fund. There are some other

funds that she will be going over that do show a structural deficit as well in the revised numbers. The fund balance as shown here is what is called "available fund balances". In the General Fund for instance, the actual fund balance is higher but we do have amounts that are assigned or reserved for other purposes and Council has designated those funds to use for certain things so those amounts are not included in these numbers.

Page 1 – General Fund. Staff did revise the Beginning Fund Balance which is $5.1 million. The new projected structural deficit is $42,000 versus $130,000 so that is a little better than the original projection and the ending fund balance is projected to be a little over $5 million. In some funds we do expect to have a structural deficit and that is completely normal. For example, in capital funds and things like that those are funds that are funded by grants where we do not spend the money. We may receive the money one year and spend it the next year so we do expect structural deficits in many funds. In the operating funds mainly we want to look at and be aware of structural deficits. The Gas Tax Fund (Fund 100) shows that there were some reductions in revenue so that does affect our structural deficit for the year.

Page 2 –

- Water Fund - revenues were reduced for the drought mandate however; we were not able to reduce expenditures by the same amount so it does show a structural deficit.
- Wastewater Fund has a small structural deficit.
- Airport – (Fund 600) has a structural deficit. Basically what happened was that in FY 15 we had an item that was budgeted for $60,000 that we declined to do so we increased the FY 15 balance which now shows $60,000 versus what it would have shown but we re-budgeted another project in FY 16 so between the two years it comes out about the same but it shows a structural deficit for FY 16.
- Electric has a very small structural deficit.

Councilmember Peterson asked why Electric would have any deficit at all.

Electric Director Mason said the main reason is the water because we have a 32% reduction in pumping. They have a $3.14 million budget for electricity and if you take 32% of that off that is about $400,000 so that actually created that deficit. But we know that they are not going to make that 32% so it is actually not going to be $400,000 so there is no structural deficit.

Interim City Manager Martin said that this does not include whatever the ultimate result of our refunding will be so once the refunding occurs it is likely that the debt savings from that will wipe this small deficit.

Page 3 – Main item there is in the Successor Agency and that was basically due to the fact that we had excess cash on hand so the Department of Finance would like us to use that cash to pay some of our debt before asking for additional RPTTF (Redevelopment Property Tax Trust Fund) Funds.

Page 4 – General Fund Finance Overview – Top half is revenues by category and the bottom half is expenditures by department. It shows a four-year history of basic categories so you can see the trends going forward since 2013 through the projection of 2016. In the revenue area the other taxes as you will see includes the Measure J funding so in FY 16 we have not included usage of

the Measure J funds. Based on estimates that could be over a million dollars but we are only including $550,000 dollars of Measure J funds in that amount. In FY 15 we have about $275,000 of Measure J funds that are included in the number so that is why you see the fluctuation.

Interim City Manager Martin said that without Measure J we would have had a $600,000 dollar structural deficit in our General Fund.

Page 4 – (continued) Other areas where you see large variances are:

- Revenue from Other Agencies (usually is grants). Grants are not budgeted ahead of time until they are received so throughout the year the grant revenue will increase.
- Interfund Services & Transfers – This includes for FY 15 the reimbursement of the oil spill and then it drops down to its pretty normal level after that point.

Councilmember Miller asked what the difference is between "structural deficit" and "deficit".

Interim City Manager Martin said that a structural deficit means that you have an imbalance between your current year expenses and your current year revenues. On a go forward basis you haven't definitively identified a way to plug that hole. A deficit might exist temporarily in a fund but you may have ways in the future to cover that deficit so it isn't an on-going concern or it could be a one-time thing also.

Page 4 – (continued) Bottom half of the page is Expenditures by Department and some of the departments are grouped together.

- City Manager/Council/Economic Development - This includes settlement payments so that is why the number spikes up a little bit there. There were some savings due to having interim individuals versus a full-time person. The FY 16 projection assumes a full-time city manager.
- City Attorney - There is a slight spike in costs for FY 15 in the General Fund portion of the legal services. In FY 15 we increased the legal budget by $130,000. In FY 16 we are assuming that those costs will get under control and will resume to normal levels.
- City Clerk/Elections - In FY 15 we had election costs and in FY 16 we do not.
- Fiscal Services – There is an increase because of personnel requests.
- Police and Dispatch – There are some personnel requests. Weed Abatement has been moved under the preview of the police area.
- Fire Services – Increase in the in fire contract. Weed Abatement moved under police area.
- Community Development, Community Services, and Public Works have some staffing changes.

Mayor Franklin said in Community Development it is going up for FY 14/15 but then going down.

Deputy Director Green said that it is going down because what happens when we have existing directors they may be at a higher level salary and when we rehire a second person the next incumbent does not necessarily come in at a higher level so we have salary savings there and there were also some staff changes made that kind of offset that but it does result in savings.

Page 5 – General Fund Financial Overview – This is a graphical representation of the Revenues and Expenditures just discussed. In Revenues three of the areas Interfund Services & Transfers, Property Taxes, and Sales & Use Taxes make up 71% of the General Fund Revenues. On the Expenditure Side Fire and Police together makeup over 67% of the General Fund budget.

Page 6 – General Fund Expenditures by Category – There are five categories: Employee Services (covers salaries and fringe benefits); Services and Supplies (other operating expenditures), City Hall Lease, Interfund Support, and Capital.

- In the Capital area normally is not budgeted because a lot of the capital is grant funded. So as grants come in they are recorded and expenditures are recorded at the same time the grant revenue is recorded and you will see the capital number going up.
- In Employee Services you will notice a large increase. Currently that is 60% of the General Fund budget. We have new positions and higher costs including PERS for safety and that was $250,000 for Safety PERS from our originally projection based on the original numbers provided by CalPERS.

Page 7 – Positions – This is a chart that shows the positions that we are included in the budget, changes so there could be deletions, reclassifications and new positions. Overall Citywide 7.88 **FTE's (Full Time Equivalents)** were added. Left-hand side of the page are positions as they exist originally, right-hand side is where they have been revised in the budget. New positions include a Part-Time Human Resources Technician, an Accounting Specialist in Finance, Police Officers (there was a request for three police officers and in order to mitigate the effect on the General Fund the implementation of the hiring of those offices will be staggered with one at the beginning of the year July 1st, second one coming on approximately mid-year January, and third one coming on the following July – actually next fiscal year), a new Sports Specials in Recreation, Bus Drivers, and Engineering Services Assistant in Electric. The rest of the positions are basically reclassifications of existing positions or replacing a vacant position with a new title making it more advantages for the department. Detailed verbiage from each of the departments is also included in regards to the changes in their staffing levels.

Mayor Franklin asked how many employees would we have if we approval this, total. Deputy Director Green said about 154 approximately.

At this time each of the department heads addressed the Council giving a quick overview of their major program changes in their department. Also the Councilmembers asked various questions of staff in regards to their program changes.

Deputy Director Green said that everything that everyone is talking about here today is already reflected in the budget numbers that the Council has in front of them.

There was some further dialogue between the Councilmembers and staff in regards to the five-day work week, and the Measure J calculations.

Deputy Finance Director Green continued her presentation.

Page 26 – Capital Improvement Projects (CIP) – This is an overview of Capital Improvement Projects and this does not include projects that are currently in progress. These are projects from 2016 forward. It is an overview by Fund that shows the amount of projects that are being planned. There was some discussion regarding the Airport projects.

Acting Director Vela said that they revise the Airport Capital Improvement Plan every year so when they do it this year they are going to thin out all those projects and you probably won't even see a project next year or the following year. They are going to limit those until the Airport Fund has enough money to meet the match for certain projects.

Mayor Franklin said since we have talked about Chromium 6 are we looking at worst-case scenario in our planning for that in this budget.

Acting Director Vela said so far what they have budgeted in here is to start with the dynamic low-profiling so they are going to do the analytical first and once they do that, then they will start budgeting. For next year when they do the CIP he thinks they will have a better idea of exactly of what they are going to be required to do.

Deputy Director Green said anything that was presented today will be in the final budget that will be presented at the June 23rd Council Meeting. Interim City Manager Dean said that staff action request will also be presented at that time.

ADJOURNMENT

By common consent the meeting adjourned at 5:09 p.m.

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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

06/23/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on June 23, 2015 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager/Interim Administrative Services Dir.
Lona N. Laymon, Assistant City Attorney
Brian Guillot, Acting Community Development Director
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

CLOSED SESSION

Assistant City Attorney Laymon said that there are six items for closed session: 1) two cases of significant exposure to litigation pursuant to Government Code Section 54956.9 (d)(2); 2) existing litigation pursuant to Government Code Section 54956.9 (d)(1): (a) Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council, et al. – Case Nos. RIC 1409829 and RIC 1409037; 3) real property negotiations pursuant to Government Code Section 54956.8 to confer with its real property negotiator, Interim City Manager Dean Martin, in regards to Fire Memories Museum – 5261 W. Wilson (APN: 408-134-009); 4) labor negotiations pursuant to the provisions of Government Code Section 54957.6 and City is represented by City Attorney and negotiations are with Banning Police Officers Association (BPOA), and in regards to Executive Salary & Benefits – Negotiator – Interim City Manager Dean Martin (Unrepresented Positions: Police Chief, Community Services Director, Electric Utility Director, Public Works Director, Community Development Director and Administrative Services Director); 5) Public Employee Appointment (double listed and qualifies for dual listings under the Brown Act) pursuant to Government Code to consider or appoint an employee to the position of City Manager and Interim City Manager which is also authorized pursuant to Government Code § 54957.6 regarding labor negotiations, continuing to discuss the filling of the unrepresented positon(s) of City Manager and Interim City Manager (Councilmembers Moyer and Welch serving as negotiators and Ad Hoc Committee); and 6) Public Employee Appointment pursuant to Government Code § 54957 to consider authorizing the Interim City Manager to execute employment contracts for the Positions of Community Development Director and Public Works Director/City Engineer.

Mayor Franklin opened the closed session items for public comments; there were none.

Meeting went into closed session at 4:03 p.m. and recessed at 5:01 p.m. and reconvened at 8:26 p.m. with no reportable action taken.

ADJOURNMENT

By common consent the meeting adjourned at 8:59 p.m.

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Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/23/15
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the Banning City Council, the Banning Utility Authority and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on June 23, 2015, at 5:12 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager, Interim Administrative Services Dir.
Lona N. Laymon, Assistant City Attorney
Alex Diaz, Police Chief
Arturo Vela, Acting Public Works Director
Fred Mason, Electric Utility Director
Brian Guillot, Acting Community Development Director
Oliver Mujica, Contract Planner
Heidi Meraz, Community Services Director
Rita Chapparosa, Deputy Human Resources Director
Michelle Green, Deputy Finance Director
Tim Chavez, Battalion Chief
Phil Holder, Lieutenant
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

The invocation was given by Pastor Tate Crenshaw, Life Point Church. Councilmember Moyer led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

Assistant City Attorney Laymon said that the Council met in closed session on six items per the revised agenda posted yesterday and there was no reportable action. The Council will reconvene at the end of this meeting on two items on the closed session in regards to Item No.4 b) Executive Salary and Benefits, and Item. No. 6, Public Employee Appointment.

PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Jan Spann addressed the Council in regards to the Banning Community Fund. She said the Banning Community Fund was founded in 2014 after they were the Centennial Committee and were left with a $50,000 dollar excess. They invested that money with the Riverside Community Foundation and now they have approximately $60,000. They will be having a benefit this Saturday, June 27th from 5 to 8 p.m. with three hours of free play at the Museum of Pinball, a ticket to the raffle for the incredible gift basket, a silent auction, and refreshments. This is something different because not only do you get to promote the Banning Community Fund which will be an endowment fund for local non-profits but you also get to promote a new enterprise in the city of Banning, The Museum of Pinball. Mr. Weeks is the founder and there are hundreds of pinball machines and all of them will be open for three hours of free play. He has an event coming up and the tickets are $200 but tickets for this event are $30.00. You can get tickets at the door or go online to www.banningcommunityfund.org.

Carl Douglas addressed the Council in regards to the State BBQ Championship that was held by the Stagecoach Days Association on June 20th. A few Councilmembers were able to attend and they really appreciated that. On behalf of the Stagecoach Days Association they would like to thank the City for all of their contributions to the event and their in-kind services that made the First Annual Stagecoach Days Kansas City Barbecue Association (KCBA) and State BBQ Competition a success. The Association would also like to thank the Parks and Recreation Division and Heidi Meraz for facilitating all of the different organizations in the city to kind of help put on their event. They had 29 professional teams participating in an event that was showcased through websites all over the web. He thanked Carl Szoyka from the City that went out and made sure that the facilities were nice and clean and signs were put up and thanked Rick Diaz and the Electric workers especially from IBEW 47 who helped resolve some electrical issues and also West Coast Electric came out and helped on some smaller issues so the City could concentrate on the bigger problem. He thanked all of those that came out and volunteered their time or donated to the event and those were Chief Alex Diaz, Rotary Club, The Key Club, Banning High School Youth Program, the Citizen Patrols, California Youth Authority, Stagecoach Days Association volunteers, Alpha Delta Pi girls from UCR, Home Depot, Walmart, and Albertsons. Those in the competition were competing for $10,000 dollars in cash and they brought competitive barbecuing from Arizona, Nevada, New Mexico, and all over Southern California.

Inge Schuler thanked the City staff for changing the number system on the agenda packets that is now easier to read. She also announced that one of our graduating seniors was No. 2 in the Top 10 graduating class, Arianna Torres, received a $500 dollar scholarship from the ACLU of Southern California, Desert Chapter. They award three $500 dollar scholarships each year to graduating seniors. The applicants have to write an essay about the first ten amendments or the actual document of the Constitution. It is a free response type essay and they received 9 applicants this year with good essays which are graded on the same scale as the AP test. Arianna Torres She will be attending UC San Diego and her plan is to go in pharmacology but we all know that can change. Ms. Schuler also said that we need to take a look in our community in regards to Assembly Bill 551 which deals with Urban Agriculture and we may want to promote that. Also, she has been mentioning for many years but hasn't mentioned it to this Council that we want to participate in the California Mills Act which protects historical

buildings and really provides for an incentive for the owners of these buildings to maintain them in the historical class type (residential or commercial building) and stop tearing them down.

Maggie Scott addressed the Council with her concerns that she has brought up before in regards to the home located on Nicolet and Almond Way. She has spoken to Code Enforcement and was told that the fire department would be taking care of that but it has been about nine months and she would like something to be done; it is a fire hazard. They are now putting things out in the street so she thinks something needs to be done as soon as possible. She doesn't know who is dropping the ball whether it is the owner of the property or whoever is supposed to take care of the City code. It is getting discouraging to see all of this stuff on the corner and you pass it every day; it looks like a dump. She asked that someone please let her know what is going on with that because nine months is a long time to keep looking at trash, old sofas, etc. and she doesn't want another nine months to go by. She would also like to know what has happened with the Hathaway Project and whether they are going to do anything about that street or not. Someone was going to go down and look at the street to see if it needs to be paved and would like someone to contact her about what is going on. On Hathaway where the warehouse was supposed to have been built the fence is falling down again. When the wind blows the tumbleweeds fly up the street. It is located right across from Nicolet on Hathaway so if someone could contact the owner of that property to put the fence back up it would be appreciated.

Clarence Taylor, Gilman Street addressed the Council stating his purpose for approaching the Council is that they presented some information pertaining to the Banning Public Library District and he doesn't think that it is on the agenda this evening. He wanted to bring to the attention of the Council that three months ago when they approached Riverside County Board of Supervisors and Ashley's group what they did was to listen to their legal counsel, Priamos and he is the one that basically steer's them as to what the legality of their job is. He has two articles from the Press Enterprise and both of them say "Grand Jury report slams County Counsel" so when you are talking to the County Counsel as to what they are doing right or wrong, or if the City of Banning needs to step up and maybe make it a City library he doesn't know but hopefully this will go to a federal level and that whole Board of Supervisors including Priamos will end up in prison. He knows that the Council doesn't want to step on toes because at the City level the next step is the County level so you don't want to step on Ashley's toes so-to-speak but being that this is hopefully televised the citizens will be able to see what side you are on.

Frank Burgess, P. O. Box 54 addressed the Council stating that he would like to know when they will have a report from the attorney in regards to the library and Code 1780 and the action that the Board of Supervisors took as Mr. Taylor just mentioned and also what has been in the newspaper the last two days of the criticism by the Grand Jury. He said that he spoke to the Grand Jury today just to let them know that they were in support of them trying to find things out in regards to the County counsel telling the Supervisors and Supervisor Ashley of what they want to hear. This is a dangerous thing whether it is the Supervisor's attorneys or the City's attorneys, tell them what is legal and not what it is you want to hear. He asked Mayor Franklin about the report from the City Attorney on the library.

Mayor Franklin said that they will complete public comments and then they will have a report.

Mr. Burgess said let's get some action taken for our library before it turns to mud and we don't have a library. Whether your realize this or not the very first evening of the meeting back last month he believes the three appointees by the Board of Supervisors put the Director on administrative leave and on June 10th they terminated him. They also have gone out and spent $10,000 dollars for landscaping to take out some grass and put in some desert and these three people are going to destroy the library and quite honestly all they have to do is to be asked to resign; they were not legally appointed. The Board of Supervisors should apologize to the City for not turning it over to them and the City apologize to the library for not taking action and action needs to be taken right away.

Alex Diaz, Police Chief made a couple of announcements: 1) This Friday, June 26th at 7:00 p.m. at the Banning Community Center Gym they will be holding their second BPAL Movie Night and they will be showing "The SpongeBob Movie" so if you are available, please come down and join them. They will have free refreshments; first come, first served. They hope to have this every other Friday so it is just something extra for our youth and families to come out and enjoy. 2) Reminder that on Friday, July 17th at 5:00 p.m. at the Banning High School Gymnasium they will be having their 5th Annual Cops vs. Clergy Basketball Game. The cost is $5.00 per ticket and it goes to a good cause and that cause is to purchase backpacks for Banning Unified School District students.

Mayor Franklin closed public comments.

Assistant City Attorney Laymon said that they have looked at both sides of the Library District appointment issue without expending a substantial amount of additional legal research time and resources. At this time they do not see this Special District appointment issue as something having an impact on the rights of the obligations of the City itself. The Library District is an entirely separate entity from the City and no district seats are appointed by the City itself. It would appear therefore that the Library District appointment process is outside of the City's subject matter jurisdiction.

CORRESPONDENCE – None

CONSENT ITEMS

Mayor Franklin said that there was a request to pull Consent Items 4, 7, 9 and 10 for discussion.

1. Approval of Minutes – Special Meeting – 05/26/15 *(Workshop)*

Recommendation: That the minutes of the Special Meeting of May 26, 2015 be approved.

2. Approval of Minutes – Special Meeting – 06/09/15 *(Closed Session)*

Recommendation: That the minutes of the Special Meeting of June 9, 2015 be approved.

3. Approval of Minutes – Regular Meeting – 06/09/15

Recommendation: That the minutes of the Regular Meeting of June 9, 2015 be approved.

5. Approval of Accounts Payable and Payroll Warrants for Month of April 2015

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

6. Accept Notice of Completion for Project No. 2014-04EL, Demolition of Building at 215 E. Barbour Street

Recommendation: That the City Council accept the Project 2014-04EL, Demotion of Building at 215 E. Barbour Street, as complete and direct the City Clerk to record the Notice of Completion.

8. Resolution No. 2015-57, Approving the First Amendment to the Rancho San Gorgonio Environmental Services Agreement Between the City of Banning and PlaceWorks (Formerly Known as The Planning Center | DC & E).

Recommendation: That the City Council adopt Resolution No. 2015-57, approving the First Amendment to the Rancho San Gorgonio Environmental Services Agreement with PlaceWorks for additional professional services related to the preparation of the Environmental Impact Report for the Rancho San Gorgonio Specific Plan as provided in the Schedule of Performance for Fiscal Year 2016.

11. Approve Contract between the Banning Unified School District and the City of Banning for Assignment of a School Resource Officer (SRO) at Banning High School and Nicolet Middle School for the 2015-16 School Year.

Recommendation: That the City Council approves entering into a contract between the Banning Unified School District and the City of Banning which will provide a School Resource Officer (SRO) at Banning High School and Nicolet Middle School during the school year.

12. Resolution No. 2015-61, Authorizing the Purchase of Two (2) 2016 Ford Fusion Sedans through National Auto Fleet Group Under the National Joint Powers Alliance (NJPA) Contract in the amount of $43,356.00.

Recommendation: That the City Council adopt Resolution No. 2015-61, authorizing the purchase of two (2) Ford Fusion Sedans through the National Auto Fleet Group in an amount not to exceed $43,356.00 under the NJPA Contract #102811.

Motion Moyer/Peterson to approve Consent Items 1, 2, 3, 5, 6, 8, 11 and 12.

Mayor Franklin opened the item for public comments.

Inge Schuler said that in regards to Consent Item 8 we are looking at amendments here and we are looking at the group that is providing services, the Romo Planning Group. On page 194 you have two persons who are going to be serving as Interim Associate Planner and that would be

Oliver Mujica and then a backup Interim Associate Planner who would be Marie Gilliam. If we have any questions on this issue, do we go through Brian Guillot to contract these people or do we contract them directly or is the initial contract person Brian Guillot.

Mayor Franklin said it is Brian Guillot.

Motion carried, all in favor.

4. Report of Investments for May 2015

There were no specific questions from the Council on this item.

Motion Moyer/Miller to approve Consent Item No. 4 to receive and file the monthly Report of Investment. Mayor Franklin opened the item for public comment; there was none. **Motion carried, all in favor.**

7. Resolution No. 2015-53, Approving the Consumer Price Index (CPI) Increase for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2015/16.

Councilmember Miller said it disturbs him that the City entered into the agreement with Waste Management in 1993 and we have been continuing that agreement since then without ever getting any other bids and we have a cost of living increase (CPI) built in and to just automatically have a CPI increase without having any alternate bids for 18 years seems ridiculous and he thinks that they should have bids on this rather than automatically just going on with this and have a CPI.

There was much Council and staff dialogue in regards to the long-term contract, CPI increases, going out for bid, responsibility of outreach and education on Assembly Bills 939 and 341, and the low franchise percentage that the City receives.

Mayor Franklin opened the item for public comment.

Clara Vera, Public Sector Representative with Waste Management addressed the Council that she is the City's new representative and also the representative for the Banning Unified School District and is looking to bring refreshed programs and ideas to the city.

Mayor Franklin asked if she could address where their rates compare to the other competitors.

Ms. Vera said that every city is designed, like our senior rate we have here, is designed specifically for each city. They offer services like community cleanups, sharps, bulky item cleanups, so they do incorporate those rates based on the additional services you receive. In regards to the rates, as she mentioned every city is designed for their rates and the City of Banning has a really outstanding rate for the services you receive. If you would like for her to put a report together, she would be more than happy to and have it available as an action item.

Councilmember Peterson said that he conducted his own poll and he called people in Perris, Hemet, Cherry Valley, etc. and has to admit that out of the competitive refuse collectors that Waste Management in the city of Banning, at the time he did his study, was the lowest rate and that was probably six months ago. Most people are averaging between $22, $24 and $25 dollars a month for the refuse service and we are still down around the $20.00 dollar mark.

Councilmember Miller said that on the agenda they have a proposal to spend $50,000 dollars for WRCOG to inform people of recycling and does Waste Management duplicate what WRCOG does and does WRCOG do something that Waste Management doesn't do and is it necessary for the City to have WRCOG get $50,000.

Ms. Vera said in her opinion she really has not had the opportunity yet to have reviewed WRCOG's material so she doesn't feel inclined to answer that question right now.

Councilmember Miller asked Ms. Vera if it would be possible for her to come back to the Council with an analysis of that. Ms. Vera said that she would be more than happy to do that.

There was some further discussion by the Council of what they would like to see included in the report from Ms. Vera.

Frank Burgess addressed the Council in regards to the franchise fee and said the 21% includes the City of Banning doing all of the billing and collecting so when you are saying you are getting 21% you have a labor cost there, number one. Number two, unless it has changed the revenue that you do not collect from the deadbeats that is subtracted from your 21%. In regards to Mr. Moyer's remarks if you put this out for bid, he will guarantee that Frank Burgess will bid on it because he attempted to bid on it when the rates were $14.00/$15.00 dollars. You need to read the agreement you have with Waste Management and why the City Council in the 1990's gave Waste Management a 10 year contact when there was only 3 years left to go he doesn't understand it but that is what the then City Council did. He also asked if the City is getting the credit it deserves for its recycling percentage that you are supposed to come up with for the State of California.

Rick Pippenger said that sometime back he was talking to staff about cardboard because the business where he used to work created a tremendous amount of cardboard and he asked if they could get a recycling dumpster just for the cardboard and the City said yes but it will cost you. So I am going to feed them cardboard but it is going to cost him to feed them; that makes no sense.

Mayor Franklin closed the item for public comment.

Mayor Franklin asked Director Vela if he needed to have this action taken tonight or is there a problem with continuing it.

Director Vela said the agreement says that once Waste Management formally notifies us that they are requesting a CPI increase the City does have a timeline to adhere to implement the CPI increase.

There were further comments by the Council in regards to waiting to act on this item until they get a comparison from Waste Management as to what is being provided.

Motion Miller to postpone this item to the next meeting and hopefully Ms. Vera can come baek and with a statement as to what her company does as compared to WRCOG and then we can make a better decision as to whether or not to proceed with both WRCOG and whether or not we need to proceed with asking for bids.

Mayor Franklin wanted to make it clear that when we are talking about Item No. 7 which is the CPI specifically for the collection, transportation and disposal of solid waste which is not the recycling pieces of it.

Councilmember Miller said that is a separate item but the two are tied together and if we wait what he would like to see again is what is the comparison of what WRCOG does and we do because those two amounts of money are tied together. Secondly, would be possible for Director Vela to give us a list of the costs and percentages of the local cities so that we can see whether or not Waste Management is giving us a good deal. Director Vela said that he could do that.

Mayor Franklin asked the Assistant City Attomey if she know if there is any adverse impact to continue this to the next meeting.

Assistant City Attomey Laymon said she is not aware of any and actually she was just going through the agreement and as it is right now this is their long form for professional services which wouldn't necessarily address that kind of detail so without more information she is not directly aware of any adverse impact. To the extent the contract says that they get an automatic yearly CPI increase they are entitled to that even without City Council action.

Director Vela said he is not sure the wording says automatic and he thinks it is still to the approval of the City Council.

Councilmember Miller said that he has mentioned over and over again that everything we do seems to be a crisis and we need to get out of that habit. This is not a crisis and we should proceed in a reasonable manner to get the best deal for the City.

Mayor Franklin asked Councilmember Miller if he was willing to amend his motion to change the word "postpone" to "continuation" to the next meeting.

Councilmember Miller said that is what he meant.

Councilmember Moyer said asked if the representative from Waste Management could give them any idea if there will be any ramifications.

Ms. Vera said she wanted to clarify that Waste Management is separate than WRCOG. As Director Vela mentioned this is a standard CPI increase and it doesn't have anything to do with a lot of the questions that are being asked.

Mayor Franklin said that there has been a motion to continue the item to the next City Council meeting. **First motion died for a lack of a second.**

Motion Peterson/Welch to approve Consent Item No. 7, to adopt Resolution No. 2015-53, Approving the Consumer Price Index ("CPI") Increase for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2015/16, as set forth in the City of Banning's Franchise Agreement with Waste Management of the Inland Empire. Motion carried, with Conncilmember Miller voting no.

9. Resolution No. 2015-58, Approving the Second Amendment to the Professional Services Agreement with J.H. Douglas and Associates Related to the Banning Housing Element in the amount of $20,000.

Councilmember Peterson said his concern is that during the housing approval process over the years he thinks that there were mistakes made on behalf of Mr. Douglas and it took time away, etc. and he really doesn't understand why we are going to award him this contract of $5,000 a year basically just to tell us of any changes in the housing element. Doesn't staff go to conferences or workshops or get emails from the industry telling you that change is coming down from the State, etc.? Do we really need someone for $5,000 a year to send us an email or to tell us there is going to be a change in the housing element? Did we do an RFP; maybe we could get it cheaper than $5,000 a year or we could subscribe to some association and get the same material.

Director Guillot said that there is no one on staff with the housing experience of Mr. Douglas. He is familiar with the citizen's request for the city of Banning and he is familiar with Council's concerns. He has decades of experience with the Housing and Community Development Department with the State of California and knows the ins and outs. Director Guillot said it would be remise on his part to try to represent the City in this arena and that is the purpose. The whole purpose of adding this amendment is to go back and take another look at the Housing Element and if you look at the scope of services they may, based on Council's decisions, meet with the public again. If you look at page 135, Exhibit A-1 – Scope of Services, his purpose is to help with those housing element programs. It was quite apparent during the Housing Element Update that Council and the citizens were not pleased with how that process went.

There was further Council and staff dialogue in regards to the amendment of this contract, and the services that will be provided to the City, Mr. Douglas being the most qualified, and doing what we can now before the next cycle starts. There were further comments in doing what we can now before the next housing cycle starts.

Director Guillot referred Council to page 126 of the packet under Fiscal Data stating that hopefully he made it clear that we are looking at $5,000 per year for four years or $20,000 total. However there was a typographical error actually in the contract that was listed as an exhibit so if you turn to page 138, Exhibit D-1 – Schedule of Performance No. 2 should state "June 30, 2019" and not "June 30, 2016" so if the Council would choose to approve this resolution he would ask that it be amended to reflect that change.

Mayor Franklin opened the item for public comment.

Inge Schuler commended the Council for putting the change that we desire on a front burner because we need to get this done once and for all because the compromise that we had with the affordable housing overlay caused a lot of resentment and we need to address that issue very quickly. She made the Council aware of the State Supreme Court decision of last week which gave cities and counties quite a bit more influence in deciding what they want in their housing elements and it was very much opposed by the Building Industry Association which was sort of a good thing to hear but we should be aware of that particular decision so that we can implement that very quickly into our changes as well.

Mayor Franklin closed the item for public comment.

Motion Moyer/Welch to approve Consent Item No. 9 to adopt Resolution No. 2015-58, approving the Second Amendment to the Professional Services Agreement with J.H. Douglas and Associates in the amount of $20,000.00 for additional professional services related to the Banning Housing Element and change Exhibit D-1 to read "June 30, 2019". Motion carried, all in favor.

10. Resolution No. 2015-59, Approving the Third Party Amendment to the Contract Services Agreement Between the City of Banning and Romo Planning Group, Inc. for Temporary Planning Services to include additional compensation in the amount not to exceed $150,400.00.

Councilmember Moyer said he wonders why we are doing this when we have an annual budget that we are going to be looking at that includes maybe going to a full-time employee and therefore at least clouding exactly what this contract would entail and he would actually like the Council to put this off and continue it until such time as we determine whether we are actually going to go with a full-time planner as it is proposed in the budget.

There was further Council and staff dialogue in regards to possible issues in postponing this item, looking at a full-time employee, the need for an assistant planner in the department, the contract planner services being provided now, and this contract going to on an "as needed basis" for a year.

Councilmember Miller said that Section 1 of the resolution it says, "The Council approves Amendment No. 3 for additional funding in the amount of $150,000" and it seems to him based upon our discussion that it should be changed for additional funding "not to exceed $150,000 depending upon on need".

Assistant City Attorney said she is looking up the scope of services, Exhibit A-1, and which is stamped page 193 and that is the standard on-call services provision and it says that each task will be indicated in writing beforehand and they will essentially have a project task that will be assigned as on-call so it is written as it stands right now to be "on-call".

There was some further Council and staff discussion in regards to the "not to exceed" language and the tasks involved, and the need to have a temporary employee.

Councilmember Miller said to him the problem is that it specifies that in Section 1 of the resolution and to him the resolution is the legal statement. We can simply change Section 1, instead of saying "the amount of $150,000.00" to say, "in the amount not to exceed $150,000.00" so we can change it if we do get a full-time employee. Assistant City Attorney Laymon said she would agree with that.

Mayor Franklin opened the item for public comment; there was none.

Motion Miller/Peterson to approve Consent Item No. 10 to adopt Resolution No. 2015-59, Approving the Third Party Amendment to the Contract Services Agreement Between the City of Banning and Romo Planning Group, Inc. for Temporary Planning Services to include additional compensation with the change to Section 1 of the Resolution that states funding in the amount "not to exceed" exceed $150,400.00. Mayor Franklin opened the item for public comment; there was none. **Motion carried, with Councilmembers Moyer and Franklin voting no.**

JOINT MEETING

Mayor Franklin recessed the regular City Council meeting and called to order a joint meeting of the Banning City Council, the Banning Utility Authority and the City Council Sitting In Its Capacity of a Successor Agency.

REPORTS

1. Adoption of Resolutions Related to the Revised Budget Plan for Fiscal Year 2015-16 for the City of Banning, Banning Utility Authority, and Successor Agency and Adoption of the GANN Limit.
   (Staff Report – Michelle Green, Deputy Finance Director)

Deputy Director Green said that she will be giving an overview of the Mid-Cycle Fiscal Year 16 Budget and there have been several discussions on various parts of this budget. At this time she started her power-point presentation (Exhibit "A" attached) and explained the information provided in regards to the General Fund and she also provided a small overview of some various groups of funds and where they will end up after any revisions that have been made to the Mid-Cycle budget and those include the Water Funds, Wastewater Funds, Reclaimed Water Funds, Electric Funds, Special Revenue Funds, Capital Improvement Funds, Enterprise Funds, Internal Service Funds, Successor Agency, and Successor Agency Funds. She said in the General Fund as far as going forward in regards to Future Challenges we have many and this is not an exhaustive list. We have increasing costs with PERS and estimates at this time tell us that our Miscellaneous Unit cost will go up almost 2% next year while safety will probably go up over 6%. In regards to best use of mining tax revenues pending litigation and the eventual mine close out we are using very conservative estimates on the Measure J revenues and have to plan for the future. We also have aging City assets and deferred maintenance because in the past those things were put off as a way to cut costs. We do have reserves that we are working on building up to

cover those items to hopefully address those issues. The most challenging as a City is how we allocate our scarce resources to meet the need for improved City services. As public servants we want to provide new services and enhance existing services to the public and it is very difficult to do so when you have limited resources so to that end staff has included in this budget process a new procedure and has incorporated into the budget document the integration of the Council Policy Goals and Objectives.

Council thanked Michelle Green and Dean Martin and staff who have all done a very good job in listening to what the Council had to say and incorporating everything that they could into this budget. There was further Council and staff dialogue in regards to the three new police officers and when they will be starting, collection of money from the Robertson's mine that is partially included in this budget and half going into reserves, this budget reflecting a lot of what had been heard in the focus group meetings, and that this budget is a living document so there will be possible changes as the City's needs change.

Mayor Franklin commended the public for participating in the community meetings, the surveys, and for giving a lot of input because that is where the Council started and also commended the Council for working together extensively on their goals and objectives and to staff for following up them. This was a good community effort where everybody worked together to see where we would like our city to go in the future.

Mayor Franklin opened the item for public comment; there was none.

Motion Welch/Moyer to approve the following resolutions: a) That the City Council adopt Resolution No. 2015-62, Adopting the Annual Budget for the Fiscal Period July 1, 2015 through June 30, 2016, Adopting the Five Year Capital Improvement Program, and Making Appropriations to Meet Expenses Approved Therein, Approving Budgetary Policies and Recommendations; b) That the Banning Utility Authority adopt Resolution No. 2015-09 UA, Adopting the Revised Budget Plan for the Fiscal Period July 1, 2015 through June 30, 2016, Adopting the Five Year Capital Improvement Program, and Making Appropriations to Meet Expenses Approved Therein; c) That the Successor Agency Board adopt Resolution No. 2015-04 SA, Adopting the Revised Budget Plan for the Fiscal Period July 1, 2015 through June 30, 2016, Adopting the Five Year Capital Improvement Program, and Making Appropriations to Meet Expenses Approved Therein; and d) That the City Council adopt Resolution No. 2015-63, Establishing an Appropriations Limit for the Fiscal Year 2015-16, Pursuant to Article XIIIB of the California Constitution. Motion carried, all in favor.

Mayor Franklin adjourned the joint meetings and reconvened the regular City Council Meeting.

REPORTS OF OFFICERS

Mayor Franklin said there has been a request to move Item No. 8 forward.

8. Resolution No. 2015-47, A Resolution of the City Council of the City of Banning, California approving an Extension to November 24, 2015 for Design Review No. 10-702 for the Village at Paseo San Gorgonio Project subject to the original conditions thereto

and further subject to City Attorney's Approval of Documentation executed and delivered by JMA Village LLC to the City Attorney on or before July 15, 2015 (i) Confirming Commencement of Construction on or before August 31, 2015, and (ii) Modifying the other Construction Commencement Dates under the Amended PSA (as defined below), Confirming the Maturity Date of the Note as August 31, 2015, and Related Requirements. (Staff Report – Lona N. Laymon, Assistant City Attorney)

Councilmember Peterson left the dais at this time because of a conflict of interest.

Assistant City Attorney Laymon gave the staff report on this item stating that this is a continued item from the last regular Council meeting. At the last meeting the Council was provided with a recommendation to extend the Design Review for this project to a date of November 24, 2015. The Council chose rather than to just outwardly extend the Design Review they wanted a date certain or to put into place some form of mechanism to get a date certain for an actual commencement of project construction. Staff has brought back a proposal to extend the design review but make the Design Review conditional upon the developer commencing construction by August 31, 2015 which was the date raised by the Council at its last regular meeting. She made a correction/suggestion to the staff report and the recommendation. In the agenda it says, "...that the Design Review extension would be to November 24, 2015." We could, if so desired by the Council amend that to make that date for the Design Review deadline coterminous with the building start date of August 31, 2015. So basically although the description and the recommendation looks very long it is actually a very simple proposal. It would be that we extend the Design Review period to August 31st and that would also be subject to the developer agreeing by July 15th to an agreement subject to their office's review and approval that would extend them starting actual construction by August 31st. We would also want to put into place because there has been some dispute as between the parties about the actual maturity date of a note regarding this project. We would also tie the August 31, 2015 Maturity Date for the Note to this new "second amendment" essentially to the project agreements.

Councilmember Miller made a motion to change the proposal and he has two suggestions: 1) Resolution No. 2015-47, A Resolution of the City Council of the City of Banning, California, approving an Extension to August 31, 2015 to correspond to the contractually required final date for the start of construction; and 2) to add to the end of this resolution, "If all the conditions listed are not met satisfactorily by August 31st, the Council directs the City Attorney to start default proceedings on September l, 2015."

Assistant City Attorney Laymon said as she is understanding it we would change the November 24, 2015 date to August 31, 2015; and adding (iii) to authorize the City Attorney's office to commence default proceedings upon the Note if the Note is not paid by August 31, 2015.

Councilmember Miller said that he would prefer, "...if all the conditions are not met" instead of just simply "...the Note" because there are two conditions. The Note has to be paid and construction has to be started.

Assistant City Attorney Laymon said that with respect to the Note they can commence default proceedings with respect to the Note if it is not paid. However, a Note or a Recorded Deed of

Trust, the Note essentially, only secures one issue and the one issue that it secures is payment. So while the failure to commence construction by August 31st may not trigger their ability to foreclose upon the Note, it may trigger their ability to seek other legal remedies such as there is a Right of Reverter under the Professional Services Agreement or a Breach of Contract.

Councilmember Miller said that is what he is looking for and could the Assistant City Attorney give us at this time a legal statement that would include both of those requirements.

Assistant City Attorney Laymon said that she definitely thinks that they can make something very broad like that. **If as of September 1, 2015 if all the conditions have not been satisfied pursuant to Council's action tonight, then the City Attorney's office would be authorized to take all available legal actions and seek all available legal remedies.**

Councilmember Miller amended his motion in regards to his second suggestion to include the language that was put forward by Assistant City Attorney Laymon. Motion seconded by Councilmember Moyer. Mayor Franklin opened the item for public comment; there was none. **Motion carried.**

At this time Councilmember Peterson returned to the dais.

1. Resolution No. 2015-48, Approving the Fire Services Protection Agreement with Riverside County Fire Department/CAL FIRE for Up to Three Years.

2. Resolution No. 2015-52, Approving a Contract for Continued Funding of Fire Engine 20 between Banning, Beaumont and Riverside County Fire.
   (Staff Report – Tim Chavez, Battalion Chief)

Chief Chavez addressed the Council regarding the three-year renewal of the fire protection services contract with CAL FIRE/Riverside County Fire. He said it is kind of encompassed in two Resolutions 2015-48 and Resolution No. 2015-52 which also includes the sharing, splitting three ways Engine 20 which sits at Highland Springs and Ramsey. Also, to note, these costs were included in the budget presentation given by Deputy Finance Director Green. Since September 1, 1998 the City of Banning has contracted with Riverside County Fire Department for fire services and staff recommendation is to approve the two resolutions.

Councilmember Peterson asked who owns the trucks and the equipment and do we share that with Beaumont. Chief Chavez said the City of Banning owns Engine 20 and all the equipment that is on it. The personnel costs are split three ways with Riverside County, the City of Beaumont and the City of Banning but they do not pay for the engine. He added that Engine 20 even though it is split three ways costs run 77% of its calls in the city of Banning. Also, Station 89 and all the equipment belong to the City of Banning as well.

Mayor Franklin added that the actual structure of Station 20 belongs to the State of California.

Councilmember Peterson asked how much the increase is. Chief Chavez said that it is an estimated amount of almost $300,000.00 for the first year however, keep in mind that the estimate that is provided is just that and it is based on full-staffing on both engines and based on

everybody being top step in the State system out of five steps and it also has a couple of wild cards thrown in for costs. Out of the last seven years five of those have come in under the estimate.

There was further Council and staff dialogue in regards to the two resolutions, the costs being split, and the possibility of having a separate paramedic truck.

Mayor Franklin opened the item for public comment; there was none.

Motion Welch/Moyer that the City Council adopt Resolution No. 2015-48, Approving the Fire Services Protection, Fire Prevention and Rescue Medieal Services Agreement with Riverside County Fire Department/CAL FIRE for up to three years. Motion carried, all in favor.

Motion Moyer/Welch that the City Council adopt Resolution No. 2015-52, Approving the contract for continued split funding of Fire Engine 20 as listed in the Banning Strategic Plan. Motion carried, all in favor.

3. Street Sweeper Purchase or Repair Options
(Staff Report – Art Vela, Acting Director of Public Works)

Acting Director Vela gave the staff report on this item as contained in the agenda packet giving some background information and also went over the available options.

Councilmember Miller said he was surprised that this diesel engine has 58,000 miles on it and typically a diesel that runs the road goes 2 million miles. It seems to him that that is a little strange.

Acting Director Vela said that there are two different diesel motors on this unit. There is the main diesel engine that runs the chasse and there is a second diesel motor which is the auxiliary motor which powers the components of the street sweeper. If you are referring to the motor on the chasse, you are correct; it did not have a lot of miles on it. He did a little bit of research and all the manufacturers that he spoke to and local agencies that have street sweepers told him that the life expectancy for a street sweeper is anywhere between 7 and 10 years. Also he looked at what our maintenance costs have been on the existing vehicle and for the first half of the vehicle's life which is about 7 years we spent about $70,000 in labor and materials for general maintenance and repairs on the unit. The second 7 years of its life we have spent about $110,000 so they would expect that if it continued to be in service that those costs would continue to increase.

Councilmember Peterson said that the 58,000 miles on that particular vehicle is like the break-in period. He doesn't understand the maintenance costs on the unit of almost $200,000 dollars over its lifetime so far.

Acting Director Vela said over a 14-year period it has been about $180,000. A majority of the repairs has been on the sweeper component fixing the hopper, the arms, the brooms and stuff like that and some repair costs to the chasse itself.

There was more dialogue between Council and staff in regards to fixing the original sweeper, CARB compliance, getting data on other types of sweepers, maintenance data on sweepers, maintenance records and track record on a Elgin or any other brand of sweeper, purchasing policy in regards in going out for bids, use of AQMD funds for the purchase of a sweeper, piggy-backing on other where other cities have purchased sweepers, and also don't purchase a demo model if we buy a new sweeper.

Mayor Franklin opened the item for public comments; there were none.

Motion Miller/Peterson that the City Council approve Option 4 the purchase of a new street sweeper. Motion carried, all in favor.

Mayor Franklin said that the motion was with the understanding that staff come back to the Council with the options of units to look at for purchase.

4. Resolution No. 2015-55, Approving a Professional Services Agreement with Western Riverside Council of Governments for Residential and Commercial Diversion Services.

Motion Moyer/Peterson to continue this item to a future date so that the Council ean have a comparison with Waste Management. Mayor Franklin opened the item for public comment; there were none. **Motion carried, all in favor.**

5. Resolution No. 2015-56, Approving a Professional Services Agreement with V2C Group, Inc. for the Design of Improvements at Roosevelt Williams Park.
(Staff Report – Art Vela, Acting Director of Public Works)

Acting Director Vela gave the staff report on this item as contained in the agenda packet.

Councilmember Miller said the design review is close to a $100,000 dollars; how much will the actual construction cost. Also, do we have the funds?

Acting Director Vela said that they estimated that it will come in anywhere from $1.5 million and $2 million. The project has been identified in the CRA bonds or the ROPS. The construction funds have not been formally approved by the Successor Agency but that will be taken on at their next approval cycle but the funds for the design have been approved

Councilmember Miller asked when would the estimate, the actual funds for construction, become available because he is concerned that if there is a delay in getting construction funds, we will have to go back into some redesign and would there be a problem.

Acting Director Vela said once they get to about 90% completion is when we get a better idea of what the construction costs will be and by about the 90% completion of the plans we have good idea of quantities and estimates. He said in regards to redesign he doesn't expect many changes

coming that would affect the plans. He said that the renewed NPDES permit has been the biggest change to the development of the plans and that permit and those requirement are relatively new so he doesn't seen those changing anytime soon.

There was further Council and staff dialogue in regards to the prior landscape improvements plans being usable, has the Parks and Recreation Commission seen the design and did they have any concerns, this being a multipurpose use, and time frame for completion.

Mayor Franklin opened the item for public comment.

Bill Dickson addressed the Council stating that his concern is that they are looking at one of our very small parks and the $95,000 dollars is just amazing especially when so much of this work was done before and when you start looking at $1.5 million to do the work that just seems like an awful lot to go through and redo some of the designs that were done in 2009-2011 so he would like to see who did this originally.

Mayor Franklin closed the item for public comment.

Mayor Franklin asked in regards to the cost of the bid do you have anything else and also how well this meets up with the Parks Master Plan that was put together a few years ago.

Acting Director Vela said that he will confirm and make sure that this design reflects what was approved in the Master Plan.

Motion Miller/Moyer that the City Council: 1) Adopt Resolution No. 2015-56, Awarding a Professional Serviees Agreement with V2C Group, Inc. of Riverside, CA in the amount of $95,592.00; 2) Authorizing the Administrative Services Director to make necessary hudget adjustments and appropriations and transfers related to the project; and 3) Authorize the Interim City Manager to execute the Professional Services Agreement with V2C Group, Inc. Motion carried, all in favor.

7. Resolution No. 2015-60, Consideration of a Contract Services Agreement for Building & Safety Services.
(Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot gave the staff report as contained in the agenda packet and displayed a chart showing Charles Abbott's proposed fee services and Willdan's existing contract.

The Council thanked Acting Director Guillot for an excellent report.

Ron Grider, Director of Charles Abbott Associates addressed the Council stating that they have been in business for 30 years and look forward to the opportunity to serve the City of Banning.

Mayor Franklin opened the item for public comment; there was none.

Motion Welch/Miller that the City Council: 1) Adopt Resolution No. 2015-60, Approving a Contract Services Agreement with Charles Ahhott Associates, Inc. to provide Building &

Safety Services in the amount not to exceed a fee of 65% of the fees paid for the first $15,000, 55% of the fees paid in the amounts from $15,001 to $30,000, and 50% of the fees paid in the amounts over $30,001; and 2) Authorize the Interim City Manager to execute the Contract Services Agreement with Charles Abbott Associates, Inc. in the form that is approved by the City Attorney. Motion carried, all in favor.

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

Councilmember Peterson –

- He requested of the Interim City Manager that perhaps at the next meeting he could publically report on the Chamber of Commerce. It has been a year since the controversy came about with the Chamber in regards to the utility bill and he would like a public report as far as have payment arrangements been made or what is going on so the public has an idea.

Mayor Franklin –

- A Water Regional Alliance Meeting will be held tomorrow night June 24th at 6:00 p.m. in the Council Chambers and it is open to the public.

City Committee Reports - None
Report by City Attorney – Nothing to report at this time.

Report by Acting City Manager –

- Beginning on the 14th of September city hall operating hours will be returning to five days a week being open Monday through Friday from 8 a.m. to 5 p.m. Written notices will be getting out as we get closer to that date.
- We will begin sending out notices to all of our utility users about the Chromium 6 issue. The City has received official notification from the State that we are in violation and therefore we are required to provide notices to our citizens.
- The position for Planning Commissioner is open and if you would like to apply or know of anyone who is interested in applying you have until July 23, 2015 at 5:00 p.m.

Councilmember Welch asked the Acting City Manager to comment on what he said in regards to the water.

Acting Director Vela said that what Interim City Manager was referring to was specifically to Chromium 6. So as we expected we are in exceedance of the new Chromium 6 MCL so the State requires that we notify all of our customers that we are in exceedance of a primary drinking water standard so that is the process that will start.

Councilmember Welch said that people are really interested in helping with our water conservation. We had talked about them getting a benchmark at some point in time to measure their effectiveness and we talked about mid-2013 and have we been able to do anything in that direction.

Interim City Manager Martin said that staff is still looking at that and still pulling together cost estimates to do that but it is going to take a minimum of 6 to 8 weeks to get it done and

implemented. He has since learned within the past week that the information is available to our citizens but they have to go to their account on-line and it will show them the last three years usage and they can do that right now. He can put information on the City's website to that effect and try to get an insert into the utility billing to make them aware of that but staff is still going to work on getting something in place that will have it actually show on their billing statement.

Mayor Franklin said to follow-up in regards to water one of the things that they are talking about with the Water Alliance tomorrow is that there is a company called iEfficient that is doing a lot of the advertising about where we are with water and conservation so we can talk about whether or not we want to participate on a regional basis with what they are doing so if there is anything that seems to fit into what we need to do to educate our residents, that will come back to the Council.

Councilmember Miller said very often it is helpful to have on the website just a thermometer or something showing what percentage the whole city is doing.

Acting Director Vela said he thinks that is something that could be added to the Water Division link. He said that they just uploaded their data to the State website as require by the State's mandate and we have already seen a reduction in our total potable water production that is nearing the 30% range.

ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(6/2015)*
2. Discussion regarding Animal Control Services *(7/2015)*
3. Discussion regarding change in time for Council Meetings
4. Fee Study
5. Discussion on how to handle/address upcoming Assembly Bills
6. Discussion of City Manager authority to give a contract of $25,000.
7. Review Consent Calendar policy.
8. Discussion of vacant properties where people are discarding furniture.

(Note: Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

Mayor Franklin said that in regards to Pending Item No. 5 we do have a governmental 2+2 committee (Mayor Franklin and Councilmember Welch) and she wanted to know if it was okay by the Council to move that item to that committee to be able to bring items back to the Council and then we can take it off Pending Items. **There was Council consensus to move that to the 2+2 committee and those items would be brought back to the Council for approval.**

Mayor Franklin said that the Council would reconvene back to closed session.

Assistant City Attorney Laymon said the two closed session items that the Council is reconvening on are: 4. Labor Negotiations: b) Executive Salary and Benefits, and Item 6.) Public Employee Appointment. Also public comment had been taken on those earlier.

ADJOURNMENT

By common consent the meeting adjourned at 8:19 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.

City of Banning
MidCycle FY16
Budget Overview

June 23, 2015

Agenda

- MidCycle Budget Review process
- Review of General Fund – Revenue and Expenditure Adjustments
- General Fund Status
- Review of Other Funds' Results
- Work plan related to Council Goals
- Recommendation
- Questions

MidCycle Budget Review Process

- Two-Year Budget (FY15 & FY16) adopted June 2014
- Second year of the two-year budget
- Final results of FY14 audit – revised available balances
- Revised revenue and expenditure estimates based on new or more relevant information
- Incorporated Council Goals

General Fund - Revenues

MidCycle Adjustments:

Property Tax	$ 287,296
Sales Tax	2,100
Transient Occupancy Tax (TOT)	80,000
Measure J Mining Tax	550,000
Electric Admin Service Charge	(40,000)
All Other Revenues	105,314
Total Adjustments to Revenues	$ 984,710

General Fund - Expenditures

MidCycle Adjustments:

Police/Dispatch/Code Enf/Fire	$ 641,196
Community Services	121,319
Fiscal Services/TV Government Access	88,366
Public Works	48,364
City Administration*	23,700
Building & Safety/Planning	(25,967)
Total Adjustments to Expenditures	$ 896,978

General Fund - Status

FY16 Adopted Budget Surplus/(Deficit)	$ (130,367)
ADD: Increase in Revenues	984,710
SUBTRACT: Increase in Expenditures	(896,978)
Net MidCycle Adjustments	87,732
Revised FY16 Budget Surplus/(Deficit)	$ (42,635)

Water Funds

Water Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
660 – Water Operations	8,686,398	(813,338)	7,873,060
661 – Water Capital Facilities	1,456,915	49,660	1,506,575
663 – BUA Water Capital Project	1,552,119	(297,100)	1,255,019
669 – BUA - Water Debt Service	82,265	(1,100)	81,165
Combined Fund Balance >>>	**11,777,697**	**(1,061,878)**	**10,715,819**

Wastewater Funds

Wastewater Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
680 – Wastewater	1,253,791	(39,197)	1,214,594
681 – Wastewater Capital Facility	9,792,434	(217,640)	9,574,794
683 – BUA Wastewater Capital Project	2,729,903	(98,700)	2,631,203
685 – State Revolving Loan	774,335	1,507	775,842
689 – BUA Wastewater Debt Service	90,056	500	90,556
Combined Fund Balance >>>	**14,640,519**	**(353,530)**	**14,286,989**

Reclaimed Water Funds

Reclaimed Water Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
662 – Irrigation Water	7,147	(2,500)	4,647
682 – Wastewater Tertiary	2,577,935	(2,132,500)	445,435
Combined Fund Balance >>>	2,585,082	(2,135,000)	450,082

Electric Funds

Electric Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
670 - Operations	11,337,359	(25,327)	11,312,032
672 - Rate Stability	6,252,685	10,000	6,262,685
673 - Electric Improvement	4,627,081	15,141	4,642,222
674 - Electric Bond Project Fund	1,460,410	(294,650)	1,165,760
675 - Public Benefit Fund	475,892	(617)	475,275
678 - Electric Debt Service Fund	298,157	200	298,357
Combined Fund Balance >>>	24,451,584	(295,253)	24,156,331

Special Revenue Funds

- Includes funds that are restricted in use. Examples include:
  - Gas Tax
  - Measure A
  - Grants
  - Development impact funds

- Total Adjusted Revenues $3,114,584
- Total Adjusted Expenditures $3,229,577

Capital Improvement Funds

- Includes funds that are restricted in use.
  - i.e. Development impact funds, major capital projects

- Total Adjusted Revenues $ 6,705
- Total Adjusted Expenditures $ 0

Enterprise Funds

- Includes funds that are considered to be like a business:
  - Airport
  - Transit
  - Refuse

- Total Adjusted Revenues $5,272,625
- Total Adjusted Expenditures $5,277,794

Internal Service Funds

- Include funds that provide services to other City operations. These include:
  - Risk Management (worker's compensation, general liability and legal svcs)
  - Fleet
  - Information Services
  - Utility Billing Services

- Total Adjusted Revenues $6,264,497
- Total Adjusted Expenditures $6,149,000

Successor Agency

Overview

- Successor Agency approves ROPS every 6 months
- Oversight Board approves ROPS
- Department of Finance approves ROPS
- Last ROPS approved was ROPS 15-16 A

Successor Agency Funds

Successor Agency Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
805 – Redev Oblign Retirement Fund	106,099	1,530,256	1,636,355
810 – Successor Housing Agency	37,753	50	37,803
830 – Debt Service Fund	178,675	152,387	331,062
850 – Successor Agency	1,535,225	(1,483,322)	51,903
855 – Tax Allocation Bonds -2007	5,695,601	(64,719)	5,630,882
856 – Tax Allocation Bonds-2003	276,197	32,974	309,171
857 – Low/Mod Tax Alloc Bonds-2003	472,912	900	473,812
Combined Fund Balance >>>	**8,302,462**	**168,526**	**8,470,988**

Future Challenges

General Fund

- Increasing costs with PERS.
- Best use of mining tax revenues given pending litigation and eventual mine closeout.
- Aging city assets and deferred maintenance.
- Allocation of scarce General Fund resources to meet need for improved city services.

Council Policy Goals and Objectives

- Community focus group meetings
- Survey results compiled
- Council defined Goals
- Council and staff collaborated on expanded definitions of goals and on policy objectives
- Staff developed activities (work plan) to meet Council's desired goals and objectives

Recommendation

- Approve the resolutions amending the estimated revenues and appropriations for the Fiscal Year 2015/2016 budget for the City of Banning, Banning Utility Authority and Successor Agency and adopting the GANN Limit

Questions

~

Further Discussion

CITY COUNCIL AGENDA
CONSENT ITEM

Date: **July 14, 2015**

TO: **City Council**

FROM: **Dean Martin, Interim City Manager**

SUBJECT: **Authorization to enter into an Enterprise Licensing Agreement with Microsoft**

RECOMMENDATION: "That the City Council authorizes entering into an Enterprise Licensing Agreement with Microsoft and authorizes the Interim City Manager to execute the related enrollment agreement".

JUSTIFICATION: The City executed a five-year licensing agreement with Microsoft for fiscal years 2011 through 2015. That agreement will expire on July 1, 2015 and it is time to execute a new agreement if the City wishes to continue using Microsoft software products. Among other benefits, the agreement will keep the City in compliance with all current licensing requirements.

BACKGROUND & ANALYSIS: The City uses and intends to continue using Microsoft software products as its standard configuration on its Application Servers and desktop computer environment. Microsoft offers an enterprise (or citywide) software licensing agreement. Entering into to this type of an agreement has several benefits. Some of those benefits include:

- Lower cost of software in the future
- Free upgrades on all software covered by agreement
- Ensures compliance with all licensing requirements
- Will facilitate standardization of software throughout the City
- Allows City to implement new Microsoft applications at a reduced rate
- Licensing costs spread over three years versus a lump sum payment
- Employee Purchase Program Discount on packaged software, including Microsoft Office, and reference software
- Training vouchers for Training at Certified Technical Training Centers
- Problem Resolution Support

Microsoft has entered into a master agreement with the County of Riverside. All cities and counties in the State are allowed to piggyback on this agreement by executing a Microsoft Enterprise Enrollment form. The City participated in the previous five-year agreement in fiscal years 11 through 15. Staff is recommending that the City piggyback on this agreement for another three-year agreement, for fiscal years 16 through 18.

FISCAL DATA: This is a three-year agreement totaling $144,690.24. The contract calls for three annual payments of $48,230.08 (copy of quote attached as Attachment 1). The prior contract was for five-years at $192,983.20, or $38,596.64 per year. Funds are currently available in the Information Services budget to pay the first annual installment. No additional appropriation is necessary.

RECOMMENDED/APPROVED BY:

Dean Martin
Interim City Manager/
Interim Administrative Services Director

CompuCom - software quote

Quoted by Michael Hawkins, CompuCom 7171 Forest Lane Dallas, TX 75230
Phone 858-527-8293 Michael.Hawkins2@compucom.com

Please fax your POs to Client Assistance Center at 800-366-9994. You may call 800-400-9852, option 2, to check status on orders.

	Quoted to:	City of Banning Eric Brown eric.brown@ci.banning.ca.us (951) 922-3133		
Date Issued	*6/18/2015*	Microsoft EA Renewal Quote with O365 G3		
		Important: Please provide the email address of the recipient designated to receive a CompuCom "order confirmation"		
Quantity	*Part #*	*Description*	*Unit Price*	*Ext. Price*
		enterprise products		
165	7R2-00001	Off365PlanG3FromSA ShrdSvr ALNG SubsVL MVL PerUsr	$ 150.96	$ 24,908.40
165	U5J-00004	ECALBridgeO365 ALNG SA MVL Pltfrm UsrCAL	$ 25.42	$ 4,194.30
176	CW2-00307	WinEntforSA ALNG (SA) MVL Pltfrm	$ 29.19	$ 5,137.44
		additional products		
1	312-02257	Exchange Server Standard (SA)	$ 105.67	$ 105.67
1	H30-00238	Project Professional w/1 ProjectSvr CAL (SA)	$ 162.62	$ 162.62
5	H21-00591	Project Server CAL (SA) User CAL	$ 28.97	$ 144.85
1	H22-00475	Project Server (SA)	$ 846.26	$ 846.26
35	359-00792	SQL CAL (SA) Device CAL	$ 31.19	$ 1,091.65
7	228-04433	SQL Server Standard Server (SA)	$ 133.98	$ 937.86
1	H04-00268	Sharepoint Server (SA)	$ 1,015.54	$ 1,015.54
4	P73-05898	WinSvrStd ALNG (SA) 2Proc	$ 131.76	$ 527.04
1	P71-07282	WinSvrDataCtr ALNG (SA) 2Proc	$ 919.64	$ 919.64
3	P71-07281	WinSvrDataCtr ALNG SASU MVL WinSvrStd 2Proc (Step Up)	$ 1,838.27	$ 5,514.81
		Subscriptions		$ -
50	4ZF-00033	VDA ALNG SubsVL MVL Pltfrm PerDvc	$ 54.48	$ 2,724.00
				$ -
		Please type "electronic software delivery" on your PO		
	Product-total			$ 48,230.08
	Sub-Total			$ 48,230.08
0	Tax	ESD - nontaxable		$ -
	Shipping			No Charge
	Total	**Annual Payment Total**		**$ 48,230.08**
		3 Year Total		$ 144,690.24

Pass-Through Warranty and Other Rights. As a reseller, end-user warranties and liabilities (with respect to any third party hardware and software products provided by CompuCom) shall be provided as a pass-through from the manufacturer of such products. All software products are subject to the license agreement of the applicable software supplier, as provided with the software packaging or in the software at time of shipment.

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CITY COUNCIL MEETING
CONSENT

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-25, "Approving Amendments to the Professional Services Agreement with LSA Associates, Inc. for Serviees related to the Banning Circulation Element and for the Update of the Traffic Fee Component of the Development Fee Program"**

RECOMMENDATION: Adopt Resolution No. 2015-25:

I. Approving an Amendment to the Professional Services Agreement with LSA Associates, Inc. in an amount of $8,000.00 for services rendered related to the update of the Circulation Element.

II. Approving an Amendment to the Professional Services Agreement with LSA Associates, Inc. in an amount of $40,000.00 for additional services related to the update of the Traffic Fee Component of the Development Fee Program.

III. Authorizing the Administrative Services Director to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with LSA Associates, Inc. for a total contract amount not to exceed $286,000.00.

IV. Authorizing the City Manager to execute contract documents.

JUSTIFICATION: The approval of these services is necessary in order to disburse payment related to services already rendered and to complete the update of the Traffic Fee Component of the Development Fee Program.

BACKGROUND: On August 23, 2011, City Council approved Resolution No. 2011-76 awarding a Professional Services Agreement ("PSA") to LSA Associates, Inc. for (1) the preparation of an environmental impact report for the Banning Circulation Element General Plan Amendment and for (2) updating the traffic fee component of the Development Fee Program. The scope of work was to be completed for an amount of $238,000.00. The services to be provided were in response to the Pardee Homes Development project and, therefore; were funded by the developer. The original agreement approved under this resolution is attached as Exhibit "A".

Circulation Element General Plan Amendment

The first task of the PSA included the Banning Circulation Element General Plan Amendment (GPA No. 13-2501) and was budgeted at $193,000.00. The scope was completed and approved by City Council on March 26, 2013 under Resolution No. 2013-34. During the completion of this task the scope of work was expanded to include a revision to the Level of Service ("LOS") for roadway

City Council on March 26, 2013 under Resolution No. 2013-34. During the completion of this task the scope of work was expanded to include a revision to the Level of Service ("LOS") for roadway operating conditions from LOS "C" to LOS "D" and removing an identified interchange improvement at I-10/Highland Home Road from the Circulation Element. The additional work was completed at a cost of $8,000.00 as shown in the proposal dated February 13, 2013 and attached as Exhibit "B". In order to compensate LSA Associates, Inc. for the additional services, staff is seeking approval of an amendment to the original PSA in the amount of $8,000.00. To date, total expenses related to services provided amount to $246,000.00.

Development Fee Program

The second task of the PSA included an update to the traffic fee component of the City's development fee program. A $45,000.00 budget, of the total $238,000.00 PSA, was included for this task. At this point the second task has not been completed. The original scope of work identified for this project was completed by LSA Associates, Inc. including: coordination with staff; identification of study area; identification of intersection needs for the future; existing traffic conditions and intersection deficiencies; estimation of costs; identification of future new traffic; development of traffic fee for future new traffic; preparation of traffic analysis report; and related meeting attendance.

During the preparation of the update to the traffic fee component, staff identified the requirement for additional analyses that were not included in the original scope of work. The additional items include the following: figures to identify typical major and secondary highways cross sections; adjustments to buildout volume development; determination of right-of-way requirements; queuing analysis estimates; and right-of-way acquisition estimates. As part of Resolution No. 2015-25 staff is requesting an amendment to the original PSA for the additional service related to the Development Fee Program in the amount of $40,000.00. The proposal for related additional services is attached as Exhibit "C" and is dated October 2, 2014.

As mentioned, City Council approved the original contract with LSA Associates, Inc. in the amount of $238,000.00. If approved, the requested two part amendment will increase the contract by a total of $48,000.00, to a total contract amount of $286,000.00. Pardee Homes has recently deposited additional funds to cover the additional services.

FISCAL DATA: Professional services provided by LSA Associates, Inc. in regard to the abovementioned services will be fully funded by deposits received by Pardee Homes. Staff requests that all existing and future funds collected by the developer for these services be appropriated to an expenditure account determined by the Administrative Services Director in order to be utilized for these services.

SIGNATURES ON NEXT PAGE

RECOMMENDED BY:

Art Vela,
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim Administrative Services
Director/Interim City Manager

Attachments:

1.) Attachment 1: Exhibit "A"-Professional Services Agreement approved under Resolution No. 2011-76.
2.) Attachment 2: Exhibit "B"- Proposal dated February 13, 2013 for professional services related to the Banning Circulation Element Update
3.) Attachment 3: Exhibit "C"- Proposal dated October 2, 2014 for professional services related to the Development Fee Program.

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RESOLUTION NO. 2015-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENT WITH LSA ASSOCIATES, INC. FOR SERVICES RELATED TO THE BANNING CIRCULATION ELEMENT AND FOR THE UPDATE OF THE TRAFFIC FEE COMPONENT OF THE DEVELOPMENT FEE PROGRAM

WHEREAS, on August 23, 2011, City Council approved Resolution No. 2011-76 awarding an agreement to LSA Associates, Inc. for: (1) the preparation of an environmental impact report for the Banning Circulation Element General Plan Amendment and for (2) updating the traffic fee component of the Development Fee Program in the amount of $238,000.00 attached as Exhibit "A"; and

WHEREAS, the Banning Circulation Element General Plan Amendment (GPA No. 13-2501) budget portion of the original agreement was for an amount of $193,000.00 and related services were completed and approved by Council on March 26, 2013 under Resolution No. 2013-34; and

WHEREAS, in order to complete services related to the Circulation Element, additional work and funding was required in the amount of $8,000.00 including changing the level of service ("LOS") for roadway operating conditions from LOS "C" to LOS "D" and removing one designated interchange improvement at I-10/Highland Home Road as described in the proposal attached as Exhibit "B"; and

WHEREAS, during the preparation of the update to the traffic fee component, staff identified the requirement for additional analyses that were not included in the original scope of work such as: figures to identify typical major and secondary highway cross sections; adjustments to buildout volume development; determination of right-of-way requirements; queuing analysis estimates; and right-of-way acquisition estimates. The additional work will cost $40,000.00 as shown in the proposal attached as Exhibit "C"

WHEREAS, as part of this resolution staff is requesting the approval of the two part amendment which will increase the total contract amount by $48,000.00 for a total contract amount of $286,000.00; and

WHEREAS, on May 13, 2015 Pardee Homes submitted a check to the City of Banning in the amount of $55,062.00 to cover the additional services as described in this report and to date has provided deposits specifically related to this project in an amount of $289,785.46; and

WHEREAS, staff request that all existing and future funds collected by the developer for these services be appropriated to an expenditure account determined by the Administrative Services Director to be utilized for these services.

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

SECTION 1. The City Council adopt Resolution No. 2015-25, "Approving Amendments to the Professional Services Agreement with LSA Associates, Inc. for Services related to the Banning Circulation Element and for the Update of the Traffic Fee Component of the Development Fee Program"

SECTION 2. The City Council approves an amendment to the Professional Services Agreement with LSA Associates, Inc. in amount of $8,000.00 for services rendered related to the update of the Banning Circulation Element.

SECTION 3. The City Council approves an amendment to the Professional Services Agreement with LSA Associates, Inc. in an amount of $40,000.00 for additional services related to the update of the Traffic Fee Component of the Development Fee Program.

SECTION 4. The Administrative Services Director is authorized to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with LSA Associates, Inc. for a total contract amount not to exceed $286,000.00 and appropriate all funds deposited by Pardee Homes for the purpose of funding said professional services.

SECTION 5. The City Manager is authorized to execute contract documents referred to herein.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, 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. 2015-25 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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ATTACHMENT 1

EXHIBIT "A"
PROFESSIONAL SERVICES AGREEEMNT APPROVED UNDER RESOLUTION NO. 2011-76

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(160)

CONTRACT SERVICES AGREEMENT

FOR PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT AND UPDATE THE TRAFFIC FEE COMPONENT OF THE DEVELOPMENT FEE PROGRAM

By and Between

THE CITY OF BANNING,
A MUNICIPAL CORPORATION

and

LSA ASSOCIATES, INC.

AGREEMENT FOR CONTRACT SERVICES FOR PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT AND UPDATE THE TRAFFIC FEE COMPONENT OF THE DEVELOPMENT FEE PROGRAM
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
LSA ASSOCIATES, INC.

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 1st day of September, 2011 by and between the City of Banning, a municipal corporation ("City") and LSA Associates, Inc., ("Consultant" or "Contractor"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties". (The term Consultant includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement,

Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 **Prevailing Wages.**

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the

Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Two Hundred Thirty Eight Thousand Dollars (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commenee the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) speeified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conelusive upon the parties to this Agreement. In no event shall Consultant bc entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in conneetion therewith:

Pritam Deshmukh	Senior Transportation Engineer
(Name)	(Title)
Les Card, P.E.	Principal/Chief Executive Officer
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to ineur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrenee or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed] _____ Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3. .

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years

duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally aecepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, eopy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have aceess to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrecs that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the projcct being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thercto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documcnts and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of

uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant sball not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant sball promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue sball lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising ont of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

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. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions 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.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 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.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of __N/A__ ($__N/A__) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performanee of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Offieer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed eommunicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 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.

9.6 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.

[SIGNATURES ON FOLLOWING PAGE]

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

Andrew J. Takata, City Manager

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Lona N. Laymon, Assistant City Attorney

CONSULTANT:

LSA ASSOCIATES, INC.

By: _____
Name: LES CARD
Title: CEO

By: _____
Name: JAMES BAUM
Title: CFO

Address: 20 Executive Park, Suite 200
Irvine, CA 92614

Two signatures are required if a corporation.

NOTE: CONSULTANT'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 DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On 9/26, 2011 before me, Teresita Dela Cruz personally appeared Les Card, proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose names(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Teresita De La Cruz

TERESITA DE LA CRUZ
Commission # 1845766
Notary Public - California
Orange County
My Comm. Expires May 20, 2013

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On 9/26 2011 before me, Teresita DeLaCruz personally appeared James Baum, proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose names(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

TERESITA DE LA CRUZ
Commission # 1845766
Notary Public - California
Orange County
My Comm. Expires May 20, 2013

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- ☐ OTHER_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. Preparation of Environmental Impact Report for Banning Circulation Element General Plan Amendment:

Task 1: Project Initiation/Kickoff Meeting

Project initiation tasks include collection of data relevant to the project and development of the Project Description. A project kickoff meeting will be undertaken at the outset of the work effort. The meeting will be held with City staff to obtain relevant Project Description information; establish the project objectives; identify key issues to be addressed in the EIR; explore community concerns regarding the project; obtain the City's significance thresholds for the EIR analysis; and obtain the City's mailing list for environmental documents.

The project kickoff meeting will include a preliminary discussion of project alternatives and the manner in which cumulative impacts will be addressed in the environmental document. Consultant will identify key critical path team decisions that are necessary to meet the EIR schedule.

Task 2: Project Management and Attendance at Meetings

This task represents an active project management role and includes attendance at various project meetings and coordination with agencies and interested parties. This task includes notifying City staff of problems as they are encountered and working expeditiously to resolve them. Important elements of this task will be to maintain the project schedule, oversee the budget, and coordinate efforts with the City and other team members.

The budget anticipates attendance by one or two team members provided by the Consultant at a total of five meetings. Consultant anticipates attending one project kickoff meeting, two meetings related to the independent preparation of the EIR, and one meeting at each of the public hearings before the City Planning Commission and City Council. Attendance at meetings over the maximum identified above or attendance of additional technical specialists at community meetings/public hearings will be on a time-and-materials basis, with the client's written approval.

Task 3: Initial Study/Notice of Preparation and Scoping Meeting

Consultant will prepare an Initial Study (IS) in accordance with CEQA Guidelines Section 15063 in order to identify effects determined not to be significant and explain the rationale for determining that potentially significant effects would not be significant. Because the City will be proceeding with preparation of an EIR, the IS will be

streamlined and focused. The purpose of the IS will be to allow the City to focus the EIR on the potentially significant impacts of the proposed GPA.

Consultant will prepare and transmit to the City a draft Notice of Preparation (NOP) per Section 15082 of the State CEQA Guidelines. Consultant will revise the IS and NOP consistent with the City's comments and finalize both for public review. Up to 25 copies of the NOP with the IS will be provided to the public agencies on the City's mailing list via certified mail. A total of 75 copies of the NOP will be reproduced and copies submitted to the State Clearinghouse and the City's distribution list for environmental documents. Consultant will also provide the NOP and IS electronically to the State Clearinghouse and the City (for uploading to its website, if determined appropriate). The City will be responsible for all public noticing, including news publications.

Scoping Meeting. Scoping meetings are not required under CEQA, but are typically conducted by the Lead Agency during the 30-day NOP public review period in order to solicit public input on a project. Consultant will attend a public scoping meeting to be held by the City during the 30-day NOP public review period. It is anticipated that City staff will introduce the proposed GPA and Consultant will discuss the EIR process and solicit written public input regarding CEQA-related topics to be addressed in the EIR. Consultant's staff will sign in attendees and take notes regarding the issues raised by the public. It is anticipated that the Consultant's Project Manager and Assistant Project Manager will attend the scoping meeting.

Task 4: Preparation of Technical Studies

4.1 Air Quality Study and Climate Change Analysis

The proposed project is located in the City of Banning, which is part of the South Coast Air Basin (Basin). Air quality in this area is administered by the South Coast Air Quality Management District (SCAQMD). Consultant will conduct an Air Quality Study that will be consistent with all applicable procedures and requirements, including the SCAQMD *CEQA Air Quality Handbook* guidelines.

Consultant will prepare the baseline and project setting for the proposed project, which is based on the existing condition and current General Plan condition for the Banning area. Because there is no construction associated with the proposed project, no construction emissions and localized significance threshold (LST) impact analysis will be included.

Because the proposed Circulation Element Update will affect the vehicular volumes along major arterials within the City, potential air quality impacts would occur. The following project-related operational impacts will be conducted: project-related mobile source

emissions that have regional effects will be calculated with the URBEMIS2007 model or EMFAC2007 model with the vehicle miles traveled (VMT) changes; the carbon monoxide (CO) hot spot analysis will be conducted with the CALINE4 model and peak-hour turn volumes at up to 15 of the most affected intersections in the City.

Consultant will include the discussion and analysis of the project-related GHGs and their potential effects on global climate change, including recent regulatory updates from the California Air Resources Board (ARB), SCAQMD, or other pertinent public agencies. Emissions of carbon dioxide (CO_2), a key GHG identified in Assembly Bill (AB) 32, and other major GHGs such as methane (CH_4) and nitrous oxide (N_2O) from direct and indirect project-related sources will be calculated using the VMT changes and EMFAC2007 model.

4.2 Noise Impact Study

Consultant will conduct a Noise Impact Study that will be consistent with all applicable procedures and requirements. Consultant will review the applicable noise and land use compatibility criteria by the City and evaluate the existing and future traffic noise levels for up to 15 roadway segments along major arterials as a result of the proposed Circulation Element Update. Noise impacts from vehicular traffic will be assessed using the United States Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108, December 1978) to address potential noise impact from the Circulation Element Update. Model input data needed include average daily traffic volumes, day/night percentages of autos, medium and heavy trucks, vehicle speeds, ground attenuation factors, and roadway widths. Baseline information will be based on the existing condition and current General Plan conditions in the City. Noise mitigation measures will be identified in the noise impact study, if required.

4.3 Traffic Study

The Traffic Study will include two separate studies; the first one will analyze the traffic impacts associated with the change in LOS policy while the second one will analyze the impacts associated with change in circulation system due to the removal of Highland Home Road/I-10 interchange.

4.3.1 Traffic Study for Changing LOS Policy

The first study will include an analysis of the traffic conditions for the future General Plan Build-Out scenario. The following tasks are to provide a traffic analysis for changing the existing policy for acceptable LOS criteria from LOS C to LOS D.

> **Coordination with City Staff.** Before beginning the Traffic Study, Consultant will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as specific analysis methodologies, assumptions, etc.) related to the Circulation Element. Consultant will analyze the intersections listed in the City's previous General Plan. This will be confirmed

with the City during the coordination process. Based on coordination and meetings, refinements to this scope of work and budget may be made to meet the objectives of the project.

Intersection Improvement Recommendations for LOS D Criteria. The General Plan Build-Out traffic conditions have been analyzed for LOS C criteria in the adopted General Plan. Consultant will use these traffic volumes and results for a.m. and p.m. peak-hour traffic conditions to develop improvements that will mitigate deficient locations in the circulation system to the proposed acceptable LOS D.

Comparison between Proposed Improvements for LOS C and LOS D Criteria. The results of the adopted General Plan Build-Out traffic conditions will be compared to the General Plan Build-Out traffic conditions with LOS D criteria to identify the reduced mitigation measures between the two General Plans (adopted LOS C and proposed LOS D). These changes will be summarized in the Traffic Study.

Development of Graphics and Conceptual Drawings. Consultant will prepare graphics showing the proposed lane configuration for LOS C and LOS D and a comparison graphic showing the difference between the two LOS criteria. Consultant will also prepare conceptual plans for proposed mitigations at up to five locations (developed in coordination with the City) that show a comparison between the improvements required for LOS C versus LOS D. Consultant will use aerials to develop the base that includes the existing lane configuration. Proposed mitigations such as the addition of a through lane or a turn lane will be overlaid on this base.

Preparation of Traffic Study. A technical study will be prepared discussing the adopted (LOS C) and proposed (LOS D) General Plan Build-Out conditions. Identification of intersection deficiencies and improvements required to mitigate them in the General Plan Build-Out conditions for the proposed acceptable LOS (D) will be provided. The changes in mitigation measures between the adopted and proposed General Plan will be summarized in the report. A physical description of the eliminated improvements will also be included. A copy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, Consultant will meet with City staff to discuss the report and to receive comments. Consultant will then modify the draft report to address the comments and submit the final Traffic Study for incorporation into the overall environmental document.

Meeting Attendance. For the purpose of this scope of work, it is anticipated that members of Consultant's staff will attend one team meeting related to preparation of the Traffic Study.

4.3.2 Traffic Analysis For Removal of I-10/Highland Home Road Interchange

The second study will include an analysis of the traffic conditions in the following scenarios:

1. General Plan Build-Out conditions with I-10/Highland Home Road interchange with LOS C and LOS D criteria
2. General Plan Build-Out conditions without I-10/Highland Home Road interchange with LOS C and LOS D criteria

The following tasks are to providc a complete Traffic Study for identifying the impacts of modifying the circulation system (I-10/Highland Home Road interchange) in the adopted General Plan.

Coordination with City Staff. Before beginning the Traffic Study, Consultant will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as defining study area, specific analysis methodologies, assumptions, etc.) relatcd to the Traffic Study. For the purposes of this analysis, Consultant will analyze up to 15 intersections in the vicinity of the I-10/Highland Home Road interchange. These intersections will be identified in coordination with the City. Based on coordination and meetings, refinements to this scope of work and budget may be made to meet the objectives of the project.

General Plan Build-Out Forecast Traffic Volumes. Based on the meeting discussed above, Consultant and City staff will confirm tbe circulation network area, whicb includes roadway segments and intersections. General Plan Build-Out traffic volumes for the intersections will be developed based on the City's General Plan model developed by Urban Crossroads in consultation with the City. Since no land use changes are proposed, the land uses from the adopted General Plan will be used for the proposed General Plan Build-Out scenarios.

Traffic forecast volumes for the General Plan Build-Out scenario will be developed for tbe following two scenarios:

1. With 1-10/Highland Home Road Interchange
2. Without I-10/Highland Home Interchange

There are two options for developing the General Plan Build-Out intersection traffic volumes; the first one is to use available data wherever possible and request the remaining data from Urban Crossroads. Since the intersections for this Traffic Study will be finalized in consultation with the City, the availability of data for the first option cannot be quantified. Also, the underlying assumptions for the traffic modeling for different scenarios are not known since it was conducted by Urban Crossroads. The second one is to request new data for all alternatives with identical underlying assumptions.

The first option will reduce the amount of effort by using the interseetion volume data for General Plan Build-Out conditions from the Butterfield Specific Plan for the Traffic Study. Urban Crossroads had developed volumes for the General Plan Build-Out condition for Alternatives 1 and 2 (listed above) for the Butterfield Specific Plan Traffic Study. It should be noted that there have been updates to the traffic model since the data for the Butterfield Specific Plan was obtained from Urban Crossroads. Hence, the second option of obtaining new forecast volumes for the General Plan Build-Out conditions for the above scenarios from Urban Crossroads will result in consistency between the altematives (1–3) listed above. For the most consistent analysis, the second option will be utilized unless otherwise agreed upon by the City and Consultant. The raw traffic model output will be postprocessed to develop intersection turning movement volumes according to methodologies approved by the City.

RivTAM. The existing traffic model that was used for the development of forecast volumes for the previous Traffic Study for the Circulation Element was the Pass Area Model developed by Urban Crossroads. This model was developed based on the previous version of the Riverside County Traffic Analysis Model (RivTAM). Since then, the County has revised/updated the model and converted the modeling platform from Tranplan to TransCAD. The new version of RivTAM was recently validated and released for use by jurisdictions within the County. Since most of the jurisdictions/cities will be using this traffic model as their basis for developing the forecast volumes for future scenarios, the City of Banning may opt to use this new tool to develop forecast volume for the City's General Plan Build-Out scenario. It should be noted that the RivTAM model may require network and land use refinement within the City's Sphere of Influence to generate better forecast volumes. If the City decides to use the new RivTAM model for the General Plan Build-Out conditions, refinements to this scope of work and budget may be needed to include the additional work effort.

General Plan Build-Out Traffic Condition – With I-10/Highland Home Road Interchange. Traffic conditions for the General Plan Build-Out scenario with the I-10/Highland Home Road interchange will be analyzed in the Traffic Study.

General Plan Build-Out a.m. and p.m. peak-hour traffic conditions and LOS will be assessed for the intersections identified for examination.

Intersection Improvements for LOS C and LOS D Criteria. The results of the General Plan Build-Out conditions with the I-10/Highland Home Road interchange will then be compared to the LOS C and D criteria, and improvements will be proposed to mitigate the defieient locations for each LOS criteria.

General Plan Build-Out Traffie Condition – Without I-10/Highland Home Road Interchange. Traffic conditions for the General Plan Build-Out scenario without the I-10/Highland Home Road interchange will be analyzed in the traffic analysis. General Plan Build-Out a.m. and p.m. peak-hour traffic conditions and LOS will be assessed for the intersections identified for examination.

Intersection Improvements for LOS C and LOS D Criteria. The results of the General Plan Build-Out conditions without the I-10/Highland Home Road interchange will then be compared to the LOS C and D criteria, and improvements will be proposed to mitigate the deficient locations for each LOS criteria.

Compare Proposed Mitigation Measures between Alternatives. The proposed mitigation improvements for the alternatives, Without 10/Highland Home Road Interchange and With 10/Highland Home Road Overcrossing, will be compared to the With 10/Highland Home Road Interchange scenario for both LOS C and LOS D criteria.

Comparison betwecn Proposed Improvements for With Interchange and Without Interchange for hoth LOS C and LOS D Criteria. The results of the General Plan Build-Out Conditions Without the I-10/Highland Home Road Interchange will be compared to the General Plan Build-Out Conditions With the I-10/Highland Home Road Interchange to identify the changes in proposed mitigation measures between the two alternatives for LOS C and LOS D criteria.

Preparation of Traffic Study. A technical study will be prepared discussing the traffic impact of the proposed modifications to the circulation system (I-10/Highland Home Road interchange) in General Plan Build-Out conditions. Identification of intersection deficiencies and improvements required to mitigate them in the General Plan Build-Out conditions will be summarized. A copy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, representatives of Consultant will meet with City staff to discuss the report and to receive comments. Consultant will then modify the draft report to address the comments and submit the final Traffic Study for incorporation into the overall environmental document.

Meeting Attendance. For the purpose of this scope of work, it is anticipated that members of Consultant's Transportation staff will attend up to two team meetings related to preparation of the Traffic Study.

Task 5: Screencheck Draft EIR

Consultant will prepare a Screencheck Draft EIR for review by the City in accordance with the requirements of CEQA and the State CEQA Guidelines. Consultant anticipates that a focused EIR can be prepared for the GPA and anticipates addressing the following environmental topics: Traffic/Circulation, Air Quality, GHG Emissions, Noise, Cultural Resources, and Land Use Impacts. The primary focus of the Screencheck Draft EIR will be to analyze the potential change in environmental conditions resulting from the removal of a previously identified interchange improvement. A key component of the Screencheck Draft EIR will be the identification of mitigation measures and strategies to be implemented in association with the GPA.

The document will contain all applicable environmental components required by CEQA, including Introduction, Background, Project Description/Characteristics/Phasing and Discretionary Approvals; Setting, Impacts (Project and Cumulative), Mitigation, and Level of Significance; and mandatory CEQA topics (e.g., Growth Inducement), Alternatives, Lists of References, Persons Consulted, and EIR Preparers. The Screencheck Draft EIR will be submitted without the Executive Summary and Mitigation Monitoring and Reporting Program (MMRP). The Executive Summary and MMRP will be provided with the preprint Draft EIR submittal once the level of environmental impacts is agreed upon with the City and the mitigation measure language is close to being finalized.

An electronic copy of the Screencheck Draft EIR will be submitted for review by the City staff. City staff will reconcile any discrepancies between internal staff comments prior to forwarding one consolidated set of comments to Consultant. City comments (one coordinated review set) will be incorporated into the Screencheck Draft EIR as described below.

Consultant's technical approach and specific analysis approach to each of the environmental topics is described below. Consultant anticipates that a focused EIR addressing traffic/circulation, air quality, GHG emissions, noise, cultural resources, and land use impacts can be prepared for the GPA. Should other environmental issues of concern arise in response to the Notice of Preparation/Initial Study, the scope of work may need to be expanded.

Significance Criteria and Impact Analysis
The significance criteria will be decided upon by the City based on current community or industry standards, including but not limited to the State CEQA Guidelines, local standards, State and federal regulation (e.g., United States Environmental Protection Agency [EPA], SCAQMD, Department of Toxic Substances [if needed], clean water legislation, and other regulations) and consistency with City, State, and local land use planning documents. Consultant will elicit input from the City for the thresholds of significance.

The technical approach for completion of the Screencheck Draft EIR is to combine the project impacts and mitigation measures in the same section and discuss potential project effects in two categories: (1) less than significant impacts, and (2) potentially significant impacts. Mitigation measures shall be prescribed when feasible to reduce impacts. Standard City mitigation measures will be used as applicable and if available.

In addition to the topics described below, the Screencheck Draft EIR will include a short explanation of environmental effects found not to be significant. It is anticipated that the proposed GPA would not result in adverse impacts related to the following: Aesthetics, Agriculture and Forestry Resources, Biological Resources, Geology and Soils, Hazards and hazardous Materials, Hydrology and Water Quality, Mineral Resources, Population and Housing, Public Services, Recreation and Utilities and Service Systems.

Air Quality
Consultant will prepare an Air Quality Study, including a discussion on GHG, on which the findings of the Air Quality section of the Screencheck Draft EIR will be based. Once the Air Quality Study is approved by the City, it will be summarized in the Screencheck Draft EIR, and mitigation measures will be proposed as necessary.

Cultural/Paleontological Resources
The proposed GPA is required to conduct Native American consultation as required under SB 18. SB 18 requires local governments to consult with tribal groups when a project requires a General Plan or Specific Plan Amendment (Burton 2004). The regulations apply to all General Plan/Specific Plan updates and amendments proposed on or after March 1, 2005.

The purpose of the consultation is to identify and preserve specified places, features, and objects located within the City's or the County's jurisdiction that have a unique and significant meaning to California Native Americans. Actions performed may include all or any combination of the following: contacting the Native American Heritage Commission (NAHC) for a search of the Sacred Lands

File and a list of Native American tribes to be invited to consult on the project; preparing a letter to each identified tribe that will be sent via certified mail; contacting the identified tribes by phone to solicit their involvement and record any information the tribe wishes to provide; and preparing notices to the tribes 10 days before any public hearings regarding the project.

The documentation related to the Native American Consultation will be the basis for the findings in the Cultural Resources Section of the Screencheck Draft EIR. All details of Native American Consultation under SB 18 will be included in an Appendix to the EIR.

Greenhouse Gas Emissions
A discussion of GHGs and their potential effects on global climate change will be included in the technical Air Quality Study, on which the findings of the GHG section of the Screencheck Draft EIR will be based. The project's compliance with applicable plans and policies will be discussed. If necessary, mitigation measures will be identified to ensure that both short-term and long-term GHG impacts will be reduced to the extent possible.

Land Use and Planning
This section will include an analysis of the proposed GPA in comparison to the conditions of the existing General Plan. A thorough analysis of the project's consistency with applicable General Plan Objectives and Policies will be included in the EIR.

Noise
Consultant will to prepare a Noise Impact Study on which the findings of the noise section of the Screencheck Draft EIR will be based. Once the Noise Impact Study is approved by the City, the findings and any necessary mitigation measures will be summarized in the Screencheck Draft EIR.

Alternatives
Consultant, in conjunction with City staff, will identify a reasonable range of alternatives to the proposed GPA. Preliminarily, the alternatives could include the No Project Alternative (existing General Plan conditions) and a project alternative with a freeway overpass in lieu of the existing planned interchange. A maximum of three project alternatives or alternative sites will be evaluated consistent with State CEQA Guidelines Section 15126.6.

Once the alternatives have been selected, Consultant will prepare a qualitative analysis of the environmental effects of each alternative. In particular, differences in traffic, parking, and noise impacts between alternative projects will be

documented and quantified. The Alternatives section will include a statement identifying the environmentally superior alternative.

Cumulative Impacts
State CEQA Guidelines Section 15130 requires that an EIR evaluate potential environmental impacts that are individually limited but cumulatively significant. These impacts can result from the proposed project alone or together with other projects. The analysis of cumulative effects will address the potential impacts associated with the proposed project in conjunction with other off-site, permitted, under construction, or probable future projects in the project vicinity. This analysis will rely on a list of cumulative projects to be provided by the City.

Growth-Inducing Impacts
The potential growth-inducing impacts of the proposed project will be evaluated. CEQA considers a project to be growth-inducing if it would foster economic or population growth. Examples of projects that typically would have growth-inducing impacts include extensions or expansions of infrastructure beyond that needed to serve project-specific demand and development of industrial parks in undeveloped or sparsely developed areas.

Other CEQA-Mandated Sections
Consultant will prepare the appropriate conclusions to fulfill CEQA requirements by providing an assessment of several additional mandatory impact categories, including:

- Unavoidable significant environmental impacts
- Significant irreversible environmental changes
- Effects found not to be significant

Task 6: Draft EIR
After receiving comments from City staff on the Screencheck EIR, Consultant will make necessary revisions to the document, including completion of the Executive Summary impact table and the draft MMRP. Consultant will provide an electronic preprint version of the Draft EIR to City staff for a limited final review prior to printing the Draft EIR. The purpose of this review will be to review the entire document with all appendices, technical reports, and the MMRP, and to verify that the City is satisfied with the Draft EIR.

Prior to completion of the Draft EIR, Consultant will work with the City to prepare a draft Notice of Completion (NOC) for City review and signature and a draft public Notice of Availability (NOA) of the Draft EIR. The City will be responsible for coordinating noticing requirements with news publieations. Reproduction and distribution of the NOC

and Draft EIR to the State Clearinghouse, Responsible Agencies, and NOA to interested parties will be completed by Consultant. In order to reduce reproduction and distribution, copies of the Draft EIR and appendices will primarily be provided on CD-ROM as a PDF file. Consultant will distribute 5 bard copies and 10 electronic copies of the Draft EIR for the City in addition to the 15 copies of tbe Draft EIR required to be sent to the State Clearinghouse, which will be produced on CD-ROM as a PDF accompanied by 15 hard copies of the Executive Summary. In addition, Consultant will distribute one hard copy of the Draft EIR and appendices to the local library for public review.

Task 7: Final EIR

The Final EIR will consist of the Draft EIR and technical appendices, Response to Comments, an Errata document containing any modifications that may be needed to the Draft EIR document, Resolutions, Findings, and the Statement of Overriding Considerations (if necessary) related to the proposed project. The City will be responsible for preparation of the Resolutions, Findings, and the Statement of Overriding Considerations (if necessary).

Response to Comments. During the public review period, the Consultant will prepare responses to comments on the Draft EIR as received. Once the comments have been reviewed and prior to preparing the responses, a strategy for the response document will be presented and discussed with the City. Althougb the focus of the responses will be those comments that are truly subject to CEQA review, Consultant will also endeavor to answer all questions in an informative manner.

Providing a budget estimate for responding to comments on the Draft EIR is extremely difficult because it is impossible to predict the volume and nature of the comments. This agreement lists the tasks to be completed and the conditions of the scope of work. These conditions are the basis for the budget estimate. They are based on Consultant's knowledge of the project and projections of the volume and nature of the comments received. Significant new analysis is not included in this task. Consultant has allocated 50 hours of professional staff time plus 18 hours of word processing time to organize, prepare, and compile the Response to Comments document.

Mitigation Monitoring and Reporting Program. As part of the Final EIR, Consultant will prepare a Final MMRP pursuant to California Public Resources Code Section 21081.6. The MMRP is intended to ensure compliance with mitigation measures through project completion and any monitoring that may be required after project completion. The monitoring program will contain an inventory of mitigation measures, timing for implementation (e.g., prior to

issuance of grading permits), the responsible staff or agency assigned to monitor the condition, and a compliance/noncompliance statement. The approved final MMRP will be attached to the City's resolutions for consideration by the Planning Commission and City Council.

B. Traffic Fee Component of the Development Fee Program

Task 1: Coordination with City Staff

Before beginning the process of updating the fee program, Consultant will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as concurrence on new intersections, specific analysis methodologies, assumptions, etc.) related to the fee program. For the purposes of this update, Consultant will add the intersections identified in the next task to the existing list in the Development Fee Program. Based on coordination and meetings, refinements to this scope of work and budget may be necessary to meet the objectives of the fee program update.

Task 2: Identification of Study Area

Consultant has identified a list of intersections from the Butterfield Specific Plan Traffic Impact Analysis (BSPTIA) that will be added to the list of intersections in the Development Fee Program. These intersections require improvements in the General Plan Build-Out condition and are not part of any other existing fee or financing program. The intersections include:

1. Highland Springs Avenue/Brookside Avenue
2. Highland Springs Avenue/16th Street-Cougar Way
3. Highland Springs Avenue/F Street
4. Highland Springs Avenue/Starlight Avenue
5. Highland Home Road/Northern Loop
6. Highland Home Road/Beaumont Road
7. Highland Home Road/F Street
8. Highland Home Road/D Street
9. Highland Home Road/Wilson Street
10. Highland Home Road/Ramsey Street
11. Sunset Avenue/Wilson Street
12. Sunset Avenue/Ramsey Street
13. Sunrise Avenue/Wilson Street
14. 16th Street/Wilson Street
15. 8th Street/I-10 Westbound Ramps
16. 8th Street/I-10 Eastbound Ramps
17. 4th Street/Wilson Street
18. San Gorgonio Avenue/Wilson Street

Task 3: Identification of Intersection Needs in the Future (General Plan Build Out)
Traffic conditions for the General Plan Build-Out scenario for the a.m. and p.m. peak hours were analyzed in the BSPTIA. The results of the General Plan Build-Out condition were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system in the BSPTIA. Consultant will use the improvements identified in the BSPTIA for the General Plan Build-Out condition for the proposed update to the Development Fee Program. These improvements include lane additions consistent with the General Plan roadway designations and possible signalization (or modification) to achieve a satisfactory LOS D condition.

Task 4: Existing Traffic Conditions and Intersection Deficiencies
Existing weekday a.m. and p.m. peak-hour conditions and LOS were assessed for the study intersections in the BSPTIA. The results of the existing conditions were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system. Since fees on new development cannot be imposed to remedy existing deficiencies in infrastructure, Consultant will identify existing deficiencies at the study intersections based on the analysis for the existing conditions. The difference between the deficiencies in the circulation system in existing and General Plan Build-Out condition will be identified. The cost for mitigating the existing deficiencies will not be included in the Development Fee Program.

Task 5: Estimation of Costs for Future (General Plan Build Out) Intersection Needs
Consultant will develop cost estimates for the proposed improvements that mitigate the deficient locations in the circulation system in the General Plan Build-Out condition using the San Bernardino Associated Governments (SANBAG) Congestion Management Plan (CMP) Appendix G, Preliminary Construction Cost Estimates for Congestion Management Plan. The total traffic improvement costs will be developed by adding cost estimates of individual intersections for both physical improvements and signalization over the larger affected area.

Task 6: Identification of Future (General Plan Build Out) New Traffic
Consultant will identify future projected land development by type: residential, commercial, and industrial, based on the General Plan Build-Out projections for these categories. The type and total number of categories will be identical to the ones listed in Figure 36 of the Development Fee Program. The growth in land uses projected in the City's General Plan between existing and General Plan Build-Out condition will then be converted into daily traffic estimates using Institute of Transportation Engineers (ITE) trip generation rates consistent with the existing traffic fee program. Consultant will use the same trip adjustment rates listed in Figure 36 in the existing Development Fee Program. Consultant will summarize the conversion rates and trips generated by each type of land use based on the projected quantities in a table format. It should be noted that

the recommended intersection improvements are based on impacts determined from peak-hour traffic conditions. Use of daily traffic forecasts for trip fee determination can affect the overall nexus of the fee program because the improvements were determined based on intersection LOS analysis for peak-hour traffic volumes. Consultant is proposing a method consistent with current practice. This method may affect the nexus and/or stakeholder tolerance to the revised fee update.

Task 7: Development of Traffie Fee for Future (General Plan Build Out) New Traffie

Consultatn will establish a relationship between the new (projected) development and the total cost associated with the recommended improvements within the City of Banning. Based on this relationship, the total cost of improvements, including signalization and physieal improvements, will be divided by the total new daily trips generated by proposed land uses to calculate the "per-trip" fee similar to the one included in the current traffic fee component of the Development Fee Program.

Task 8: Preparation of Traffic Analysis Report

A technical study will be prepared discussing the relationship between the future land uses for the General Plan Build-Out condition and the cost of improvement to mitigate the circulation system to conform to City's standards. The establishment of a "per-trip" fee for the future land uses adopted in the General Plan will be summarized in the report. A eopy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, representatives of Consultant will meet with City staff to discuss the report and to receive comments. Consultant will then modify the draft report to address the comments and submit the final study report to the City.

Task 9: Meeting Attendance

Consultant's Transportation staff will attend up to four team meetings related to preparation of the technical traffie analysis.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

Preparation of Environmental Impact Report for Banning Circulation Element General Plan Amendment:

A. Draft Notice of Preparation (NOP) per Section 15082 of CEQA guidelines.

B. Meeting minutes.

C. Initial Study (IS) in accordance with CEQA guidelines Section 15063.

D. 25 copies of the NOP to be provided to public agencies on City's mailing list.

E. 75 copies of the NOP to be provided to the State Clearinghouse.

F. Electronic copy of NOP and IS.

G. Air Quality Study and Climate Change Analysis.

H. Noise Impact Study.

I. Traffic Study for Changing LOS Policy.

J. Traffic Analysis for Removal of I-10/Highland Home Interchange.

K. Sereencheek Draft EIR.

L. Draft EIR.

M. Draft Notice of Completion related to Draft EIR.

N. Draft Public Notice of Availability of Draft EIR.

O. One (1) hardcopy of EIR to the public library for review.

P. Five (5) hardcopies and Ten (10) electronic CD-ROM copies of Draft EIR for City.

Q. Fifteen (15) CD-ROM Draft EIR copies to Clearinghouse.

R. Final Mitigation Monitoring and Reporting Program (MMRP)

Traffic Fee Component of the Development Fee Program:

A. Analysis on identification area including an updated list of intersections to be added to the Development Fee Program.

B. Analysis and identification needs for future (General Plan Build Out) including lane additions and possible signalization or modifications.

C. Analysis and comparison of existing traffic conditions and intersection deficiencies.

D. Estimated costs for future intersection needs.

E. Identification of future (General Plan Build Out) new traffic.

F. Future traffic fees and formulas.

G. Traffic Analysis Report.

H. Meeting minutes.

III. **In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**

Monthly status reports.

IV. **All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

V. **Consultant will utilize the following personnel to accomplish the Services:**

A. Pritam Deshmukh, Senior Transportation Engineer

B. Les Card, P.E., Principal Chief Executive Officer

C. Designated personal approved by the City.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

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EXHIBIT "C"
COMPENSATION

I. Consultant shall perform the following tasks:

TASK: PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT	RATE	TIME (estimated hours)	SUB-BUDGET
Task A: Project Initiation/Kickoff Meeting	$140	25	$ 3,500
Task B: Project Management and Attendance at Meetings	$160	53	$ 8,500
Task C: Initial Study/NOP/Seoping Meeting	$140	93	$ 13,000
Task D: Air Quality Study and Climate Change Analysis	$130	62	$ 8,000
Task E: Noise Impact Study	$130	54	$ 7,000
Task F: Traffic Study	$175	417	$ 73,000
Task G: Screencheck Draft EIR	$120	383	$46,000
Task H: Draft EIR	$120	113	$ 13,500
Task I: Final EIR	$120	79	$9,500
Task J: Reimbursables	N/A	N/A	$11,000

TASK: TRAFFIC REE COMPONENT OF THE DEVELOPMENT FEE PROGRAM	RATE[1]	TIME (estimated hours)	SUB-BUDGET
Task 1: Coordination with City	$145	14	$ 2,000
Task 2: Identification of Study Area	$120	15	$ 1,800
Task 3: Identification of Intersection Needs	$120	15	$ 1,800
Task 4: Existing Traffic Conditions	$120	15	$ 1,800
Task 5: Estimation of Costs for Future Intersection Needs	$120	75	$ 9,000
Task 6: Identification of Future New Traffic	$120	75	$ 9,000
Task 7: Development of Traffic Fee for Future	$120	50	$ 6,000
Task 8: Preparation of Traffic Analysis Report	$125	44	$ 5,500
Task 9: Meeting Attendance	$180	45	$ 8,100

II. **Payments will be made based upon the satisfactory completion of the task.**

III. **Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**

VI. **The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. **The total compensation for the Services shall not exceed $238,000.00, as provided in Section 2.1 of this Agreement.**

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. **Consultant shall perform all services timely in accordanee with the following schedule:**

TASK: PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT	DAYS TO PERFORM	DEADLINE DATE
Task A: Project Initiation/Kickoff Meeting	3 weeks from Notice to Proceed (NTP)	7/22/11
Task B: Project Management and Attendance at Meetings	Ongoing	TBD
Task C: Initial Study/NOP/Scoping Meeting	10 weeks	9/9/11
Task D: Air Quality Study and Climate Change Analysis	6 weeks	10/14/11
Task E: Noise Impact Study	6 weeks	10/14/11
Task F: Traffic Study	8 weeks	10/28/11
Task G: Screencheck Draft EIR	18 weeks	11/11/11
Task H: Draft EIR (includes 45-day review)	10 weeks	1/20/12
Task I: Final EIR	4 weeks	2/17/12
Task J: Reimbursables	N/A	N/A

TASK: TRAFFIC REE COMPONENT OF THE DEVELOPMENT FEE PROGRAM	DAYS TO PERFORM	DEADLINE DATE
Task 1: Coordination with City	Ongoing	N/A
Task 2: Identification of Study Area	3 days	9/21/11
Task 3: Identification of Intersection Needs	3 days	9/26/11
Task 4: Existing Traffic Conditions	3 days	9/29/11
Task 5: Estimation of Costs for Future Intersection Needs	2 weeks	10/13/11
Task 6: Identification of Future New Traffic	2 weeks	10/27/11
Task 7: Development of Traffic Fee for Future	1 week	11/4/11
Task 8: Preparation of Traffic Analysis Report	1 week	11/11/11
Task 9: Meeting Attendance	Ongoing	N/A

II. Consnltant shall deliver the following tangible work products to the City by the following dates.

Preparation of Environmental Impact Report for Banning Circulation Element General Plan Amendment:

A. Draft Notice of Preparation (NOP) per Section 15082 of CEQA guidelines, September of 2011.

B. Meeting minutes, TBD.

C. Initial Study (IS) in accordance with CEQA guidelines Section 15063, September of 2011.

D. 25 copies of the NOP to be provided to public agencies on City's mailing list, September of 2011.

E. 75 copies of the NOP to be provided to the State Clearinghouse, September of 2011..

F. Electronic copy of NOP and IS, September of 2011

G. Air Quality Study and Climate Change Analysis, October of 2011.

H. Noise Impact Study, October of 2011.

I. Traffic Study for Changing LOS Policy, October of 2011.

J. Traffic Analysis for Removal of I-10/Highland Home Interchange, October of 2011.

K. Screencheck Draft EIR, November of 2011.

L. Draft EIR, January of 2012.

M. Draft Notice of Completion related to Draft EIR, January of 2012.

N. Draft Public Notice of Availability of Draft EIR, January of 2012.

O. One (1) hardcopy of EIR to the public library for review, January of 2012.

P. Five (5) hardcopies and Ten (10) electronic CD-ROM copies of Draft EIR for City, January of 2012.

Q. Fifteen (15) CD-ROM Draft EIR copies to Clearinghouse, January of 2012.

R. Final Mitigation Monitoring and Reporting Program (MMRP), February of 2012.

Traffic Fee Component of the Development Fee Program:

A. Analysis on identification area including an updated list of intersections to be added to the Development Fee Program.

B. Analysis and identification needs for future (General Plan Build Out) including lane additions and possible signalization or modifications, September 2011.

C. Analysis and comparison of existing traffic conditions and intersection deficiencies, September 2011.

D. Estimated costs for future intersection needs, October of 2011.

E. Identification of future (General Plan Build Out) new traffic, October of 2011.

F. Future traffic fees and formulas, November of 2011.

G. Traffic Analysis Report, November of 2011.

H. Meeting minutes, Ongoing/TBD.

III. **The Contract Officer may approve extensions for performance of the services in accordance with Seetion 3.2.**

ATTACHMENT 2

EXHIBIT "B"
LSA ASSOCIATES, INC. PROPOSAL DATED FEBRUARY 13, 2013 FOR SERVICES RELATED TO THE BANNING CIRCULATION ELEMENT UPDATE

LSA ASSOCIATES, INC.
20 EXECUTIVE PARK, SUITE 200
IRVINE, CALIFORNIA 92614

949.553.0666 TEL
949.553.8076 FAX

BERKELEY
CARLSBAD
FORT COLLINS

FRESNO
PALM SPRINGS
PT. RICHMOND

RIVERSIDE
ROCKLIN
SAN LUIS OBISPO

February 13, 2013

Mr. Duane Burk
Public Works Director
99 E. Ramsey Street
Banning, CA 92220

Subject: Professional Services Proposal: Update the City of Banning Circulation Element

Dear Mr. Burk:

LSA Associates, Inc. (LSA) is pleased to submit this proposal to provide professional services for updating the existing Circulation Element for the City of Banning (City).

Background

The City of Banning is proposing to amend the General Plan Circulation Element. The proposed General Plan Amendment (GPA) includes a change to the acceptable Level of Service (LOS) for roadway operating conditions from LOS "C" to LOS "D". Additionally, the City is proposing to remove one designated interchange improvement at the Interstate 10 (I-10) from the Proposed General Plan Street System identified in Exhibit III-6 in the Circulation Element.

In order to provide the appropriate documentation in accordance with the California Environmental Quality Act (CEQA), LSA has prepared and circulated the Draft Environmental Impact Report (EIR) for the changes listed above.

Update Circulation Element

LSA will review the Circulation Element for the City of Banning and update it based on the proposed change in LOS and removal of designated interchange improvement at I-10/Highland Home Road. Additionally, LSA will clean up the Circulation Element section by removing outdated and irrelevant information. Also, LSA will review the Land Use section of the City's General Plan to identify and address inconsistencies between the Land Use section and the Circulation Element. LSA will submit a draft redline/strikeout word document to the City for review. Based on comments from the City, LSA will finalize the Circulation Element section and submit it to the City.

Based on this work plan, a budget of $8,000 will be required. This amount will be billed on an hourly basis, consistent with the attached schedule of billing rates and provisions. This amount will not be exceeded without your prior authorization. LSA is prepared to initiate this work effort upon your authorization to proceed.

Thank you for the opportunity to submit this proposal to provide professional services to the City of Banning. LSA looks forward to continuing a successful working relationship with the City.

Sincerely,

LSA ASSOCIATES, INC.

Pritam Deshmukh, P.E., T.E.
Senior Transportation Engineer

Attachment: Schedule of Standard Contract Provisions and Billing Rates

SCHEDULE OF STANDARD CONTRACT PROVISIONS AND BILLING RATES

FEES FOR PROFESSIONAL SERVICES

Fixed-Fee Contracts

If a fixed-fee proposal, the professional services described in the Scope of Services Section of the attached proposal shall be provided for the fixed fee noted in the proposal. All other professional services are considered extra services. Extra services shall be provided on a time and expenses basis at the same rates specified for hourly contracts, unless other arrangements are made in advance.

Hourly Contracts

If an hourly plus expenses proposal, the professional services described in the Scope of Services Section of the attached proposal shall be provided on a time and materials basis at current hourly rates. These rates are as shown on a Rate Schedule that is attached, or can be made available. Hourly rates are subject to review at least annually on or about August 1 of each year, and may be adjusted to reflect changing labor costs, at our discretion, at that time. (A schedule can be made available upon request.)

Direct costs (including cost of subconsultants) shall be reimbursed at cost plus ten percent, unless other arrangements are made in advance, and are not included in the hourly fee for professional services.

The total estimated amount of time and expenses noted in the proposal will serve as a control on the services to be provided. The specified amount will not be exceeded without prior approval of the client.

INVOICING

Monthly invoices shall be submitted for progress payment based on work completed to date. Clients requesting changes to LSA's standard invoice may be billed for the time to develop the invoice and monthly administration of the billing.

PAYMENT OF ACCOUNTS

Terms are net 30 days. LSA offers a one percent discount on invoices paid within 30 days of the invoice date. A service charge of 1.5 percent of the invoice amount (18 percent annual rate) may be applied to all accounts not paid within 30 days of invoice date. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the client.

STANDARD OF CARE

Services provided by LSA under this Agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

INDEMNIFICATION

Client and consultant each agree to indemnify and hold the other harmless and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, and expenses are caused by the indemnifying party's negligent acts, errors, or omissions.

ELECTRONIC FILE DATA CHANGES

Copies of documents that may be relied upon by client are limited to the printed copies (also known as hard copies) that are signed or sealed by LSA. Files in electronic media format or text, data, graphic, or other types that are furnished by LSA to client are only for convenience of client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, LSA makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those of LSA at the beginning of the assignment.

FORCE MAJEURE

Neither party shall be deemed in default of this Agreement to the extent that any delay in performance of its obligation results from any cause beyond its reasonable control and without its negligence.

LITIGATION

In the event that either party brings action under the proposal for the breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs whether or not such action is prosecuted to judgment.

NOTICES

Any notice or demand desired or required to be given hereunder shall be in writing, and shall be deemed given when personally delivered or deposited in the mail, postage prepaid, sent certified or registered, and addressed to the parties as set forth in the proposal or to such other address as either party shall have previously designated by such notice. Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

TERMINATION OF CONTRACT

Client may terminate this agreement with seven days prior notice to LSA for convenience or cause. Consultant may terminate this Agreement for convenience or cause with seven days prior written notice to client. Failure of client to make payments when due shall be cause for suspension of services, or ultimately termination of the contract, unless and until LSA has been paid in full all amounts due for services, expenses, and other related charges.

If this Schedule of Standard Contract Provisions is attached to a proposal, said proposal shall be considered revoked if acceptance is not received within 90 days of the date thereof, unless otherwise specified in the proposal.

HOURLY BILLING RATES EFFECTIVE JANUARY 2013

Job Classification							Hourly Rate Range[1,2]
Planning	**Environmental**	**Transportation**	**Air/Noise**	**Cultural Resources**	**Biology**	**GIS**	
Principal	Principal	Principal	Principal	Principal	Principal	Principal	$125–300
Associate	Associate	Associate	Associate	Associate	Associate	Associate	$90–195
Senior Planner	Senior Environmental Planner	Senior Transportation Planner/Engineer	Senior Air Quality/ Noise Specialist	Senior Cultural Resources Manager	Senior Biologist/Botanist/ Wildlife Biologist/ Ecologist/Soil Scientist/ Herpetologist/Arborist	Senior GIS Specialist	$70–170
Planner	Environmental Planner	Transportation Planner/Engineer	Air Quality/Noise Specialist	Cultural Resources Manager	Biologist/Botanist/ Wildlife Biologist/ Ecologist/Soil Scientist/ Herpetologist/Arborist	GIS Specialist	$65–125
Assistant Planner	Assistant Environmental Planner	Assistant Transportation Planner/Engineer	Air Quality/Noise Analyst	Cultural Resources Analyst	Assistant Biologist/ Botanist/Wildlife Biologist/Ecologist/Soil Scientist/Herpetologist/ Arborist	Assistant GIS Specialist	$50–100
Field Services							
Senior Field Crew/Field Crew							$50–85
Office Services							
Research Assistant/Technician							$30–55
Graphics							$90–115
Office Assistant							$45–95
Word Processing/Technical Editing							$75–100

1 The hourly rate for work involving actual expenses in court, giving depositions or similar expert testimony, will be billed at $400 per hour regardless of job classifications.

2 Hourly rates are subject to review at least annually. on or about August 1 of each year, and may be adjusted to reflect changing labor costs at LSA's discretion at that time.

LSA IN-HOUSE DIRECT EXPENSES
JANUARY 2013

			Unit Cost
Reproduction	(8.5 x 11)	B/W	$.07 per page
Reproduction	(8.5 x 11)	Color	$.40 per page
Reproduction	(11 x 17)	B/W	$.10 per page
Reproduction	(11 x 17)	Color	$.75 per page
CD Production			$5.00 per CD
Plotting			$3.75 per sf
Mileage On Road			$.565 per mile
Mileage Off-Road			$.715 per mile
GPS Unit			$75.00 per day
Total Station Surveying Instrument			$50.00 per day
Level (Laser or Optical)			$25.00 per day
Laser Rangefinder			$25.00 per day
Sound Meter			$75.00 per day
Aerial Photo			Cost
Boat Rental			$50.00/day
Water Quality Meter			$25.00/day

ATTACHMENT 3

EXHIBIT "C"
PROPOSAL DATED OCTOBER 2, 2014 FOR SERVICES RELATED TO THE DEVELOPMENT FEE PROGRAM

LSA

LSA ASSOCIATES, INC.
1500 IOWA AVENUE, SUITE 200
RIVERSIDE, CALIFORNIA 92507

951.781.9310 TEL
951.781.4277 FAX

OTHER OFFICES:
IRVINE
PT. RICHMOND
SAN LUIS OBISPO
PALM SPRINGS
FORT COLLINS
BERKELEY
ROCKLIN
SOUTH SAN FRANCISCO
CARLSBAD
FRESNO

October 2, 2014

Mr. Duane Burk
Director of Public Works
City of Banning
99 E. Ramsey Street
Banning, California 92220

Subject: Update of Traffic Fee Component of the Development Fee Program, City of Banning - Contract Amendment Request (LSA Project No. COB1101A)

Dear Duane:

LSA Associates, Inc. (LSA) is under contract with the City of Banning (City) to update the traffic fee component of the Development Fee Program (DIF) for the City. LSA's initial scope of work for preparation of this update was based on the attached proposal dated March 2nd, 2011 (Attachment A). LSA requested a budget of $45,000 for the preparation of the update to the fee program based on the scope of work shown in Attachment A.

During the preparation of the update LSA identified the requirement for some additional analysis for calculation of the updated fees. These new analyses were presented and discussed with the City on September 9th, 2014. Based on consultation with the City, it was determined that these additional analyses needs to be included in the study. Thus, LSA has prepared this contract amendment request for completion of the fee program analysis.

Background:

In December 2010, LSA submitted a Traffic Impact Analysis (TIA) for the Butterfield Specific Plan to the City of Banning (City). The project consisted of approximately 1,543 acres of residential uses, parks, open space, schools, golf course, and commercial uses. At the time, the study was submitted, the City's General Plan Circulation Element considered Level of Service C as the upper limit of satisfactory operations at intersections. A subsequent traffic impact analysis for the Banning General Plan Amendment Change in Level of Service Policy was prepared by LSA in September 2012 because the City proposed to change its existing policy for acceptable LOS criteria from LOS C to LOS D for all intersections within the City. The benefits of changing the Citywide LOS standard from LOS C to LOS D were to be consistent with the City of Beaumont along the common border of Highland Springs Avenue, reduce the Capital Improvement Cost and physical impact for improving an intersection to acceptable LOS per City's General Plan policy which would result in lower traffic impact fees. In September 2012, LSA submitted a traffic impact analysis for the Re-designation of Highland Home Road at Interstate 10 From an Interchange to an Overcrossing to the City. This study proposed to eliminate the interchange at Interstate 10 and Highland Home Road and maintain an overcrossing. The results of the TIA recommended that the overcrossing would result in fewer circulation improvements, less right-of-way acquisition, and lower construction costs.

The current DIF Program does not include physical improvements required at intersections to maintain acceptable level of service (LOS) according to the City's General Plan policy in the General Plan Build-out conditions. The current Fee program only addresses proposed traffic control upgrade (signalization) at several locations in the City. Subsequent to the preparation of the General Plan Policy updates, the City determined the need for updating the traffic fee component of the DIF so that a comprehensive traffic mitigation fee could be obtained by the City for all new developments. LSA is currently under contract to prepare an update to the traffic fee component of the development fee that will include physical improvements, additional signalization needs, and additional intersection locations in the traffic fee component of the Development Fee Program for the City of Banning.

Following are the out of scope tasks, as briefly discussed earlier that were not included in the original scope and budget for the update to the development fee program:

Additional Tasks Completed:

Task 1: Figures to identify Typical Major and Secondary Highways Cross Sections

LSA and City staff had a meeting on May 21st, 2013, to finalize the initial scope of work and begin work on the update to the fee program. It was determined in this meeting that a few typical roadway cross-section diagrams as proposed in the General Plan etc. needs to be overlaid on existing roadway configurations to identify the level of detail that the fee program analysis will include. Based on discussions in this meeting LSA created some sample figures that were subsequently presented to the City on September 30th, 2013.

To create these figures, LSA created the attached overall citywide figure (Attachment B) based on the updated General Plan circulation system showing the roadway classification that was superimposed on existing aerial images. This figure was used to identify major roads as included in the City's General Plan circulation system based on the following four categories: Collector Highway, Secondary Highway, Major Highway and Urban Arterial Highway. Subsequently, three maps were created that consisted of focused aerial views of specific road segments. Each map was laid out in a side-by-side view showing the existing condition of a selected road segment next to the proposed condition of the same selected road segment. An example of these maps is attached (Attachment C). These figures were presented to the City on the September 30th meeting to determine whether the fee program will include only improvements to intersections within the City or also include roadway segment improvements. This was an additional analysis conducted to finalize the actual detail that the fee program analysis needs to include. This task involved an additional cost of approximately $8,000.

Task 2: Adjustments to Buildout Volume Development

As stated previously, LSA submitted a TIA for the re-designation of Highland Home Road from an interchange to an overcrossing. However, the volume development for the buildout analysis did not include all of the intersections that were analyzed in the updated fee program study. Additionally, LSA identified some issues in distribution and assignment of traffic from the Butterfield Specific Plan due to removal of the northerly connection with Brookside Avenue. Therefore, volumes were developed at intersections not included in the re-designation of Highland Home Road overcrossing TIA and volumes were readjusted for intersections adjacent to the Butterfield Specific Plan due to removal of the northerly connection. This task involved an additional cost of approximately $4,000.

Task 2: Determination of Right-of-Way requirements

Upon completion of Tasks 1 through 8 as identified in the original scope of work, LSA identified the requirement of additional analysis that needs to included in the evaluation for the update to the fee program. The original scope of work only included costs for physical improvements at intersections and did not include costs for right-of-way acquisitions. Additionally, the scope included calculation of costs for physical improvements at study intersections based on the cost estimates include in Appendix G of the SANBAG CMP. These cost estimates are significantly old estimates and requires inclusion of inflation factors to calculate current construction costs. Identification of right-of-way required for intersection improvements were based on the following tasks:

Task 2A: Queuing Analysis Estimates

A queuing analysis was conducted at each study intersection to determine the approximate length that will be necessary for the recommended circulation improvements at the study intersections. This included right-of-way requirements for left-turns, transitions for additional through lanes, and right-turn lanes. The queuing analysis was conducted based on traffic analysis conducted for the City of Banning General Plan Circulation Element, the Butterfield Specific Plan TIA and the updates to the City's General Plan. Attachment D shows the queuing results at all analysis intersections. This task involved an additional cost of approximately $4,000.

Task 2B: Right-Of-Way Acquisition Estimates

Upon completion of Task 2A, right-of-way acquisition estimates were calculated at each intersection, which included the total right-of-way required (Square Feet) and if any takings of land/buildings may be necessary to construct any of the circulation improvements. This was prepared based on identification of improvements proposed at each study intersections, which was superimposed on existing aerial imagery. The table included as Attachment E summarizes the findings of right-of-way requirements. This task involved an additional cost of approximately $10,000.

Task 3: Example Right-Of-Way Figures/Meeting

Subsequently LSA prepared a few example figures (Attachment F) to illustrate the methodology of determining right-of-way requirements, which show roadway classifications, the beginning of transition lanes, length of lanes, and transition across intersections. As mentioned earlier, these example figures were presented to the City on September 9th, 2014. The objective of this meeting was to finalize whether right-of-way acquisition costs should be included in the updated fee program and if so which right-of way acquisitions does the City deemed feasible as well as the associated costs for the same. This task involved an additional cost of approximately $6,000.

Additional Tasks Pending:

As mentioned earlier, LSA presented the fee program analysis based on the original scope of work to the City on September 9th, 2014. Additionally, LSA reported the findings based on the additional analysis that was prepared and recommended inclusion of those into the updated fee program. Based on discussions at this meeting following are the outstanding tasks that needs to be completed for preparation of fee program update:

Task 4: Determination of right-of-way acquisitious and associated costs

LSA and City staff will discuss and identify which of the recommended intersections improvements and associated right-of-way acquisitions are feasible. Subsequently, hased on consultation with City staff, costs associated with these right-of-way acquisitions will be determined and included in the calculation of updated fees. This task will require and additional cost $4,000.

Task 5: Application on Inflation Costs to SANBAG CMP Cost Estimates

As discussed earlier, the original scope of work only included calculation of cost estimates hased on the SANBAG CMP Preliminary Cost Estimates as listed in Appendix G. These cost estimates should be updated since they do not reflect current construction costs. LSA recommends application of an appropriate inflation factor to update these cost estimates. It is anticipated that this task will require and additional cost of $4,000.

CONCLUSION

Based on the additional task items identified ahove, we request a hudget augment of $40,000 to accomplish the scope of work included in Tasks 1-5. Because of this amendment, the total budget for the preparation of the update to the fee program would be $85,000.

Thank you for your consideration of this request. If you have any questions or would like additional information, please call me at (951) 781-9310.

Sincerely,

LSA ASSOCIATES, INC.

A. Mukherjee

Ambarish Mukherjee, AICP, EIT
Associate

Attachments:
Attachment A: Proposal to Update the Traffic Fee Component of the Development Fee Program for the City of Banning dated March 2, 2011
Attachment B: Citywide General Plan Circulation System With Roadway Classification
Attachment C: Comparison of Existing and Proposed Right-of-Way at Study Intersections/Segments
Attachment D: Queuing Analysis for determination of Turn-Pocket Lengths and Transition Lanes
Attachment E: Right-of-Way Determination Tahle
Attachment F: Example Intersection Geometry and Right-of-Way Requirements With Implementation of Proposed Improvements

ATTACHMENT A:

Proposal to Update the Traffic Fee Component of the Development Fee Program for the City of Banning dated March 2, 2011

LSA

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ROCKLIN
SAN LUIS OBISPO
SOUTH SAN FRANCISCO

March 2, 2011

Mr. Mike Taylor
Pardee Homes
10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024

Subject: Proposal to Update the Traffic Fee Component of the Development Fee Program for the City of Banning

Dear Mike:

LSA Associates, Inc. (LSA) is pleased to present this professional services proposal to update the traffic fee component of the Development Fee Program for the City of Banning (City). The current Development Fee Program does not consider physical improvements required at intersections to maintain acceptable level of service (LOS) standards (consistent with the City's General Plan policy) in the General Plan Build-Out condition, but only addresses proposed traffic control upgrades (signalization) at several locations in the City. LSA has prepared a scope and budget to include physical improvements, additional signalization needs, and additional intersection locations in the traffic fee component of the Development Fee Program for the City of Banning. It should be noted that the update to the traffic fee component of the Development Fee Program will be conducted subsequent to the General Plan Amendment for changing the LOS policy from LOS C to LOS D and removal of the Highland Home Road/I-10 interchange.

Task 1: Coordination with City Staff

Before beginning the process of updating the fee program, LSA will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as concurrence on new intersections, specific analysis methodologies, assumptions, etc.) related to the fee program. For the purposes of this update, LSA will add the intersections identified in the next task to the existing list in the Development Fee Program. Based on coordination and meetings, refinements to this scope of work and budget may be necessary to meet the objectives of the fee program update.

Task 2: Identification of Study Area

LSA has identified a list of intersections from the Butterfield Specific Plan Traffic Impact Analysis (BSPTIA) that will be added to the list of intersections in the Development Fee Program. These intersections require improvements in the General Plan Build-Out condition and are not part of any other existing fee or financing program. The intersections include:

1. Highland Springs Avenue/Brookside Avenue
2. Highland Springs Avenue/16th Street-Cougar Way

3. Highland Springs Avenue/F Street
4. Highland Springs Avenue/Starlight Avenue
5. Highland Home Road/Northern Loop
6. Highland Home Road/Beaumont Road
7. Highland Home Road/F Street
8. Highland Home Road/D Street
9. Highland Home Road/Wilson Street
10. Highland Home Road/Ramsey Street
11. Sunset Avenue/Wilson Street
12. Sunset Avenue/Ramsey Street
13. Sunrise Avenue/Wilson Street
14. 16th Street/Wilson Street
15. 8th Street/I-10 Westbound Ramps
16. 8th Street/I-10 Eastbound Ramps
17. 4th Street/Wilson Street
18. San Gorgonio Avenue/Wilson Street

Task 3: Identification of Intersection Needs in the Future (General Plan Build Out)

Traffic conditions for the General Plan Build-Out scenario for the a.m. and p.m. peak hours were analyzed in the BSPTIA. Also, the results of the General Plan Build-Out condition were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system in the BSPTIA. LSA will use the improvements identified in the BSPTIA for the General Plan Build-Out condition for the proposed update to the Development Fee Program. These improvements include lane additions consistent with the General Plan roadway designations and possible signalization (or modification) to achieve a satisfactory LOS D condition.

Task 4: Existing Traffic Conditions and Intersection Deficiencies

Existing weekday a.m. and p.m. peak-hour conditions and LOS were assessed for the study intersections in the BSPTIA. The results of the existing conditions were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system. Since fees on new development cannot be imposed to remedy existing deficiencies in infrastructure, LSA will identify existing deficiencies at the study intersections based on the analysis for the existing conditions. The difference between the deficiencies in the circulation system in existing and General Plan Build-Out condition will be identified. The cost for mitigating the existing deficiencies will not be included in the Development Fee Program.

Task 5: Estimation of Costs for Fnture (General Plan Build Out) Intersection Needs

LSA will develop cost estimates for the proposed improvements that mitigate the deficient locations in the circulation system in the General Plan Build-Out condition using the San Bernardino Associated Governments (SANBAG) Congestion Management Plan (CMP) Appendix G, Preliminary Construction Cost Estimates for Congestion Management Plan. The total traffic improvement costs will be developed by adding cost estimates of individual intersections for both physical improvements and signalization over the larger affected area.

Task 6: Identification of Fnture (General Plan Build Out) New Traffic

LSA will identify future projected land development by type: residential, commercial, and industrial, based on the General Plan Build-Out projections for these categories. The type and total number of categories will be identical to the ones listed in Figure 36 (attached) of the Development Fee Program. The growth in land uses projected in the City's General Plan between existing and General Plan Build-Out condition will then be converted into daily traffic estimates using Institute of Transportation Engineers (ITE) trip generation rates consistent with the existing traffic fee program. LSA will use the same trip adjustment rates listed in Figure 36 (attached) in the existing Development Fee Program. LSA will summarize the conversion rates and trips generated by each type of land use based on the projected quantities in a table format. It should be noted that the recommended intersection improvements are based on impacts determined from peak-hour traffic conditions. Use of daily traffic forecasts for trip fee determination can affect the overall nexus of the fee program because the improvements were determined based on intersection LOS analysis for peak-hour traffic volumes. LSA is proposing a method consistent with current practice. This method may affect the nexus and/or stakeholder tolerance to the revised fee update.

Task 7: Development of Traffic Fee for Future (General Plan Build Out) New Traffic

LSA will establish a relationship between the new (projected) development and the total cost associated with the recommended improvements within the City of Banning. Based on this relationship, the total cost of improvements, including signalization and physical improvements, will be divided by the total new daily trips generated by proposed land uses to calculate the "per-trip" fee similar to the one included in the current traffic fee component of the Development Fee Program.

Task 8: Preparation of Traffic Analysis Report

A technical study will be prepared discussing the relationship between the future land uses for the General Plan Build-Out condition and the cost of improvement to mitigate the circulation system to conform to City's standards. The establishment of a "per-trip" fee for the future land uses adopted in the General Plan will be summarized in the report. A copy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, representatives of LSA will meet with City staff to discuss the report and to receive comments. LSA will then modify the draft report to address the comments and submit the final study report to the City.

Task 9: Meeting Attendance

For the purpose of this scope of work, it is anticipated that members of LSA's Transportation staff will attend up to four team meeting related to preparation of the technical traffic analysis.

Traffic Study Budget Estimate and Schedule

Based on this scope of work, a budget of $45,000 is required. This amount will be billed on an hourly basis consistent with the attached rates and provisions. This amount will not be exceeded without your prior authorization.

LSA is prepared to initiate this work effort immediately. A draft traffic study will be submitted to your office for review within 6 weeks after authorization to proceed, as evidenced by the signature of an authorized agent.

Sincerely,

LSA ASSOCIATES, INC.

Les Card, P.E.
Principal/Chief Executive Officer

Figure 36: Average Weekday Vehicle Trip Factors and Pass-By Adjustments

Residential and Nonresidential Demand Indicators	Residential	Commercial/ Shopping Ctrs	Other Nonresidential
Average Weekday Vehicle Trip Ends Per Unit			
Single Family-Detached	9.57		
Townhouse/Duplex	5.86		
Multifamily	6.59		
Mobile Home/Other	4.99		
Avg Weekday Vehicle Trip Ends Per 1,000 Sq Ft			
820 Com / Shop Ctr 50,000 SF or less		86.56	
820 Com / Shop Ctr 50,001-100,000 SF		67.91	
820 Com / Shop Ctr 100,001-200,000 SF		53.28	
820 Com / Shop Ctr over 200,000 SF		41.80	
710 Office / Inst 25,000 SF or less			18.35
710 Office / Inst 25,001-50,000 SF			15.65
710 Office / Inst 50,001-100,000 SF			13.34
720 Medical-Dental Office			36.13
610 Hospital			17.57
770 Business Park			12.76
110 Light Industrial			6.97
140 Manufacturing			3.82
150 Warehousing			4.96
520 Elementary School			14.49
Other Nonreisdential			
320 Lodging (per room)			9.11
565 Day Care (per student)			4.48
620 Nursing Home (per bed)			2.37
Trip Adjustment Factors			
Residential	50%		
Com / Shop Ctr 50,000 SF or less		26%	
Com / Shop Ctr 50,001-100,000 SF		29%	
Com / Shop Ctr 100,001-200,000 SF		32%	
Com / Shop Ctr over 200,000 SF		35%	
All Other Nonresidential			50%

Source: ITE Trip Generation, 7th Edition, 2003

CAPITAL FACILITY PLAN

The traffic control capital improvements included in the development impact fee methodology is based on capacity improvements identified by a study prepared for the City by Whipple, Kinsell, and Company (1992).

ATTACHMENT B:

Citywide General Plan Circulation System With Roadway Classification

Legend
Collector Highway 66' ROW
Secondary Highway 80' ROW
Major Highway 100' ROW
Urban Arterial Highway 144' ROW
CONCOMBER ROAD
MARIPOSA STREET
E. 10TH STREET
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ATTACHMENT C:

Comparison of Existing and Proposed Right-of-Way at Study Intersections/Segments

EXISTING CONDITIONS
BARBOUR STREET
SAN GORGONIO AVENUE
WESTWARD AVENUE
REGIONAL MAP
Map Locations
PROPOSED CONDITIONS
BARBOUR STREET
SAN GORGONIO AVENUE
WESTWARD AVENUE
Street Cross Sections
MAJOR HIGHWAY
SECONDARY HIGHWAY

ATTACHMENT D:

Queuing Analysis for determination of Turn-Pocket Lengths and Transition Lanes

Attachment D - Queuing Analysis for determination of Turn-Pocket Lengths and Transition Lanes

Intersection	95th Percentile Queue Lengths (feet)																						
	A.M. Peak Hour												P.M. Peak Hour										
	NBL	NBT	NBR	SBL	SBT	SBR	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR	EBL	EBT	EBR	WBL	WBT	WBR
1. Highland Springs Avenue/Brookside Avenue	400	225	-	-	525	525	50	-	550	-	-	-	450	575	-	-	850	850	225	-	950	-	-	-
2. Highland Springs Avenue/16th Street-Cougar Way	400	400	-	-	350	350	75	-	75	-	-	-	650	650	-	-	1,325	1,325	500	-	500	-	-	-
3. Highland Springs Avenue/F Street	-	550	275	150	625	-	-	-	-	850	-	425	-	575	1,250	500	600	-	-	-	-	875	-	500
4. Highland Springs Avenue/Oak Valley Parkway-B Street	275	350	350	50	700	700	25	150	700	850	850	850	550	775	775	100	775	775	225	450	975	900	900	900
5. Highland Springs Avenue/Starlight Avenue-A Street	200	450	125	75	500	375	75	125	625	475	375	375	225	1,375	200	150	900	275	425	450	350	475	475	475
6. Highland Springs Avenue/Wilson Street	125	350	175	250	675	100	150	275	275	525	200	175	50	925	500	525	550	50	425	675	675	275	375	925
7. Highland Springs Avenue/Ramsey Street	175	66	2	105	454	36	114	126	-	254	82	-	7	55	8	6	36	11	17	18	14	19	19	19
8. Highland Springs Avenue/I-10 Westbound Ramps	361	172	-	-	498	303	-	-	-	204	-	51	2	17	20	21	22	2	17	27	27	11	15	37
9. Highland Springs Avenue/I-10 Eastbound Ramps	-	384	86	294	122	-	332	-	51	-	-	-	201	417	33	167	295	41	220	254	-	270	370	-
10. Highland Springs Avenue/San Lakes Boulevard	125	625	50	175	375	-	75	75	50	100	175	475	225	625	275	350	725	-	75	825	300	650	550	475
11. Highland Springs Avenue/Potrero Boulevard	350	425	-	-	325	125	350	-	75	-	-	-	225	325	-	-	475	350	350	-	200	-	-	-
12. C Street-Apex Avenue/Wilson Street	-	-	-	475	-	475	175	325	325	-	675	675	-	-	-	525	-	525	150	775	775	-	1,050	1,050
13. Highland Home Road/Northern Loop	25	-	-	-	-	-	-	-	25	-	-	-	25	-	-	-	-	-	-	-	25	-	-	-
14. Highland Home Road/Bamgont Road-C St	-	150	50	375	375	-	-	-	-	775	-	775	-	300	350	225	225	-	-	-	-	675	-	675
15. Highland Home Road/F Street	125	175	-	-	700	375	175	-	450	-	-	-	350	650	-	-	825	275	1,000	-	325	-	-	-
16. Highland Home Road/D Street	200	100	-	-	1,050	1,050	475	-	475	-	-	-	350	575	-	-	875	875	400	-	400	-	-	-
17. Highland Home Road/Wilson Street	200	200	50	325	300	300	125	375	375	200	525	125	800	450	325	300	300	400	150	1,225	1,225	75	675	600
18. Highland Home Road/Ramsey Street	50	50	50	200	75	125	25	200	200	25	100	75	50	125	125	275	100	100	275	350	350	75	400	575
19. Highland Home Road/San Lakes Boulevard--Westward Avenue	125	25	25	75	175	175	50	75	75	-	175	175	225	50	50	150	375	375	150	450	450	50	700	700
20. Sunset Avenue/Wilson Street	175	175	50	125	525	125	250	425	275	50	250	50	450	575	50	225	525	350	500	525	175	175	900	175
21. Sunset Avenue/Ramsey Street	175	125	75	100	450	50	25	125	325	75	75	75	150	475	100	125	325	150	150	400	175	300	400	400
22. Sunset Avenue/I-10 Westbound Ramps	450	150	-	-	375	-	-	-	-	475	475	475	250	525	-	-	225	-	-	-	-	325	325	325
23. Sunset Avenue/I-10 Eastbound Ramps	-	475	475	325	75	-	150	150	375	-	-	-	-	525	525	175	175	-	400	400	675	-	-	-
24. Sunset Avenue/Lincoln Street	50	175	175	75	150	150	250	50	50	25	50	75	200	150	150	125	325	350	275	275	275	50	425	125
25. Sunset Avenue/Westward Avenue	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26. Sunrise Avenue/Wilson Street	75	75	75	100	100	100	150	150	150	-	50	50	325	325	325	75	75	75	350	350	350	50	400	400
27. 16th St/Wilson Street	75	-	75	-	-	-	-	75	75	50	25	-	175	-	175	-	-	-	-	200	200	25	250	-
28. 8th St/Wilson Street	100	50	50	125	175	175	-	300	25	25	125	25	275	225	225	175	200	200	50	500	-	25	675	50
29. 8th St/Ramsey Street	50	100	400	50	250	250	-	100	125	300	50	50	250	175	525	25	175	175	75	300	325	275	200	200
30. 8th St/I-10 Westbound Ramps	300	75	-	-	175	625	-	-	-	225	225	225	275	275	-	-	325	400	-	-	-	575	-	575
31. 8th St/I-10 Eastbound Ramps	-	350	350	200	25	-	300	-	300	-	-	-	-	700	700	175	75	-	275	650	300	-	-	-
32. 8th Street/Lincoln Street	25	500	500	500	175	175	75	175	175	25	50	750	175	700	700	575	425	425	550	525	525	75	1,025	675
33. 4th St/Wilson Street	25	25	-	275	275	275	400	400	400	175	175	175	150	150	100	175	175	175	550	550	550	900	900	900
34. San Gorgonio Avenue/Wilson Street	25	50	50	375	375	375	50	425	425	200	200	200	150	150	100	175	175	175	550	550	550	850	850	850
35. Hargrave Street/Ramsey Street	125	375	350	25	575	25	50	100	75	450	100	25	1,025	1,250	425	50	925	50	75	200	150	1,175	200	75
36. Hargrave Street/I-10 Westbound Ramps	300	225	-	-	400	-	-	-	-	75	75	-	825	800	-	-	650	-	-	-	-	825	825	-
37. Hargrave Street/I-10 Eastbound Ramps	-	450	150	425	125	-	600	600	-	-	-	-	-	975	450	475	700	700	900	900	-	-	-	-
38. Hargrave Street/Lincoln Street	25	125	125	575	125	50	150	175	75	-	75	-	275	125	125	450	100	1,525	675	275	100	75	200	-
39. Fields Road/I-10 Westbound Ramps	-	25	50	275	350	-	-	-	-	100	100	25	-	50	225	1,075	1,100	-	-	-	-	600	600	300

Notes:
The 95th-percentile queue is defined to be the queue length that has only a 5-percent probability of being exceeded during the analysis time period.
Queue lengths assume a vehicle length of 25 feet.

ATTACHMENT E:

Right-of-Way Determination Table

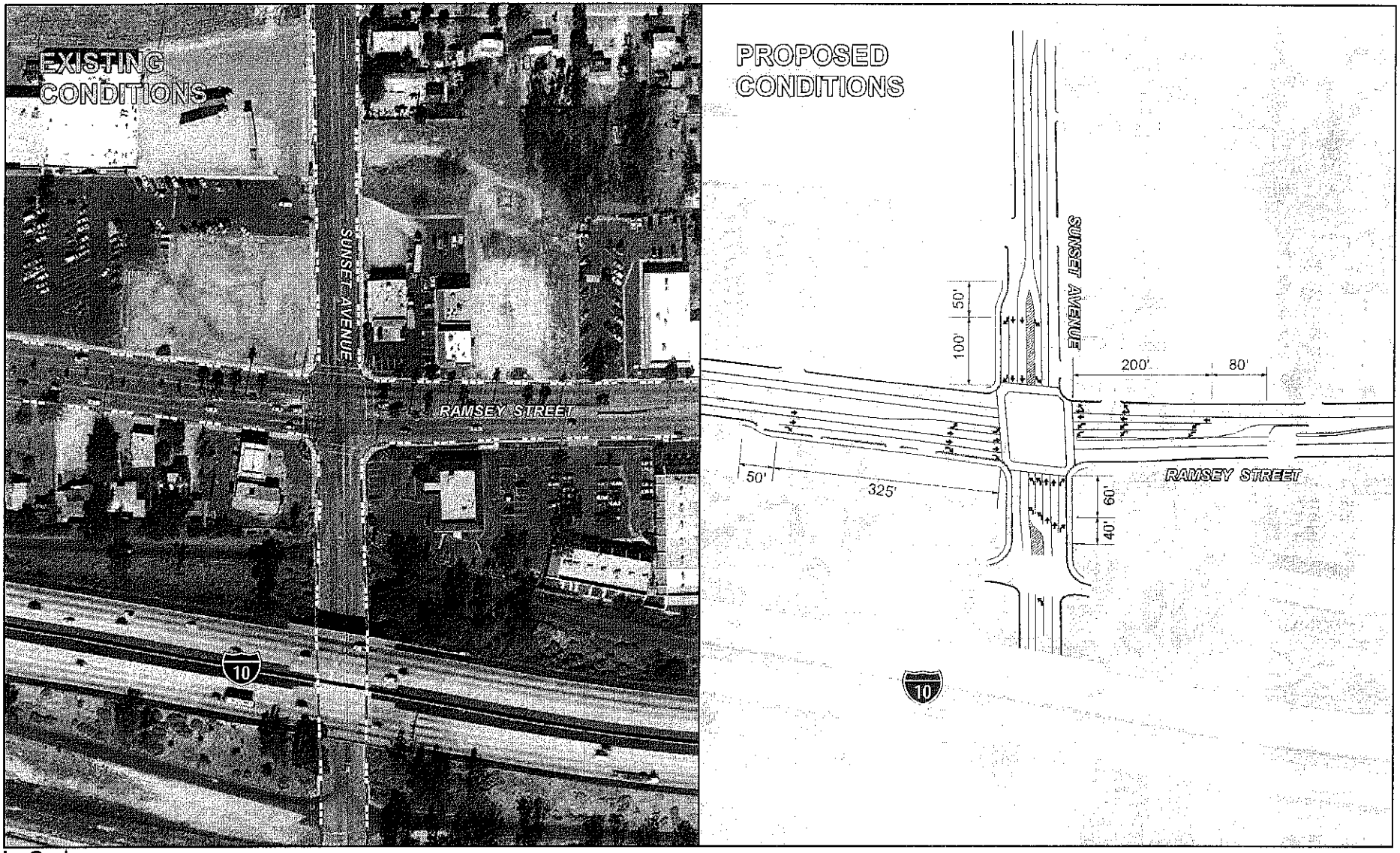
Attachment E - Right-of-Way Determination

	Intersection	Improvements Needed to Mitigate Existing Deficiencies	General Plan Buildout Circulation Improvements	Completed Improvements	TUMF Program Improvements	Signalization Covered Through Existing Development Fee Program (Traffic Control)	DIF Program Improvements	Total Improvement Cost (For DIF Only)	Total Right of Way Required (Square Feet)	Land (Square Feet)	Buildings (Type/Location)
1 .	Highland Springs Avenue/Brookside Avenue		Install a traffic signal. Add a NBL, NBT, SBT, EBL.		NBT, SBT		Install a traffic signal. Add NBL, EBL.	$395,000	7,500	7,500	-
2 .	Highland Springs Avenue/16th Street-Cougar Way		Install a traffic signal.				Install a traffic signal.	$210,000	-	-	-
3 .	Highland Springs Avenue/F Street		Install a traffic signal. Add a NBR with overlap, 2 SBL, WBR with overlap.		SBL		Install a traffic signal. Add a NBR with overlap, SBL, WBR with overlap.	$396,450	28,500	28,500	-
4 .	Highland Springs Avenue/Oak Valley Parkway-B Street		Add NBL, NBT, SBT.		NBT, SBT		Add a NBL	$187,250	3,800	3,800	-
5 .	Highland Springs Avenue/Starlight Avenue -A Street		Install a traffic signal. Add NBL, NBT, NBR, SBL, SBT, SBR, EBL, EBR with overlap, WBL.		NBT,SBL, SBT,		Install a traffic signal. Add NBL, NBR, SBR, EBL, EBR with overlap, WBL.	$578,430	22,700	19,300; Taking of land may be required for NBL, SBR and EBR. Removal of west leg median for EBL.	-
6 .	Highland Springs Avenue/Wilson Street		Install a traffic signal. Add a 2 NBT, SBL, SBR, WBL, overlap to WBR.	Install a traffic signal.	2 NBT,		Add a SBL, SBR, WBL, overlap to WBR.	$290,750	9,600	9600; Taking of land may be required for WBL.	-
7 .	Highland Springs Avenue/Ramsey Street	Optimize & coordinate with Highland Springs Ave./I-10 EB & WB Ramps.	Add NBL, NBT, SBL, SBT, WBL.		NBT, SBT		Add NBL, SBL, WBL.	$326,250	9,105	9,105; Taking of land may be required for NBL, SBL, WBL. Removal of east leg median for WBL.	-
8 .	Highland Springs Avenue/I-10 Westbound Ramps	Optimize and coordinate with Highland Springs/I-10 EB Ramps & Highland Springs/8th Street-Ramsey St.	Convert SBR to Free SBR, WBR.		Convert SBR to Free SBR, WBR.					-	-
9 .	Highland Springs Avenue/I-10 Eastbound Ramps		Add EBL		Add EBL					-	-
10 .	Highland Springs Avenue/San Lukas Boulevard		Install a traffic signal. Add NBR, SBL, 2 WBL, Re-stripe WBL to WBT.	Install a traffic signal.	SBL		Add NBR, 2 WBL. Re-stripe WBL to WBT.	$250,750	19,800	- 19,800; Taking of land may be required for NBR, 2 WBL. Removal of east leg median for 2 WBL	-
11 .	Highland Springs Avenue/Potrero Boulevard		Install a traffic signal.				Install a traffic signal.	$250,000	-	-	-
12 .	C Street-Apex Avenue/Wilson Street		Install a traffic signal. Add EBL, EBT, WBT.				Install a traffic signal. Add EBL, EBT, WBT.	$489,540	37,500	37,500	West Leg/SW Quad-Remove 15 mobile homes, East Leg/SE Quad-Remove 3 SFR.
13 .	Highland Home Road/Northern Loop									-	-
14 .	Highland Home Road/Beaumont Road-G St		Install a traffic signal. Add NBR with overlap.				Install a traffic signal. Add NBR with overlap.	$288,988	3,600	3,600	-
15 .	Highland Home Road/F Street		Install a traffic signal. Add 2 NBL, SBR, EBL.				Install a traffic signal. Add 2 NBL, SBR, EBL.	$504,480	15,300	15,300	-
16 .	Highland Home Road/D Street		Install a traffic signal. Add NBL, NBT.				Install a traffic signal. Add NBL, NBT.	$406,020	20,700	20,700	-
17 .	Highland Home Road/Wilson Street		Install a traffic signal. Add NBT, 2 SBL, SBT, SBR, WBR with overlap.			Install a traffic signal.	Add NBT, 2 SBL, SBT, SBR, WBR with overlap.	$483,870	24,300	24,300; Removal of existing median for NBL. Taking of land may be required for NBT. Removal of existing storm basin for SBL, SBT, SBR, Taking of land may be required for WBR.	-
18 .	Highland Home Road/Ramsey Street		Install a traffic signal. NBL, NBT, SBL, SBT, Overlap to WBR.			Install a traffic signal.	Add NBL, NBT, SBL, SBT, Overlap to WBR.	$457,770	43,200	Taking of land may be required for NBL, NBT.	-
19 .	Highland Home Road/San Lukas Boulevard--Westward Avenue		Install a traffic signal. Add NBL, SBL, EBL, EBT, WBT.		WBT	Install a traffic signal.	Add NBL, SBL, EBL, EBT.	$301,020	17,400	17400; Taking of land may be required for EBL.	East Leg/SE Quad-Removal of vacated SFR,
20 .	Sunset Avenue/Wilson Street		Install a traffic signal. Add 2 NBL, Re-stripe NBR-NBT,NBR, SBL, SBT, SBR with overlap, EBL, EBT,WBL, WBT, WBR with overlap	NBL, SBL, SBT, EBL,WBL		Install a traffic signal.	Add NBL, Re-stripe NBR-NBT, NBR, SBR with overlap, EBT,WBT, WBR with overlap	$459,720	60,600	60,600; Taking of land may be required for NBL, EBT	West-Leg/SW Quad-Removal of 12 mobile homes, East-Leg/SE Quad-Removal of 6 SFR
21 .	Sunset Avenue/Ramsey Street		Add NBL, NBR, SBR, EBR, WBL.				Add WBL, NBR, SBR, EBR, WBL.	$342,180	15,300	15,300; Taking of land may be required for NBL, NBR, EBR. Removal of existing median for WBL.	-
22 .	Sunset Avenue/I-10 Westbound Ramps		Install a traffic signal. Add free SBR.		Install a traffic signal. Add free SBR.					-	-
23 .	Sunset Avenue/I-10 Eastbound Ramps		Install a traffic signal. Add 2 EBL, SBL.		Install a traffic signal. Add 2 EBL, SBL.					-	-
24 .	Sunset Avenue/Lincoln Street		Install a traffic signal. Add NBL, NBT, SBL, SBT, 2 EBL, EBT, WBL, WBT, WBR.		EBL, EBT.	Install a traffic signal.	Add NBL, NBT, SBL, SBT, WBL, WBT, WBR.	$494,160	77,100	77,100;	South Leg/SW Quad-Realignment of Existing Channel
25 .	Sunset Avenue/Westward Avenue									-	-
26 .	Sunrise Avenue/Wilson Street		Install a traffic signal. Add EBTL, convert WBR to WBTR.	EBTL, WBTR			Install a traffic signal.	$250,000		-	-
27 .	16th St/Wilson Street		Install a traffic signal.				Install a traffic signal.	$250,000		-	-
28 .	8th St/Wilson Street		Install a traffic signal. Add NBL, SBL, WBR.			Install a traffic signal.	Add NBL, SBL, WBR.	$134,995	8,700	8,700; Taking of land may be required for NBL, WBL.	-
29 .	8th St/Ramsey Street		Add NBL. Re-stripe EBR-EBT, EBR, WBL.				Add NBL. Re-stripe EBR-EBT, EBR, WBL.	$316,830	28,200	28,200; Taking of land may be required for NBL, EBR, and WBL.	-
30 .	8th St/I-10 Westbound Ramps		Install a traffic signal. Add 2 NBL, NBT, SBT.		NBL		Install a traffic signal. Add NBL, NBT, SBT.	$489,540	37,500	37,500; Taking of land may be required for NBL, NBT, SBT	-
31 .	8th St/I-10 Eastbound Ramps	Install a traffic signal.	Add NBT, SBL, SBT.		SBL		Add NBT, SBT.	$275,790	33,600	33,600;Taking of land may be required for NBT, SBT	-
32 .	8th Street/Lincoln Street		Install a traffic signal. Add NBL, 2 SBL, SBT, 2 EBL, EBT, WBL, WBT.			Install a traffic signal.	Add NBL, 2 SBL, SBT, 2 EBL, EBT, WBL, WBT.	$685,560	71,100	71,100; Taking of land may be required for WBT	-
33 .	8th St/Nixon Street		Install a traffic signal.				Install a traffic signal.	$250,000		-	-
34 .	San Gorgonio Avenue/Wilson Street		Install a traffic signal. Add EBL, EBT, WBTL.			Install a traffic signal.	Add EBL, EBT, WBTL.	$239,940	37,500	37,500; Taking of land may be required for EBT, WBTL	West Leg/SW Quad-12 SFR & 2 City of Banning Community Services Buildings may need to be removed to add EBT, EBL, WBTL.
35 .	Hargrave Street/Ramsey Street		Add NBL, NBT, overlap to NBR, SBL, SBT, SBR, EBL, EBT, WBL, WBT.				Add NBL, NBT, NBR to NBR with Overlap, SBL, SBT, SBR, EBL, EBT, WBL, WBT.	$831,450	81,000	81,000; Taking of land may be required for SBL, SBT, SBR, EBL, EBT, WBL, and WBT	South Leg/SW Quad-Remove Car Station, South Leg-SE Quad-Remove Gas Station/Fast-Food Restaurant
36 .	Hargrave Street/I-10 Westbound Ramps		Install a traffic signal. Add 2 NBL, NBT, Free SBR, WBL, free WBR.				Install a traffic signal. Add 2 NBL, NBT, Free SBR, WBL, Free WBR.	$624,970	36,000	36,000;Taking of land may be required for 2 NBL, NBT, Free SBR, WBL, Free WBR	-
37 .	Hargrave Street/I-10 Eastbound Ramps		Install a traffic signal. Add NBT, NBR, SBL, SBT, EBL, Free EBR.				Install a traffic signal. Add NBT, NBR, SBL, SBT, EBL, Free EBR.	$422,820	48,600	48,600; Taking of land may be required for NBT, NBR, SBL, SBT, EBL, Free EBR	-
38 .	Hargrave Street/Lincoln Street		Install a traffic signal. Add NBL, NBT, 2 SBL, SBT, SBR with overlap, EBL, EBT, EBR, WBL, WBT, Free WBR.		Add NBL, SBL.	Install a traffic signal.	Add NBT, SBL, SBT, SBR with overlap, EBL, EBT, EBR, WBL, WBT, Free WBR.	$726,630	86,100	86,100; Taking of land may be required for NBT, SBL, SBT, SBR with overlap, EBL, EBT, EBR, WBL, WBT, Free WBR	South Leg/SE Quad-Removal of 5 SFR, north leg/NW Quad-Removal of 2 SFR, north leg/NE Quad-Removal of 2 SFR, East leg/North East Quad-Removal of 1 Warehouse building, East Leg/South East Quad-Removal of 4 warehouse buildings/7 1 SFR
39 .	Pardee Road/I-10 Westbound Ramps		Install a traffic signal. Add SBTR and stripe WBL. Re-stripe SBLTR-SBTL.				Install a traffic signal. Add SBTR and WBL. Re-stripe SBLTR-SBTL.	$333,520	20,700	20,700; Taking of land may be required for SBTR and WBL	-

Note: NBL = Northbound Left-turn lane, NBT = Northbound Through Lane, NBTR= Northbound Through-Right, NBR = Northbound Right-turn Lane, etc.

ATTACHMENT F:

Example Intersection Geometry and Right-of-Way Requirements With Implementation of Proposed Improvements



LSA

N

0 100 200

Feet

Existing

Proposed

Existing Lane

Proposed Lane

SOURCE: Google Earth, 2013

I:\COB1101\Reports\Traffic\fig1_RamseySunset.mxd (6/13/2014)

FIGURE 1

Banning Fee Program
Traffic Study

Ramsey Street and Sunset Avenue

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Brian Guillot, Acting Community Development Director**

SUBJECT: **Economic Development**
Resolution No. 2015-66, "Approving an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan"

RECOMMENDATION: That the City Council:

I. Adopt Resolution No. 2015-66 (Attachment 1) approving an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan in the amount not to exceed, Twenty-five Thousand Dollars ($25,000.00).

JUSTIFICATION: Section 21674 of the Public Utilities Code sets forth the powers and duties of the Airport Land Use Commission. At this time, Countywide Policies for Zone D maximum densities/intensities of the Riverside County Airport Land Use Compatibility Plan for Banning Municipal Airport restrict a finding of compatibility by the Commission for assembly uses (those with higher occupancies) around the airport, more specifically Zone D (see Attachment 2).

BACKGROUND: On October 14, 2004, the Riverside County Airport Land Use Commission adopted the Airport Land Use Compatibility Plan in accordance with their authority. The plan includes baseline densities/intensities for both residential and other land uses. Since the time that the plan was adopted in 2004, the California Airport Land Use Planning Handbook (2011) makes provision for allowing increased densities. The Airport Land Use Commission has approved amendments to other airport compatibility plans such as French Valley Airport that make their plans more accommodating to development, while still maintaining the standards that ensure public safety.

In order to encourage and facilitate economic development around the airport in the City of Banning and in particular Zone D of the Airport Land Use Compatibility Plan, staff requested that the plan be amended to allow increased densities/intensities. The Riverside County Airport Land Use Commission (ALUC) staff is willing to bring an amendment forward to the commission; however, they do not have sufficient staff to complete the environmental

documents. The agreement makes provision for ALUC to hire a consultant to complete the environmental documents (see Attachment 3).

A staff report from ALUC dated October 9, 2014, for a project in the City of Banning is included in Attachment 4. The report identifies the major issues related to this proposal and helps further explain the need to amend the Airport Land Use Compatibility Plan in order to make the project compatible. The project has been continued by ALUC until these issues may be resolved. It is hoped that after the compatibility plan is amended, the applicant will be able to revise the project design in order for ALUC to make a finding of compatibility.

FISCAL DATA: The cost to provide the environmental services for this amendment is estimated to be in the amount not to exceed $25,000.00. Provision for this project is made in the 2015/2016 Budget account number 001-2800-441-33-11.

RECOMMENDED BY:

Brian Guillot
Acting Community Development Director

APPROVED BY:

Dean Martin
Interim City Manager
Interim Administrative Services Director

ATTACHMENTS:

1. Resolution No. 2015-66
2. Compatibility Map and Table 2A Densities/Intensities
3. Standard ALUC Agreement with cover letter dated December 22, 2013
4. Staff Report from ALUC dated October 9, 2014 (Museum of Pinball)

Attachment 1

(Resolution No. 2015-66)

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RESOLUTION NO. 2015-66

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT WITH THE RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION (ALUC) FOR THE AMENDMENT OF THE BANNING MUNICIPAL AIRPORT LAND USE COMPATIBILITY PLAN

WHEREAS, on October 14, 2004, the Riverside County Airport Land Use Commission adopted the Banning Municipal Airport Land Use Compatibility Plan in accordance with their authority; and

WHEREAS, the Airport Compatibility Plan includes baseline densities/intensities for both residential and other land uses that may act as a constraint on economic development; and

WHEREAS, the City Council desires to encourage and facilitate economic development adjacent to Banning Municipal Airport; and

WHEREAS, the Riverside County Airport Land Use Commission is willing to consider amending the plan to increase the maximum densities and intensities in accordance with the California Airport Land Use Planning Handbook subject to certain conditions;

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

SECTION 1. The Council approves an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan in the amount not to exceed, Twenty-five Thousand Dollars ($25,000.00).

SECTION 2. The Interim City Manager is authorized to execute an Agreement with Riverside County Airport Land Use Commission in a form approved by the City Attorney.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, Mayor
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

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

ATTEST:

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-66 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015.

AYES:

NOES:

ABSENT:

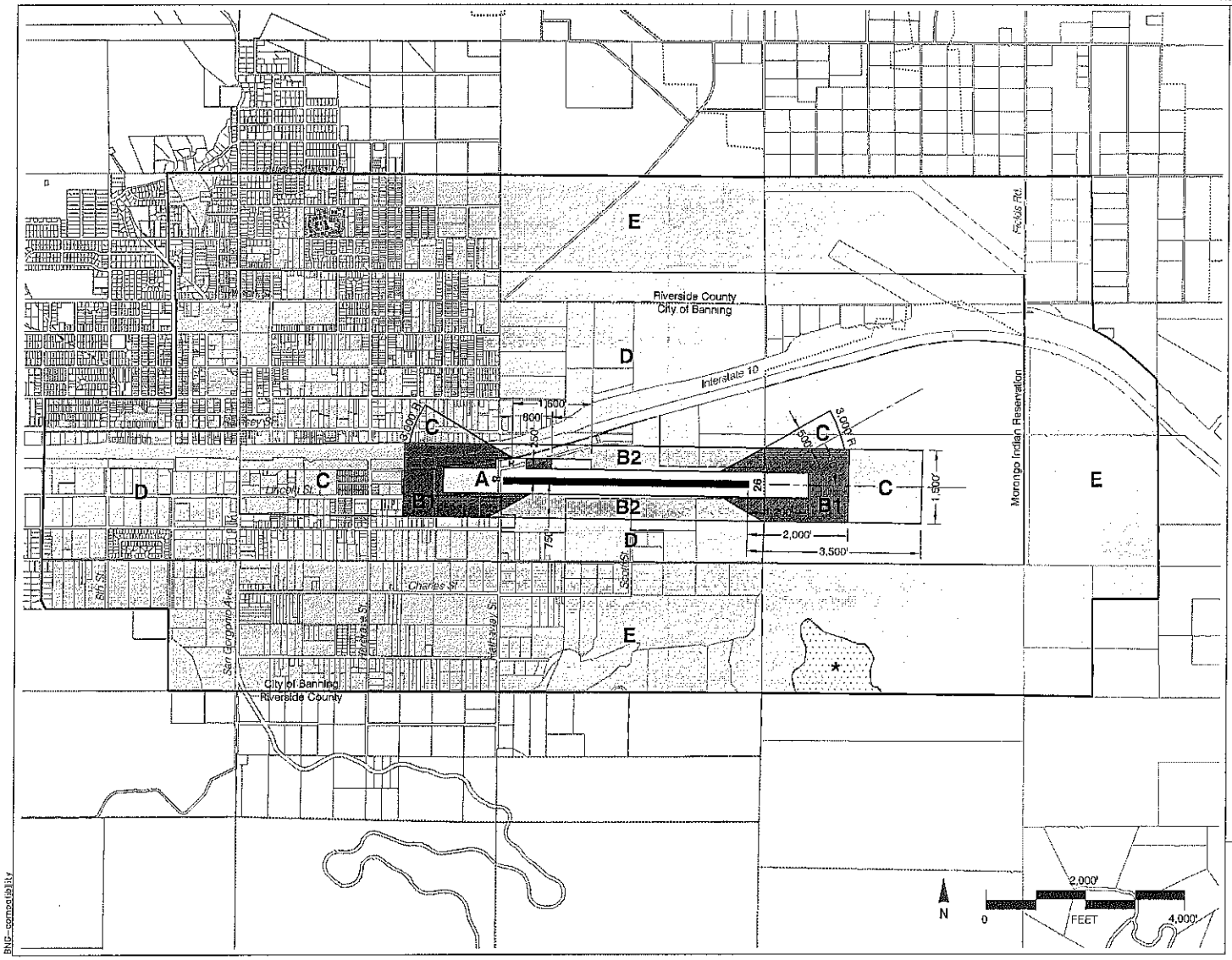
ABSTAIN:

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

Attachment 2

(Compatibility Map)

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Legend

Compatibility Zones

- Airport Influence Area Boundary
- Zone A
- Zone B1
- Zone B2
- Zone C
- Zone D
- Zone E
- Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
Airport Land Use Commission

Riverside County
Airport Land Use Compatibility Plan
Policy Document

(Adopted October 2004)

Map BN-1

Compatibility Map

Banning Municipal Airport

BNP-compatibility

Zone	Locations	Maximum Densities / Intensities: Residential (d.u./ac) [1]	Other Uses (people/ac) [2]: Average [6]	Single Acre [7]	with Bonus [8]	Req'd Open Land [3]	Additional Criteria: Prohibited Uses [4]	Other Development Conditions [5]
A	Runway Protection Zone and within Building Restriction Line	0	0	0	0	All Remaining	› All structures except ones with location set by aeronautical function › Assemblages of people › Objects exceeding FAR Part 77 height limits › Storage of hazardous materials › Hazards to flight [9]	› Avigation easement dedication
B1	Inner Approach/ Departure Zone	0.05 (average parcel size ≥20.0 ac.)	25	50	65	30%	› Children's schools, day care centers, libraries › Hospitals, nursing homes › Places of worship › Bldgs with >2 aboveground habitable floors › Highly noise-sensitive outdoor nonresidential uses [10] › Aboveground bulk storage of hazardous materials [11] › Critical community infrastructure facilities [12] › Hazards to flight [9]	› Locate structures maximum distance from extended runway centerline › Minimum NLR of 25 dB in residences (including mobile homes) and office buildings [13] › Airspace review required for objects >35 feet tall [14] › Avigation easement dedication
B2	Adjacent to Runway	0.1 (average parcel size ≥10.0 ac.)	100	200	260	No Req't	Same as Zone B1	› Locate structures maximum distance from runway › Minimum NLR of 25 dB in residences (including mobile homes) and office buildings [13] › Airspace review required for objects >35 feet tall [14] › Avigation easement dedication
C	Extended Approach/ Departure Zone	0.2 (average parcel size ≥5.0 ac.)	75	150	195	20%	› Children's schools, day care centers, libraries › Hospitals, nursing homes › Bldgs with >3 aboveground habitable floors › Highly noise-sensitive outdoor nonresidential uses [10] › Hazards to flight [9]	› Minimum NLR of 20 dB in residences (including mobile homes) and office buildings [13] › Airspace review required for objects >70 feet tall [15] › Deed notice required
D	Primary Traffic Patterns and Runway Buffer Area	**(1)** ≤0.2 (average parcel size ≥5.0 ac.) *or* [16] **(2)** ≥5.0 (average parcel size ≤0.2 ac.)	100	300	390	10%	› Highly noise-sensitive outdoor nonresidential uses [10] › Hazards to flight [9]	› Airspace review required for objects >70 feet tall [15] › Children's schools, hospitals, nursing homes discouraged [17] › Deed notice required
E	Other Airport Environs	No Limit	No Limit [18]			No Req't	› Hazards to flight [9]	› Airspace review required for objects >100 feet tall [15] › Major spectator-oriented sports stadiums, amphitheaters, concert halls discouraged beneath principal flight tracks [18]
*	Height Review Overlay	Same as Underlying Compatibility Zone				Not Applicable	Same as Underlying Compatibility Zone	› Airspace review required for objects >35 feet tall [14] › Avigation easement dedication

See Chapter 3 for airport-specific additions or exceptions to these policies

Table 2A

Basic Compatibility Criteria

Attachment 3

(Standard ALUC Agreement with cover letter dated December 22, 2013)

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AIRPORT LAND USE COMMISSION
RIVERSIDE COUNTY

RECEIVED
DEC 30 2013

December 22, 2013

CHAIR
Simon Housman
Rancho Mirage

VICE CHAIRMAN
Rod Ballance
Riverside

COMMISSIONERS

Arthur Butler
Riverside

Glen Holmes
Hemet

John Lyon
Riverside

Greg Pettis
Cathedral City

Richard Stewart
Moreno Valley

STAFF

Director
Ed Cooper

John Guerin
Russell Brady
Barbara Santos

County Administrative Center
4080 Lemon St, 14th Floor
Riverside, CA 92501
(951) 955-5132

www.rcaluc.org

Ms. Zai Abu Bakar, Community Development Director
Mr. Duane Burk, Public Works Director
City of Banning
99 East Ramsey Street
Banning, CA 92220

RE: Banning Municipal ALUCP Amendment Agreement

Dear Ms. Abu Bakar and Mr. Burk:

Thank you for meeting with Airport Land Use Commission (ALUC) staff recently to express your interest in moving forward with modifications to the Banning Municipal ALUCP ahead of ALUC's currently scheduled time frame.

We understand and appreciate the city's concerns. While the proposed amendment may not resolve all problems immediately, the Scope of Services outlined in the attached agreement should provide a significant improvement in potential economic activity compatible with the airport. Please review the Scope of Services carefully for what the modification can, and cannot, achieve.

Attached are three (3) original copies of the agreement for the ALUCP amendment for your review, approval, and City Council execution. Please make sure all three (3) copies are signed and returned. After County Board of Supervisors approval, we will return one (1) fully executed copy to you.

If there are any concerns or questions regarding the agreement, please contact myself, John Guerin, Principal Planner, or Russell Brady, ALUC Planner, at (951) 955-5132. If textual changes are desired, please e-mail us the concerns as well as day/time availability when we can quickly conference call to keep this project on track.

Sincerely,
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

Edward C. Cooper, Director

FUNDING AGREEMENT BY AND BETWEEN RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION AND CITY OF BANNING FOR PREPARATION OF AN INITIAL STUDY AND NEGATIVE DECLARATION IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FOR AMENDMENT OF BANNING MUNICIPAL AIRPORT LAND USE COMPATIBILITY PLAN, ADOPTED 2004

This Agreement is entered into on this ____th day of _____, 2014, by and between the Riverside County Airport Land Use Commission ("RCALUC") and the City of Banning ("CITY") for the provision of certain services required to be performed in connection with an amendment of the Banning Municipal Airport Land Use Compatibility Plan, adopted in 2004 ("THE 2004 PLAN") located within the jurisdictional boundaries of the CITY. The RCALUC and City are sometimes hereinafter referred to individually as "Party" and collectively as the "PARTIES."

RECITALS

A. The Banning Municipal Airport is located within the jurisdictional boundaries of the CITY and provides general aviation services to the CITY and benefits to the residents in the surrounding area.

B. The CITY seeks to amend the 2004 PLAN to address permissible intensities of nonresidential uses (only) in Airport Compatibility Zone D.

C. The CITY has requested RCALUC to perform all services necessary in order to amend the 2004 PLAN as proposed. These services generally consist of the preparation of an Initial Study and Negative Declaration to analyze the impacts associated with the proposed amendment to the 2004 PLAN, followed by adoption of the amendment by the RCALUC, hereinafter referred to as "PROJECT." The Scope of Services for the project is more specifically listed in Exhibit "A" attached hereto and made a part of this agreement as fully set forth herein. The location of the PROJECT is shown in Exhibit "B" attached hereto and made a part of this Agreement as if fully set forth herein.

D. The CITY agrees to fund the PROJECT and acknowledges that RCALUC will take the lead role in the development and implementation of the PROJECT and coordination of the services necessary to complete the PROJECT.

E. The PARTIES desire to define herein the terms and conditions under which said PROJECT is to be administered, prepared, coordinated, managed and financed.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the PARTIES hereto agree as follows:

1. The total estimated cost of the PROJECT is $25,000. The amount excludes any legal challenges to the PROJECT or any aspects thereof.

2. The City agrees to fund the PROJECT in an amount not to exceed $25,000.

3. The City agrees to deposit with RCALUC, prior to the start of any work on the PROJECT, $25,000 (100%) of the estimated cost of the PROJECT.

4. RCALUC shall provide all services as described in Exhibit "A" attached hereto and made a part of this Agreement as if fully set forth herein.

5. If unused funds remain upon completion of the PROJECT, RCALUC agrees to issue the City a refund of any unused amounts within ninety (90) days following the adoption of the proposed amendment to the 2004 PLAN and posting of the Notice of Determination at the Office of the County Assessor-Clerk-Recorder.

6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by all parties and no oral understanding or agreement not incorporated herein shall be binding on each PARTY hereto.

7. The PARTIES shall retain or cause to be retained for audit for a period of three (3) years from the date of final payment, all records and accounts relating to PROJECT.

8. This Agreement and the exhibits herein contain the entire Agreement between the PARTIES, and are intended by the PARTIES to completely state the Agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any PARTY in relation thereto, not expressly set forth in this Agreement, is null and void.

9. This Agreement may be executed in one or more counterparts and when a counterpart shall have been signed by each party hereto, each shall be deemed an original, but all of which constitute one and the same instrument.

10. This Agreement shall be terminated three (3) months after the filing of a Notice of Determination for the PROJECT or upon mutual agreement of the parties.

11. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other address as the PARTIES may designate:

To RCALUC:
Riverside County Airport Land Use Commission
Riverside County Administrative Center
Attention: Ed Cooper, Director
4080 Lemon Street, 14th Floor
Riverside, CA 92501
Phone: (951) 955-5132
Fax: (951) 955-5177

To City of Banning:
City of Banning
Attention: City Manager
99 E. Ramsey Street
Banning, CA 92220
Phone: (951) 922-3101
Fax: (951) 922-3112

[SIGNATURES ON NEXT PAGE]

APPROVALS

RCALUC Approvals:

RECOMMENDED FOR APPROVAL:

_____ Dated:_____

ED COOPER
RCALUC, Director

APPROVED AS TO FORM:

_____ Dated:_____

ANNA W. WANG
Deputy County Counsel

APPROVAL BY THE BOARD OF SUPERVISORS

_____ Dated:_____

JOHN J. BENOIT
Chairman, Riverside County Board of Supervisors

ATTEST:

_____ Dated:_____

KECIA HARPER-IHEM

[SIGNATURES CONTINUED ON NEXT PAGE]

CITY OF BANNING Approvals:

APPROVED BY:

_____ Dated:_____

City Manager
City of Banning

APPROVED AS TO FORM:

_____ Dated:_____

DAVID J. ALESHIRE
Aleshire & Wynder, LLP
City Attorney
City of Banning

ATTEST:

_____ Dated:_____

MARIE CALDERON
City Clerk, City of Banning

EXHIBIT A • SCOPE OF SERVICES

A. PROJECT SCOPE

The Scope of Services covered under this agreement will propose to make limited revisions to the Banning Municipal Airport Land Use Compatibility Plan (ALUCP) by the Riverside County Airport Land Use Commission (RCALUC). More specifically, services covered by this agreement include:

1. RCALUC will act as the Lead Agency for the purposes of the California Environmental Quality Act (hereinafter "CEQA") in carrying out the services necessary to develop and implement the PROJECT.
2. RCALUC will analyze the environmental impacts of the proposed adoption of an amendment to the 2004 PLAN addressing permissible intensities of nonresidential uses in Airport Compatibility Zone D within the PROJECT area.
3. RCALUC staff will propose to amend the 2004 Banning Municipal Airport ALUCP to increase maximum average and single-acre intensities within Compatibility Zone D exclusively; including all text and figure updates as necessary to the ALUCP;
4. RCALUC staff will prepare Initial Study/Negative Declaration programmatically analyzing the impacts of the proposed revision to the Banning Municipal ALUCP;
5. RCALUC staff will prepare a staff report, presentation, and any other materials to present the proposed amendment to the Banning Municipal Airport ALUCP and associated Initial Study/Negative Declaration for adoption by the RCALUC;
6. RCALUC shall conduct a public hearing for the proposed amendment to the 2004 PLAN; and
7. City of Banning staff will provide GIS based data including General Plan, Zoning, current land use, and any other pertinent information upon request by ALUC staff as necessary to support analysis and document preparation.

The Scope of Services under this agreement does **NOT** include any of the following:

1. Modify residential densities within ANY ALUCP Compatibility Zone.

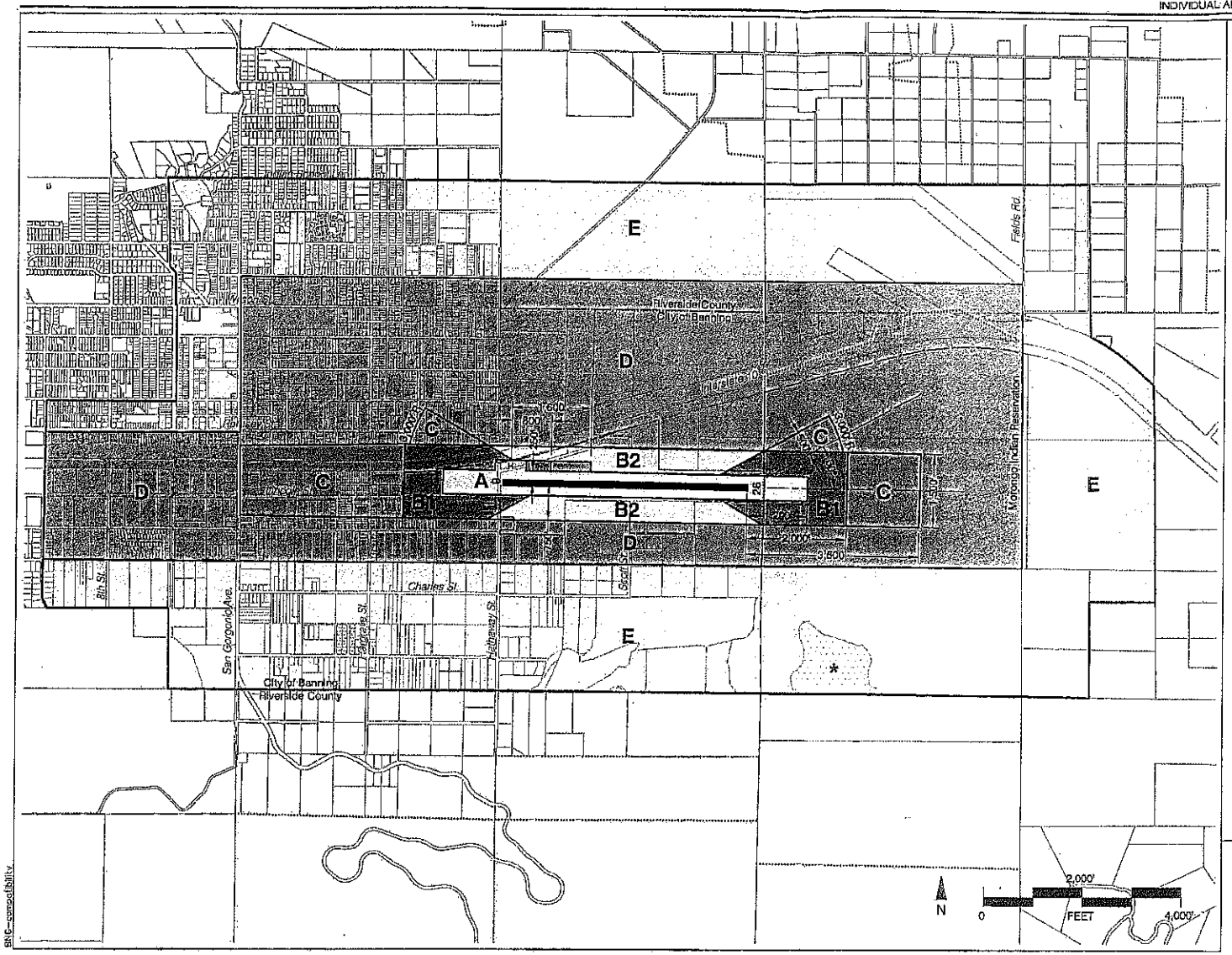
2. Modify non-residential intensities in any ALUCP Compatibility Zone other than Compatibility Zone D.
3. Update any Compatibility Zone boundaries of the Banning Municipal ALUCP.
4. Revise or update any other policies applicable to the Banning Municipal ALUCP.

   A comprehensive update of the entire Banning Municipal ALUCP pursuant to the current Airport Master Plan will be undertaken at a later time at the discretion of the RCALUC and its staff and based on available future resources and budget.
5. Any legal defense (or such costs) of the Plan amendments should good faith negotiations with potential opponents fail.
6. Any work not specifically called out under RCALUC tasks above.

B. PROJECT TIMEFRAME

Completion of the tasks listed in the Scope of Services is expected to take between three (3) months and four (4) months to complete; this contract is structured to complete the work within the required timeframes.

EXHIBIT "B"



Legend

Compatibility Zones

- Airport Influence Area Boundary
- Zone A
- Zone B1
- Zone B2
- Zone C
- Zone D
- Zone E
- Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
Airport Land Use Commission

Riverside County
Airport Land Use Compatibility Plan
Policy Document

(Adopted October 2004)

Map BN-1

Compatibility Map

Banning Municipal Airport

BNC-compatibility

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Attachment 4

(Staff Report from ALUC dated October 9, 2014, Museum of Pinball)

COUNTY OF RIVERSIDE
AIRPORT LAND USE COMMISSION

STAFF REPORT

AGENDA ITEM:	**2.2** ~~3.4~~
HEARING DATE:	**October 9, 2014 (Continued from** September 11, 2014)
CASE NUMBER:	ZAP1018BA14 – Museum of Pinball, Inc., John Weeks (Representative: Ramon Aoanan)
APPROVING JURISDICTION:	City of Banning
JURISDICTION CASE NO:	CUP-14-8005 (Conditional Use Permit)

MAJOR ISSUES: The proposed use is calculated by staff hased on the Building Code Method to accommodate potentially 1,343 and 1,767 people each within Buildings A South and B, respectively, which each would exceed the normal Compatihility Zone D single-acre criteria of 300 people and the maximum 390 with risk reduction bonus. However, based on the Parking Space Method, the total site occupancy would he 1,084 people, assuming that the truck/RV parking spaces are not occupied by tour huses. An occupancy of approximately 400-500 people per building is requested by the applicant to accommodate special and other events and would represent a peak or worst-casc scenario.

The 2004 Banning Airport Land Use Compatibility Plan (ALUCP) does not inclade any Additional Compatibility Policies addressing non-residential intensities. Therefore, the provisions of Table 2A in the Countywide Policies section of the Riverside County Airport Land Use Compatibility Plan are applicable. More recent plans (2007 French Valley, 2008 Chino, and 2010-11 Perris Valley) provide for non-residential average intensities of up to 150 persons per acre and single-acre intensities of up to 450 persons in Zone D. The City of Banning is on record as requesting such an amendment to the Banning ALUCP. However, given that staff's resources must be devoted to the March ALUCP and EIR at this time, additional consultant time would be needed to prepare the required CEQA analysis of such an amendment.

In response to a request by City staff, ALUC prepared an agreement whereby the City would pay the cost of preparing the CEQA analysis for the amendment. The proposed project was designed based on the understanding that the amendment would be expedited and moved forward; however, the City Council ultimately declined to fund the expedition of the amendment.

The 2011 Airport Land Use Planning Handbook published by the California Division of Aeronautics recommends average intensity limits of 200 to 300 persons per acre and single-acre inteusity limits of 800 to 1,200 persons for properties in the Traffic Pattern Zones around suburban airports. These provisions have been discussed with the applicant and City staff, aad the project proponent has indicated a willingness to underwrite the cost of the amendment nceded

to resolve the intensity issue affecting this project.

Input from the Commission regarding its willingness to consider these higher intensities (or alternative intensity levels beyond those utilized in the French Valley, Chino, and Perris Valley Plans) would be helpful in providing direction to staff as to how to proceed with project review and the potential Plan amendment.

RECOMMENDATION: ***Staff recommends the project be CONTINUED off-calendar until the Banning Airport Land Use Compatibility Plan Zone D non-residential criteria are updated.*** ~~**Staff must recommend a finding of INCONSISTENCY for the Conditional Use Permit, based on the proposed project exceeding single-acre non-residential intensity criteria for Compatibility Zone D.**~~

PROJECT DESCRIPTION: CUP-14-8005 would allow for the conversion of a former manufacturing facility into a pinball museum and arcade. Two existing buildings totaling 83,436 square feet would be converted into the museum/arcade and would include exhibit/assembly area, restaurant, bars, seating areas, lounges, offices, and educational/vocational areas. A third existing building totaling 34,220 square feet would be maintained for warehouse/storage and office uses. The applicant also proposes to provide for RV camping (42 spaces) and amenities such as a jogging path, swimming pool, and tennis courts. The site consists of approximately 18.17 acres net (19.76 acres gross).

PROJECT LOCATION: The site is located easterly of Hathaway Street, northerly of Westward Avenue, southerly of Lincoln Street, and bisected by Barbour Street, in the City of Banning, approximately 690 feet southerly of Runway 8-26 at Banning Municipal Airport.

LAND USE PLAN: 2004 Banning Municipal Airport Land Use Compatibility Plan

a. Airport Influence Area:	Banning Municipal Airport
b. Land Use Policy:	Zones B2 and D
c. Noise Levels:	Partially within 55-60 CNEL, remaining below 55 CNEL from aircraft noise

BACKGROUND:

Non-Residential Average Intensity: The site is located within Airport Compatibility Zones B2 and D, with all of the existing buildings and other proposed uses located in Compatibility Zone D and only a portion of a parking lot located within Compatibility Zone B2. Since no uses are proposed within Compatibility Zone B2, intensity of the proposed project shall be compared solely to the Compatibility Zone D criteria. Non-residential intensity in Airport Compatibility Zone D is restricted to an average intensity of 100 people per acre. The "Building Code Method" for calculating intensity utilizes "minimum floor area per occupant" criteria from the Building Code as a

factor in projecting intensity. Pursuant to Appendix C, Table C-1, of the Riverside County Airport Land Use Compatibility Plan, the following intensities were utilized for the project:

- office/business areas – 1 person/100 square feet with potential for 50% reduction;
- assembly/exhibit areas – 1 person/15 square feet;
- assembly/seating/restaurant/bar areas – 1 person/15 square feet;
- educational/vocational areas – 1 person/50 square feet;
- storage areas/mechanical equipment – 1 person/300 square feet;
- warehouse areas – 1 person/500 square feet.

Based on the site plan provided, the building areas would total an occupancy of 3,742 people. The non-building uses would consist of the RV parking (42 total RV spaces) and the tennis courts. It is assumed that the tennis courts would be used by those utilizing the RV camping, so the tennis courts are not considered to attract additional people. Assuming an occupancy of 4 people for each RV parking space would result in a total of 168 people, which would result in a total site occupancy of 3,910 people. Based on the approximate 19.33 gross acres located in Zone D, this total site occupancy would result in an average intensity of 202 people per acre, which would be inconsistent with the Zone D average acre criterion of 100.

Although the 50% reduction is not typically applied for assembly type uses, with a 50% reduction also applied to assembly/exhibit, assembly/seating/restaurant/bar, and educational/vocational areas, the total building occupancy would be reduced to 1,907 people. This would reduce the overall site occupancy to 2,075 people and an average intensity of 107 people, which would also be inconsistent with the Zone D average acre criterion of 100 (although it would be consistent with the higher average intensity allowance of 150 persons per acre authorized in Compatibility Plans adopted since 2007).

An alternative calculation for intensity is based on the number of parking spaces provided for a project. A total of 362 standard and handicapped parking spaces, 48 truck/RV parking spaces, and 42 RV camping spaces are shown on the site plan. Assuming an occupancy of 2 persons per vehicle for standard parking spaces and 4 persons per truck/RV space, this would equate to a total of 1,084 people for the entire site. Utilizing the gross acreage located in Zone D as previously noted, this would result in an average intensity of 56 people, which would be consistent with the Zone D average acre criterion of 100. However, total occupancy would be higher if this destination facility becomes sufficiently popular to attract tour buses that would park in the truck/RV parking spaces.

Non-Residential Single-Acre Intensity: As previously noted, the existing buildings and proposed outdoor recreational areas are located within Airport Compatibility Zone D, with only a portion of a parking lot located within Airport Compatibility Zone B2. Non-residential intensity in Airport Compatibility Zone D is restricted to 300 people in any given single acre. The most intense single-acre within Zone D would consist of the southern portion of Building A or Building B. Pursuant to the Building Code calculations presented above, the southern portion of Building A would result in a total occupancy of 1,343 people and Building B would result in a total occupancy of 1,767 people,

both of which would be inconsistent with the Zone D single-acre criterion of 300. Even with a 50% reduction for the assembly type uses (which is not typically allowed), the southern portion of Building A would result in a total occupancy of 674 people and Building B would result in a total occupancy of 898 people, which would also be inconsistent with the Zone D single-acre criterion of 300.

Upon discussion with the applicant to determine whether the projected level of occupancy pursuant to the Building Code is accurate with their planned use of the facility, the applicant indicated that a limitation of 300 or less people within the southern portion of Building A or Building B would not be acceptable.

Risk-Reduction Design Bonus: A bonus of up to 1.3 times the Zone D single-acre criteria of 300 for a maximum allowable intensity of 390 could be granted at the authority of the City of Banning based on the type and amount of risk reduction measures incorporated. The buildings are all limited to single-story. Based on the site images provided by the applicant, most of the buildings, in particular Buildings A South and Building B do contain a low amount of windows. The buildings' construction type is unknown by staff, but do not appear to be primarily concrete tilt up design based on site images. Based on aerial images, the roofs for each of the buildings do not include skylights. The applicant has indicated that for Building B, an additional two emergency exits are provided beyond the three required by code. Building A South includes three emergency exits, which is the minimum required by Code. Other potential bonus design measures related to fire sprinkler and strength of the roof are unknown. In summary, the project includes three of the recommended seven risk reduction design measures. However, the project as currently designed exceeds the maximum allowable single-acre intensity of 390 with a full 30 percent bonus.

Infill Potential: Higher intensity criteria may be considered if the surrounding land uses are similar to or more intense than the proposed project. To qualify for consideration, at least 65% of the project site's perimeter must be surrounded by uses similar to or more intense than the proposed project, and the project site must be less than 20 acres in area. If qualified, a higher average intensity level - the lesser of either the equivalent intensity to surrounding land uses or double the normally allowable intensity - may be consistent. The properties immediately surrounding the project site consist of low intensity residential, airport hangars, low intensity industrial, and vacant land that would not be similar or more intense than the proposed project. As such, the project would not qualify for consideration of infill higher intensity criteria.

Prohibited and Discouraged Uses: The applicant does not propose any uses prohibited or discouraged in Zone B2 (Children's schools, day care centers, libraries, hospitals, nursing homes, places of worship, buildings with more than 2 aboveground habitable floors, highly noise-sensitive outdoor non-residential uses, aboveground bulk storage of hazardous materials, critical community infrastructure facilities, and hazards to flight) or Zone D (highly noise-sensitive outdoor non-residential uses and hazards to flight). However, as noted above, the proposed usage exceeds Zone D intensity limitations.

Open Area Requirements: Compatibility Zone D requires a minimum of 10% open area. Compatibility Zone B2 does not require any provision of open area. Approximately 17.77 acres (net) of the project is located within Compatibility Zone D, which would require a minimum of 1.77 acres of open area required. The project includes two large parking areas that appear to be free of any obstructions greater than 4 feet in height. At the time of writing of this staff report, it has yet to be confirmed by the applicant whether with potential parking area lighting this open area might be reduced. Assuming no obstructions would be included, these parking areas total 3.6 acres, which provides more than double the minimum open space required.

Noise: The property lies partially within the area that would be subject to average exterior noise levels of 55-60 CNEL under ultimate airport development conditions, with the remainder located in areas subject to average exterior noise levels less than 55 CNEL. The portion located within the 55-60 CNEL area is proposed for parking and none of the remaining facility would be subject to aircraft noise levels in excess of 55 CNEL. Therefore, no special measures to mitigate aircraft-generated noise are required.

PART 77: The applicant has indicated that no additional height will be added to the existing buildings nor will any new structures will be added. As such, review by the Federal Aviation Administration Obstruction Evaluation Service is not required.

Other Special Conditions: Countywide Policy 3.3.6 allows the Commission to find a normally incompatible use to be acceptable "because of terrain, specific location, or other extraordinary factors or circumstances related to the site." In such a situation, the Commission would need to make findings that the land use would not create a safety hazard nor expose people to excessive noise. In some cases, projects that did not quite meet the exacting standards for consideration as infill have been judged consistent through use of Policy 3.3.6. Staff has not identified any site-specific factors such as terrain, specific location, or other extraordinary factors that exist to consider the normally incompatible use to be acceptable pursuant to Policy 3.3.6.

Handbook/Potential Amendment: The City of Banning has requested that ALUC amend the Banning ALUCP to allow for increased nonresidential intensities in Zone D. However, the City declined to pay the cost of the necessary CEQA study to advance the timing for consideration of this amendment. The California Airport Land Use Planning Handbook (2011) recommends allowing for single-acre intensities of 800 to 1,200 persons in the Traffic Pattern Zone around suburban airports. While strict use of the Building Code Method would still indicate inconsistency, acceptance of the Parking Space Method with a limit on use of tour buses would indicate probable compliance with this considerably more lenient standard. Therefore, it is quite possible that the Commission could find a similar proposal to be consistent with a future amended Banning ALUCP. However, staff must base its recommendation on the adopted Plan. A potential alternative for Commission consideration would be to "take no action" in light of the Handbook's recommendations, but such a procedure may not be appropriate, given that the Commission is not currently engaged in amending the Banning ALUCP.

CONDITIONS (in the event that the Commission chooses to determine the project Consistent):

1. Any outdoor lighting that is installed shall be hooded or shielded so as to prevent either the spillage of lumens or reflection into the sky.

2. The following uses shall be prohibited:
   (a) Any use which would direct a steady light or flashing light of red, white, green, or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at an airport, other than an FAA-approved navigational signal light or visual approach slope indicator.

   (b) Any use which would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight final approach towards a landing at an airport.

   (c) Any use which would generate smoke or water vapor or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area, including landscaping utilizing water features, trash transfer stations that are open on one or more sides, recycling centers containing putrescible wastes, construction and demolition debris facilities, and incinerators.

   (d) Any use which would generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation.

   (e) Highly noise-sensitive outdoor non-residential uses or hazards to flight

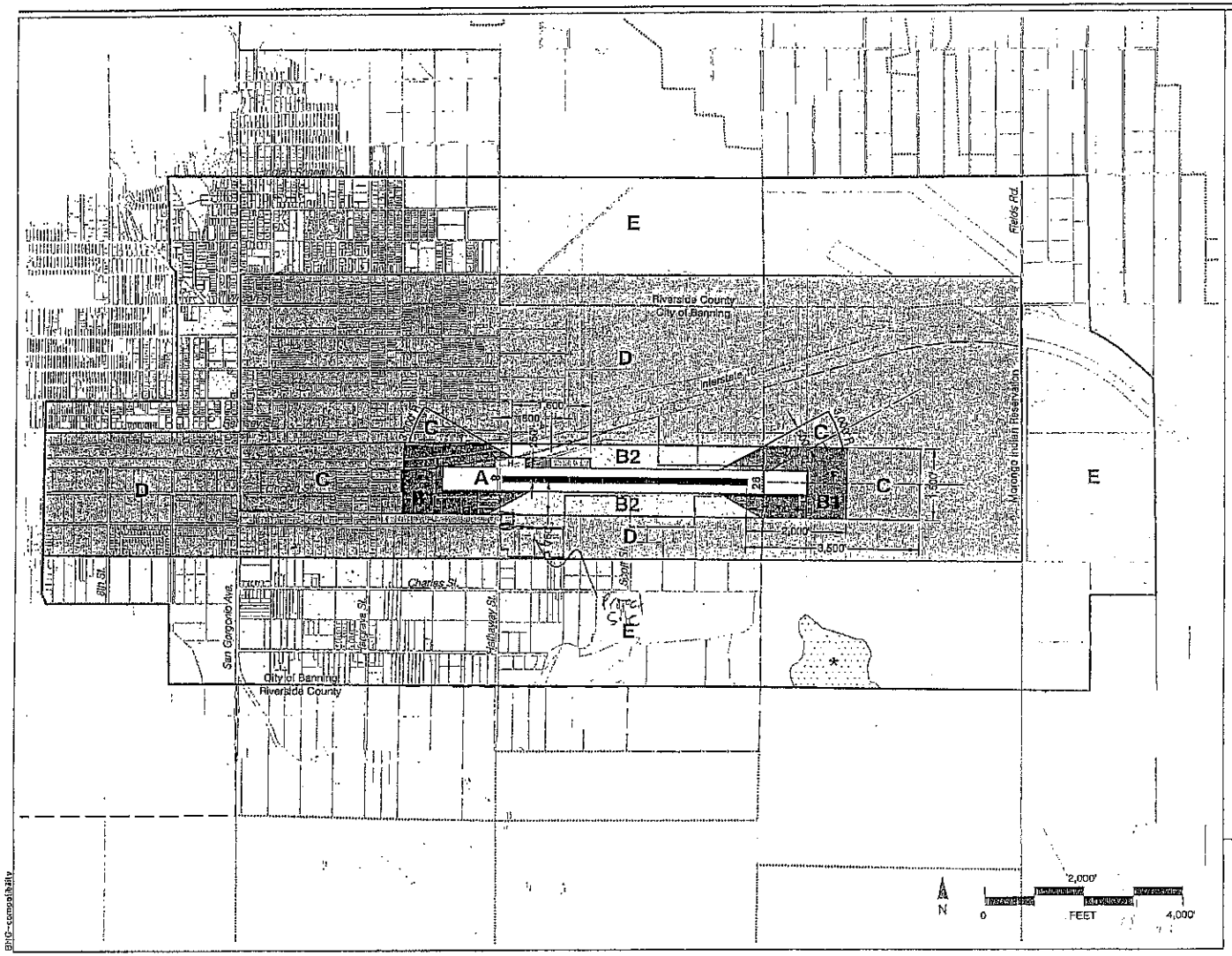
3. The attached notice shall be provided to all potential purchasers of the property, and shall be recorded as a deed notice.

4. Any new retention basins on the site shall be designed so as to provide for a maximum 48-hour detention period following the conclusion of the storm event for the design storm (may be less, but not more), and to remain totally dry between rainfalls. Vegetation in and around the retention basin(s) that would provide food or cover for bird species that would be incompatible with airport operations shall not be utilized in project landscaping.

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NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. Business & Professions Code Section 11010 (b)(13)(A)



Legend

Compatibility Zones

- Airport Influence Area Boundary
- Zone A
- Zone B1
- Zone B2
- Zone C
- Zone D
- Zone E
- Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
Airport Land Use Commission

Riverside County
Airport Land Use Compatibility Plan
Policy Document

(Adopted October 2004)

Map BN-1

Compatibility Map

Banning Municipal Airport



PINBALL MADNESS

700 S. HATHAWAY ST. BANNING, CA 92220

CLIENT:

JOHN WICKS

VICINITY MAP

NOT TO SCALE

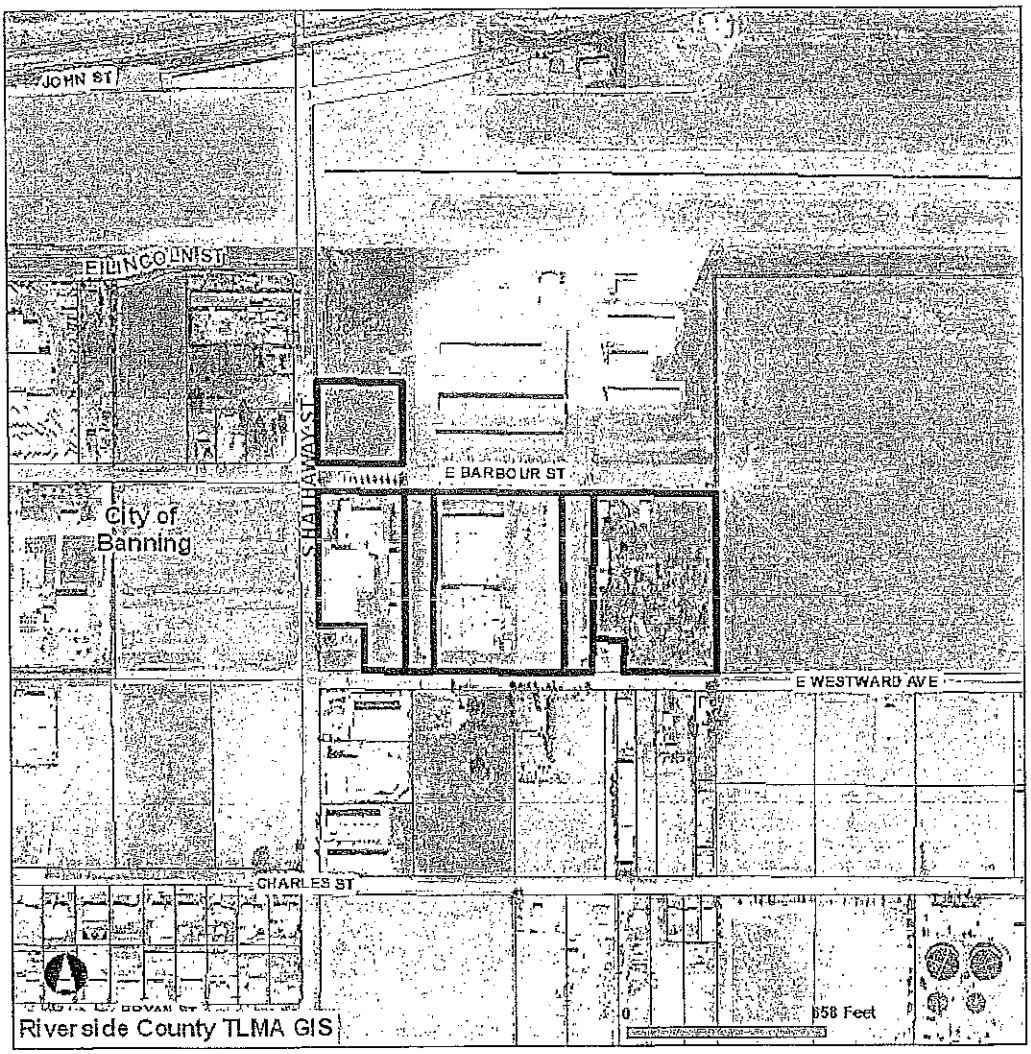
RAMON AOANAN AIA

Architect

P.C.Corrections

2413 LA CRESCENTA AVE.
ALHAMBRA, CA 91803
Tel. 510.432.4066
FAX 323.729.6043

RIVERSIDE COUNTY GIS



Selected parcel(s):

532-130-003 532-130-004 532-130-006 532-130-007 532-130-014 532-130-015

AIRPORTS

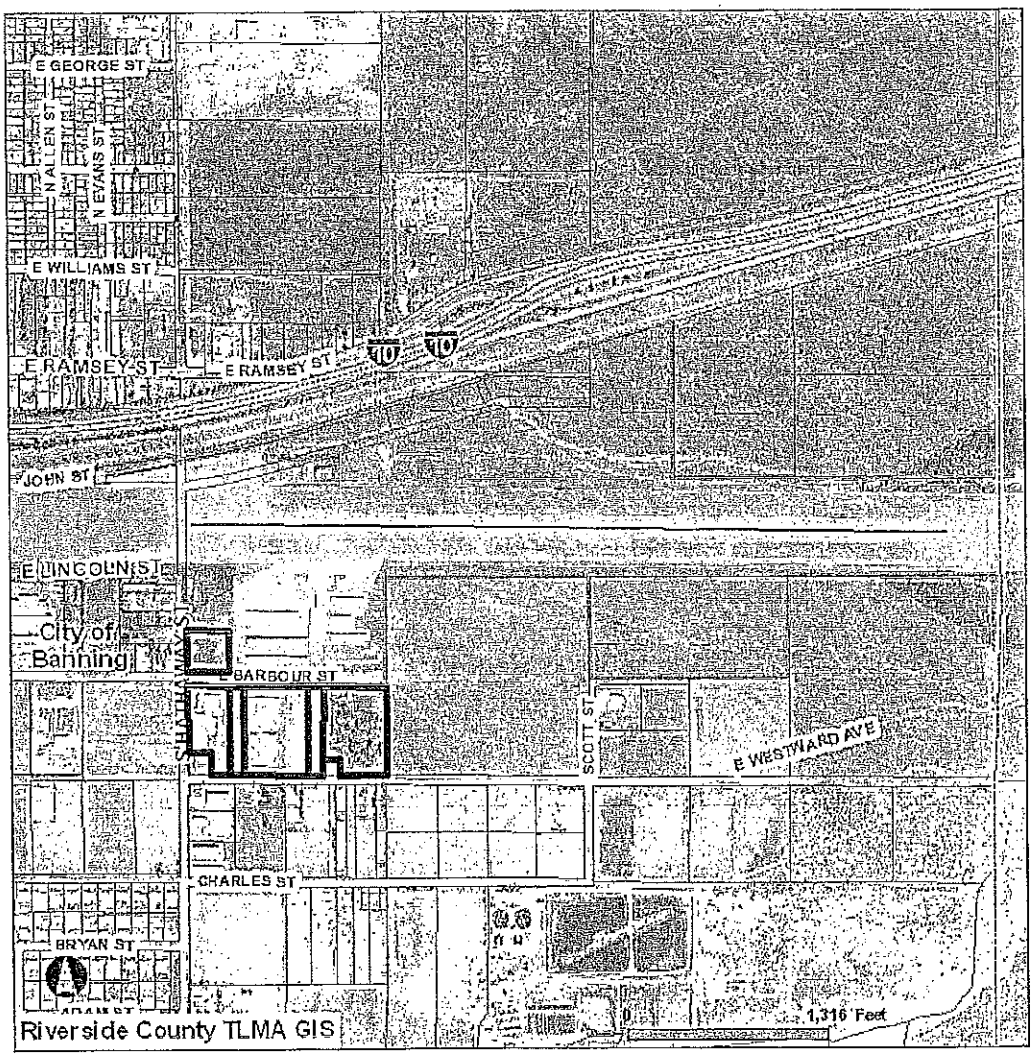
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AIRPORT RUNWAYS	AIRPORT INFLUENCE AREAS	AIRPORT BOUNDARIES	COMPATIBILTY ZONE A
COMPATIBILTY ZONE B1	COMPATIBILTY ZONE B2	COMPATIBILTY ZONE C	COMPATIBILTY ZONE D
COMPATIBILTY ZONE E			

IMPORTANT
Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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Version 131127

RIVERSIDE COUNTY GIS



Selected parcel(s):

532-130-003 532-130-004 532-130-006 532-130-007 532-130-014 532-130-015

AIRPORTS

SELECTED PARCEL	INTERSTATES	HIGHWAYS	PARCELS
AIRPORT RUNWAYS	AIRPORT INFLUENCE AREAS	AIRPORT BOUNDARIES	COMPATIBILTY ZONE A
COMPATIBILTY ZONE B1	COMPATIBILTY ZONE B2	COMPATIBILTY ZONE C	COMPATIBILTY ZONE D
COMPATIBILTY ZONE E			

IMPORTANT
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Version 131127

RIVERSIDE COUNTY GIS



Selected parcel(s):

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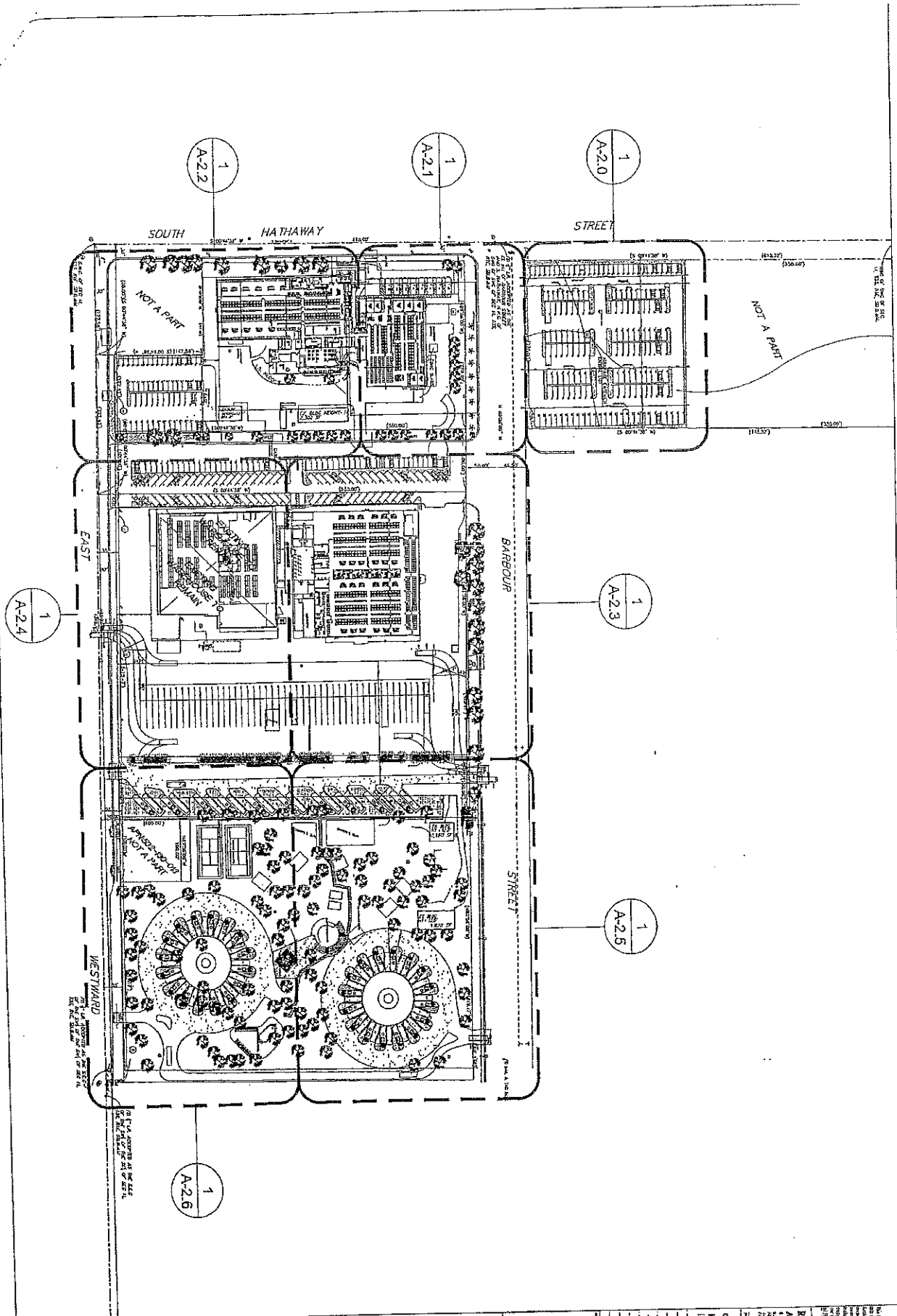
LEGEND

SELECTED PARCEL | INTERSTATES | HIGHWAYS | PARCELS | CITY

IMPORTANT
Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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Version 131127



MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

OVERALL SITE PLAN

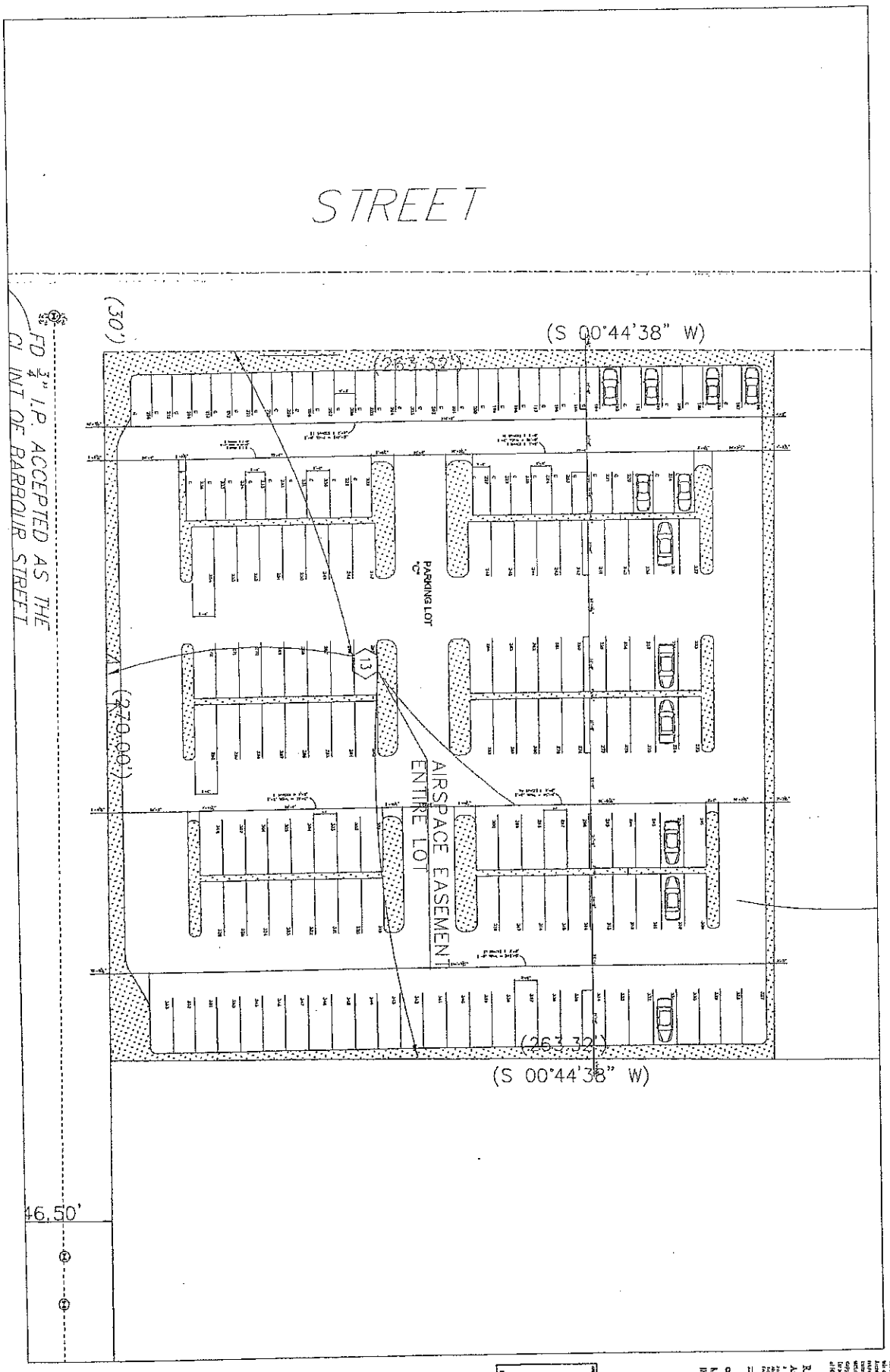
NOT FOR CONSTRUCTION

RAMON AOANAN
Architect

CLIENT:
MUSEUM OF PINBALL, INC.

project number 0001
date JULY 30, 2014

A 1.0



MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 1

NOT FOR CONSTRUCTION

CLIENT:
MUSEUM OF PINBALL, INC.

RAMON AGAMAN
Architect

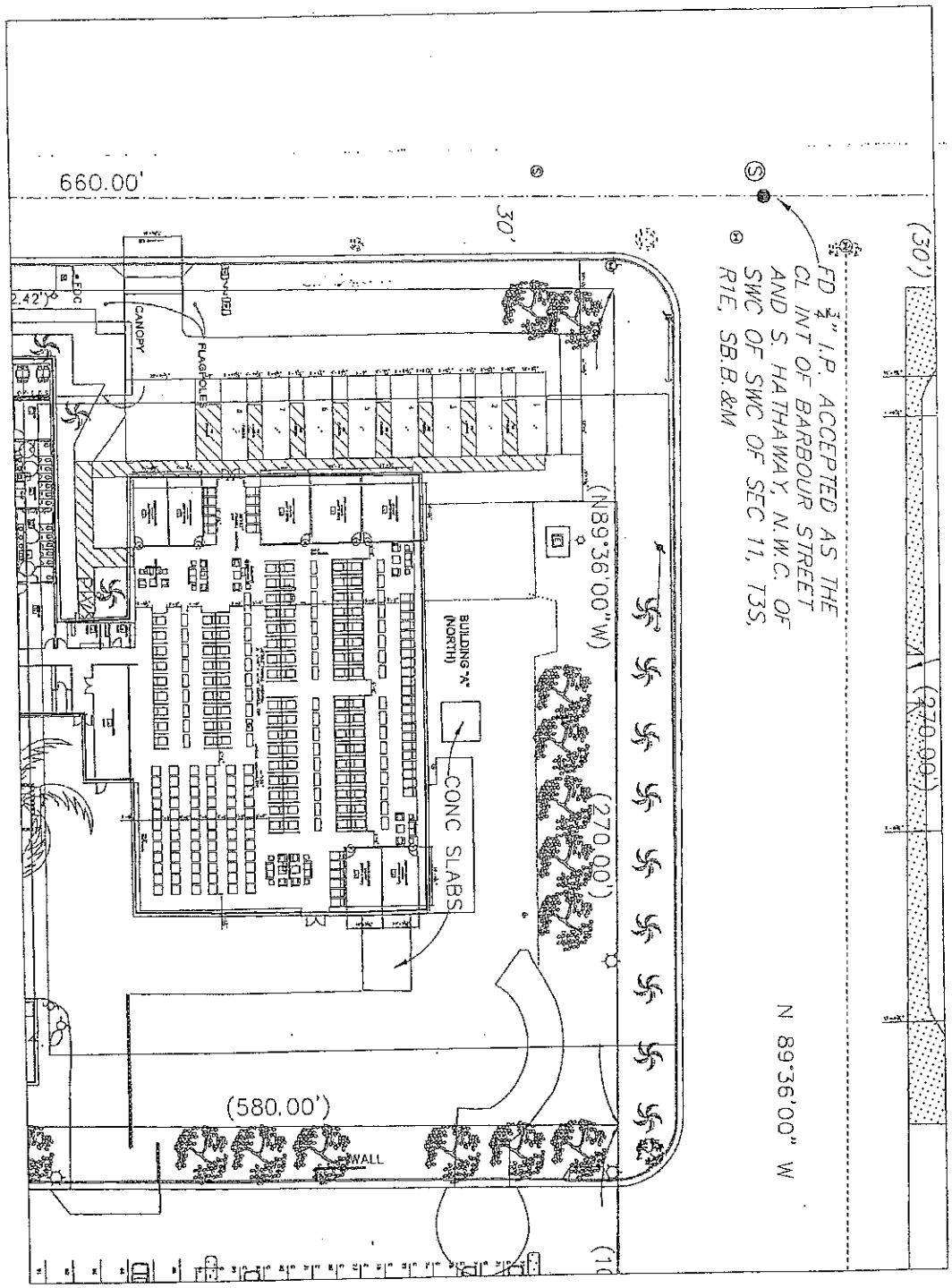
project number
0001

date
JULY 30, 2014

scale
1/16" = 1'-0"

A-2.0

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MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 2

NOT FOR CONSTRUCTION

RAMON ADAMAN

Architect

CLIENT:

MUSEUM OF PINBALL, INC.

project number 0001

date JULY 30, 2014

A-2.1

MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 3

NOT FOR CONSTRUCTION

OWNER:
MUSEUM OF PINBALL INC.

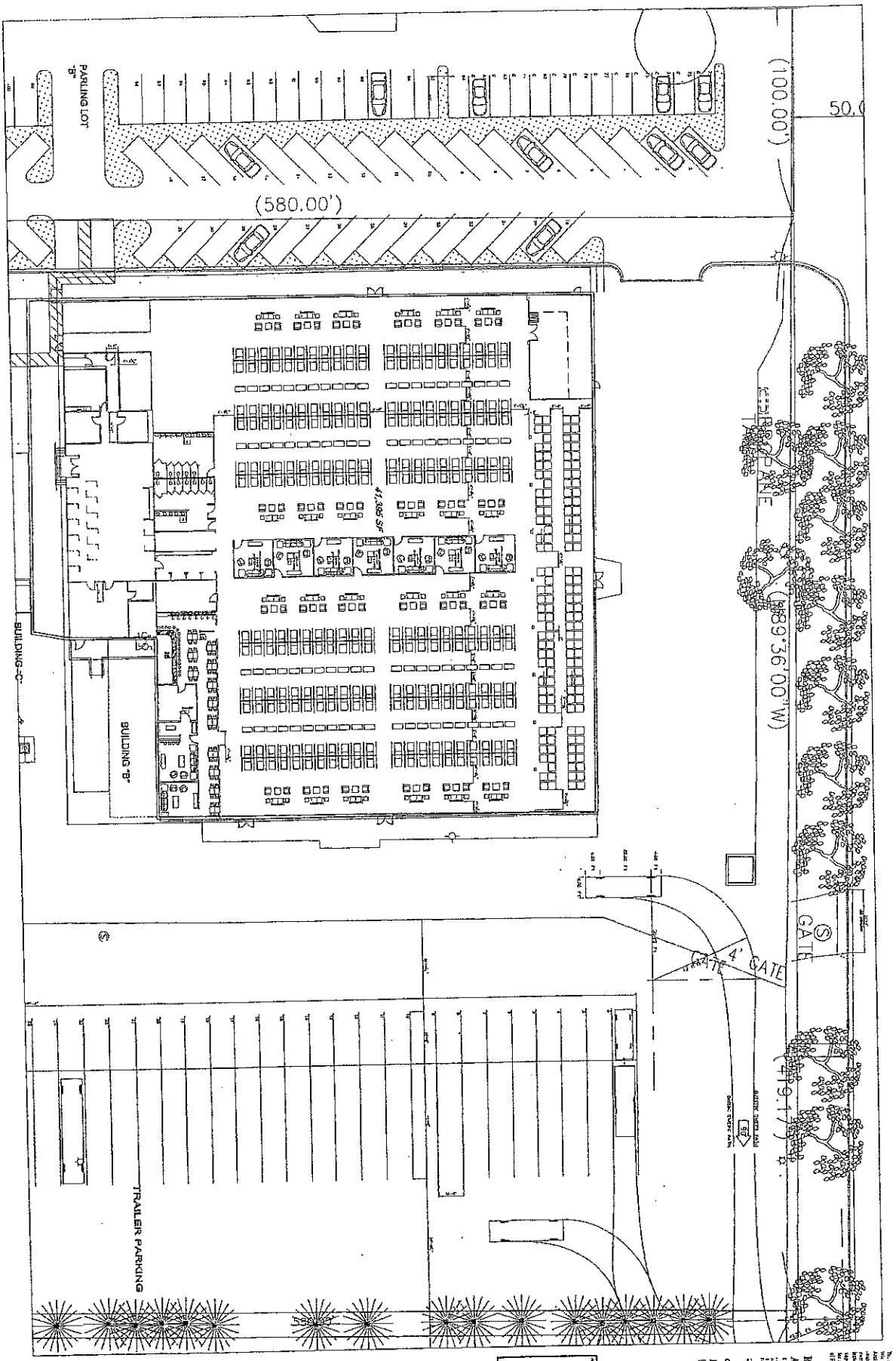
RAMON AOANAN
Architect

project number
0001

date
JULY 30, 2014

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1/16" = 1'-0"

A-2.2



MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

SITE PLAN 4

NOT FOR CONSTRUCTION

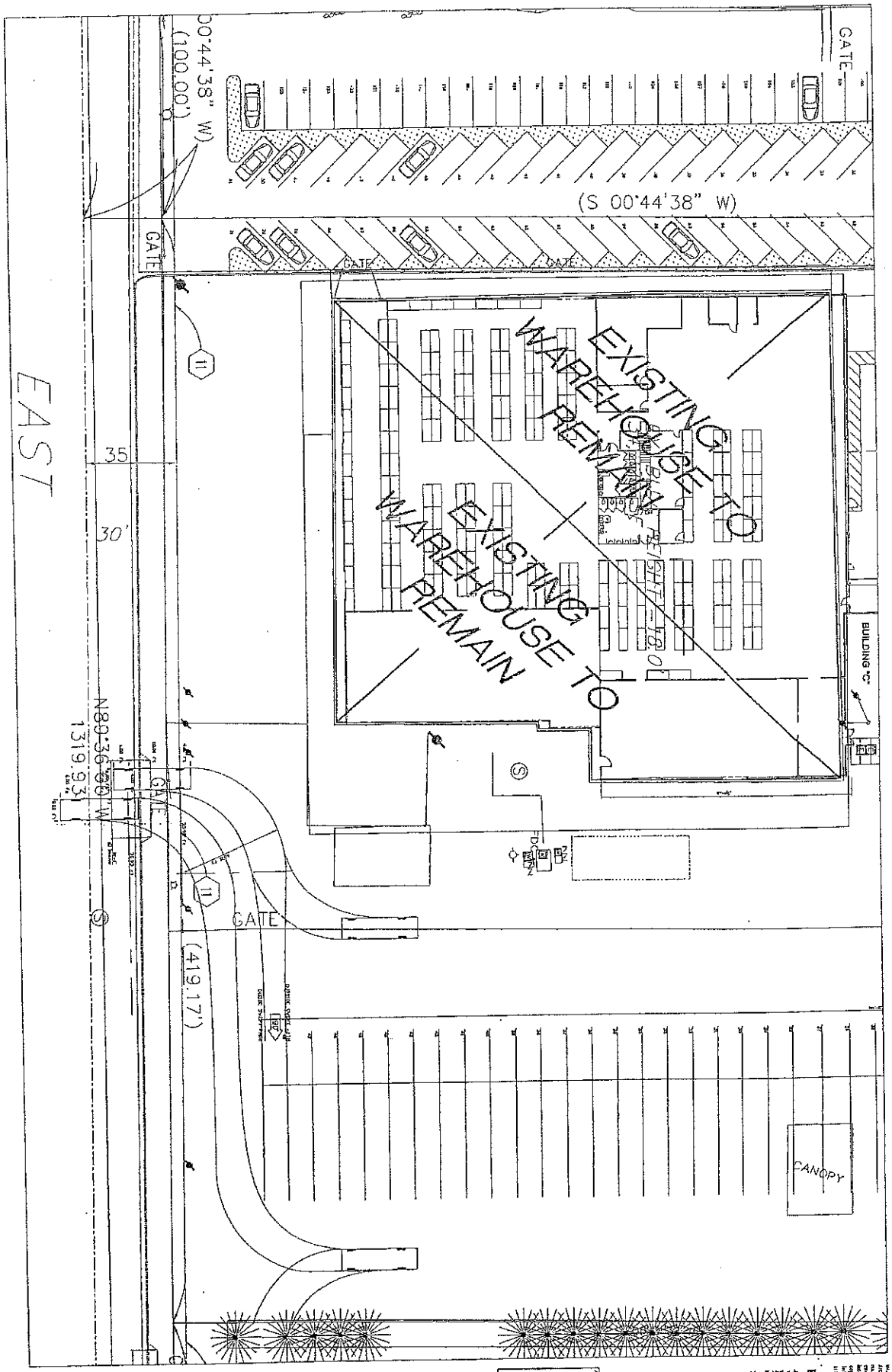
RAMON ADANAN
Architect

CLIENT:
MUSEUM OF PINBALL INC.

project number
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JULY 30, 2014

1/16" = 1'-0"

A-2.3



MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 5

NOT FOR CONSTRUCTION

RAMON AGANAN
Architect

CLIENT:
MUSEUM OF PINBALL
LLC.

project number
0001

date
JULY 30, 2014

A-2.4

MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 6

NOT FOR CONSTRUCTION

CLIENT:
MUSEUM OF PINBALL, INC.

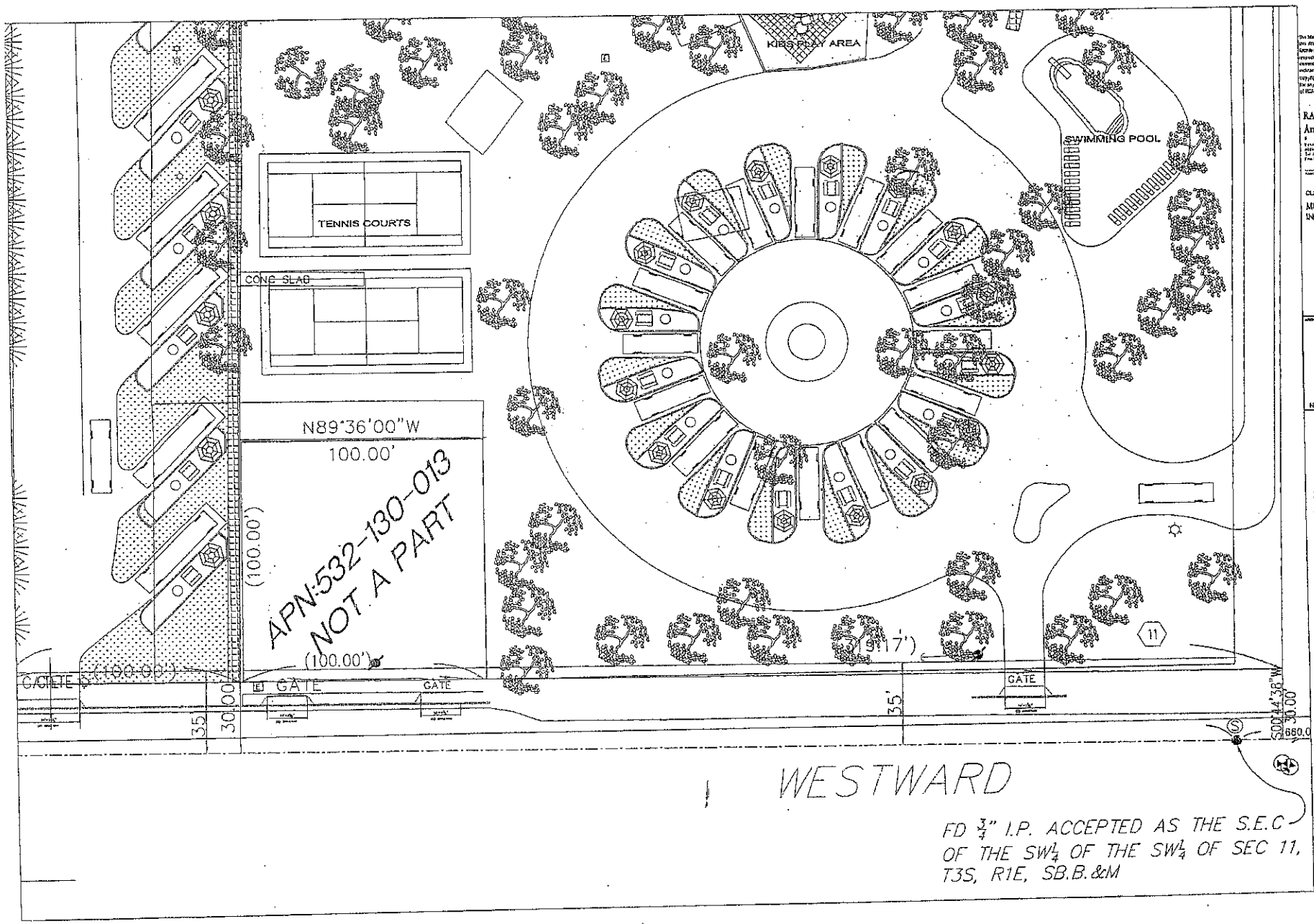
RAMON AGANAN
Architect

project number
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date
JULY 30, 2014

scale
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A-2.5



RAMON AOANAN
Architect

CLIENT:
MUSEUM OF PINBALL, INC.

NOT FOR CONSTRUCTION

MUSEUM OF PINBALL
700 S. HATHAWAY ST., BANNING, CA 92220

SITE PLAN 7

scale
1/16" = 1'-0"

project number
0001
date
JULY 30, 2014

A-2.6

700 S. HATHAWAY ST
BANNING, CA 92220

CITY OF BANNING ZONING CODE REQUIREMENTS:
USE CLASSIFICATION: BILLIARD PARLORS/POOL HALLS
CONDITIONAL USE REQUIRED IN AIRPORT INDUSTRIAL LOCATION

2013 CALIFORNIA BUILDING CODE

CITY OF BANNING ZONING CODE REQUIREMENTS

ZONING AREA DESIGNATION	ZONE USE DESIGNATION	USE OCCUPANCY REQUIREMENT
AIRPORT INDUSTRIAL	MUSEUM / INDOOR RECREATION CENTER	CONDITIONAL USE REQUIRED
AIRPORT INDUSTRIAL	OUTDOOR COMMERCIAL RECREATION	CONDITIONAL USE REQUIRED

COMMERCIAL AND INDUSTRIAL PARKING REQUIREMENTS

TABLE 17.28.040	REQUIRED	PROVIDED	REMARKS
HV PARKS	ONE (1) SPACE FOR EACH RECREATIONAL VEHICLE SPACE		
VIDEO ARCADES	ONE (1) SPACE PER 500 SF OF ENCLOSED SPACE – ONE SPACE PER 3 PERSONS AT MAXIMUM CAPACITY		VARIANCE REQUIRED
INDUSTRIAL MANUFACTURING	OVER 20,000 SF, 20 SPACES + ONE SPACE PER 2,000 SF PER PORTION OVER 20,000 SF		
RESTAURANTS, CAFES, BARS	ONE SPACE FOR EACH 30 SF OF PUBLIC SEATING AREA + ONE SPACE FOR EACH 500 SF OF ALL OTHER GROSS FLOOR AREA, WITH A MINIMUM OF 10 SPACES		VARIANCE REQUIRED
GENERAL OFFICES	FOR UP TO 2,000 SF OF GROSS FLOOR AREA, ONE SPACE PER EACH 500 SF. FOR 2,001 TO 1,500 SF OF GROSS FLOOR AREA, ONE SPACE FOR EACH 300 SF		
TOTAL	2% OF TOTAL REQUIRED PARKING (2 CAR SPACES WITH 2 VAN PARKING)	200 SPACES	

NOTES: 1) 10% OF TOTAL PARKING SPACES MAY BE COMPACTS (8'-0" W X 18'-0" LONG)
2) ACCESSIBLE PARKING REQUIREMENTS ARE ESTABLISHED BY THE 2013 CALIFORNIA BUILDING CODE

PLUMBING FIXTURE REQUIREMENTS PER 2010 CALIFORNIA PLUMBING CODE

ZONING AREA DESIGNATION	ZONE USE DESIGNATION	USE OCCUPANCY REQUIREMENT
AIRPORT INDUSTRIAL	MUSEUM / INDOOR RECREATION CENTER	CONDITIONAL USE REQUIRED
AIRPORT INDUSTRIAL	OUTDOOR COMMERCIAL RECREATION	CONDITIONAL USE REQUIRED

(5) LOAD OCCUPANCY CALCULATION
1/32" = 1'-0"

RIVERSIDE COUNTY AIRPORT LANDUSE COMMISSION REQUIREMENTS

LOCATION	TOTAL (GROSS) AREA	OCCUPANT LOAD	ALLOWABLE INTENSITY OCCUPANCY IN A 218' X 218' AREA (NT BONUS)	NET AREA (SF)	NOTES 1 (EXTRA EXITING)	NOTES 2 (LANDSCAPE/OPEN SPACE PROVISION)
BUILDING "A" SOUTH	13,644 SF	504	340 OCCUPANTS	164 OCCUPANTS ABOVE REQUIREMENT		
BUILDING "A" NORTH	29,587 SF	423	259 OCCUPANTS	423 OCCUPANTS OVER REQUIREMENT		
BUILDING "B"	43,399 SF	434	300 OCCUPANTS	434 OCCUPANTS OVER REQUIREMENT		
BUILDING "C"	34,220 SF	68	160 OCCUPANTS	- 232 OCCUPANTS BELOW REQUIREMENT		
				TOTAL OCCUPANT LOAD		

EXITING REQUIREMENTS PER 2011 CALIFORNIA BUILDING CODE

LOCATION	TOTAL (GROSS) AREA	OCCUPANT LOAD	MAXIMUM TRAVEL DISTANCE REQUIREMENT	ACTUAL MAXIMUM TRAVEL DISTANCE PROVIDED	EXITS (REQUIRED)	EXITS (PROVIDED)
BUILDING "A" SOUTH	13,644 SF	504	250' - 0"		1	3
BUILDING "A" NORTH	29,181 SF	423	250' - 0"		1	4
BUILDING "B"	43,399 SF	434	250' - 0"		2	4
BUILDING "C"	34,220 SF	68	400' - 0"		2	2

BUILDING "A" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
NORTH BUILDING	1A ,--- SF	ASSEMBLY EXHIBIT GALLERY AND MUSEUM	4 324 SF (PINBALL MACHINES)	4,01 1 SF	30 NET	111
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS		2,996 SF	15 NET	101
		MECHANICAL EQUIPMENT AREAS		440 SF	300 GROSS	2
				TOTAL OCCUPANT LOAD		324

BUILDING "A" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
SOUTH BUILDING	29,3W SF	ASSEMBLY EXHIT GALLERY AND MUSEUM	6,183 SF (PINBALL MACHINES)	13,861 SF	30 NET	464
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (HEALTH FOOD RESTAURANT)		3,414 SF	15 NET	143
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (BARS SEATING AREAS)		1,132 SF	15 NET	74
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (PRIVATE PLAY AREAS)		1,650 SF	30 NET	55
		EDUCATIONAL/VOCATIONAL ROOM AREAS (PINBALL REPAIR INSTRUCTION AND AERONAUTICAL AREAS)		600 SF	60 NET	10
		BUSINESS AREAS		497 SF	100 NET	5
		REST ROOMS		1,366 SF	0	0
		MECHANICAL EQUIPMENT & STORAGE AREAS		630 SF	300 GROSS	3
				TOTAL OCCUPANT LOAD		859

BUILDING "B" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
SINGLE BUILDING	43,399 SF	ASSEMBLY EXHIT GALLERY AND MUSEUM	7,824 SF (PINBALL MACHINES)	22,440 SF	30 NET	750
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (BARS SEATING AREAS)		1,050 SF	15 NET	70
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (PRIVATE LOUNGE AREAS)		1,043 SF	30 NET	35
		BUSINESS AREAS		4,470 SF	100 NET	5
		REST ROOMS		847 SF	0	0
		MECHANICAL EQUIPMENT & STORAGE AREAS		1,728 SF	300 GROSS	6
				TOTAL OCCUPANT LOAD		856

BUILDING "C" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
SINGLE BUILDING	34,220 SF	WAREHOUSES		13,917 SF	300 GROSS	47
		BUSINESS AREAS		1,729 SF	100 NET	18
		REST ROOMS		442 SF	0	0
		MECHANICAL EQUIPMENT & STORAGE AREAS		632 SF	300 GROSS	4
				TOTAL OCCUPANT LOAD		69

177

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Architect
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[illegible]
Tel: [illegible]
Fax: [illegible]

CLIENT:
MUSEUM OF PINBALL, INC.

ARCHITECT'S SEAL

NOT FOR CONSTRUCTION

MUSEUM OF PINBALL
700 S. HATHAWAY ST. BANNING, CA 92220
drawing title
OCCUPANCY & EXIT ANALYSIS

scale
NOT TO SCALE

project number
0001
date
JULY 30, 2014

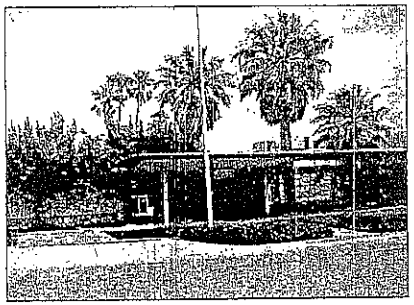
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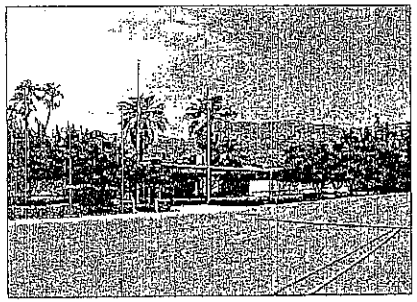
RAMON AOANAN
Architect
[illegible]

CLIENT:
MUSEUM OF PINBALL, INC.

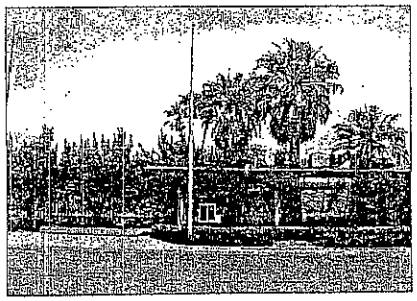
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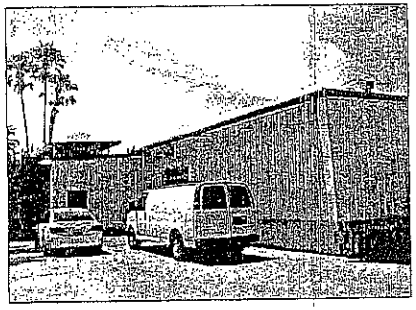
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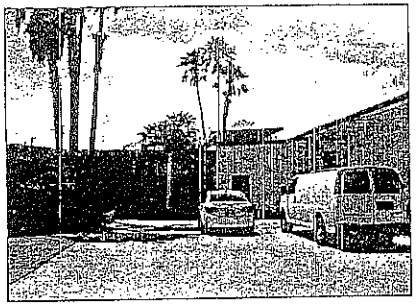
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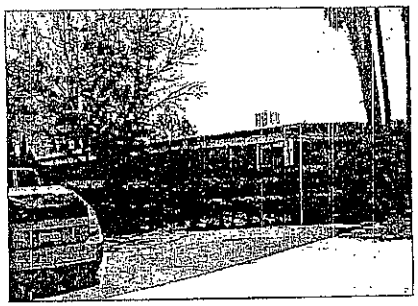
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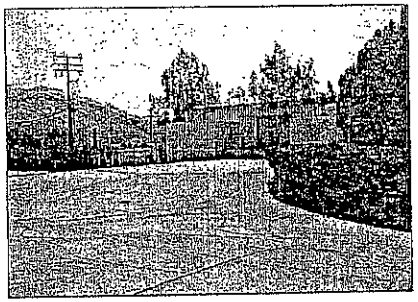
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BUILDING A REAR - 2



BUILDING A REAR - 3



BUILDING A REAR - 4

MUSEUM OF PINBALL
700 S. HATHAWAY ST. BANNING, CA 92220

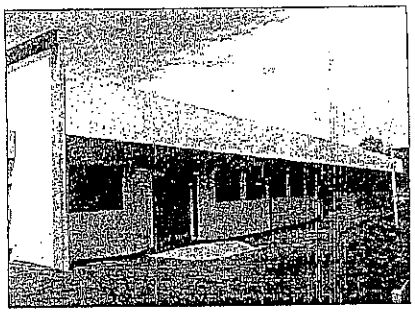
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scale
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project number
0001

date
JULY 30, 2014

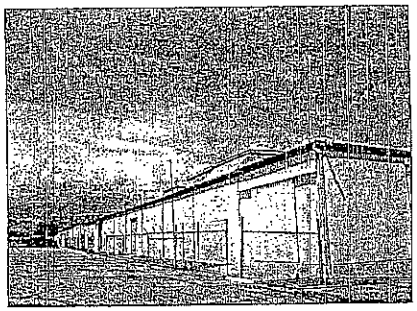
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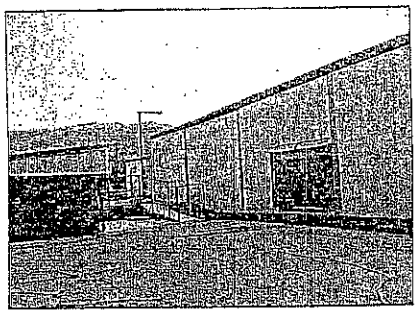
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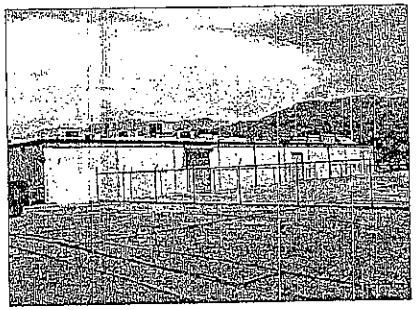
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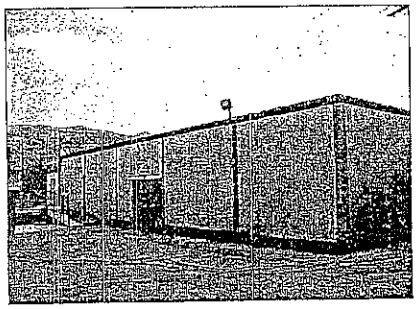
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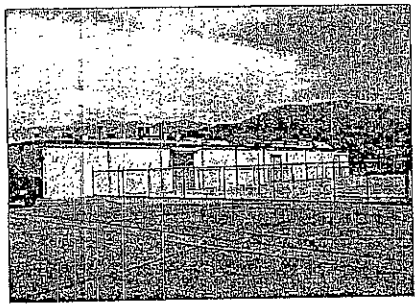
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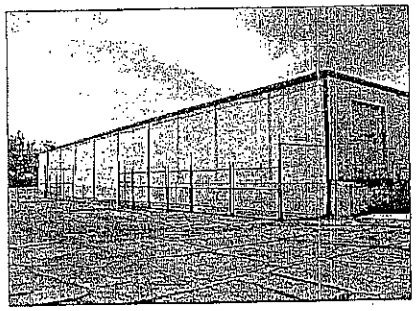
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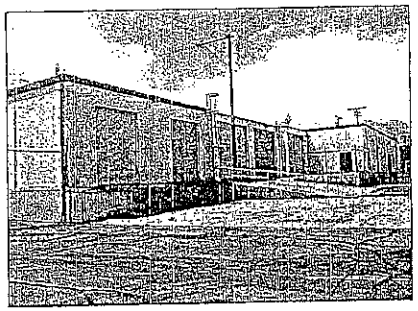
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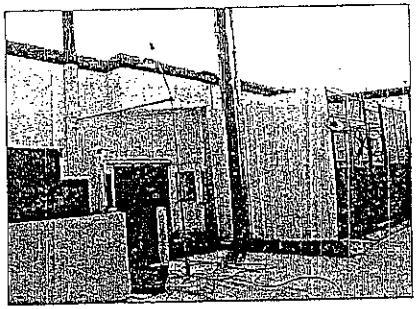
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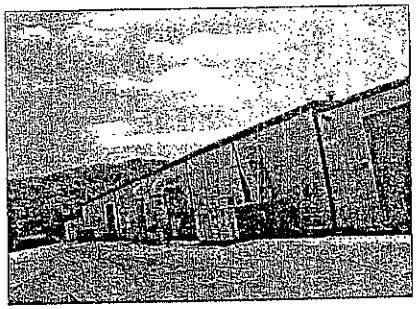
BUILDING B REAR - 5



BUILDING B REAR - 6



BUILDING B REAR - 7



BUILDING B REAR - 8

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RAMON AGANAN
Architect
[redacted]

CLIENT:
MUSEUM OF PINBALL, INC.

NOT FOR CONSTRUCTION

MUSEUM OF PINBALL
700 S. HATHAWAY ST. BANNING, CA 92220

drawing title
BUILDING-B PHOTOS

scale
NOT TO SCALE

project number
0001

date
JULY 30, 2014

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MUSEUM OF PINBALL

EXHIBIT "A"

Proposed Land Use Land Use *Project call for re-use of these buildings for the following:*

1. *Pinball Machine Museum and Arcade.*
   Supporting this use are a restaurant, private lounge areas and a bar and seating areas.
   Designated as Building A North , Building A South and Building B on drawings.
2. *Warehouse*
   Designated as Building C on drawings.
3. *Glamping (Glamour Camping)*

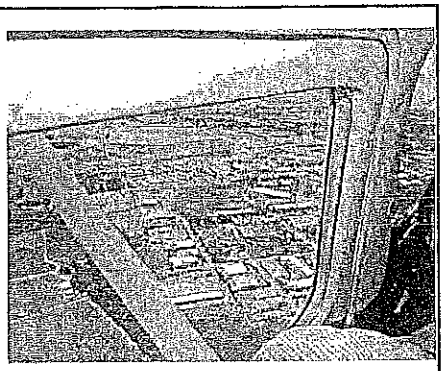
About a 3rd of the total acreage of the property will be used for overnight recreational camping facility with facilities provided for swimming, tennis, physical fitness routines like walking, running, barbecue, and other outdoor activities. Existing bathroom and shower facilities will be maintained and a new fitness center will be installed within the exiting structures

Hours of Use - Friday and Saturday 10 AM to 2 AM
Sunday thru Thursday 10 AM to 9PM

Site/Use Summary							
Building/Use	Area/Amount	App's Occ Rate (1 per)	App's Occ	Verification of App's Occ	ALUC's Occ Rate (1 per)	ALUC's Occ	ALUC's Occ w assembly 50% reduction
Buildings							
Building A North							
Assembly/Exhibit Gallery	6,014	30	311	200	15	401	200
Assembly/Unconcentrated tables and chairs	2,856	15	191	190	15	190	95
Mech Equip	440	300	2	1	300	1	1
subtotal	*9,310*		*504*	*392*		*593*	*297*
Building A South							
Assembly/Exhibit Gallery	13,917	30	464	464	15	928	464
Assembly/Unconcentrated tables and chairs (restaurant)	2,916	15	195	194	15	194	97
Assembly/Unconcentrated tables and chairs (bars/seating areas)	1,132	15	76	75	15	75	38
Assembly/Unconcentrated tables and chairs (priv. play areas)	1,856	30	62	62	15	124	62
Educational/Vocational	866	50	18	17	50	17	9
Business Areas	497	100	5	5	200	2	2
Restrooms	1,398	0	0	0	0	0	0
Mech Equip	632	300	3	2	300	2	2
subtotal	*23,214*		*823*	*820*		*1343*	*674*
Building B							
Assembly/Exhibit Gallery	22,485	30	750	750	15	1,499	750
Assembly/Unconcentrated tables and chairs (bars/seating areas)	1,959	15	76	131	15	131	65
Assembly/Unconcentrated tables and chairs (priv. play areas)	1,642	30	55	55	15	109	55
Business Areas	4,479	100	5	45	200	22	22
Restrooms	947	0	0	0	0	0	0
Mech Equip	1,728	300	3	6	300	6	6
subtotal	*33,240*		*889*	*985*		*1767*	*898*
Building C							
Warehouse	13,917	500	47	28	500	28	28
Business Areas	1,739	100	18	17	200	9	9
Restrooms	662	0	0	0	0	0	0
Mech Equip	632	300	3	2	300	2	2
subtotal	*16,950*		*68*	*47*		*39*	*39*
		Building Total	2,284	2,245		3,742	1,907
Non-Building Uses							
RV Camping Spots							
West	10				0.25	40	40
Northeast	16				0.25	64	64
Southeast	16				0.25	64	64
subtotal						*168*	168
Other							
Tennis Courts	2					0	0
subtotal						*0*	*0*
		Non-Building Total	0	0		168	168
		Site Total	*2,284*	*2,245*		*3,910*	*2,075*

Nature of Risk

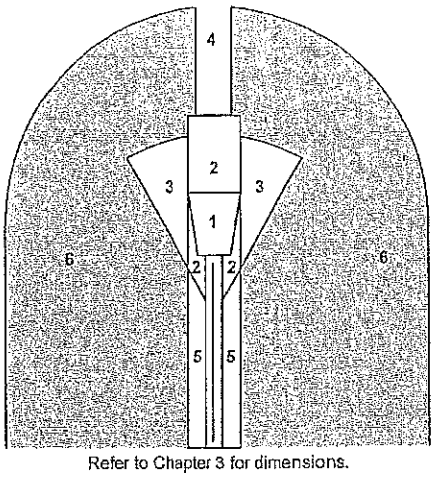
- Normal Maneuvers
  - Aircraft within a regular traffic pattern and pattern entry routes
- Altitude
  - Ranging from 1,000 to 1,500 feet above runway
- Common Accident Types
  - Arrival: Pattern accidents in proximity of airport
  - Departure: Emergency landings
- Risk Level
  - Low
  - Percentage of near-runway accidents in this zone: 18% - 29% (percentage is high because of large area encompassed)



IN TRAFFIC PATTERN

Basic Compatibility Policies

- Normally Allow
  - Residential uses (however, noise and overflight impacts should be considered where ambient noise levels are low)
- Limit
  - Children's schools, large day care centers, hospitals, and nursing homes
  - Processing and storage of bulk quantities of highly hazardous materials
- Avoid
  - Outdoor stadiums and similar uses with very high intensities
- Prohibit
  - None



Refer to Chapter 3 for dimensions.

	Maximum Residential Densities	Maximum Nonresidential Intensities	Maximum Single Acre
	Average number of dwelling units per gross acre	Average number of people per gross acre	4x the Average number of people per gross acre
Rural	No Limit – See Note A	150 – 200	600 – 800
Suburban	No Limit – See Note A	200 – 300	800 – 1,200
Urban	No Limit – See Note A	No Limit – See Note B	No Limit – See Note B
Dense Urban	No Limit – See Note A	No Limit – See Note B	No Limit – See Note B

Note A: Noise and overflight should be considered.
Note B: Large stadiums and similar uses should be avoided.

FIGURE 4G

Safety Zone 6 – Traffic Pattern Zone

NOTICE OF PUBLIC HEARING
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

A PUBLIC HEARING has been scheduled before the Riverside County Airport Land Use Commission (ALUC) to consider the application described below.

Any person may submit written comments to the ALUC before the hearing or may appear and be heard in support of or opposition to the project at the time of hearing. The proposed project application may be viewed at the Riverside County Administrative Center, 4080 Lemon Street, 14th Floor, Riverside, California 92501, Monday through Thursday from 8:00 a.m. to 5:00 p.m., except Labor Day (September 1), and by prescheduled appointment on Friday, September 5 from 8:30 a.m. to 5:00 p.m.

PLACE OF HEARING: Riverside County Administration Center
4080 Lemon St., 1st Floor Hearing Room
Riverside, California

DATE OF HEARING: September 11, 2014

TIME OF HEARING: 9:00 A.M.

CASE DESCRIPTION:

ZAP1018BA14 – Museum of Pinball, Inc. (Representative: Ramon Aoanan) – City of Banning Case No. 14-8005 (Conditional Use Permit). The Conditional Use Permit would allow for the conversion of a former manufacturing facility into a pinball machine museum and arcade. Two existing buildings totaling 83,436 square feet would be converted into the museum/arcade and would include exhibit/assembly area, restaurant, bars, and seating areas, lounges, offices, and educational/vocational areas. A third existing building totaling 34,220 square feet would be maintained for warehouse/storage and office uses. The applicant also proposes to provide for RV (42 spaces) camping areas and amenities such as a jogging path, swimming pool and tennis courts. The site consists of approximately 18.17 acres net (19.76 acres gross) located easterly of Hathaway Street, northerly of Westward Avenue, and southerly of Lincoln Street, and bisected by Barbour Street, in the City of Banning. (Airport Compatibility Zones D and B2 of the Banning Municipal Airport Influence Area).

FURTHER INFORMATION: Contact Russell Brady at (951) 955-0549 or John Guerin at (951) 955-0982. The ALUC holds hearings for local discretionary permits within the Airport Influence Areas, reviewing for aeronautical safety, noise and obstructions. All other concerns should be addressed to Mr. Brian Guillot of the City of Banning Community Development Department, at (951) 922-3152.

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Santa Ana, CA 92705

Deutch Co Electronic
3850 Industrial Ave
Hemet, CA 9254S

City of Banning
P.O. Box 998
Banning, CA 92220

Paul J. Heilig
8S1S Arjons Dr. Ste K
San Oiego, CA 92126

John C. Tamulonis
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Banning, CA 92220

Leonard Harold Peterson
2908 Via Hidalgo
San Clemente, CA 92673

Credi Union California
701 N. Brand Blvd.
Glendale, CA 91203

Keith Turner
2247 El Capitan Or.
Riverside, CA 92506

Cal Oaks Partners
620 Camno Oelos Mares #206
San Clemente, CA 92673

Resident
700 S. Hathaway St.
Banning, CA 92220

Resident
700 S. Hathaway St.
Banning, CA 92220

SPSSM Investments V111LP
1487 Barbour St
Banning, CA 92220

Demissie Belete
1S22 Lincoln
Banning CA 92220

Darling Industrial LLC
820 Hathaway St.
Banning, CA 92220

Ray Quintero
200 S. Hathaway St.
Banning, CA 92220

Stephen Stypinksi
200 S. Hathaway St.
Banning, CA 92220

Olivia Ann Holmes
200 S. Hathaway St.
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532-130-012
CITY OF BANNING
P O BOX 998
BANNING CA. 92220

532-130-013
CITY OF BANNING
P O BOX 998
BANNING CA. 92220

532-160-003
DAVID W LAW
PATRICIA CHRISTEEN LAW
P O BOX 956
BANNING CA. 92220

532-160-005
EXCEL PROP MANAGEMENT
SERVICES
9034 W SUNSET BLV
WEST HOLLYWOOD CA. 90069

532-160-006
LENARD O GREEN
1469 ADAM
BANNING CA. 92220

532-160-007
ZENNER PERFORMANCE METERS
INC
P O BOX 256
BANNING CA. 92220

532-160-008
DIANA L TUCKER
461 W AVE L
CALIMESA CA. 92320

532-160-009
DIANA L TUCKER
461 W AVE L
CALIMESA CA. 92320

532-160-012
DARLING INDUSTRIAL
19181 VIA DEL CABALLO
YORBA LINDA CA. 92886

532-160-013
STEPHANIE DOMINGUEZ
22965 VISTA GRANDE WAY
GRAND TERRACE CA. 92313

532-180-043
CHARLES BANNING
43980 MAHLON VAIL RD 2404
TEMECULA CA. 92592

541-290-010
PAUL J HEILIG
8515 ARJONS DR STE K
SAN DIEGO CA. 92126

541-290-015
JOHN C TAMULONIS
CAROL L TAMULONIS
461 S HATHAWAY ST
BANNING CA. 92220

541-290-016
JOHN C TAMULONIS
CAROL L TAMULONIS
461 S HATHAWAY ST
BANNING, CA. 92220

541-290-017
LEONARD HAROLD PETERSON
ALYCE FRANCES PETERSON
2908 VIA HIDALGO
SAN CLEMENTE CA. 92673

541-290-018
LUIS ROBERT ZAMBRANA
BERTHA ZAMBRANA
1698 PANTHER LN
BEAUMONT CA. 92223

541-290-019
KEITH TURNER
2247 EL CAPITAN DR
RIVERSIDE CA. 92506

541-330-002
CAL OAKS PARTNERS
629 CAMNO DELOS MARES 206
SAN CLEMENTE CA. 92673

543-090-008
DOUGLAS D FINNIE
ADELHEID F FINNIE
10410 LIVE OAK AVE
BEAUMONT CA. 92223

JOHN WEEKS
P.O. BOX 517
BANNING, CA 92262

RAMON AOANAN
2413 LA CRESCENTA AVE.
ALHAMBRA CA 91803

JOHN WEEKS
P.O. BOX 517
BANNING CA 92262

RAMON AOANAN
2413 LA CRESCENTA AVE
ALHAMBRA CA 91803

JOHN WEEKS
P.O. BOX 517
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RAMON AOANAN
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JOHN WEEKS
P.O. BOX 517
BANNING CA 92262

RAMON AOANAN
2413 LA CRESCENTA AVE.
ALHAMBRA CA 91803

PLANNING DEPT.
CITY OF BANNING
99 E. RAMSEY ST.
P.O. BOX 998
BANNING CA 92220

PLANNING DEPT.
CITY OF BANNING
99 E. RAMSEY ST.
P.O. BOX 998
~~BANN~~ BANNING CA
92220

PLANNING DEPT
CITY OF BANNING
99 E. RAMSEY ST.
BANNING CA 92220

PLANNING DEPT
CITY OF BANNING
99 E. RAMSEY ST.
P.O. BOX 998
BANNING CA 92220

ALYCE & LEONARD PETERSON
481 S. HATHAWAY ST.
BANNING, CA 92262

PAUL J. HELIG
1521 E. BARBOUR ST.
BANNING CA 92262

APPLICATION FOR MAJOR LAND USE ACTION REVIEW
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

ALUC Identification No. ZAP1018BA14

PROJECT PROPONENT (TO BE COMPLETED BY APPLICANT)

Date of Application: JULY 30, 2014

Property Owner: JOHN WIEKS - MUSEUM OF PINBALL, INC. Phone Number: 562-274-3254

Mailing Address: P.O. BOX 517
BANNING, CA 92262

Agent (if any): RAMON AOANAN, ARCHITECT Phone Number: 510-432-4066

Mailing Address: 2413 LA CRESCENTA AVE.
ALHAMBRA, CA 91803

PROJECT LOCATION (TO BE COMPLETED BY APPLICANT)

Attach an accurately scaled map showing the relationship of the project site to the airport boundary and runways

Street Address: 700 S. HATHAWAY ST.
BANNING, CA 92220

Assessor's Parcel No(s): 532-130-003, 004, 006, 007, 014 & 15 Parcel Size: 18.08 ACRES

Subdivision Name: N.A. Zoning Classification: AIRPORT INDUSTRIAL

Lot Number: N.A.

PROJECT DESCRIPTION (TO BE COMPLETED BY APPLICANT)

If applicable, attach a detailed site plan showing ground elevations, the location of structures, open spaces and water bodies, and the heights of structures and trees; include additional project description data as needed

Existing Land Use (describe): ① MANUFACTURING OF AIRPLANE PARTS & OTHER INDUSTRIAL PRODUCTS.
② RECREATIONAL PARK

Proposed Land Use (describe): SEE EXIBIT "A"

For Residential Uses — Number of Parcels or Units on Site (exclude secondary units): N.A.

For Other Land Uses (See Appendix C) — Hours of Use: FRIDAYS & SATURDAYS: 10 AM TO 2AM; SUNDAY THRU THURSDAY = 10 AM TO 9 AM

Number of People on Site — Maximum Number: 389 OCCUPANTS

Method of Calculation: 2013 CA BLDG. CODE OCCUPANCY REQMTS.

Height Data — Height above Ground or Tallest Object (including antennas and trees): 20 FT. ft.

Highest Elevation (above sea level) of Any Object or Terrain on Site: 2,211 FT. ft.

Flight Hazards — Does the project involve any characteristics which could create electrical interference, confusing lights, glare, smoke, or other electrical or visual hazards to aircraft flight? ☐ Yes ☒ No

If yes, describe

CA 14-8005

REFERRING AGENCY (APPLICANT OR JURISDICTION TO COMPLETE)			
Date Received	8/6/2014	Type of Project	
Agency Name	CITY OF BANNING PLANNING DEPT.	☐	General Plan Amendment
		☐	Zoning Amendment or Variance
Staff Contact	HOLLY STUART	☐	Subdivision Approval
Phone Number	(951) 922-3190	☒	Use Permit
Agency's Project No.	C.U.P.14-9005	☐	Public Facility
		☐	Other

A. NOTICE: Failure of an applicant to submit complete or adequate information pursuant to Sections 65940 to 65948 inclusive, of the California Government Code, MAY constitute grounds for disapproval of actions, regulations, or permits.

B. SUBMISSION PACKAGE:

ALUC REVIEW

1. . . . . Completed Application Form
1. . . . . Project Site Plan – Folded (8-1/2 x 14 max.)
1. . . . . Elevations of Buildings - Folded
1 Each . 8 ½ x 11 reduced copy of the above
1. . . . . 8 ½ x 11 reduced copy showing project in relationship to airport.
1 Set Floor plans for non-residential projects
4 Sets. . Gummed address labels of the Owner and representative *(See Proponent)*.
1 Set. . Gummed address labels of all property owners within a 300' radius of the project site. If more than 100 property owners are involved, please provide pre-stamped envelopes (size #10), with ALUC return address.
4 Sets. . Gummed address labels of the referring agency (City or County).
1. . . . . Check for Fee (See Item "C" below)

STAFF REVIEW (Consult with ALUC staff planner as to whether project qualifies)

1 . . . . . Completed Application Form
1 . . . . . Project Site Plans – Folded (8-1/2 x 14 max.)
1 . . . . . Elevations of Buildings - Folded
1 . . . . . 8 ½ x 11 Vicinity Map
1 Set . Gummed address labels of the Owner and representative *(See Proponent)*.
1 Set . Gummed address labels of the referring agency.
1 . . . . .Check for review–See Below

MUSEUM OF PINBALL

EXHIBIT "A"

Proposed Land Use Land Use *Project call for re-use of these buildings for the following:*

1. *Pinball Machine Museum and Arcade.*
   Supporting this use are a restaurant, private lounge areas and a bar and seating areas.
   Designated as Building A North , Building A South and Building B on drawings.
2. *Warehouse*
   Designated as Building C on drawings.
3. *Glamping (Glamour Camping)*

About a 3rd of the total acreage of the property will be used for overnight recreational camping facility with facilities provided for swimming, tennis, physical fitness routines like walking, running, barbecue, and other outdoor activities. Existing bathroom and shower facilities will be maintained and a new fitness center will be installed within the exiting structures

Hours of Use - Friday and Saturday 10 AM to 2 AM
Sunday thru Thursday 10 AM to 9PM

CITY COUNCIL MEETING
CONSENT ITEM

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-69, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line 'D-2' Stage 1 and Stage 2"**

RECOMMENDATION: Adopt Resolution No. 2015-69, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line 'D-2' Stage 1 and Stage 2."

JUSTIFICATION: The Riverside County Flood Control and Water Conservation District ("District") proposes to construct flood control facilities within the City of Banning in order to improve flood protection and drainage. The Cooperative Agreement between the District and the City of Banning is necessary in order to grant the District the necessary rights to construct, inspect, operate and maintain the project.

BACKGROUND: The proposed project includes the construction of 5,300 lineal feet of an underground storm drain system along Hargrave Street from Ramsey Street to Indian School Lane, 700 lineal feet of an underground storm drain system located on Theodore Street between Florida Street and Hargrave Street and related appurtenances such as connector pipes and catch basins. An aerial photograph of the project is attached as Exhibit "A". Currently a storm drain system does not exist within the project limits. The project will mitigate flooding at the intersection of Ramsey Street and Hargrave Street during a large storm event as well as provide flood protection to some of the adjacent properties. The storm drain system has been sized for the 100-year rainfall event and can convey nearly 500 cubic feet per second of storm water. The chosen alignment minimizes conflicts with existing utilities and preserves the city's infrastructure to the maximum extent practicable, while still achieving the project goals.

The District will pay the costs associated with the construction of the storm drain system and appurtenances and estimates that the cost of construction will be approximately $3,000,000.00.

The Cooperative Agreement, attached as Exhibit "B", between the District and the City of Banning grants the District the necessary rights to construct, inspect, operate and maintain the project; identifies facilities to be maintained by the District and which facilities are to be maintained by the City; and requires the City to relocate existing water lines within the District's project limits.

On March 24, 2015 the Banning Utility Authority approved Resolution No. 2015-04 UA, "Approving a Professional Services Agreement with Land Engineering Consultants, Inc. for Water Main Replacement Design at Various Locations." As part of the professional services agreement the consultant is designing the relocation of water mains within the District's project limits. Staff anticipates the relocation of the water mains will be completed prior to the commencement of the District's project. The water main relocation project is part of the approved 2015/2016 Fiscal Year budget.

FISCAL DATA: The District shall pay all costs associated with the construction, inspection, operation and maintenance associated with the District's flood control facilities as explained in the Cooperative Agreement. The City shall be responsible for the future maintenance and operation of those specific flood control facilities identified in the Cooperative Agreement.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVEIWED/APPROVED BY:

Dean Martin
Interim Administrative Services
Director/Interim City Manager

RESOLUTION NO. 2015-69

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE COOPERATIVE AGREEMENT WITH THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT FOR STORM DRAIN LINE "D-2" STAGE 1 AND STAGE 2

WHEREAS, the Riverside County Flood Control and Water Conservation District ("District") proposes to construct a storm drain system within the City of Banning right-of-way; and

WHEREAS, the proposed project includes the construction of 5,300 lineal feet of an underground storm drain system along Hargrave Street from Ramsey Street to Indian School Lane, 700 lineal feet of an underground storm drain system located on Theodore Street between Florida Street and Hargrave Street and related appurtenances such as connector pipes and catch basins as shown in Exhibit "A"; and

WHEREAS, the purpose of the project will mitigate flooding at the intersection of Ramsey Street and Hargrave Street during a large storm event as well as provide flood protection to some of the adjacent properties; and

WHEREAS, a Cooperative Agreement between the District and the City of Banning is necessary in order to grant the District the necessary rights to construct, inspect, operate and maintain the project; and

WHEREAS, the Cooperative Agreement, attached as Exhibit "B", between the District and the City of Banning grants the District the necessary rights to construct, inspect, operate and maintain the project; identifies facilities to be maintained by the District and which facilities are to be maintained by the City; and requires the City to relocate existing water lines within the District's project limits.

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

SECTION 1. The City Council adopts Resolution No. 2015-69, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line "D-2" Stage 1 and Stage 2" and authorizes the mayor to sign said Cooperative Agreement.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, 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. 2015-69 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

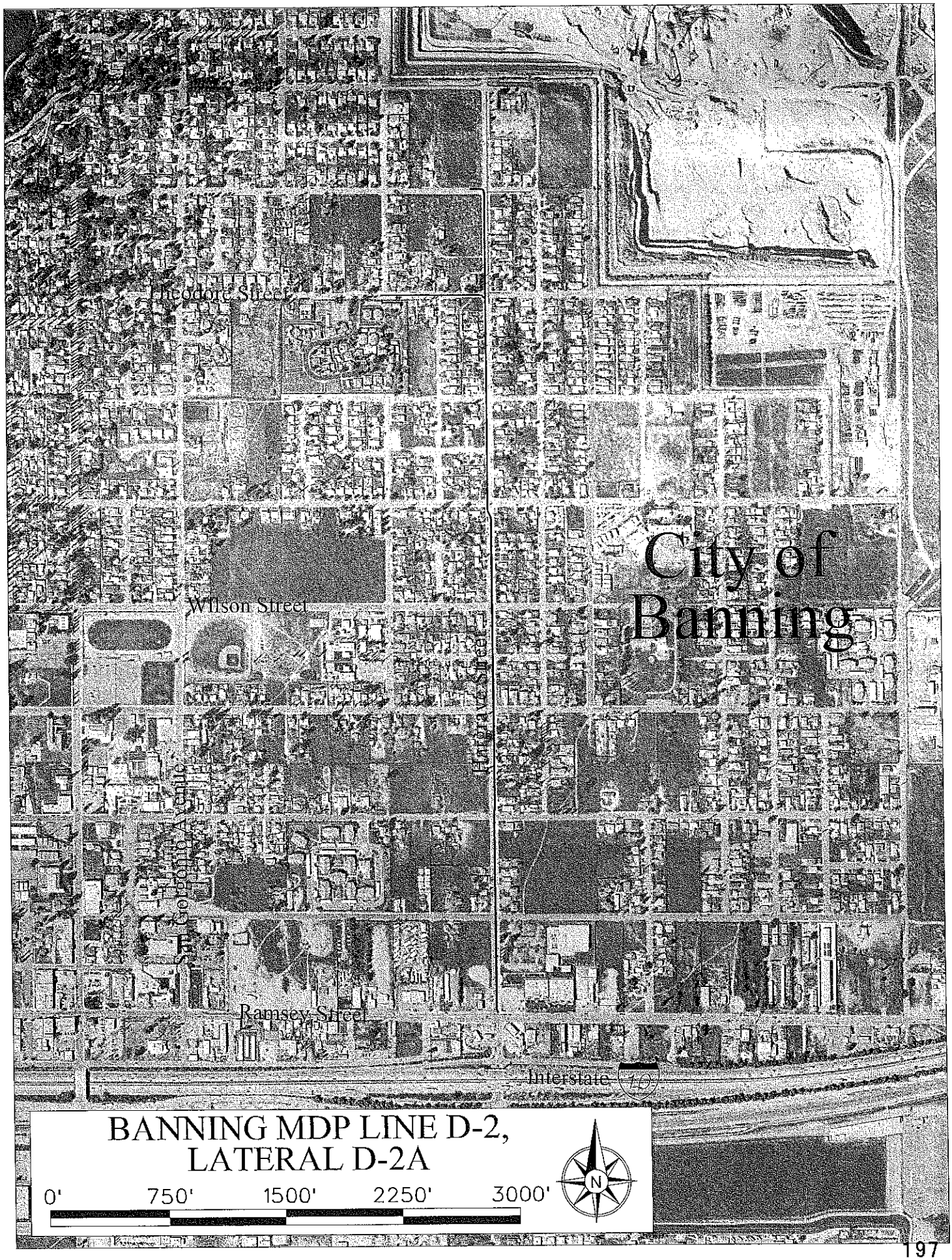
ABSTAIN:

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

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ATTACHMENT "1"

EXHIBIT "A"
AERIAL PHOTO OF PROJECT LIMITS


Theodore Street
Wilson Street
City of Banning
Ramsey Street
Interstate 10
BANNING MDP LINE D-2,
LATERAL D-2A
0'
750'
1500'
2250'
3000'
N

ATTACHMENT "2"

EXHIBIT "B"
ATTACHED COOPERATIVE AGREEMENT
LINE "D"

COOPERATIVE AGREEMENT

Banning Master Drainage Plan Line D-2, Stages 1 and 2 and
Banning Master Drainage Plan Lateral D-2A, Stage 1
(Project Nos. 5-0-00169 and 5-0-00172)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF BANNING, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to construct certain flood control facilities in order to provide improved flood protection and drainage to the interseetion of Ramsey Street and Hargrave Street, located within the City of Banning; and

B. The flood control facilities, all as shown on DISTRICT Drawing Nos. 5-223 and 5-225, respectively, consist of the following:

(i) approximately 600 lineal feet of underground storm drain system extending from Hargrave Street to Williams Street, hereinafter called "LINE D-2 STAGE 1", as shown in concept in blue on Exhibit "A", attached hereto and made a part hereof; and

(ii) approximately 4,700 lineal feet of underground storm drain system extending from Williams Street to Indian School Lane and along a portion of Indian School Lane, hereinafter called "LINE D-2 STAGE 2", as shown in concept in red on Exhibit "A".

Together, LINE D-2 STAGE 1 and LINE D-2 STAGE 2 are hereinafter called "DISTRICT DRAINAGE FACILITIES"; and

C. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of:

(i) approximately 700 lineal feet of underground storm drain system located in Theodore Street between Florida Street and Hargrave Street, hereinafter called "LATERAL D-2A", as shown in concept in green on Exhibit "A"; and

(ii) certain catch basins, connector pipes and storm drains that are thirty-six inches (36") or less in diameter located within CITY held easements or rights of way, hereinafter ealled "APPURTENANCES".

Together, LATERAL D-2A and APPURTENANCES are hereinafter called "CITY DRAINAGE FACILITIES". Together, DISTRICT DRAINAGE FACILITIES and CITY DRAINAGE FACILITIES are hereinafter called "PROJECT"; and

D. Within the project footprint, CITY owns, operates and maintains existing waterlines and related appurtenances that are located within CITY-held easements or rights of way, hereinafter called "CITY WATERLINES"; and

E. DISTRICT is willing to (i) prepare plans and specifications for PROJECT in accordance with applicable DISTRICT and CITY standards, (ii) advertise, award and administer a public works construction contract for PROJECT, (iii) inspect the construction of PROJECT, (iv) fund all costs for the design, construction and inspection of PROJECT as set forth herein, and (v) upon completion of PROJECT construction, assume ownership, operation and maintenance responsibility of DISTRICT DRAINAGE FACILITIES; and

F. CITY is willing to (i) review and approve plans and specifications for PROJECT, (ii) grant DISTRICT the right to construct PROJECT within CITY rights of way, (iii) plan, design and carry out the relocation of all interfering and affected portions of CITY WATERLINES at CITY's sole cost and expense, (iv) inspect construction of PROJECT, and

(v) upon completion of PROJECT construction, assume ownership, operation and maintenance responsibility of CITY DRAINAGE FACILITIES; and

G. It is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

H. The purpose of this Agreement is to memorialize the understandings by and among CITY and DISTRICT with respect to the funding, construction, inspection, ownership, operation and maintenance of PROJECT.

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION I

DISTRICT shall:

1. Pursuant to the California Environmental Quality Act (CEQA), act as the Lead Agency and assume responsibility for the preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.

2. Prepare, at its sole cost and expense, construction plans and specification documents for PROJECT in accordance with applicable DISTRICT and CITY standards and submit to CITY for review and approval prior to advertising a public works construction contract for PROJECT.

3. Obtain all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT.

4. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or agreements required by any federal or state resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT.

5. Advertise, award and administer a public works contract for the construction of PROJECT.

6. Provide CITY with written notice that DISTRICT has awarded a construction contract for PROJECT.

7. Notify CITY in writing at least twenty (20) days prior to the start of construction of PROJECT.

8. Construct, or cause to be constructed, PROJECT pursuant to a DISTRICT administered public works contract in accordance with DISTRICT and CITY approved plans and specifications and pay all costs associated therewith.

9. Inspect the construction of PROJECT.

10. [THIS SECTION INTENTIONALLY LEFT BLANK]

11. Not permit any change to or modification of CITY approved PROJECT plans and specifications that would result in change of function or maintainability of CITY DRAINAGE FACILITIES without the prior written permission and consent of CITY.

12. Within two (2) weeks of completing PROJECT construction, provide CITY with written notice that PROJECT construction is substantially complete and request CITY to conduct a final inspection of PROJECT.

13. Provide CITY with a copy of the Notice of Completion upon completion of PROJECT construction and settlement of any outstanding claims.

14. Provide CITY with a duplicate copy of 'Record Drawing' plans for PROJECT following DISTRICT'S acceptance of PROJECT construction as being complete.

SECTION II

CITY shall:

1. Act as a Responsible Agency under CEQA and take all neeessary and appropriate action to comply with CEQA.

2. Review and approve PROJECT plans and specifications at its sole cost and expense prior to DISTRICT advertising PROJECT for construction bids.

3. Grant DISTRICT, by execution of this Agreement, all rights to construct, inspect operate and maintain PROJECT within CITY rights of way.

4. Issue a no fee encroachment permit to DISTRICT'S contraetor(s) to construct PROJECT within CITY rights of way.

5. Plan, design and carry out the relocation of any interfering or affected portions of CITY WATERLINES at its sole cost and expense, to be completed prior to the start of construction of LINE D-2, STAGE 2 and no later than March 31, 2016.

6. Inspect construction of PROJECT at its sole cost and expense, as set forth in Section III.1.

7. Upon receipt of DISTRICT'S written notice that PROJECT construction is substantially complete, as set forth in Section I.12, conduct a final inspection of PROJECT.

8. Accept ownership and sole responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES upon (i) receipt of DISTRICT'S Notice of Completion, as set forth in Section I.13, and (ii) receipt of a duplicate copy of 'Record Drawing' plans for PROJECT, as set forth in Section I.14.

9. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way, which must be performed at such time(s) that the finished grade along and

above the underground portions of DISTRICT DRAINAGE FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no eost to DISTRICT.

SECTION III

It is further mutually agreed:

1. CITY DRAINAGE FACILITIES shall, at all times, remain sole ownership and exclusive responsibility of CITY. Nothing herein shall be construed as ereating any obligation or responsibility on the part of DISTRICT to operate, maintain or warranty CITY DRAINAGE FACILITIES.

2. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT and shall not be deemed complete until approved and accepted as complete by DISTRICT.

3. Except as otherwise provided herein, DISTRICT shall not be responsible for any additional street repairs or improvements not shown in IMPROVEMENT PLANS and not as a result of PROJECT construction.

4. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT'S (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including but not limited to (i) property damage, (ii) bodily injury or death, (iii) payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever.

5. CITY shall indemnify, defend, save and hold harmless DISTRICT and County of Riverside (including their respective officers, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY'S (including its officers, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including but not limited to (i) property damage, (ii) bodily injury or death, (iii) payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever.

6. [THIS SECTION INTENTIONALLY LEFT BLANK]

7. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right or action based upon the provisions of this Agreement.

8. The parties hereto each pledge to cooperate in regard to the operation and maintenance of their respective facilities as set forth herein and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facilities.

9. Any and all notices sent or required to be sent to the parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Engineering Services Section

CITY OF BANNING
99 East Ramsey Street
Banning, CA 92220
Attn: Art Vela

10. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

11. This Agreement is to be construed in accordance with the laws of the State of California.

12. The parties hereto shall not assign this Agreement without the written consent of the other parties.

13. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

14. This Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

15. Any waiver by DISTRICT or by CITY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other

breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner ehanging the terms hereof or estopping DISTRICT or CITY from enforcement hereof.

16. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral and written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

//

//

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

_____
(to be filled in by the Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By _____
NEAL R. KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

Cooperative Agreement
Banning MDP Line D-2, Stage 1 and 2; Lateral D-2A, Stage 1
Project Nos. 5-0-00169 and 5-0-00172
06/01/15
LMD:bad

CITY OF BANNING

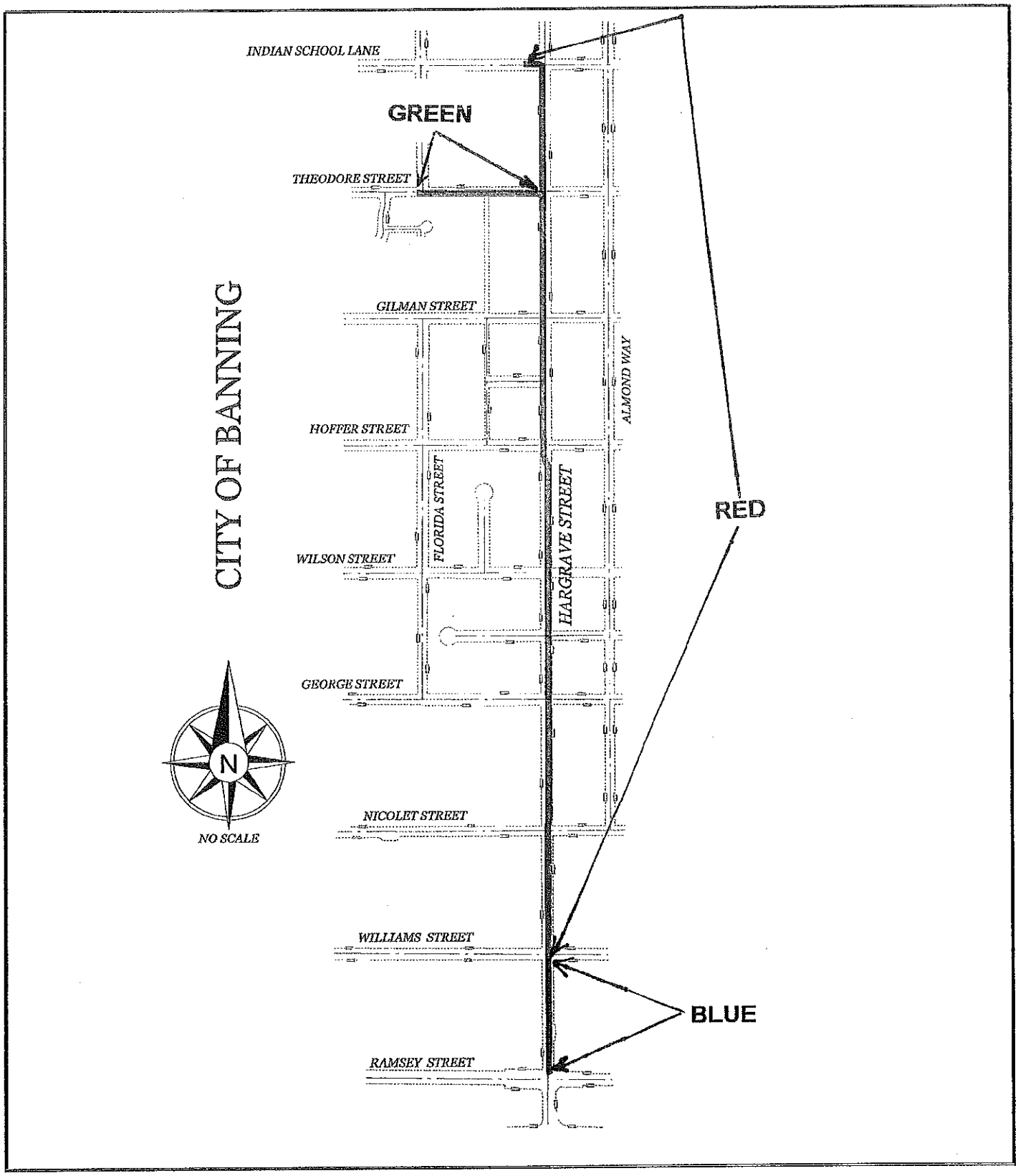
By _____
DEBORAH FRANKLIN
Mayor

APPROVED AS TO FORM:

By _____
DAVID ALESHIRE
City Attorney

Cooperative Agreement
Banning MDP Line D-2, Stage 1 and 2; Lateral D-2A, Stage 1
Project Nos. 5-0-00169 and 5-0-00172
06/01/15
LMD:bad

EXHIBIT A



COOPERATIVE AGREEMENT

Banning Master Drainage Plan
Line D-2 (stage 1), Line D-2 (stage 2), Line D-2A (stage 1)

Project Nos. 5-0-00169 and 5-0-00172

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CITY COUNCIL AGENDA
REPORT OF OFFICERS

DATE: **July 14, 2015**

TO: **Mayor and City Council**

FROM: **Rita Chapparosa, Deputy Human Resources Director**

SUBJECT: Classification Plan Amendments

RECOMMENDATION: Adopt Resolution No. 2015-70, Amending the Classification and Compensation Plan and Resolution No. 2015-71, Amending the Class Plan for Part-Time Employees to include new classifications and changes to salary ranges and job descriptions.

JUSTIFICATION: The City Council approved the City of Banning Classification and Compensation Plan on January 25, 2005. Periodically the plan is amended to reflect changes in the organizational structure. Maintenance of the plan is a dynamic process in which Human Resources works with operating departments to develop classifications which reflect the current needs of the department in their efforts to deliver quality services to residents. City Personnel Rules require that the City Council approve all changes to the City's Classification Plan.

The amendment of the Classification Plan and Part-Time Classification Plan changes are part of the recently approved fiscal year 2016 mid-cycle budget and staff's request through their Program Worksheets reflected on the June 23, 2015 Council Agenda and through the Budget Committee meetings.

Staff is requesting that the City Council approve the new or changed positions and salary ranges listed on the attached Resolutions under the class plan amendment and the part-time class plan amendment.

FISCAL DATA: The fiscal impact is reflected in the recently adopted fiscal year 2016 mid-cycle budget.

Recommended By:

Rita Chapparosa Director
Deputy Human Resources Director

Approved By

Dean Martin
Interim City Manager

Attachments: Resolution No. 2015-70, Classification Plan Amendment for City Employees
Resolution No. 2015-71, Classification Plan for Part-Time City Employees

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RESOLUTION 2015-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING THE CLASSIFICATION & COMPENSATION PLAN FOR THE CITY OF BANNING

WHEREAS, it is necessary to amend the City's Classification Plan from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise;

WHEREAS, the classification and compensation plan has been updated to reflect changes in salary ranges per the recently approved fiscal year 2016 mid-cycle budget;

WHEREAS, changes to job descriptions, job titles and/or pay ranges require Council approval.

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

SECTION 1: That the City Council approve the following classifications and salary ranges as incorporated in the attached classification and compensation plan – Schedule "A" (Exhibit "A"):

Accounting Specialist– Salary Range 53
Executive Assistant/Deputy City Clerk – Salary Range 57
Management Analyst – Salary Range 68
Public Works Director/City Engineer – Salary Range 100
Purchasing Manager – Salary Range 77
Senior Planner – Salary Range 79
Transit Field Supervisor – Salary Range 59

SECTION 2: That the City Council approve the job description for Accounting Specialist (Job Code 1136), Executive Assistant/Deputy City Clerk (Job Code 1606), Management Analyst (Job Code 1601), Public Works Director/City Engineer (Job Code 4400), and Transit Field Supervisor (Job Code 3360) as attached in Exhibit "B".

PASSED, APPROVED, AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, 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. 2015-70 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

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

EXHIBIT "A"

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Schedule "A"

CITY OF BANNING
CLASSIFICATION & COMPENSATION PLAN
REVISED JULY 14, 2015
RESOLUTION NO. 2015-70 (AMENDING RESOLUTION NO. 2014-44)

MATRIX BY CLASS SERIES/JOB CODE

Class Series/Occupational Job Group	Job Code	Classification/Position	Salary Range	Bargaining Unit
1000 – CITY ADMINISTRATION SERIES				
City Administration Group	1010	City Manager	113	Council Contract
	1020	City Clerk/Executive Assistant	57	Elected
	1606	Executive Assistant/Deputy City Clerk	57	Conf/Gen
Financial Services Group	1105	Administrative Services Director/Deputy City Manager	101	Contract
	1115	Deputy Finance Director	87	Mgmt/Conf
	1160	Purchasing Manager	77	SBPEA
	5028	Utility Financial Analyst	76	SBPEA
	1125	Accountant II	59	IBEW-G
	1140	Accountant	54	IBEW-G
	1136	Accounting Specialist	53	IBEW-G
	1130	Financial Services Specialist	47	IBEW-G
Human Resources Group	1215	Deputy Hnman Resources Director	83	Mgmt/Conf
	1230	Human Resources Technician	54	Conf/Gen
Utility Billing Group	1340	Senior Utility Billing Rep	48	IBEW-G
	1350	Utility Billing Representative	43	IBEW-G
	1340	Lead Field Service Representative	55	IBEW-U
	1325	Field Service Representative	51	IBEW-U
Information/Cable Systems Group	1410	Information Technology Coordinator	59	IBEW-G
	1416	Police Information Technology Technician	59	IBEW-G
	1415	Information Technology/Media Technician	57	IBEW-G
	1510	Cable Services Specialist	44	IBEW-G

Schedule "A"

1				
Office Support Group	**1610**	**Executive Secretary**	**53**	**IBEW-G**
	1601	**Management Analyst**	**68**	**SBPEA**
	1620	**Office Specialist**	**44**	**IBEW-G**
	1630	**Receptionist**	**31**	**IBEW-G**

2000 – POLICE SERIES

Police Group	**2010**	**Police Chief**	**100**	**Contract**
	2025	**Police Lieutenant**	**87**	**Police Mgmt**
	2030A	**Police Staff/Master Sergeant**	**78**	**POA**
	2040	**Police Corporal**	**71**	**POA**
	2050	**Police Officer**	**67**	**POA**
	2060	**Police Recruit/Trainee**	**N/A**	**At-Will**
Police Support Group	**2143**	**Lead Public Safety Dispatcher**	**56**	**IBEW-G**
	2110	**Public Safety Dispatcher**	**52**	**IBEW-G**
	2151	**Police Assistant II**	**48**	**IBEW-G**
	2152	**Police Assistant I**	**44**	**IBEW-G**

3000-COMMUNITY DEVELOPMENT SERIES

Community Development Group	**3010**	**Community Development Director**	**92**	**Contract**
	3026	**Development Project Coordinator**	**58**	**IBEW-G**
	3050	**Senior Planner**	**79**	**SBPEA**
	3020	**Associate Planner**	**68**	**SBPEA**
	3015	**Assistant Planner**	**63**	**SBPEA**
Economic Development Group	**3110**	**Economic Development Director**	**92**	**Contract**
Development Services Group	**3210**	**Development Services Manager (Building Official)**	**84**	**SBPEA**
	3215	**Senior Building Inspector**	**67**	**IBEW-G**
	3230	**Code Compliance Officer**	**58**	**IBEW-G**
	3240	**Building Permit Specialist**	**55**	**IBEW-G**

3300-COMMUNITY SERVICES GROUP

Community Services Group	**3310**	**Community Services Director**	**86**	**Contract**
	3360	**Transit Field Supervisor**	**59**	**IBEW-G**
	3325	**Recreation Coordinator**	**51**	**IBEW-G**
	3328	**Program Coordinator**	**43**	**IBEW-G**
	3350	**Lead Bus Driver/Trainer**	**55**	**IBEW-G**
	3340	**Bus Driver**	**47**	**IBEW-G**

4000-PUBLIC WORKS SERIES

Public Works Management Group	4400	Public Works Director/City Engineer	100	Contract
Streets/Parks Group	4210	Public Works Superintendent	78	SBPEA
	4230	Work Release Crew Leader	47	IBEW-G
	4240	Senior Maintenance Worker	50	IBEW-G
	4250	Maintenance Worker	45	IBEW-G
	4260	Motor Sweeper Operator	50	IBEW-G
Engineering Group	4300	City Engineer	85	SBPEA
	4350	Senior Civil Engineer	82	SBPEA
	4320	Associate Civil Engineer	76	SBPEA
	4325	Assistant Civil Engineer	68	SBPEA
	4330	Public Works Inspector	62	IBEW-G
	4340	Engineering Services Assistant	48	IBEW-G
General Maintenance and Support Group	4420	Fleet Maintenance Mechanic	53	IBEW-G
	4430	Building Maintenance Specialist	49	IBEW-G
	4441	Community Center Caretaker	36	IBEW-G
	4450	Warehouse Services Specialist	52	IBEW-G
Water/Wastewater Group	4115	Water/Wastewater Superintendent	78	SBPEA
	4130	Water Crew Supervisor	60	IBEW-U
	4140	Water Services Worker	52	IBEW-U
	4155	Wastewater Collection System Supervisor	60	IBEW-U
	4145	Wastewater Collection System Technician	52	IBEW-U
	4132	Water Valve Flushing Crew Lead	56	IBEW-U
	4133	Water Construction Crew Lead	56	IBEW-U
	4131	Water Meter Crew Lead	56	IBEW-U

5000 ELECTRIC UTILITIES SERIES

Electric Services & Operations Group	5001	Electric Utility Director	100	Contract
	5021	Power Resource & Revenue Administrator	85	SBPEA
	5025	Associate Electrical Engineer	76	SBPEA
	5028	Utility Financial Analyst	76	SBPEA
	5029	Senior Electric Service Planner	79	IBEW-U7
	5030	Electric Service Planner	77	IBEW-U
	5050	Public Benefits Coordinator	55	IBEW-U

Schedule "A"

	5055	Utility Services Assistant	48	IBEW-U
	5110	Electric Operations & Maintenance Manager	85	SBPEA
	5120	Powerline Crew Supervisor	79	IBEW-U
	5130	Powerline Technician	75	IBEW-U
	5140	Powerline Apprentice	67/ 73	IBEW-U
	5150	Electric Services Worker	52	IBEW-U
	5161	Snbstation Test Technician	75	IBEW-U
	5160	Electric Meter Test Technician	75	IBEW-U
	5170	Apprentice Electric Meter Test Technician	67 / 73	IBEW-U

EXHIBIT "B"

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CITY OF BANNING, CALIFORNIA

Accounting Specialist

Job Code: 1136

FLSA **[ ] Exempt** **[X] Non-Exempt**

JOB DEFINITION: Under general supervision, performs routine to moderately complex technical and specialized duties in the preparation, processing and maintenance of the City-wide payroll and related records; general ledger accounting, accounts payable, purchase requisitions, business licenses and performs related duties as assigned.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Depending on the area of the assignment, duties may include, but are not limited to the following:

Reviews and processes payroll action forms and resolves discrepancies with Human Resources; ensures employees are correctly set up in the payroll system; verifies, audits, edits and processes biweekly employee payroll in accordance with City policies and procedures and labor contract agreement provisions; generates reports and verifies accurate reporting of changes in pay, payroll status, benefits, taxes and other deductions, as well as retroactive pay adjustments and terminations; verifies and edits attendance and work hours data entered by departments; works with departments to resolve reporting problems and errors; enters work hours, leaves taken, overtime and account codes for employees with labor distribution and for part-time employees; processes adjustments to individual employee pay to correct errors; processes employee payroll deductions, benefits elections and tax changes; monitors eligibility dates and initiates set up of annual enrollments/increases and floating holiday accruals. Processes and data enters special payroll transactions, such as wage assignments, liens, and child support payments; makes payroll system adjustments to ensure appropriate payroll tax treatment of retroactive and other special wages; generates and checks preliminary and final payroll reports and registers; runs leave accrual processes; generates paychecks; processes void and reissued paychecks; ensures timely and accurate posting of payroll to the financial accounting system and generates electronic bank deposits; generates and distributes a variety of system reports and ensures appropriate documentation for audit purposes. Posts deduction and benefit amounts to subsidiary ledger accounts; prepares payment authorizations for vendors; generates EFT transfers for tax deposits; reconciles quarterly tax reports to the general ledger; prepares and submits quarterly tax returns and media files for transmission; reconciles payroll liability accounts, resolves discrepancies and posts adjusting journal entries; responsible for required maintenance of payroll software. Answers department and employee questions regarding payroll and benefits deductions by explaining requirements, policies and procedures; responds to requests for salary verification. Researches and remains current on Federal and State payroll tax law changes, pension, benefits and other applicable regulations affecting payroll. Maintains required files and records; researches transaction history to verify payroll totals, accruals and audit questions. Performs user testing of system updates. Attends a variety of meetings, training sessions and seminars as required. May oversee the work of temporary employees assigned to work area. Assists the Finance Department with procurement needs. Reviews purchase requisitions for compliance with City policy before issuing purchase orders. Pays department bills and reports purchasing updates. Insures money is taken from correct accounts. Monitors the budget for purchase orders. Prepares cash flow for Finance Director. Prepares sales and property taxes and conducts audits. Reconciles and oversees Department inventory. Processes vendor payments and researches and reconciles vendor discrepancies. Prepares and enters journal entries for general ledger. Examines, analyzes, researches and reconciles general ledger accounts and statements. Audits invoices, corrects mistakes and extends tax consequences. Reconciles and files invoice statements. Assists vendors with collecting outstanding or unpaid invoices. Posts fiscal agent report data and balances to general ledger.

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CITY OF BANNING, CALIFORNIA

Accounting Specialist

Job Code: 1136

Issues business licenses to companies conducting business in the City of Banning. Enters business licenses payments into computer system, prints licenses and renewals, prepares copies for inspectors and files and maintains information. Prepares a variety of financial support documents. Performs related duties and responsibilities as assigned.

KNOWLEDGE AND SKILLS:

- Federal, State and City laws, regulations, rules and guidelines applicable to timekeeping, payroll preparation and pay reporting.
- Methods, practices, documents and terminology used in processing payroll transactions and in payroll recordkeeping.
- The City's payroll system and associated practices and procedures for processing payroll information and interpreting input and output data.
- Payroll and deductions policies, practices and procedures, including garnishment and employment verification.
- Records management and file maintenance procedures.
- Standard office practices and procedures.
- Principles and practices of quality customer service and sound business communication.
- Operate a computer using word processing, spreadsheet and accounting system applications; operate a calculator and other standard office equipment.
- Organize, set priorities and exercise sound judgment within established guidelines.
- Interpret, apply and reach sound decisions in accordance with City rules, policies and department procedures.
- Make calculations and tabulations and review payroll and related documents and information with speed and accuracy.
- Understand and follow written and verbal instructions.
- Learn and apply new information.
- Schedule, organize, analyze and complete work in accordance with established guidelines.
- Prepare clear and accurate payroll records and reports.
- Prepare and maintain accurate and complete specialized records and files.
- Communicate clearly and effectively, both orally and in writing, and work cooperatively with employees, customers, the general public, vendors, co-workers, department representatives, supervisors, management and others encountered in the course of work.
- Exercise tact and diplomacy in dealing with sensitive, complex and confidential payroll issues and situations.
- Maintain complete confidentiality of sensitive employee information.
- City's and the Department's policies and procedures.
- Accounts payable, payroll, purchasing and general ledger procedures.
- Financial reporting guidelines and procedures.
- Reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules,
- Regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in operating a personal computer utilizing a variety of software applications.

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CITY OF BANNING, CALIFORNIA

Accounting Specialist

Job Code: 1136

MINIMUM QUALIFICATIONS: Three years of progressively responsible experience in payroll, tax and insurance deductions, accounts payable, purchasing, and customer service. Experience in municipal payroll operations is desirable. An Associate's degree with major coursework in accounting, bookkeeping or a closely related field. A Bachelor's degree is preferred.

ADDITIONAL REQUIREMENTS: Must have and maintain a valid California Class C Driver's License. May be required to work outside the traditional work schedule

CITY OF BANNING, CALIFORNIA

Executive Assistant/Deputy City Clerk

Job Code: 1606

FLSA [ ] Exempt [X] Non-Exempt

JOB DEFINITION: To perform a variety of highly responsible and complex secretarial and administrative support duties to the City Manager, City Clerk and elected official or designee handling administrative details and coordination of day-to-day office operations; may supervise clerical staff; and to do related work as required.

DISTINGUISHING CHARACTERISTICS: The Executive Assistant position is distinguished from other administrative support classes by the higher degree of independent judgment required; a thorough knowledge of divisional, department and City-wide procedures and policies; and the ability to choose among a number of alternatives in performing a variety of complex assignments without instruction and in scheduling and completing work. Incumbents routinely handle highly confidential and sensitive information; may serve as staff support on internal and external committees, may have budget preparation and administration responsibility; and may represent the City and/or City executive/elected officials as required.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Depending on the area of the assignment, duties may include, but are not limited to, the following:

Perform a wide variety of responsible, complex and confidential duties for designated individuals at the Division Head level. Interpret and apply divisional policies and procedures in response to inquiries and make appropriate referrals. Review, log, prioritize and route correspondence. Take and transcribe dictation from rough draft, shorthand notes or recordings. Respond independently to letters and general correspondence of a routine nature. Maintain appointment schedules, daily calendars and make travel arrangements. Assist in agenda preparation, gather information and contact meeting participants. Research public records, and provide information to the public and staff members concerning City Council actions, laws, ordinances, codes, procedures and projects; independently compose responses to requests for information. Performs follow-up activities resulting from Council meetings, including transcribing and distributing minutes, ensuring that resolutions and ordinances are in proper format. Assist the City Clerk in the administration and conduct of municipal elections. Gather, organize and prepare information for routine reports. Recommend organizational or procedural changes affecting administrative support activities. Compile and maintain complex and extensive records for a department. Maintain a variety of files and records of information. Maintain manuals and update resource materials. May serve as secretary and/or administrative staff to a board or commission, preparing the agenda and taking minutes of meetings. Assist in the assigning, supervision and participation in the work of the administrative support section of an assigned department or division. Review work upon completion for conformance to divisional requirements.

REPRESENTATIVE DUTIES: (continued)

Participate in the preparation and administration of Department budget.

Perform specialized projects, including collecting, compiling and summarizing information obtained.

Serve on various internal and external committees; represent the City and/or City executive/elected official as required.

Assist in developing, analyzing and evaluating policy and procedures.

Coordinate activities, events and correspondence involving all City departments/department heads.

May select, train, supervise and evaluate subordinates.

KNOWLEDGE AND ABILITIES:

- Knowledge of English usage, spelling, grammar and punctuation.
- Knowledge of modern office methods and standard office equipment usage.
- Knowledge of computer software, including word processing applications, at an advanced level.
- Knowledge of reception and telephone techniques.
- Knowledge of principles and practices of classifying, indexing, processing, retrieving and controlling a large volume of records.
- Knowledge of principles of supervision and training.
- Knowledge of modern office administration practices and procedures.
- Knowledge of principles and practices of effective business communication.
- Knowledge of rules and procedures governing the notice and conduct of public meetings.
- Knowledge of record keeping, account maintenance and purchasing practices and procedures.
- Knowledge of City boards and committees.
- Knowledge of organization, procedures, ordinances and rules applicable to department to which assigned.
- Knowledge of procedures and operating details of municipal government; City-wide policies and procedures.
- Knowledge of research techniques, sources and availability of information.
- Knowledge of report writing and presentation.
- Knowledge of communications/media services and resources.
- Knowledge of employment selection practices and principles.
- Ability to plan, organize and carry out secretarial work to meet deadlines.
- Ability to receive highly sensitive information and maintain confidentiality.
- Ability to understand and carry out oral and written directions.

CITY OF BANNING, CALIFORNIA

Executive Assistant/Deputy City Clerk

Job Code: 1606

KNOWLEDGE AND ABILITIES: (continued)

- Ability to operate office equipment, a personal computer and utilize various software and/or new technology.
- Ability to communicate clearly and concisely, both orally and in writing.
- Ability to maintain division head's working calendar and schedule appointments and meetings.
- Ability to establish and maintain cooperative working relationships with those contacted in the course of work.
- Ability to assist in compiling and maintaining complex records and preparing technical reports for a division.
- Ability to work independently in the absence of a supervisor.
- May exercise the ability to plan, organize and supervise the work of other clerical staff.
- Ability to perform relatively complex arithmetic and statistical calculations and computations rapidly and accurately.
- Ability to interpret and apply administrative and divisional rules, policies and procedures.
- Ability to analyze situations carefully and adopt effective courses of action.
- Ability to assist in developing, analyzing and evaluating policies and procedures.
- Ability to compose correspondence and business letters from brief instructions.
- Ability to interpret and apply administrative and departmental rules, policies an procedures.
- Ability to compose correspondence independently.
- Ability to compile and maintain complex and extensive records and files for a department.
- Ability to represent the department using good judgment, poise, tact and diplomacy.
- May exercise the ability to supervise, train, and evaluate subordinates.
- Ability to establish and maintain professional effective working relationships with diverse groups and individuals.

MINIMUM QUALIFICATIONS: A high school diploma or GED supplemented by specialized administrative support/business related courses and five (5) years of experience performing increasingly complex and highly responsible office and administrative support work, of which at least (2) two years involved administrative support work for one or more managers. An Associate's Degree is preferred. Municipal/public sector government experience is highly desirable. Ability to obtain certification as a Certified Municipal Clerk (CMC) after two years.

ADDITIONAL REQUIREMENTS: Demonstrated proficiency at an advanced level in Word and/or Excel. Possession of a valid California driver's license.

CITY OF BANNING, CALIFORNIA

Management Analyst

Job Code: 1601

FLSA **[x] Exempt** **[ ] Non-Exempt**

JOB DEFINITION: Under general direction of the Director, performs professional administrative, technical and analytical analysis in the administration and management of a department in conducting specific and comprehensive analysis of wide range of City policies involving organization procedures, finance and services; and to provide guidance on various City policies, procedures, goals and objectives. Supervises activities of assigned personnel. May supervise or oversee staff under the division or programs.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Manages and administers departmental contract operations, including procurement, invoice processing, evaluation of proposals and negotiations. Works with the department to prepare grant proposals and applications; monitors grant implementation for budgetary and operation compliance to grant stipulations. Ensures fiscal compliance of all contracts and grants; ensures compliance with appropriate Federal, State, County and Local regulations. Develops formal and informal bids, RFQs and RFPs, ensuring that all applicable legal and contractual provisions are included; directs and participates in the solicitation, evaluation and award of RFPs; participates in pre-bid briefings. Performs budget preparation, analysis and administration; analyze and report on the budget status for various activities related to assigned staff, programs and projects. Develops and reviews project/services scope of work with managers to ensure clarity of work and contracting requirements. Research and analyze information; prepare agenda reports and administrative documents for the department. Provides executive level administrative support to the E Director and supervisors as needed. Supervises and trains subordinates, as required.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

Knowledge of: Grant proposal writing, application and monitoring techniques, policies and procedures; contract preparation and negotiation techniques; proper contract format; legal language used in contracts; working knowledge of governmental regulations regarding contracted services and competitive bidding process; county, state and federal government general administrative structures and processes; principles of business and public administration; accounting and budgetary controls, basic analysis and research techniques; computer applications pertaining to procurement and business requirements; principles and practices of management and supervision; principles and practices of budget administration; the City's and the Department's policies and procedures; file and records management principles; research methods and procedures.

CITY OF BANNING, CALIFORNIA

Management Analyst

Job Code: 1601

Skill in: Reading, understanding, interpreting and applying relevant city, county, state and federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives; assessing and prioritizing multiple tasks, projects and/or demands; working within deadlines to complete projects and assignments; assessing, analyzing, identifying and implementing solutions to complex problems; establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning; operating a personal computer utilizing a variety of software applications, including Microsoft Excel and Word.

MINIMUM QUALIFICATIONS: Bachelor's degree in business or public administration. Three years of experience in preparing and processing state and federal contracts, purchases of service contracts, preparation of grant applications and conducting competitive bids, formulating policy and procedures, and negotiating contracts. Supervisory experience desired.

ADDITIONAL REQUIREMENTS: A valid California driver's license. May be required to work outside the traditional work schedule.

CITY OF BANNING, CALIFORNIA

Public Works Director/City Engineer

Job Code: 4400

FLSA **[x] Exempt** **[ ] Non-Exempt**

JOB DEFINITION: Under policy direction, directs, oversees, plans, organizes and administers water, wastewater, engineering, streets, parks, fleet and airport division operations.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Establishes and maintains direction and regulation over Public Works Divisions including the,water, wastewater, engineering, streets, parks, fleet and airport divisions and services in accordance with operational and environmental protection measures and Federal, state and regional regulatory requirements. Provides professional assistance and information to the City Council and City management staff on City operations associated with Public Works. Develops and implements the Capital Improvement Program (CIP). Interprets and enforces Public Works Department policies and procedures. Acts as liaison with other City departments and other government agencies such as Department of Transportation, Riverside County Transportation Commission and Riverside County Economic Development Agency. Manages Banning Municipal Airport operation. Manages the waste management franchise contract and address solid waste related issues.

Develops financial plans including loans and grants to pay for infrastructures. Reviews and/or approves assigned staff plans, specifications and cost estimates for each public works operation. Monitors the acquisition, allocation or use of resources needed for successful service delivery or project completion. Researches, reviews, investigates and reports services, problems or conditions affecting the safe and convenient use of City water systems, streets, parks, vehicles and equipment and airport. Prepares reports of conditions and results of Public Works operations for the City. Oversees budgetary and expenditures for the Public Works Departments and Divisions.

Manages the buying, selling and trading operations within the Public Works Department. Provides short term and long term utilities and public works capital improvement planning for the City. Attends meetings and presentations. Oversees, monitors and directs office operations of assigned staff. Prioritizes and assigns special projects. Interviews prospective employees. Hires and/or recommends hiring. Develops, identifies and implements new employee and on-going staff training. Assigns, tracks and reviews work assignments and progress. Reviews and approves the formal performance evaluation of assigned department staff. Develops and implements disciplinary actions for assigned staff. Prepares reports, memos and correspondence.

Performs other duties as assigned or required.

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CITY OF BANNING, CALIFORNIA

Public Works Director/City Engineer

Job Code: 4400

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of water, wastewater, street, engineering, parks, fleet and airport management and operations practices and principles.
- Knowledge of management and/or supervision principles.
- Knowledge of finance and budget principles.
- Knowledge of file and report management techniques.
- Knowledge of research methods and procedures.
- Knowledge of engineering principles and methods.
- Knowledge of trends and practices in public improvement projects.

- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

MINIMUM QUALIFICATIONS: A Bachelor's degree in Civil Engineering or related field **AND** ten (10) years of public works, water, wastewater or engineering experience that includes five (5) years of management and/or supervision. Must possess registration in California as a Professional Civil Engineer at time of appointment.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license. Depending on the needs of the City, the incumbent in this classification may be required to obtain and maintain additional licenses or certifications. May be required to work outside the traditional work schedule.

CITY OF BANNING, CALIFORNIA

Transit Field Supervisor

Job Code: 3360

FLSA [ ] Exempt [x] Non-Exempt

JOB DEFINITION: Under the direction of the Community Services Director. Supervises the City's Bus Driver's, ensuring efficient and courteous service. Responsibilities include; planning, assigning and directing work; appraising performance; rewarding employees; addressing complaints and resolving problems. Operates passenger coach over specified or demand responsive routes to transport people to and from their destination in a safe, courteous and timely manner.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Monitors the daily performance/operation of fixed routes, including efficiency, system safety and on time performance; makes recommendations for adjustments. Develops routes for detours and special events. Monitors motor coaches on the road and determines location of bus stops, zones, and amenities. Researches service and makes recommendations. Supervises and monitors operator performance including on-board ride checks and overall compliance with rules, regulations and safety requirements. Trains new and experienced Bus Drivers and other City personnel in all areas of coach operation, including vehicles, equipment, and procedures. Conducts classroom training on coach operation and transit procedures, rules, and regulations. Conducts individual or group retraining for employees as needed. Maintains various training records for internal use and for the California DMV training verification. Assists operators with passenger relations. Investigates customer complaints and acts as liaison for the Agency with the general public and public works/safety personnel. Responds to, investigates and submits reports on accidents, incidents and claims involving Agency vehicles and personnel. Maintains, monitors, and analyzes logs and records relative to coach operator efficiency and performance such as attendance, on time, and disciplinary records. Evaluates and documents work performance and counsels subordinates, recommending and implementing disciplinary actions as required. Acts as an emergency responder for natural and man-made disasters that involve public mass transit services. Assists the dispatch office, providing dispatch relief for meetings, breaks or other duties. Enforces and rates on a scale the safety performance including rules and regulations compliance and implements corrective action. Directly supervises Coach Operators in the Operations Department. Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws.

Performs other duties as assigned or required.

KNOWLEDGE and ABILITIES:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures
- Knowledge of transit operations and applicable laws and regulations.
- Knowledge of union contracts, rule books and progressive disciplinary procedures.
- Knowledge of basic accident investigation procedures.
- Knowledge of two-way radio functions.

- Ability to prepare reports.
- Ability to handle pressure or emergency situations.
- Ability to establish and maintain effective working relationships with a variety of individuals, departments, outside agencies and the employees' labor union.
- Ability to read and interpret documents such as safety rules, operating and maintenance instructions, and procedure manuals.
- Ability to write routine reports and correspondence.
- Ability to effectively present information and respond to questions from groups of managers, employees, customers and the general public.
- Ability to apply common sense understanding to carry out instructions furnished in written, oral, or diagram form.
- Ability to deal with problems involving several concrete variables in standardized and very unique situations.

MINIMUM QUALIFICATIONS: A high school diploma or GED AND three (5) years of experience in the operation passenger buses and a minimum of two years relevant supervisory experience; or an equivalent combination of education and experience.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a Class B California driver license with air brake and passenger endorsements and a valid Medical Examiner's Certificate. Must be twenty-one (21) years of age at time of hire. Must pass background investigation and successfully complete periodic physical examinations as required by federal transportation regulations. Must have, or be able to obtain within first three months of employment, U. S. Department of Transportation, Transportation Safety Institute Instructor Certificate. Must be familiar with current business operating systems, software and programs.

PHYSICAL DEMANDS:
While performing the duties of this job, the employee is regularly required to sit and talk or hear. The employee is frequently required to stand, walk, use hands to finger, handle or feel and reach with hands and arms. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl; and taste or smell. The employee must regularly lift and/or move up to 10 pounds, frequently lift and/or move up to 25 pounds, and occasionally push/pull up to 90 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

WORK ENVIRONMENT:
While performing the duties of this job, the employee is frequently exposed to moving mechanical parts and outside weather conditions. The employee is occasionally exposed to fumes or airborne particles, and vibration. The noise level in the work environment is usually moderate.

RESOLUTION NO. 2015-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING, THE CLASSIFICATION AND COMPENSATION POLICY FOR PART-TIME EMPLOYEES OF THE CITY OF BANNING

WHEREAS, part-time employees are individuals who customarily work less than 1,000 hours per fiscal year, or an average of 20 hours per week on a regular year-round basis; and

WHEREAS, it is necessary and desirable to employ persons on a part-time basis to provide valuable services to augment the provision of City services; and

WHEREAS, such part-time employees are unrepresented "at-will" individuals that pay no dues to, nor receive benefits from, negotiations by employee unions; and

WHEREAS, the Council desires to provide guidelines for the compensation to such employees for the rendering of such valuable service;

WHEREAS, the City Council now desires to adopt an amended and restated resolution of salaries for the Part-Time Classifications, which has been updated to reflect changes in salary ranges per the recently approved fiscal year 2016 mid-cycle budget; restates and replaces any and all pre-existing salary resolutions for the Part-Time classifications, including, but not limited to Council Resolution No. 2015-13.

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

SECTION 1: Classification and Pay Structure. Part-time classification titles shall be authorized as set forth in Exhibit "A" and Exhibit "B", effective July 14, 2015, including the Recreation Sports Coordinator (Job Code 3329) and Human Resources Technician (Job Code 1230) job descriptions set forth as Exhibit "C". The minimum and maximum annual ranges used for the part-time classification hourly calculations shall be based on the permanent Salary Range Table, attached as Exhibit "D" divided by 2080 hours and determining where on the range to place the employee based on qualifications and experience.

SECTION 2: Performance Review System for Part-Time Employees. Part-time employees will receive performance reviews and merit adjustments after completing 1,000 hours of the service and thereafter upon completion of each additional period of 1,000 hours of service. Recommended merit adjustments must be based upon written performance evaluations and included in the City's annual budget.

PASSED, APPROVED, AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, 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. 2015-71 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT "A"

PART-TIME CLASSIFICATION TITLES (INCLUDING SEASONAL)

EFFECTIVE JULY 14, 2015

Administrative Intern	Range 33
Airport Attendant	Range 17
Assistant Pool Manager	Range 27
Building Attendant	Range 29
Cashier	Range 17
Crossing Guard	Range 12
Development Assistant	Range 42
Dial-A-Ride Driver	Range 31
Human Resources Technician*	**Range 54**
Lifeguard	Range 22
Lifeguard w/WSI Certification	Range 25
Pool Manager	Range 32
Recreation Leader	Range 29
Recreation Sports Coordinator*	**Range 43**
Senior Center Coordinator	Range 49
Senior Recreation Leader	Range 36

- New Classifications for Part-Time Positions/Resolution

EXHIBIT "B"

CLASSIFICATIONS AND SALARY RANGES

TITLE	SALARY RANGE*
Accountant	S4
Accountant II	59
Administrative Services Director/Deputy City Manager	101
Apprentice Electric Meter Test Technician	67 / 73
Assistant Civil Engineer	68
Assistant Planner	63
Associate Civil Engineer	76
Associate Electrical Engineer	76
Associate Planner	68
Building Maintenance Specialist	49
Building Permit 5pecialist	SS
Bus Driver	47
Bus Driver (part-time)	41
Cable Services Specialist	44
City Clerk/Executive Assistant	S7
City Engineer	85
City Manager	113
Code Compliance Officer	58
Community Center Caretaker	36
Community Development Director	92
Community 5ervices Director	86
Deputy Finance Director	87
Deputy Human Resources Director	83
Development Project Coordinator	58
Development Services Manager (Building Official)	84
Economic Development Director	92
Electric Meter Test Technician	7S
Electric Operations & Maintenance Manager	8S
Electric Service Planner	77
Electric 5ervices Worker	S2
Electric Utility Director	100
Engineering 5ervices Assistant	48
Executive Assistant	S7
Executive Secretary	53
Field Service Representative	S1
Financial Services Specialist	47
Fleet Maintenance Mechanic	53
Human Resources Technician	S4
Information Technology Coordinator	S9
Information Technology/Media Technician	57

*Per Class Plan Resolution No. 2014-44 or any future amendments authorized by Council.

CLASSIFICATIONS AND SALARY RANGES

Lead Bus Driver/Trainer	SS
Lead Field Service Representative	SS
Lead Public Safety Dispatcher	S6
Maintenance Worker	4S
Motor Sweeper Operator	S0
Office Specialist	44
Payroll Coordinator	S3
Police Assistant II	48
Police Assistant I	44
Police Chief	100
Police Corporal	71
Police Information Technology Technician	59
Police Lieutenant	87
Police Officer	67
Police Recruit/Trainee	N/A
Police Staff/Master Sergeant	78
Power Contracts & Revenue Administrator	8S
Powerline Apprentice	67/ 73
Powerline Crew Supervisor	79
Powerline Technician	7S
Program Coordinator	43
Public Benefits Coordinator	SS
Public Safety Dispatcher	S2
Public Works Analyst	68
Public Works Director	100
Public Works Inspector	62
Public Works Superintendent	78
Receptionist	31
Recreation Coordinator (correction of salary range)	43
Senior Building Inspector	67
Senior Civil Engineer	82
Senior Electric Service Planner	79
Senior Maintenance Worker	S0
Senior Utility Billing Rep	48
Substation Test Technician	7S
Transit Manager	73
Utility Billing Representative	43
Utility Financial Analyst	76
Utility Financial Analyst	76
Utility Services Assistant	48
Warehouse Services Specialist	S2
Wastewater Collection System Supervisor	60
Wastewater Collection System Technician	S2
Water Construction Crew Lead	S6

*Per Class Plan Resolution No. 2014-44 or any future amendments authorized by Council.

CLASSIFICATIONS AND SALARY RANGES

Water Crew Supervisor	60
Water Meter Crew Lead	56
Water Services Worker	52
Water Valve Flushing Crew Lead	56
Water/Wastewater Superintendent	78
Work Release Crew Leader	47

*Per Class Plan Resolution No. 2014-44 or any future amendments authorized by Council.

EXHIBIT "C"

JOB DESCRIPTIONS

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CITY OF BANNING, CALIFORNIA

Recreation Sports Coordinator

Job Code: 3329

FLSA **[ ] Exempt** **[x] Non-Exempt**

JOB DEFINITION: Under general direction of the Community Services Director, to assist in conducting various youth and adult sports programs; assist in organization, promotion and coordination of special events and activities; and to perform related duties as assigned.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Assists in planning, promoting, implementing, supervising, and coordinating sports programs, day camp, and special events. Proficiently operates computer and software programs in the design, preparation, and distribution of Community Services publicity, including press releases, flyers, and printed schedules. Promotes interest and participation in sports through public relations and informational programs. Assists in administration of the youth and adult sports and recreation classes, including processing registration forms and accepting fees. Assists in recruitment, selection, training and supervision of seasonal personnel. Plans work, schedules, and trains assigned staff. Responds to citizen inquiries and requests for information. Assists in coordinating sports, day camp, and special activities with other City departments and divisions, and with outside agencies. Actively researches new sports programs and sponsors, and develops ways to contact and obtain the appropriate coaches and assistants. Orders supplies and maintains inventory. Speaks before community groups. Works flexible hours, including weekends, evenings, and holidays. Performs related duties as assigned.

KNOWLEDGE and SKILLS:

- Knowledge of principles, procedures, and requirements used in developing and administering a coordinated community sports program adapted to the particular needs of the community, including youth and cultural activities.
- Knowledge of modern office procedures, methods, and computer equipment.
- Knowledge of business letter writing and basic report preparation.
- Knowledge of recent developments, current literature, and sources of information related to leisure services planning and administration.
- Knowledge of public relations principles and techniques.

- Ability to communicate clearly and concisely, both orally and in writing.
- Ability to stablish and maintain cooperative relationships with the general public and those contacted in the course of work.
- Ability to properly interpret and make decisions in accordance with laws, regulations, and policies.
- Ability to work well independently.
- Ability to work well in a fast-paced, often hectic environment, and meet established deadlines.
- Generate support and enthusiasm of leaders, participants, groups, and agencies in recreation programs.

MINIMUM QUALIFICATIONS: Two years of college-level coursework in recreation/sports management, social services or a related field and two (2) years of parks and recreation experience in sports.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license. May be exposed to extreme weather conditions, potential physical harm, infectious diseases, hazardous chemicals and/or dangerous machinery. May be required to work outside the traditional work schedule.

CITY OF BANNING, CALIFORNIA

Human Resources Technician

Job Code: 1230

FLSA **[ ] Exempt** **[x] Non-Exempt**

JOB DEFINITION: Under general supervision, provides responsible technical and office support for personnel and risk management activities and functions in a centralized personnel setting; performs related work as assigned.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES:

This is a technical support class, providing a variety of personnel and risk management support in clearly defined areas as well as performing complex and responsible office support work. This class is distinguished from the general office support classes by the technical knowledge of the personnel and risk management function required for successful performance of the work, including an above average degree of technological proficiency with modern computers.

- Prepares job announcements and advertising materials and places ads;
- Assists Analyst in preparing/administering written examinations, proctoring exams and oral boards;
- Scores examinations and prepares eligibility lists;
- Performs basic background and reference checks on new employees.
- Prepares and administers new hire orientation documents and assists them in completing necessary forms;
- Processes enrollments and changes in employee benefits, COBRA rights, maintains human resource records,
- Arrange for random drug testing of employees in accordance with city policies.
- Prepares employee evaluation forms for routing to department. Maintains a log of outstanding evaluations, and notifies department of any outstanding evaluations as needed.
- Respond to high volume of requests and inquiries from the general public, other agencies and other City departments regarding Human Resource Department functions, requiring the ability to easily interpret routine policies, procedures, rules with guidance from higher levels staff on difficult or complex interpretations; serves as ombudsman to employees on benefit questions; acts as liaison with benefit providers to solve problems; refers employees to the proper source for information;
- Performs a variety of responsible office support work such as preparation of confidential correspondence; prepares periodic and special reports regarding personnel activities utilizing complex software;
- Sets up and maintains workers comp and liability claim files; assembles and reviews pertinent information to assist in evaluation of claims; communicates with third-party administrators regarding claims activities;
- Arranges recovery and defense actions related to small claims subrogation efforts.
- Processes physical damage claims filed by City departments for reimbursement (create form for this)
- Coordinates with Information Services to maintain Human Resources Department web site. Converts documents into a format appropriate for the internet.
- Performs other duties as assigned or required.

(continued on reverse side)

CITY OF BANNING, CALIFORNIA

Human Resources Technician

Job Code: 1230

KNOWLEDGE and SKILLS:

Basic public personnel administration practices and terminology, particularly as related to recruitment, selection and compensation and benefits administration
Federal and State COBRA laws
Basic claims administration practices and terminology, particularly as related to public agency liability claims and workers compensation claims
Standard office practices and procedures, including filing and the use of office equipment
Use of Microsoft Word, Excel, Power Point & Access, separately and interactively
Business English, including spelling, grammar and punctuation
Business arithmetic
Basic functions and structure of a municipal government
Records management & retention policies, & document imaging software

Skill in:

Understanding, analyzing, interpreting, applying and explaining complex policies, procedures, laws and regulations
Preparing clear, concise and effective written materials
Maintaining accurate records and files
Researching and compiling information and preparing reports and recommendations
Exercising sound independent judgment within established guidelines
Establishing and maintaining effective working relationships with those contacted in the course of the work, including maintaining a high degree of confidentiality
Coordinating multiple concurrent projects

MINIMUM QUALIFICATIONS: Equivalent to graduation from high school and five years of progressively responsible personnel work or office administrative work in a public sector agency. A paralegal certificate or some college-level training is highly desirable. Must possess a valid California driver's license.

ADDITIONAL REQUIREMENTS: May be required to work outside the traditional work schedule.

EXHIBIT "D"

Permanent Salary Range Table

Salary Range	Minimum	Midpoint	Maximum	Salary Range	Minimum	Midpoint	Maximum
1	$10,712	$12,602	$14,492	59	$44,858	$52,774	$60,691
2	$10,979	$12,917	$14,855	60	$45,980	$54,094	$62,208
3	$11,254	$13,240	$15,226	61	$47,129	$55,446	$63,763
4	$11,535	$13,571	$15,607	62	$48,307	$56,832	$65,357
5	$11,824	$13,910	$15,997	63	$49,515	$58,253	$66,991
6	$12,119	$14,258	$16,397	64	$50,753	$59,709	$68,666
7	$12,422	$14,614	$16,807	65	$52,022	$61,202	$70,383
8	$12,733	$14,980	$17,227	66	$53,322	$62,732	$72,142
9	$13,051	$15,354	$17,657	67	$54,655	$64,301	$73,946
10	$13,377	$15,738	$18,099	68	$56,022	$65,908	$75,794
11	$13,712	$16,132	$18,551	69	$57,422	$67,556	$77,689
12	$14,055	$16,535	$19,015	70	$58,858	$69,245	$79,631
13	$14,406	$16,948	$19,491	71	$60,329	$70,976	$81,622
14	$14,766	$17,372	$19,978	72	$61,838	$72,750	$83,663
15	$15,135	$17,806	$20,477	73	$63,384	$74,569	$85,754
16	$15,514	$18,251	$20,989	74	$64,968	$76,433	$87,898
17	$15,902	$18,708	$21,514	75	$66,592	$78,344	$90,096
18	$16,299	$19,175	$22,052	76	$68,257	$80,303	$92,348
19	$16,707	$19,655	$22,603	77	$69,964	$82,310	$94,657
20	$17,124	$20,146	$23,168	78	$71,713	$84,368	$97,023
21	$17,552	$20,650	$23,747	79	$73,506	$86,477	$99,449
22	$17,991	$21,166	$24,341	80	$75,343	$88,639	$101,935
23	$18,441	$21,695	$24,950	81	$77,227	$90,855	$104,483
24	$18,902	$22,238	$25,573	82	$79,157	$93,126	$107,095
25	$19,375	$22,794	$26,213	83	$81,136	$95,455	$109,773
26	$19,859	$23,363	$26,868	84	$83,165	$97,841	$112,517
27	$20,355	$23,947	$27,540	85	$85,244	$100,287	$115,330
28	$20,864	$24,546	$28,228	86	$87,375	$102,794	$118,213
29	$21,386	$25,160	$28,934	87	$89,559	$105,364	$121,169
30	$21,921	$25,789	$29,657	88	$91,798	$107,998	$124,198
31	$22,469	$26,434	$30,399	89	$94,093	$110,698	$127,303
32	$23,030	$27,094	$31,159	90	$96,446	$113,465	$130,485
33	$23,605	$27,772	$31,938	91	$98,857	$116,302	$133,747
34	$24,196	$28,466	$32,736	92	$101,328	$119,210	$137,091
35	$24,801	$29,178	$33,554	93	$103,861	$122,190	$140,518
36	$25,421	$29,907	$34,393	94	$106,458	$125,245	$144,031
37	$26,057	$30,655	$35,253	95	$109,119	$128,376	$147,632
38	$26,708	$31,421	$36,134	96	$111,847	$131,585	$151,323
39	$27,376	$32,207	$37,038	97	$114,644	$134,875	$155,106
40	$28,060	$33,012	$37,964	98	$117,510	$138,247	$158,984
41	$28,762	$33,837	$38,913	99	$120,447	$141,703	$162,958
42	$29,481	$34,683	$39,886	100	$123,459	$145,245	$167,032
43	$30,218	$35,550	$40,883	101	$126,545	$148,876	$171,208
44	$30,973	$36,439	$41,905	102	$129,709	$152,598	$175,488
45	$31,747	$37,350	$42,952	103	$132,951	$156,413	$179,875
46	$32,541	$38,284	$44,026	104	$136,275	$160,324	$184,372
47	$33,355	$39,241	$45,127	105	$139,682	$164,332	$188,982
48	$34,189	$40,222	$46,255	106	$143,174	$168,440	$193,706
49	$35,043	$41,227	$47,411	107	$146,753	$172,651	$198,549
50	$35,919	$42,258	$48,597	108	$150,422	$176,967	$203,512
51	$36,817	$43,314	$49,812	109	$154,183	$181,392	$208,600
52	$37,738	$44,397	$51,057	110	$158,037	$185,926	$213,815
53	$38,681	$45,507	$52,333	111	$161,988	$190,574	$219,161
54	$39,648	$46,645	$53,642	112	$166,038	$195,339	$224,640
55	$40,839	$47,811	$54,983	113	$170,189	$200,222	$230,256
56	$41,655	$49,006	$56,357	114	$174,444	$205,228	$236,012
57	$42,697	$50,231	$57,766	115	$178,805	$210,359	$241,912
58	$43,764	$51,487	$59,210	116	$183,275	$215,617	$247,960

Midpoint
2.50%

Range Spread
35.00%

CITY COUNCIL AGENDA
REPORT OF DIRECTORS

DATE: **July 14, 2015**

TO: **Honorable Mayor and City Council**

FROM: **Alex Diaz, Chief of Police**

SUBJECT: **Animal Control Services Contract**

RECOMMENDATION: It is recommended that the City Council approve the "Agreement to Provide Animal Control Field Services" contract for FY16 (July 1, 2015 through June 30, 2016).

BACKGROUND: The City of Beaumont has provided Animal Control Field Services for the City of Banning since July 1, 2010. The contract is billed on a per-call basis, and initially entailed a cost of $30 per incident. In April 2012, the fee increased to $50 per-call. Our current contract is scheduled for renewal with an increase to $75 per-call. Based on prior year's activity, it is estimated that our annual costs might increase from $100,000 to a high of $170,000. The new contract (effective July 1st, 2015) is a month-to-month contract.

DISCUSSION: The month-to-month contract stipulation allows our City the ability to look at other options in the future, including the creation of our own Animal Control Services department. Staff will look for options on specific programs that will be beneficial to the care of domestic animals within our City, mindful of the economic impact the implementation of said program could create.

FISCAL DATA: N/A

RECOMMENDED BY:

Dean Martin
Interim City Manager

PREPARED BY:

Alex Diaz
Chief of Police

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AGREEMENT TO PROVIDE ANIMAL CONTROL FIELD SERVICES

THIS AGREEMENT is made and effective July 1, 2015, by and between the City of Banning ("City") and the City of Beaumont ("Beaumont"). City and Beaumont are at times hereinafter collectively referred to as "Parties" or individually as the "Party".

RECITALS

A. Beaumont has the personnel, experience and equipment to provide animal control field services under the direction of Beaumont's Chief of Police.

B. City has asked Beaumont to provide it with animal control field services. It is the purpose of this Agreement to set forth the terms and conditions by which Beaumont will do so.

AGREEMENT

NOW, THEREFORE, the consideration hereinafter set forth and subject to and upon the terms, covenants and conditions of this Agreement, the Parties agree as follows:

1. **Scope of Basic Animal Services.** Beaumont shall provide the following Basic Animal Services:

a. If available, a trained animal control field service officer on duty ("ACO") seven (7) days a week, between the hours of 7 a.m. and 5 p.m., which ACO shall be equipped with a motor vehicle suitable for the impoundment of small animals, including basic tools required to perform Basic Animal Services. If such ACO is not available, then City shall be responsible for responding to calls for service;

b. Beaumont will provide City 24-hour access to Beaumont temporary kennels;

c. Beaumont will provide a 24-hour Call Center to which City residents may call for animal control field services;

d. Beaumont will provide access for City residents to periodic animal licensing clinics in City of Beaumont;

e. Beaumont will directly bill fees and charges to City recipients of animal control services; and

f. Beaumont will provide recordkeeping services, including animal licenses.

2. **Afterhours Emergency Services.** City may request emergency services between the hours of 5 p.m. and 7 a.m. from Beaumont. Determination of what constitutes an "emergency" shall be made by Beaumont based on the specific facts of the incident and the need for an ACO.

3. **Compensation.** For each animal control service call-out, City shall pay to Beaumont the sum of $75.00 per call-out, plus any actual costs incurred including, but not limited to, the impoundment of large or wild animals, tranquilizers, veterinary services, shelter services, additional officers, animal cruelty investigations, and any additional services not included within Basic Animal Services, billed monthly.

4. **Credit for Fees and Charges.** Beaumont shall attempt to collect from City recipients of animal control services such fees and charges as are lawfully imposed for the impoundment, boarding, and adoption of animals. When collected, Beaumont shall remit the collected amount to City monthly.

5. **Term of Agreement.** The initial term of this Agreement shall be for one (1) year with automatic one year renewals for two additional years unless terminated sooner as provided in section 6.

6. **Termination.** City or Beaumont may terminate this Agreement at any time, upon 30-days prior written notice; provided, however, that City shall pay for all services rendered to it prior to the date of termination, and Beaumont shall reimburse City for any fees and charges collected from recipients of animal control services rendered prior to the termination date but collected thereafter.

7. **City Liaison.** In order to ensure smooth operation of the services provided hereunder, City and Beaumont each agree to appoint a representative who shall be responsible for coordinating the implementation of this Agreement.

Beaumont Appointment: Beaumont appoints the Chief of Police as its representative. The chief may be contacted as follows:

Name: Frank Coe, Chief of Police
Beaumont Police Department
550 East 6th Street
Beaumont, CA 92223
Telephone: 951-769-8500
Fax: 951-769-8508
E-mail: fcoe@beaumontpd.org

City Appointment: City appoints City Manager as its representative. City Manager may be contacted as follows:

Name: Alex Diaz, Chief of Police
Banning Police Department
125 E. Ramsey Street
Banning, CA 92220
Telephone: 951-849-1194
Fax: 951-922-0039
E-mail: adiaz@ci.banning.ca.us

8. **Notices.** Any notice, payment, statement, or demand required or permitted to be given hereunder by either Party to the other shall be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the Parties at the addresses appearing in section 7 above but each Party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

9. **Indemnification.** Nothing in the provisions of this Agreement is intended to create duties or obligations to, or rights in third parties not party to this Agreement, or affect the legal liability of either Party to Agreement, by imposing any standard of care respecting the regulation and enforcement of laws regarding animals different from the standard of care imposed by law. It is understood and agreed that neither City, nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Beaumont under or in connection with any work, authority or jurisdiction delegated to Beaumont under this Agreement. It is also understood and agreed that pursuant to Government Code 895.4, Beaumont shall defend, indemnify and save harmless City, all officers, and employees from all claims, suits or actions of every name, kind, and description brought forth or on account of injuries or death of any person or damage to property resulting from anything done or omitted to be done by Beaumont under this Agreement except as otherwise provided by Statute. It is understood and agreed that neither Beaumont nor any officer or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority or jurisdiction delegated to City under this Agreement. It is also understood and agreed that pursuant to Government Code Section 895.4, City shall defend, indemnify and save harmless Beaumont, all officers and employees from all claims, suits or actions of every name, kind and description brought forth on account of injuries or death of any person or damage to property resulting from anything done or omitted to be done by City under connection with any work, authority or jurisdiction delegated to City under this Agreement except as otherwise provided by Statute.

10. **Status of the Parties' Officers/Employees/Agents.** Neither Party's officers, employees, agents, partners, other contractors or subcontractors shall be deemed to be employees of the other Party at any time. Nothing in this Agreement shall be construed as creating a civil service employer- employee relationship or a joint venture relationship. No officer, employee, agent, partner, other contractor or subcontractor of the other Party shall be eligible for membership in or any benefits from any plan for hospital, surgical, or medical insurance, or for membership in any retirement program, paid vacation, paid sick leave, other leave, with or without pay, collective bargaining rights, grievance procedures, or any other benefits which inures to or accrues to an employee of the other Party. The only performance and rights due the other Party are those specifically stated in this Agreement.

11. **Governing Law and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Additionally, this Agreement has been formed and shall be performed in Riverside County; the venue for any legal action on the Agreement shall be in Riverside County.

12. **Entire Agreement**. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without the prior written agreement of the Parties.

13. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be

considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

14. **Successors and Assigns.** This Agreement shall be binding upon and insure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

15. **Captions.** The captions to the various clauses of this Agreement are for information purposes only and shall not alter the substance of the terms and conditions of this Agreement.

16. **Authorization.** Each of the Parties represents and warrants to the other that this Agreement has been duly authorized by all necessary corporate or governmental action on the part of the representing Party and that this Agreement is fully binding on such Party.

17. **Amendments to this Agreement.** From time-to-time, City and Beaumont may determine that the provision of services hereunder could be improved, made more efficient or expanded. Therefore, the Parties agree to meet and confer at the request of either Party and to negotiate in good faith such reasonable amendments to this Agreement as the Parties deem appropriate.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following authorized officials.

CITY OF BEAUMONT

By _____
BRENDA KNIGHT, Mayor

ATTEST:

By _____
JULIO MARTINEZ, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF CALIMESA

By _____
DEBORAH FRANKLIN, Mayor

ATTEST:

By _____
MARIE A. CALDERON, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **CITY COUNCIL**

FROM: **Dean Martin, Interim City Manager**

SUBJECT: **City Manager Signing Authority**

RECOMMENDATION:

1. **Require a monthly written report to the City Council of the contracts signed under the sole authority of the City Manager.**
2. **Eliminate the provision within the City's standard professional serviee contracts that allow for exceedance of Council approved contract amounts.**
3. **Require City Couneil approval for contracts that are renewed on an annual basis which in the aggregate will exceed $25,000.**

JUSTIFICATION: Codified in the City's Municipal Code is the authority for the City Manager to execute contracts under his or her sole authority for $25,000 or less. However, no provision exists that requires regular reporting to City Council of the contracts executed under this authority. Additionally, there are ambiguities in the existing authority that require clarification to ensure appropriate accountability and to minimize the potential for abuse.

BACKGROUND: Municipal Code Section 3.24, "Purchasing System", governs the City Manager's authority to sign contracts. Section 3.24.040, "Types of contracts", part B, states that "informal letter contracts shall be used when the purchasing officer (defined in Section 3.24.020, Definitions, as the city manager or his or her designees(s)) determines that due to a lack of complexity, risk, or monetary value, a purchase of services need not include the detailed procedural and substantive protections of the city's interests". Section 3.24.070, Formal bid procedures, part A.6, Acceptance of Formal Bid, states that "contracts in the amount of $25,000 or less will be awarded by the City Manager".

Contracts for professional services are governed by Section 3.24.090, "Professional services purchasing procedures", part A, which states in part "professional services contracts of twenty-five thousand dollars or less shall be awarded by the city manager, upon recommendation of the director of the department responsible for the project." Part C of that same section, states in part "in the event that it is determined by the city manager, that it would be in the best interest of the city for services to be provided by a specific consultant, a contract may be awarded based on negotiations with the specific consultant. Contracts in the amount of twenty-five thousand or less will be awarded by the city manager". From the foregoing, the authority of the City

Manager to execute contracts less than $25,000 is codified in the City's Municipal Code. However, the Code does not include a reporting requirement.

In addition to the Municipal Code, the City's standard professional services contract in Section 1.8, "Additional Services", grants the City Manager the authority to exceed the original contract amount by the lesser of 10% or $25,000, or to extend the maturity date up to 180 days.

Establishment of a policy that requires monthly reporting of the contracts executed under the City Manager's authority would result in greater transparency. Additionally, deletion of the contractual authority granted in the standardized contract to exceed the Council approved contract amount would lead to greater accountability. Finally, it would be good to clarify that a multi-year contract (including contracts that are renewed from year to year) requires Council approval, even if the annual amount is $25,000 or less, if the aggregate amount of the contracted services will exceed $25,000. For example, there are a number of maintenance type contracts that annually are less than $25,000, but are renewed each year. Since the service continues from year to year and the aggregate amount is more than $25,000 over an extended period of time, Council action would be advisable as it reduces the potential for abuse.

FISCAL DATA: No fiscal impact

RECOMMENDED BY:

Dean Martin
Interim City Manager

CITY COUNCIL AGENDA

REPORT OF OFFICERS

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Heidi Meraz, Community Services Director**

SUBJECT: **RESOLUTION NO. 2015-64 "AUTHORIZING THE PURCHASE OF TWO (2) ELDORADO NATIONAL CNG POWERED EZ-RIDER II BUSES FROM CREATIVE BUS SALES UTILIZING THE CALIFORNIA ASSOCIATION FOR COORDINATED TRANSPORTATION (CALACT) COMPETITIVE BID AWARD FOR A TOTAL OF $888,681.06"**

RECOMMENDATION: That the Council authorizes the purchase of TWO (2) El Dorado National CNG powered EZ-Rider II buses from Creative Bus Sales utilizing the California Association for Coordinated Transportation (CalAct) competitive bid award for a total of $888,681.06.

BACKGROUND: Due to an aging fleet, additional buses are needed to maintain existing service of our fixed-route bus system. Funds are available to cover the purchase of the two (2) buses and all the necessary options via State Transit Assistance (STA) as well as the California Department of Transportation through the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Program. The purchase of said buses will provide increased reliability an passenger comfort, as well as replace existing buses that are beyond their useful life and only being kept in service to meet demand.

CalAct conducts Caltrans approved vehicle procurements as a competitive process for many various types and sizes of transit vehicles to assist the purchase of equipment by small and medium public transit agencies. By utilizing this cooperative process to purchase transit vehicles, we are receiving the lowest possible pricing.

FISCAL DATA: Funding for this purchase is available in Transit Fund 610-5800-434-90-51. There will be no impact to the General Fund.

RECOMMENDED BY:

Heidi Meraz
Community Services Director

REVIEWED AND APPROVED BY:

Dean Martin, Interim City Manager/
Interim Administrative Services Director

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RESOLUTION NO. 2015-64

RESOLUTION NO. 2015-64 "AUTHORIZING THE PURCHASE OF TWO (2) ELDORADO NATIONAL CNG POWERED EZ-RIDER II BUSES FROM CREATIVE BUS SALES UTILIZING THE CALIFORNIA ASSOCIATION FOR COORDINATED TRANSPORTATION (CALACT) COMPETITIVE BID AWARD FOR A TOTAL OF $888,681.06"

WHEREAS, funding has been made available for the capital expenses through State Transit Assistance (STA), as well as by the California Department of Transportation through the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Program; and

WHEREAS, two buses in the Banning Pass Transit Fleet have exceeded their useful lives; and

WHEREAS, Banning Pass transit desires to purchase two (2) EZ-Rider II buses that will meet the needs of the department; and

WHEREAS, Creative Bus Sales has prepared a proposal through the CalAct Purchasing Cooperative; and

WHEREAS, utilizing the CalAct competitive bid award is the most fiscally responsible means for acquiring the above mentioned EZ-Rider II buses,

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

SECTION 1. The City Council adopts Resolution No. 2015-64, Authorizing the purchase of two (2) El Dorado National CNG Powered EZ-Rider II Buses from Creative Bus Sale Utilizing the California Association for Coordinated Transportation (CALACT) Competitive Bid Award for a total $888,681.06.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, 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. 2014-64, was duly adopted by the City Council of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-67, "Approving the Inerease of Hangar Rents and Access Fees at the Banning Mnnicipal Airport and Amending Resolution No. 2005-44 and Resolution No. 2006-114"**

RECOMMENDATION: Adopt Resolution No. 2015-67, "Approving the Increase of Hangar Rents and Access Fees at the Banning Municipal Airport and Amending Resolution No. 2005-44 and Resolution No. 2006-114."

JUSTIFICATION: The proposed increase will generate additional revenues to provide funding for the general operations and maintenance of the Banning Municipal Airport.

BACKGROUND: The current Airport Fee Schedule was approved on November 22, 2005 under Resolution No. 2005-44. Currently, the airport operates independently with revenues generated by hangar and tie-down rental fees, fuel sales and annual operation grants from the Department of Transportation. The revenues are used for general operations and to provide grant matching funds as required by the Federal Aviation Administration ("FAA") for capital improvement projects.

Per Section 7 of the Agreement, attached as Exhibit "A", with a City provided 30 day notice, rates can be increased once per calendar year at the sole discretion of the City. As a result, staff recommends an increase in fees to be implemented over a period of five (5) years with the rates increasing 5% in year one beginning September 1, 2015 with the implementation of automatic rate increases for the following four year period beginning July 1st of each year commencing in 2016, 2017, 2018 and 2019.

On July 6, 2015, the proposed rate increase was presented to the Budget and Finance Committee ("Committee"). Consequently, the Committee made the following recommendations in addition to the initial 5% rate increase effective September 1, 2015:

- The rate increase for years 2016, 2017, 2018 and 2019 will be automatic rate increases equal to the average of the monthly percentage increases in the Consumer Price Index ("CPI"), All Urban Consumers, for the Los Angeles/Orange County/Riverside Area as published by the United States Department of Labor, Bureau of Labor Statistics for the March through February period or reflect a 2% increase, whichever is higher; and

- Currently the City pays for all water and electric services in connection with use of the hangars. The Committee recommends establishing a fair and reasonable manner in which

to bill the hangar tenants for the water and electric charges associated with the use of the hangars.

Current rates and proposed rates are attached as Exhibit "B" and will be effective September 1, 2015. As a comparison, surrounding airport hangar rates are attached as Exhibit "C".

FISCAL DATA: The proposed 5% rate increase will generate additional revenues in an approximate amount of $4,050.00 for Fiscal Year 2015/2016.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim City Manager/
Administrative Services Director

Attachments:

1. Exhibit "A"- Hangar Rental Agreement Template
2. Exhibit "B" – Current Rates and Proposed Rates
3. Exhibit "C" –Surrounding Area Hangar Rate Comparison

RESOLUTION NO. 2015-67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE INCREASE OF HANGAR RENTS AND ACCESS FEES AT THE BANNING MUNICIPAL AIRPORT AND AMENDING RESOLUTION NO. 2006-114 AND RESOLUTION NO. 2005-44

WHEREAS, Resolution No. 2006-114 revised the Fee and Service Charge Revenue/Cost Comparison System in conformance with Ordinance Nos. 908 and 912, amending Resolution Nos. 1993-30, 1995-46, 2000-70, 2004-64 and 2005-34; and

WHEREAS, the airport hangar fees and other airport fees were adjusted with the approval of Resolution No. 2005-44; and

WHEREAS, in order to meet current operational demands, it is essential for the City to increase the rates as allowed per the Airport Hangar Use Agreements; and

WHEREAS, per Section 7 of the agreements, as shown in Exhibit "A" with a City provided 30 day notice, rates can be increased once per calendar year at the sole discretion of the City;

WHEREAS, an increase in fees will be implemented over a period of five (5) years with the rates increasing 5% in year one beginning September 1, 2015 as shown in attached Exhibit "B"; and

WHEREAS, the rate increase for years 2016, 2017, 2018 and 2019 will be automatic rate increases equal to the average of the monthly percentage increases in the Consumer Price Index ("CPI"), All Urban Consumers, for the Los Angeles/Orange County/Riverside Area as published by the United States Department of Labor, Bureau of Labor Statistics for the March through February period or reflect a 2% increase, whichever is higher; and

WHEREAS, staff will establish a fair and reasonable manner in which to bill the hangar tenants for the water and electric charges associated with the use of the hangars which is currently paid for by the City.

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

SECTION 1. The hangar rents and access fees at Banning Municipal Airport are hereby established per the attached Exhibit "A".

SECTION 2. The rates will become effective the first year on September 1, 2015 with the subsequent years being increased on July 1st of 2016, 2017, 2018 and 2019.

PASSED, ADOPTED AND APPROVED this 14th day of July, 2015.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon,
City Clerk of the 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. 2015-67, was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

ATTACHMENT 1

EXHIBIT "A" - BANNING AIRPORT HANGAR USE AGREEMENT

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AIRPORT HANGAR USE AGREEMENT

1. PARTIES. This Agreement (hereinafter "the Agreement") is made between the City of Banning (hereinafter "CITY") and:

_____ **Te**nant's Name (hereinafter "TENANT")

_____ Tenant's Street Address/P.O. Box

_____ City/State/Zip Code

_____ Tenant's Telephone Number

TENANT hereby agrees that he/she may be given Notice, as provided for herein, at the above-stated address.

2. PREMISES. City hereby leases to TENANT the following Aircraft Hangar at Banning Municipal Airport, in Banning, California:

_____ Hangar Number (hereinafter "Premises").

TENANT hereby acknowledges that he/she has inspected the Premises and accepts said Premises "as is" and in its present condition.

3. USE. TENANT shall use the Premises for the storage of an aircraft identified as follows:

_____ Aircraft Make

_____ Aircraft Model

_____ Aircraft registration number

In addition to the above-described aircraft, TENANT may also store such supporting equipment as necessary for the operation and/or maintenance of said aircraft. TENANT shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or nuisance, or causes damage to the Premises or neighboring properties. TENANT shall not permit anything to be done in or about the Premises which will in any way obstruct, interfere, injure, annoy, or disturb the rights of other tenants, other occupants or users of the Banning Municipal Airport or employees and/or agents of CITY. All uses of the Premises that are not expressly granted by this Agreement are not permitted without prior written consent of CITY.

4. TERM. TENANT's occupancy and use of the Premises shall begin on the following date:

_____ hereinafter referred to as "Commencement Date")

The term of the TENANT's occupancy of the Premises shall be on a month-to-month basis. The term shall continue on a month-to-month basis until the agreement is terminated by one of the parties as provided for herein.

5. RENT. TENANT agrees to pay to CITY as rent, the sum of $ ____( )__, or demand, on the first day of each month. Should this agreement commence on other than the first day of a calendar month, the monthly rent for the first month shall be the full amount expressed above and the rent for the second month shall be prorated based on the number of days remaining in the month on which TENANT first commences the Agreement.

6. LATE PAYMENT. If the monthly rent is not received by the tenth day after it is due, TENANT shall pay to CITY a late payment charge equal to ten percent (10%) of the outstanding monthly rent. TENANT and CITY agree CITY will sustain damage on account of late payment of rent, including, but not limited to, administrative, processing, accounting management expenses and costs, but that it will be impracticable and extremely difficult to specify the actual amount of such damage. The parties agree that this late charge represents a fair and reasonable estimate of the damages that CITY will incur by reason of TENANT's late payment of rent. TENANT bears the risk of loss or delay of any payment made by mail. Acceptance of a late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount, or prevent CITY from exercising any of the other rights and remedies available to CITY pursuant to this lease or under any applicable law.

7. ADJUSTMENTS TO MONTHLY RENT. The monthly rent established in paragraph 5 herein, shall continue until changed by CITY as provided for herein. No more than once each calendar year, CITY shall have the right to adjust the amount of the monthly rent. The amount of monthly rent, as adjusted, shall be determined at the sole discretion of CITY, or its designated representative. The adjusted rent amount shall be deemed effective upon thirty (30) days written notice to TENANT at the address set forth in paragraph 1, above. Notice shall be deemed effective upon CITY depositing same with the U.S. Postal Service with prepaid, first-class postage affixed.

8. SECURITY DEPOSIT. Prior to the Commencement Date of this agreement, TENANT shall pay to CITY a Security Deposit in the amount of $ ( ). The Security Deposit shall secure TENANT's faithful performance of TENANT's obligations under the agreement. If TENANT fails to pay the Monthly Rent amount or any other amount which TENANT is obligated to pay pursuant to this agreement or defaults on the performance of any of the terms, provisions, covenants, and conditions contained in the agreement, CITY may withdraw the Security Deposit for the payment of any amount in default or for any other sum which CITY may spend or be required to spend by reason of TENANT's default. The Security Deposit or any balance of the Security Deposit remaining shall be returned to TENANT at the termination of the agreement, less any accrued or accruing interest, and less any amount expended by CITY to repair damage or deterioration left un-repaired by TENANT.

9. INSURANCE. TENANT, at his/her own expense, shall procure and maintain during the duration this Agreement, the following insurance with the following limits:

(i) General Liability Insurance, one million dollars ($1,000,000);
(ii) Property Damage Insurance, one million dollars ($1,000,000);

(A) All insurance required pursuant to this Agreement shall be with carriers duly licensed to transact business in the State of California.

(B) The policies shall contain additional insured endorsements naming CITY and its officers, employees, agents, and volunteers, as additional insureds with respect to all claims alleged to arise out of or arising out of TENANT's use or occupancy of the Premises. The policy shall provide CITY with thirty (30) days written notice of cancellation. CITY shall have no liability for any premiums charged for such coverage(s). The inclusion of CITY as an additional named insured is not intended to and shall not make CITY a partner or joint venturer with TENANT in TENANT's operations at Airport.

(C) TENANT shall provide CITY with certificates of insurance and additional insured endorsements as evidence of compliance with this provision. TENANT may not occupy the Premises until evidence of insurance, satisfactory to CITY, is provided to CITY.

(D) All insurance required as part of this Agreement must be maintained in force at all times by TENANT. Failure to maintain said insurance, due to expiration, cancellation, or for any other reason shall be deemed a material breach of the agreement and may be cause for CITY to direct TENANT to immediately suspend all activities at the Airport. Failure to reinstate said insurance within ten (10) days of TENANT's receipt of CITY's notice shall be cause for termination and forfeiture of this Agreement.

10. INDEMNITY. Except to the extent that indemnification is prohibited by law, TENANT shall defend, with counsel approved by CITY, indemnify and hold harmless, CITY, its authorized officers, agents, volunteers and employees, from and against any and all claims, actions, losses, damages, costs, expenses, and/or liability alleged to arise out of or arising out of this Agreement or from TENANT's use or occupancy of the Premises, including the acts, errors or omissions of any agent, contractor, employee or invitee of TENANT and for any costs or expenses incurred by the CITY on account of any such claim. TENANT's obligation to defend and indemnify CITY as provided herein shall apply regardless of whether said claim(s) also allege the acts or omissions of CITY caused or contributed to the cause of the subject incident. TENANT shall not be required to defend or indemnify CITY for those claims arising out of the sole negligence of CITY.

(A) The expiration or termination of this Agreement and or the termination of TENANT's right to possession shall not relieve TENANT from liability under any indemnity provisions of this agreement as to matters occurring or accruing during the Term or by reason of TENANT's occupancy of the Premises.

11. TAXES, ASSESSMENTS, AND LICENSES. TENANT shall pay before delinquency any and all property taxes, assessments, fees, or charges, including but not limited to possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to TENANT and located in or about the Premises. TENANT recognizes and understands that this agreement may create a possessory interest subject to property taxation and that the TENANT is obligated to pay and discharge such taxes. TENANT shall also pay all license or permit fees necessary or required by law for the conduct of TENANT's operation.

12. IMPROVEMENTS. No alterations, modifications, improvements or the installation of fixtures of any kind whatsoever in or about the Premises shall be undertaken by TENANT, unless TENANT has first obtained the written approval from CITY. All alterations, modifications improvements or installation shall be completed in: (i) accordance with the plans and specifications approved by CITY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, any and all applicable permits and the Master Plan for the Airport. TENANT shall provide CITY with not less than thirty (30) day's notice prior to the commencement of any work in, on or about the Premises so that CITY, at CITY's option, may post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed contractors, which contractors shall be acceptable to CITY. Prior to commencing work, Tenant's contractor(s) shall provide written evidence that said contractor(s) has complied with all insurance requirements contained in Paragraph 9, herein.

13. MAINTENANCE OF PREMISES. TENANT shall, at TENANT's sole expense and at all times, keep the Premises and every part thereof in good order, condition and repair. TENANT shall deposit all non-hazardous waste, including rubbish garbage and debris in receptacles provided by CITY in the vicinity of the Premises. TENANT shall remove all hazardous materials, including but not limited to, used crank case oils, hydraulic fluids, engine coolants, etc. from the Airport Premises and dispose of said hazardous materials in a manner consistent with the regulations set out at paragraph 16.

(A) Should TENANT fail to perform any of TENANT's maintenance obligations, CITY may enter upon the Premises, after ten (10) days prior written notice to TENANT (except in the case of an emergency, in which case no notice shall be required), and perform such obligations on TENANT's behalf. If CITY performs any of TENANT's maintenance obligations, such maintenance shall be at TENANT's sole cost and expense and TENANT shall reimburse CITY for all costs incurred by CITY within ten (10) days of CITY's demand. TENANT acknowledges that the Premises are located at an airport and that the control of potential damage to aircraft utilizing Airport is of utmost importance, TENANT, in performing TENANT's maintenance obligations, shall maintain the Premises and implement such maintenance procedures as are required to eliminate the risk of Foreign Object damage.

(B) CITY shall maintain all access routes to the Premises and CITY's mains and main sewer lines. CITY shall also be responsible for maintaining the Premises in a structurally sound and waterproof condition.

14. SURRENDER AND RESTORATION OF THE PREMISES. TENANT shall surrender the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not

include any damage or deterioration that could have been prevented by good maintenance practice or by TENANT performing all of its obligations under this agreement. TENANT's obligation shall include the repair of any damage occasioned by the installation, maintenance or removal of TENANT's fixtures, furnishings, equipment, by or for TENANT, and the removal, replacement, or remediation of any soil, material or ground water contamination by TENANT, all as may then be required by any applicable law, ordinance or regulation and/or good practice.

15. HAZARDOUS MATERIALS. During the term of this agreement and any extensions thereof, TENANT shall not violate any federal, state or local law, or ordinance or regulation, relating to industrial hygiene or to the environmental condition on, under or about the leased Premises including, but not limited to, soil and groundwater conditions. TENANT is responsible for obtaining any permit or registration required for activities performed on the Premises including, but not limited to, any permit or registration required for handling hazardous materials. Further, TENANT, its successors, assigns and sublessee shall not handle, use, generate, manufacture, produce, store or dispose of on, under or about the Premises or transport to or from the Premises any hazardous material, hazardous substance, or hazardous waste in a manner inconsistent with regulations governing such materials. For the purpose of this agreement, hazardous materials shall include, but not be limited to, those materials defined as "hazardous substances," "hazardous materials," "hazardous wastes," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; and those substances defined in the California Health and Safety Code as "hazardous wastes" (Section 25117), or "hazardous substances" (Section 25316).

16. UTILITIES. CITY shall provide and pay for all water and electrical services in connection with the Premises. TENANT shall provide and pay for all other utilities that it may require in connection with the Premises.

17. ASSIGNMENT AND SUBLETTING. TENANT shall not assign, sublet, mortgage, hypothecate or otherwise transfer in any manner any of its rights, duties or obligations hereunder to any person or entity without the written consent of CITY.

18. CITY'S ENTRY ON PREMISE. CITY and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes: (1) to determine whether the Premises are in good condition and whether TENANT is complying with its obligations under this agreement; (2) to do any necessary maintenance and to make any restoration to the Premises that CITY has the right or obligation to perform; (3) to serve, post, or keep posted any notices required or allowed under the provisions of this agreement; (4) to carry-out whatever action is necessary to lease or rent the Premises during the last month of the term or during any period while TENANT is in default, including but not limited to, posting "for rent" signs, and showing the Premises to brokers, agents, prospective tenants, or other persons interested in the Premises.

19. ERECTION OF SIGNS. TENANT may not erect signs on the external portions of the Premises without the written permission of CITY.

20. INGRESS AND EGRESS. TENANT shall be permitted ingress and egress to and from the Premises through established gates and/or over such routes as are designated by the Airport Manager. CITY, at its sole discretion, shall determine and may from time to time change the routes of surface ingress and egress to the Premises, but agrees to locate such routes as conveniently as may be done for airport tenants and users, having in mind the reasonable requirements of CITY with respect to the operation of the Airport. CITY also reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of the TENANT and without interference or hindrance.

21. DAMAGE OR DESTRUCTION OF PREMISES. Upon thirty (30) days written notice from CITY, TENANT shall repair or replace any damage to the Premises or any other portion of the Airport caused by TENANT. If TENANT fails to repair or replace said damage within thirty (30) days, CITY reserves the right to draw from the Security Deposit, to pay for repairs to the Premises caused by TENANT. TENANT shall replenish the amount used by CITY within ten (10) days of TENANT's receipt of written notice of the same from CITY.

22. SPECIAL USE COVENANTS AND RESTRICTIONS. TENANT, by accepting this agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and/or taking off of aircraft from the Airport, or any part therein or otherwise constitute a hazard to navigation on the use of the Airport by aircraft as determined by the CITY. TENANT shall not use the Premises or store any personal property therein or thereon, for the purpose of conducting any activity upon or within the airport Premises for which any form of remuneration is expected or received, unless between CITY and TENANT.

(A) TENANT shall not fuel or defuel an aircraft inside or upon the Premises or within twenty five (25) feet of any hangar. TENANT shall not store any highly volatile materials, including but not limited to, paint products, aviation fuels or those hazardous materials described in paragraph 16 herein within or outside of the Premises.

(B) TENANT agrees to conform to all applicable federal, state and county rules and regulations and to further conform to any and all requirements or regulations of the Federal Aviation Administration as may be applicable to the TENANT and the TENANT's use of the Premises.

(C) This agreement shall be subordinate to the provisions and requirements of any existing or future agreement between CITY and the United States relative to the development, operation or maintenance of the Airport.

(D) TENANT agrees that before commencing any use of the Premises, TENANT will acquire, provide and maintain those notices, certifications, licenses, approvals and permits required by any federal, state, or local jurisdiction or authority for carrying out the purpose of this agreement. Failure to comply with this provision will constitute a default and right to terminate by CITY under paragraph 24, DEFAULT AND RIGHT TO TERMINATE of this agreement.

(E) TENANT agrees to abide by, keep and observe all minimum standards, reasonable rules and regulations which CITY may make from time to time for the management, safety, care, cleanliness of the grounds, parking

areas, and the preservation of good order, as well as for the convenience of other tenants, occupants, or visitors to the Airport.

23. RIGHT TO TERMINATE AND DEFAULT. This Agreement shall remain in effect, and the term shall continue on a month-to-month basis until one of foregoing occurs:

(A) One of the parties hereto serves a thirty (30) day written notice on the other indicating intent to terminate the Agreement upon expiration of such period.

(B) TENANT is in default of any provision of this Agreement. The term "Default" as used in this paragraph shall mean any of the following:

(i) TENANT's failure to comply with the limitations on use of the Premises;

(ii) TENANT's vacating of the Premises without evident intention to reoccupy; an abandonment of the Premises, or written notice of TENANT's intent to abandon Premises;

(iii) TENANT's failure to pay the Rent, or any other monetary payment required to be made by TENANT hereunder following ten (10) days written notice thereof by CITY to TENANT;

(iv) TENANT's failure to provide CITY with evidence of insurance required under this Agreement, following ten (10) days written notice thereof by CITY to TENANT,

(v) The filing by TENANT of a petition for voluntary or involuntary bankruptcy, or the making by TENANT of an assignment for the benefit of creditors, or the appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this agreement,

(vi) TENANT's failure to perform any of its duties or obligations, not specifically mentioned in this paragraph but required under this Agreement, following ten (10) days written notice from CITY to TENANT.

(C) In the event of a default by TENANT, CITY may terminate TENANT's right of possession of the Premises by any lawful means, in which case this Agreement and the term shall terminate and TENANT shall immediately surrender possession of the Premises to CITY pursuant to paragraph 14. CITY shall be entitled to recover from TENANT the amount of unpaid rent accrued at the time of termination of this agreement as well as the reasonable loss of rent and other damages incurred by CITY for the reasonable time during which CITY was unable to rent the Premise. Nothing in this agreement shall prevent or preclude CITY from pursuing any other remedy now or hereafter available to CITY under the laws of the State of California.

(D) Immediately upon termination of this Agreement, TENANT agrees to remove all of TENANT's personal property, machinery or fixtures from the Premises. If TENANT fails to remove any such personal property, CITY shall have the right to remove and place the same in storage at the expense of TENANT and without liability to CITY for losses. Following ten (10) days written notice to TENANT, CITY may sell all or any part of said personal property. CITY shall apply the proceeds of any such sale to the amounts due from TENANT under this

agreement and to any expense incidental to said sale. Any remainder arising from said sale shall be refunded to TENANT.

(E) CITY's receipt of any rent or of any other sum of money paid by TENANT after the termination of this Agreement, or after the giving by CITY of any notice to effect such termination, shall not waive the Default, reinstate, continue or extend the Term of this agreement, or destroy or impair the efficacy of CITY's notice of termination, unless otherwise agreed in writing by CITY.

24. HOLDING OVER. If the TENANT continues in possession of the Premises after the expiration of the Term or after any termination of this Agreement prior to the expiration of the Term, and if said occupancy is with the consent of CITY, then TENANT shall be deemed to be holding the Premises on a month-to-month tenancy subject to all the provisions of this agreement. TENANT shall be responsible for the monthly rent during the period of holding pursuant to paragraphs 5, 6, and 7 of this Agreement.

25. CHOICE OF LAW. All disputes regarding or resulting from this Agreement shall be determined pursuant to and in accordance with the laws of the State of California.

26. VENUE. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in Riverside County, California. The parties agree that any action at law or in equity brought by either of the parties to this Agreement for the purpose of enforcing a right or rights provided hereunder shall be tried in a court of competent jurisdiction in the County of Riverside, State of California. Each party hereby waives any law or rule of court which would allow the parties to request or demand a change of venue. If any action or claim concerning this agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to Riverside County.

27. ATTORNEY'S FEES AND COSTS. In any action claim or proceeding arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

28. PARAGRAPH HEADINGS. The paragraph headings herein are for the convenience of the parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

29. NOTICES. TENANT hereby agrees that any notice, demand, request, consent, or communication that either party desires or is required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally or sent by prepaid, first-class mail to the other party at the following addresses:

CITY:
Airport Manager
City of Banning
P.O. Box 998
Banning CA 92220

TENANT:
(Address set forth in Paragraph 1)

(A) Either party may change its address by notifying the other party of the change of address.

30. SEVERABILITY. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

31. BINDING ON SUCCESSORS. TENANT, its assigns, and successors in interest shall be bound by all of the terms and conditions contained in this Agreement, and all of the parties thereto shall be jointly and severally liable hereunder.

32. INTERPRETATIONS. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

33. ENTIRE AGREEMENT. This Agreement constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this Agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

34. MODIFICATION. No waiver, modification or amendment of any term, condition, or provision of this Agreement shall be valid or shall have any force or effect unless made in writing and signed by all of the parties hereto. This provision shall not apply to adjustments to monthly rent made by CITY pursuant to paragraph 7 as said adjustments to monthly rent are contemplated by this agreement and as such do not constitute a modification.

35. MATERIAL MISREPRESENTATION. If during the course of the administration of this Agreement, CITY determines that the TENANT has made a material misstatement or misrepresentation, or that material inaccurate information has been provided to CITY, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, CITY is entitled to pursue any available legal remedies.

36. WAIVER OF PERFORMANCE. Failure of CITY to enforce any of the terms and conditions of this Agreement shall not be construed as a waiver by CITY of its right to later enforce said terms and conditions of this Agreement or the strict and timely performance of such terms and conditions.

37. DISCRIMINATION. TENANT, in utilizing the storage area, shall not discriminate against any person or class of persons on account of race, color, creed, sex, or national origin.

38. SALE OR DISPOSAL OF AIRCRAFT. In the event that TENANT sells or otherwise disposes of the aircraft described in paragraph 3 herein, TENANT shall notify CITY, in writing, within ten (10) days of such sale or disposal. TENANT shall have sixty (60) days from the date of such sale within which to become the owner of another aircraft to be stored in the Premises pursuant to the Agreement. If TENANT does not obtain the ownership of another aircraft within said sixty (60) day period, CITY may, upon ten (10) days written notice, declare the agreement to be void and require TENANT to immediately vacate the Premises.

39. JOINT USE. When two or more persons, in an unincorporated or other informal association, make use of the Premises described in Paragraph 2, the following conditions shall apply:

(A) Each party shall be signatory of an agreement with CITY.

(B) Each party shall be jointly and severally liable for all obligations of his or her joint use arising under the agreement.

(C) Entitlement to continued occupancy of the Premises, by the remaining joint user(s), upon vacation of the Premises by one or more of the original joint users, shall be based on the right of the longest occupying joint user remaining in possession to such continued use.

(1) CITY maintains a waiting list for the assignment of hangars. Upon a space becoming available, the person most senior on the waiting list is assigned the newly available space.

(2) If there is not among the remaining joint users at least one who would be entitled to assignment of a hangar based on their place on the waiting list, then all remaining joint users must immediately vacate the Premises upon the voluntary or involuntary vacation of the Premises by the original joint user who initially obtained the license for the hangar.

40. CITY'S REPRESENTATIVE. CITY hereby appoints the Director of Public Works as its authorized representative to administer this license. CITY may, from time-to-time, change said designated authorized representative without notice.

41. FORMAT APPROVAL. The format of this Agreement has been approved by the Banning City Council.

42. SIGNATURE. All parties to this Agreement represent that the signators executing this document are fully authorized to enter into this agreement.

IN WITNESS THEREOF, the parties executed this Agreement:

TENANT: _____ Date: _____

CITY OF BANNING _____ Date: _____

ATTACHMENT 2 - EXHIBIT "B"

RESOLUTION NO. 2015-67

BANNING MUNICIPAL AIRPORT RATES

T-HANGAR	EXISTING RATE/UNIT	PROPOSED RATE/UNIT
A/B ROW	$285.00	$299.25
A/B CORNER	$350.00	$367.50
C/D ROW	$255.00	$267.75
C/D CORNER	$320.00	$336.00
E ROW	$270.00	$283.50
E CORNER	$295.00	$309.75
F-1	$150.00	$157.50
FC B-1 thru FC B-8	$160.00	$168.00
FC C-1 thru FC D-8	$170.00	$178.50
FC S-1 thru FC S-6	$ 45.00	$47.25
FC A & E	$330.00	$346.50
G-1 (BEASLEY)	$270.00	$283.50

MISC. FEES	EXISTING RATE	PROPOSED RATE
ACCESS FEE	$ 20.00	$21.00
TIE DOWN/DAILY	$ 3.50	$3.68
TIE DOWN/MONTHLY	$ 40.00	$42.00

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ATTACHMENT 3

EXHIBIT "C" – SURROUNDING AREA HANGAR RATE COMPARISON

ATTACHMENT 3 - EXHIBIT "C"

LOCAL AIRPORT T-HANGAR RENTAL COMPARISONS

	BIG BEAR	FLABOB	FRENCH VALLEY	HEMET	REDLANDS	BANNING	5% inc	2% inc	2% inc	2% inc	2% inc
SQ FT											
700						$150.00	$157.50	$160.65	$162.66	$164.69	$166.75
955				$376.00							
1060						$270.00	$283.50	$289.17	$292.78	$296.44	$300.15
1092				$435.00							
1126						$255.00	$267.75	$273.11	$276.52	$279.98	$283.47
1160						$295.00	$309.75	$315.95	$319.89	$323.89	$327.94
1248			$435.00								
1455					$315-$350						
*1476	$270.00										
1470	$200-$270	$375.00									
1483						$320.00	$336.00	$342.72	$347.00	$351.34	$355.73
*1522	$220.00										
*1573	$350.00										
1671						$285.00	$299.25	$305.24	$309.05	$312.91	$316.82
2430						$350.00	$367.50	$374.85	$379.54	$384.28	$389.08

BIGBEAR: ONLY HAS ONE SIZE T-HANGAR BUT 12 OPTIONS FOR BOX HANGARS (UNITS HAVE * NEXT TO THEM)
82 OPERATIONS/DAY 141 AIRCRAFT BASE

FLABOB: RECENTLY BOUGHT T-HANGARS FROM RIALTO AIRPORT (65)
109 OPERATIONS/DAY 202 AIRCRAFT BASE

FRENCH VALLEY: HAS EDA OWNED HANGARS AND PRIVATELY OWNED HANGARS
269 OPERATIONS/DAY 170 AIRCRAFT BASE

HEMET: SMALL HANGARS ONLY-MOSTLY A CAL-FIRE FIELD
206 OPERATIONS/DAY 151 AIRCRAFT BASE

BANNING: ONLY SMALL AIRPORT TO HAVE A WIDE VARIETY OF T-HANGAR SIZES
10 OPERATIONS/DAY 40 AIRCRAFT BASE

REDLANDS: NO INFORMATION AVAILABLE

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-68, "Approving a Professional Services Agreement with Aspen Environmental Group to Provide Environmental and Permitting Serviees related to the Flume"**

RECOMMENDATION: The City Council adopt Resolution No. 2015-68:

l. Approving a Professional Services Agreement with Aspen Environmental Group of Agoura Hills, California in the amount of $82,098.00.

ll. Authorizing the Interim Administrative Services Director to make necessary budget adjustments and appropriations and transfers related to the project.

lll. Authorizing the Interim City Manager to execute the Professional Services Agreement with Aspen Environmental Group.

JUSTIFICATION: It is necessary for the City to obtain a consulting firm to provide environmental and permitting services for the purpose of obtaining a U.S. Forest Service ("USFS") Special Use Permit and other applicable permits or authorizations to repair, upgrade, operate and maintain existing water conveyance facilities ("Flume").

BACKGROUND: The City and its partner agencies (Banning Heights Mutual Water Company and San Gorgonio Pass Water Agency) hold water rights to surface waters originating at stream diversions on the South Fork and Middle Fork of the Whitewater River, at about 7,200 feet elevation. The water is currently conveyed to the Banning Heights Mutual Water District via a flume and penstock system that is owned by Southern California Edison ("SCE"), under license by Federal Energy Regulatory Commission ("FERC").

The conveyance system is located in part on National Forest System lands managed by the USFS, and in part on City-owned lands. The conveyance system has been damaged by storms and erosion, and is not in operation for power generation; however, it continues to convey water. The system provides 100 percent of the Banning Heights Mutual Water Company's supply and provides water that recharges the Banning Canyon Storage Unit which is pumped out off to provide about 30 percent of the City's municipal water supply. SCE has applied to FERC to surrender its license; that application is currently under FERC review. Upon surrender of the license, SCE proposes to transfer ownership of the conveyance system to the City and its partner agencies.

The City will be required to obtain a USFS Special Use Permit in order to continue the operation and maintenance of the Flume. Staff determined that it would be beneficial to the City to hire a consulting firm with experience in similar projects involving the USFS.

Consequently, staff solicited proposals and statement of qualifications from consultants that demonstrated strong capabilities in environmental review and permitting complex infrastructure systems on National Forest System Lands; experience permitting for water conveyance systems; experience with USFS permitting; the full range of National Environmental Policy Act ("NEPA") and California Environmental Quality Act ("CEQA") analysis and compliance; and strong technical expertise in resource areas such as public utilities and ground water.

Staff advertised a Request for Qualifications ("RFQ"), attached as Exhibit "A", on May 18, 2015 in the Press Enterprise and on the City's website. The RFQ is provided as Exhibit "B".

Public Works staff received four proposals in response to the RFQ, assembled a committee consisting of three members who evaluated the proposals based on project approach, technical competency, project team and experience, overall responsiveness to the RFQ and cost. The following are the average scores for the four proposers:

	Consultant	Score
1.	Aspen Environmental Group	76.0
2.	Placeworks	76.0
3.	Meridian Consultants	63.5
4.	KWC Engineers	34.0

The evaluation summary can be found attached as Exhibit "C". In addition, interviews for the two highest scored consulting firms were conducted on June 18, 2015. As a result the interview committee recommended the award of the project to Aspen Environmental Group. The fee schedule submitted by Aspen Environmental Group is attached as Exhibit "D".

FISCAL DATA: The Professional Services Agreement shall be funded in an amount of $82,098.00, Account No. 663-6300-471.96-35 (Flume Project) which has an approved budget of $300,000.00 in the 2015/2016 Fiscal Year budget.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim City Manager/
Administrative Services Director

Attachments:

1. Exhibit "A"- Press Enterprise Advertisement
2. Exhibit "B" - Request for Qualifications (RFQ)
3. Exhibit "C" –Proposal Evaluation Summary
4. Exhibit "D" –Aspen Environmental Group Fee Schedule

RESOLUTION NO. 2015-68

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ASPEN ENVIRONMENTAL GROUP TO PROVIDE ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO THE FLUME

WHEREAS, in order to obtain a U.S. Forest Service ("USFS") Special Use Permit and other applicable permits or authorizations to repair, upgrade, operate and maintain existing water conveyance facilities the City deemed it necessary to obtain an environmental and permitting services consulting firm; and

WHEREAS, staff solicited proposals and statement of qualifications from consultants that demonstrated strong capabilities in environmental review and permitting complex infrastructure systems on National Forest System Lands; experience permitting for water conveyance systems; experience with USFS permitting; the full range of NEPA and CEQA analysis and compliance; and strong technical expertise in resource areas such as public utilities and ground water; and

WHEREAS, staff advertised a Request for Qualifications ("RFQ"), attached as Exhibit "A", on May 18, 2015 in the Press Enterprise and on the City's website and the RFQ is provided as Exhibit "B"; and

WHEREAS, following the evaluation committee recommendations, attached as Exhibit "C" interviews were held on June 18, 2015, resulting in the selection of Aspen Environmental Group; and

WHEREAS, the fee schedule is attached as Exhibit "D" and a contract award in the amount of $82,098.00 will be funded by Account No. 663-6300-471.96-35 (Flume Project).

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

SECTION 1. The Banning City Council adopts Resolution No. 2015-68 approving a Professional Services Agreement with Aspen Environmental Group of Agoura Hills, California in an amount of $82,098.00.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments and appropriations and transfers related to the project.

SECTION 3. The Interim City Manager is authorized to execute the Professional Services Agreement with Aspen Environmental Group of Agoura, California, in a form approved by the City Attorney.

PASSED, ADOPTED AND APPROVED this 14th day of July, 2015.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon,
City Clerk of the 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. 2015-68, was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

ATTACHMENT 1

EXHIBIT "A" - RFP ADVERTISEMENT

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REQUEST FOR QUALIFICATIONS (RFQ) FOR
ENVIRONMENTAL AND PERMITTING SERVICES

The City of Banning (City) is soliciting Statements of Qualifications (SOQs) from qualified consulting firms to provide environmental and permitting services to the City for the purpose of obtaining a US Forest Service (USFS) Special Use Permit and any other applicable agency permits or authorizations, to repair, upgrade, operate, and maintain existing water conveyance facilities. In addition, the City may pursue a Federal Energy Regulatory Commission (FERC) license to operate the existing conveyance system as a hydroelectric power plant, consistent with its historic use.

The City anticipates the need to consult with multiple agencies to identify issues and concerns, prepare environmental review documents under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), and prepare a number of technical studies to support the Special Use Permit application.

A complete copy of the Request for Qualifications may be obtained by visiting the City of Banning website at http://www.ci.banning.ca.us/index.aspx?nid=19 or by contacting Ms. Holly Stuart, Public Works Analyst by email at hstuart@ci.banning.ca.us or by phone at (951) 922-3138. The Proposals are due by Monday, June 1, 2015 by 10:00 a.m. to the City of Banning, City Clerk located at 99 E. Ramsey Street, Banning, CA 92220.

BY ORDER OF THE CITY CLERK of the City of Banning, California.

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

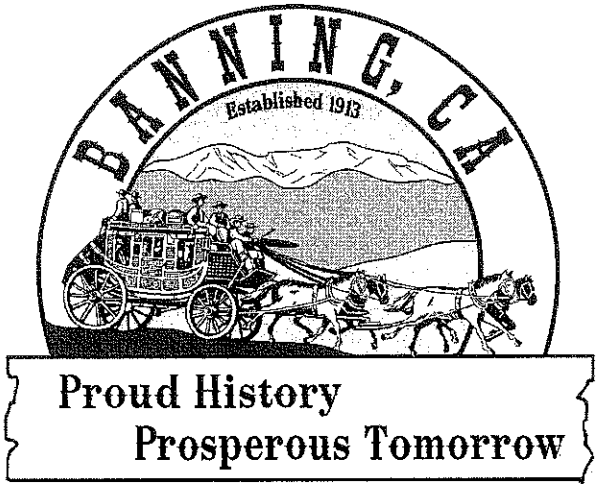
DATED: May 14, 2015
PUBLISH: May 18, 2015

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ATTACHMENT 2

EXHIBIT "B" - REQUEST FOR PROPOSALS

Request for Qualifications (RFQ)
Environmental and Permitting Services



Responses Due:
City of Banning
Public Works Department
99 E. Ramsey Street
Banning, CA 92220
(951) 922-3130

May, 2015

TABLE OF CONTENTS

1.0	INTRODUCTION		1
	1.1	Project Description and Objectives	1
	1.2	Background Information	1
2.0	CONSULTANT QUALIFICATIONS		1
	2.1	Project Administration and Coordination	2
	2.2	Qualifications and Understanding	3
	2.3	Project Team	3
	2.4	References	4
	2.5	Schedule	4
	2.6	Workshops and Meetings	4
3.0	PROPOSAL SUBMISSION		4
	3.1	RFP Time Schedule	4
	3.2	Number of Copies and Delivery	5
	3.3	Format and Content	5
	3.4	Proposal Evaluations	6
	3.5	Negotiations	6
4.0	CONTRACT REQUIREMENTS AND SUBMITTALS		7
	4.1	City of Banning Requirements	7

1.0 INTRODUCTION

1.1 PROJECT DESCRIPTION AND OBJECTIVES

The City of Banning (City) is soliciting Statements of Qualifications (SOQs) from qualified consulting firms to provide environmental and permitting services to the City for the purpose of obtaining a US Forest Service (USFS) Special Use Permit and any other applicable agency permits or authorizations, to repair, upgrade, operate, and maintain existing water conveyance facilities. In addition, the City may pursue a Federal Energy Regulatory Commission (FERC) license to operate the existing conveyance system as a hydroelectric power plant, consistent with its historic use.

The City anticipates the need to consult with multiple agencies to identify issues and concerns, prepare environmental review documents under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), and prepare a number of technical studies to support the Special Use Permit application.

1.2 BACKGROUND INFORMATION

The City and its partner agencies (Banning Heights Mutual Water Company and San Gorgonio Pass Water Agency) hold water rights to surface waters originating at stream diversions on the South Fork and Middle Fork of the Whitewater River, at about 7,200 feet elevation. The water is currently conveyed to the Banning Heights Mutual Water District via a flume and penstock system that is owned by Southern California Edison (SCE), under license by FERC (San Gorgonio Hydroelectric Project No. 344). The conveyance system is located in part on National Forest System lands managed by the San Bernardino National Forest (SBNF), and in part on City-owned lands. The conveyance system has been damaged by storms and erosion, and is not in operation for power generation; however, it continues to convey water. The system provides about 30 percent of the City's municipal water supply, and 100 percent of the Banning Heights Mutual Water Company's supply. SCE has applied to FERC to surrender its lieense; that application is currently under FERC review. Upon surrender of the license, SCE proposes to transfer ownership of the conveyance system to the City and its partner agencies.

A summary of the system's history, current status, and ongoing regulatory proceeding may be found at the FERC web site: https://www.ferc.gov/whats-new/comm-meet/2014/091814/H-3.pdf

2.0 CONSULTANT QUALIFICATIONS

Qualified consultants should be located in southern California. The SOQ must demonstrate strong capabilities in environmental review and permitting of complex infrastructure systems on National Forest System Lands within the past five years; experience permitting for water conveyance systems within the past five years; experience with USFS permitting within the past five years; the full range of NEPA and

CEQA analysis and compliance; and strong technical expertise in resource areas including but not limited to:

- Public utilities and services
- Public health and safety
- Surface hydrology
- Groundwater
- Biological resources
- Cultural resources
- Land use
- Geology and soils

In addition, qualified consultants should have strong prior experience with county, city, and local districts, and a strong understanding of the FERC regulatory processes. The SOQ should demonstrate staffing capacity and availability to provide the needed services; ability to meet with City staff and other agencies on short notice; and ability to complete tasks and high-quality, professional, and legally defensible work products according to agreed-upon schedules. Specify any conflict of interest conditions and/or disclose the firm's or subconsultants' prior work or ongoing work with other interested parties.

2.1 PROJECT ADMINISTRATION AND COORDINATION

Kick-off Meeting

Upon receipt of a written Notice to Proceed from the City of Banning, consultant shall conduct a kick-off meeting with the City and/or Participating Entities ("PE") to review the scope of the project, develop a project schedule, and confirm deliverables. The project schedule shall include each task and subtasks, milestones, critical path designation and a schedule for progress meetings.

Multi-Agency Coordination

The City, has been working with Banning Heights, SCE and the San Gorgonio Pass Water Agency ("Pass Water") for a number of years to secure control of the Flume, once SCE's Surrender Application has been accepted by the Federal Energy Regulatory Commission ("FERC"), which is anticipated to be handed down at any time. It is very important to coordinate with all participating Pes, as well as, other entities as needed.

Project Milestone/Monthly Meetings

Consultant shall prepare a project execution schedule with major milestones for approval. Consultant shall prepare regular progress reports each month.

2.2 QUALIFICATIONS AND UNDERSTANDING

This section should describe one or more proposed strategies for achieving the objectives of the RFQ. It should provide a description of environmental services tasks that will be needed to complete the project objective, including a list of anticipated documents and technical studies needed, and list of local, state, and federal agencies that are likely to be involved. The narrative should include a description of the logical progression of tasks and efforts and estimated schedule for the completion of the work.

Please note that the City has not identified a specific scope of work. The Qualifications and Understanding section of the SOQ should demonstrate the consultant's understanding of the project, and its ability to develop a detailed scope, including schedule and budget, in collaboration with the City. The overall permitting strategy may necessitate a phased process, such that only the initial tasks and budget can be specified at this time. In addition, please provide descriptions of no more than four comparable projects the firm has eompleted.

Each Consultant must provide the following information about their company so the City can evaluate the Consultant's stability and ability to support the commitments set forth in response to the RFQ. It is imperative the Consultant's proposal fully address all aspects of the RFQ. The proposal must provide the City Staff with clearly expressed information concerning the Proposer's understanding of the City's specific requirements which would result in the conduct of this study in a thorough and efficient manner.

The Consultant shall outline their company's (or team's) background, including:

- How long the company has been in business, plus a brief description of the company history, size and organization.
- Consultant qualifications to complete the scope of services and a statement of understanding of the work involved to complete this assignment.

2.3 PROJECT TEAM

Each Consultant must provide the following information about their project team.

- Primary point of contact, person responsible for overall corporate commitment (must be a company principal or officer) and project manager. Describe the responsibilities of the individuals and extent of involvement with the project.
- Identify and list key individuals proposed for the project team. Describe the responsibilities of the individuals and extent of involvement with the project.
- All key personnel listed should have current names, titles and telephone numbers and be listed on at least one of the supplied client references who are familiar with work performed by the individual in a similar capacity. References will be contacted as part of the selection process.

- Clearly identify project sub consultants, how long the prime and sub have worked together and the reason why they were selected. Consultants are encouraged to support small businesses where ever possible.

2.4 REFERENCES

The Consultant shall supply a minimum of 3 references from agencies with projects of similar nature. Each reference shall contain:

- Client name and contact information
- Project description
- Role of key project team members.

Only references of the prime consultant shall be considered, or references from project teams that have completed at least 3 projects together. The Consultant shall also list projects completed for other agencies.

2.5 SCHEDULE

The consultant shall provide a project schedule indicating key milestones and activities.

2.6 WORKSHOPS AND MEETINGS

Additionally, it is estimated that the consultant will be required to attend ten (10) meetings located at City Hall, Banning, California. The meetings will be held between staff, Consultant, and participating entities. A fee reflecting this requirement shall be included in the proposal.

3.0 PROPOSAL SUBMISSION

3.1 RFQ TIME SCHEDULE

• Request for Proposal Available	Wed.,	May 20, 2015
• Inquiry Deadline @ 1:00 p.m.	Tues.,	May 26, 2015
• Proposals Due @ 10:00 a.m.	Mon.,	June 1, 2015
• Final Selection	Thurs.,	June 11, 2015
• City Council Approval	Tues.,	June 23, 2015
• Notice to Proceed (Tentative)	Tues,	July 21, 2015

3.2 NUMBER OF COPIES AND DELIVERY

Four (4) copies of the proposal shall be submitted to the following address:

City of Banning
City Clerk's Office
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220

The proposal title, consultants name and deadline information sball be clearly identified on the submission package and cover page. Submission deadline is Monday, June 1, 2015 at 10:00 a.m. Proposals submitted after that time shall not be considered. All questions regarding the scope of work shall be submitted to Holly Stuart, Public Works analyst at the address above or via e-mail at hstuart@ci.banning.ca.us.

3.3 FORMAT AND CONTENT

Proposals shall be printed on 8 ½" X 11" paper, single sided in a 10 point Arial font and be limited to 25 pages excluding the eover letter, resumes and any appended information.

Proposals should address the following items in order of appearance:

Cover letter

The cover letter shall be provided which explains the firm's interest in the project. The letter shall contain name/address/phone number of the person who will serve as the firm's principal contact person.

Qualifications of Firm/Project Team

Provide names, titles and responsibilities of key personnel wbo will be responsible for the management of the project. Include qualifications, resumes, experience of each, and length of time with the company.

References

Give at least three (3) references for projects of similar size and scope, including at least three (3) references for projects completed during the past five years. Include the name and organization, a brief summary of tbe work, the cost of the project and tbe name and telephone number of a responsible contact person.

Strategy and Implementation Plan

Prepare a list of tasks to address tbe Scope of Work. Describe the firm's interpretation of the City's objectives with the regard to this RFP. Describe the proposed strategy and/or plan for achieving the objectives of the RFP. The narrative should include a description of the logical progression of tasks and efforts. Also include an explanation of the type of technology that will be used. This section shall also include a time schedule for the completion of the project and an estimate of time commitments from City staff.

Proposed quality assurance program (QA/QC)

Explain the firm's quality assurance program and the proposed approach for implementing the plan with this project.

Fee Proposal: One set in a separate sealed envelope

The Fee Schedule in a separate envelope shall be broken down on separate sheets as follows:

- A "Not to Exceed" fee for all services. Man-hours and billing rates per classification of personnel will be indicated for each task and/or subtask.
- Provide a complete list of costs per task and/or subtask and a total fee for the proposal, including expected reimbursable expenses (non-binding), for completion of the scope of services set forth in the proposal.
- A current hourly Fee Schedule for Fiscal Year 2014/2015 and classification of personnel for the firm, along with the type of work they and any sub consultants will perform, is also required.
- All printing and reproduction costs, research, meetings, mileage, telephone usage, general office supplies and overhead, etc., shall be included in the proposal and its "Not to Exceed" Fee schedule. Proposals should be prepared in a straight forward manner.

Note: A separate fee schedule is required for each project location.

3.4 PROPOSAL EVALUATION

Proposals will be evaluated based on the following criteria:

- Responsiveness to the RFP.
- Consultant qualifications, project understanding, and overall experience.
- Technical Competency.
- Results of reference checks.
- Project Schedule.
- Proposed QA/QC plan.
- Proposal Fee.

3.5 NEGOTIATIONS

In an effort to manage the resources available for this project, the City may find it necessary to negotiate tasks, include contingencies for additional meetings or workshops, and address other factors identified by the Proposer not contemplated in this document or the City's standard agreement.

4.0 CONTRACT REQUIREMENTS AND SUBMITTALS

4.1 CITY OF BANNING REQUIREMENTS

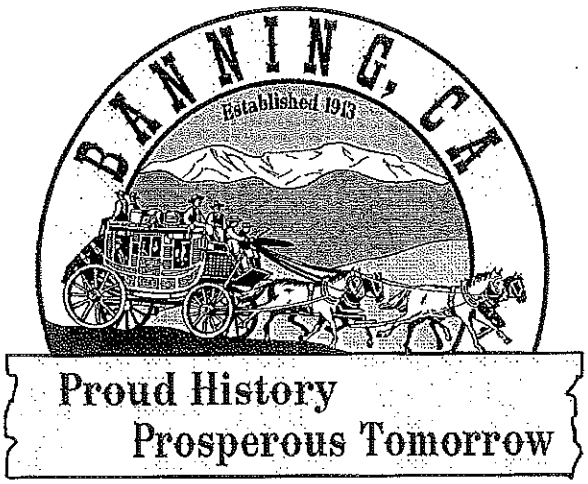
The Contract will be presented to Council for approval. Please provide a copy of the attached City agreement to your legal team and insurance provider, if you are selected for Final Evaluation. This will expedite the process. A purchase order will not be granted until the contract is signed and all insurance requirements are satisfied.

ATTACHMENT 3

EXHIBIT "C" - PROPOSAL EVALUATION SUMMARY

Design of Improvements at Roosevelt Williams Park

Reviewers	Aspen Environmental Group	Placeworks	Meridian Consultants	KWC Engineers
City of Banning, Acting Director of Public Works	86	85.5	84.5	51
Banning Heights Municipal Water Company, Board of Directors President	66	65	35	2
Stockton Consutling, Stephen P. Stockton	76	77.5	71	49
Total Score	228	228	190.5	102
Average Score	**76.0**	**76.0**	**63.5**	**34.0**



CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: ASPEN ENVIRONMENTAL GROUP

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): [signature]

DATE OF EVALUATION: 6/5/15

8 of 300

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 18

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) 9

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 9

B. **TECHNICAL COMPETENCY (20 Points)** 16

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) 8

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 8

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 18

I. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) 9

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 9

D. **RESPONSIVENESS TO RFP (10 Points)** 9

I. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) 4

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) 5

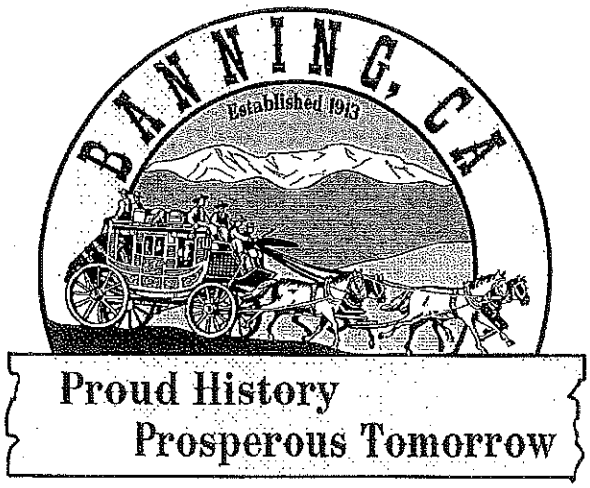
E. PROPOSAL FEE / COST (30 Points) 25

TOTAL POINTS: 86

ADDITIONAL NOTES:

- Permitting lead has experience w/ SBNF & USFS.
- Subconsultant w/ FERC Experience
- Good list of projects.
- Good experience w/ NEPA/CEQA process.
- Referenced projects related to FERC and water conveyance systems.
- Good understanding of scope.
- Good approach to project.

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: ASPEN ENVIRONMENTAL GROUP

EVALUATOR (PRINT): Julie L. Hutchinson - BHMWC

EVALUATOR (SIGN): Julie L Hutchinson

DATE OF EVALUATION: 6/3 - 6/4, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 17

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 16

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 15

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 8

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. **PROPOSAL FEE / COST** (30 Points) * seems low and not comprehensive due to variables & complexities involved. 10 *

TOTAL POINTS: 77 66 *

ADDITIONAL NOTES:

Pros - Positives

① Tom Davidson indicated Hydro Divesture experience w/ PG&E

② John Kessler - FERC licensing, relicensing experience as well as experience w/ surrender, transfer and Powers Co. culture and vulnerabilities - All could be helpful to us

③ seem to be reputable & organized - more govt based

Cons - Concerns

① *Red Flag* on potential conflict and major situational awareness - Scott White listed as "Permitting Lead" works as consultant to SBNF, was previous employee of SBNF, has done projects for Wildlands Conservancy (Key on issue) and w/ Angeles NF (Jody Noiron)

② Alternative of Powers FERC license not discussed - limits alternatives

③ Limited water conveyance experience other than (Kessler)

④ RFQ seems very Process orientated vs. strategic thinking (alternatives, suggestions, etc)

⑤ William Lathey - Special Use Compliance but nothing in RFQ really supports his experience on SUP etc.. other than studying

⑥ James Thurber - SCE consultant w any potential concerns -

⑦ No understanding of current PRD w/ FERC and coming in to replace previous consultant

⑧ No recognition of historical analysis & Value of historic preservation

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: ASPEN ENVIRONMENTAL GROUP 76

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: June 1, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 15

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 16

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 17

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 8

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

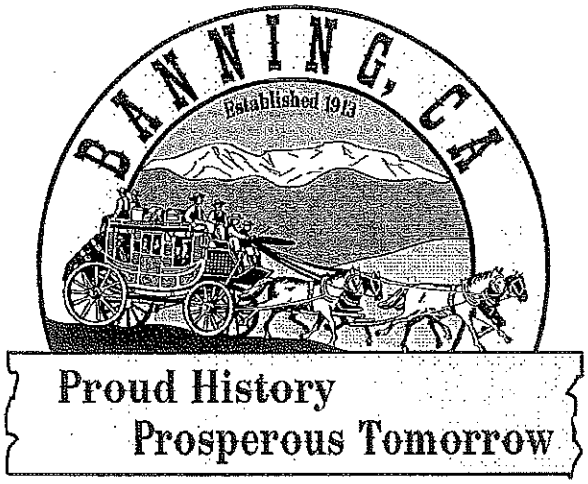
E. PROPOSAL FEE / COST (30 Points) 20

TOTAL POINTS: 76

ADDITIONAL NOTES:

NO schedule for phase I tasks

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: PLACEWORKS

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): [signature]

DATE OF EVALUATION: 6/5/15

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 18

I. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) 9

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 9

B. **TECHNICAL COMPETENCY (20 Points)** 15.5

I. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) 7.5

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 8.0

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 18

I. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) 9

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 9

D. **RESPONSIVENESS TO RFP (10 Points)** 9

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) 4

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) 5

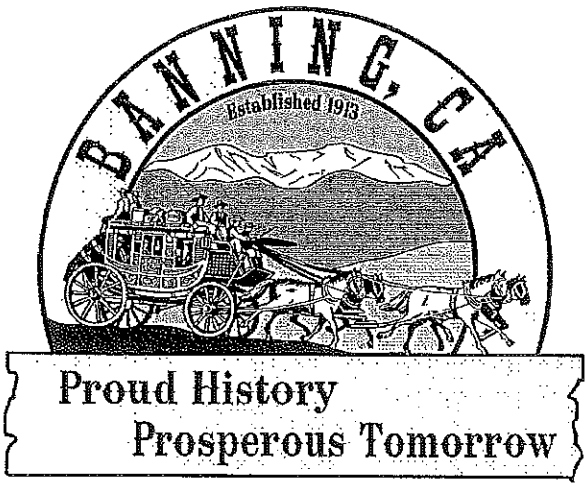
E. PROPOSAL FEE / COST (30 Points) 25

TOTAL POINTS: 85.5

ADDITIONAL NOTES:

- Good team, which includes an attorney specializing in environmental projects.
- Biologist has good experience with SCE on this specific proj.
- Project experience includes SUP through USFS.
- Good understanding of project.

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: PLACEWORKS

EVALUATOR (PRINT): Julie L. Hutchinson - BHMWC

EVALUATOR (SIGN): Julie L. Hutchinson

DATE OF EVALUATION: 6/3-6/4, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 15

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 14

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 14

I. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 7

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 15

TOTAL POINTS: 45

ADDITIONAL NOTES:

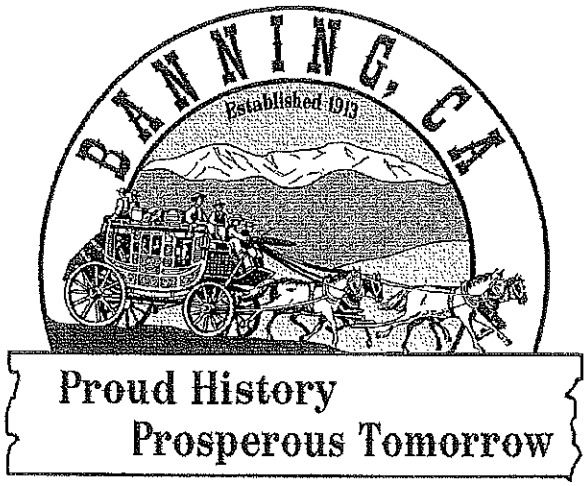
Pros- Positives

* (1) Past experience w/ this project (Decomissioning & Biologists, environmental Studies)
* (2) Understands SCE culture - past employee
* (3) Has worked w/ USBR specifically Jody Nixon (while ANF)
* Pro/good and/~~Good~~ could be a Concern

Cons- Concerns

(1) Greg Miller - SCE history (any conflict?)
(2) No evidence of any water Conveyance projects or similar
(3) NEPA/CEQA support for FERC Hydro license option - no strategy or management identified
(4) No FERC DRD understanding that already mid-process
(5) No comparisons of other water Conveyance projects successes

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: PLACEWORKS – 775

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: 6-3-2015

EVALUATION CRITERIA

A. PROJECT UNDERSTANDING AND APPROACH (20 Points) 15

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. TECHNICAL COMPETENCY (20 Points) 19

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. QUALIFICATIONS AND PROJECT TEAM (20 Points) 19

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. RESPONSIVENESS TO RFP (10 Points) 9.5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 15

TOTAL POINTS: 77.5

ADDITIONAL NOTES:

NO Firm Schedule

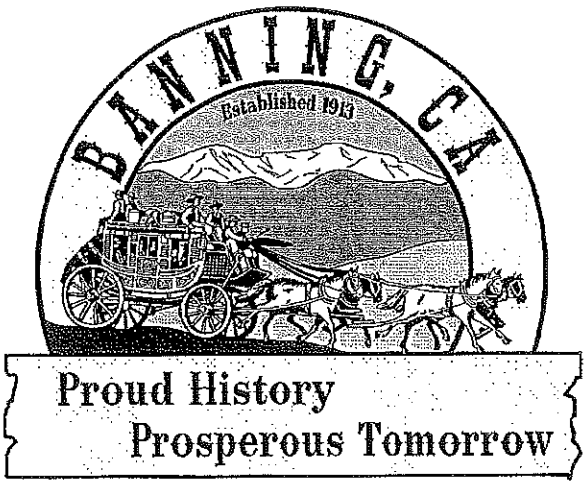
COST ESTIMATE only APPROACHABLE All prospects

VERY Good understanding of project & process

I LIKED Greg Miller & his previous work on P-344

SPS

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: MERIDIAN CONSULTANTS

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): A. Vela

DATE OF EVALUATION: 6/5/15

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 17.5

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) 9.5

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 9

B. **TECHNICAL COMPETENCY (20 Points)** 15

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) 7

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 8

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 16.5

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) 8

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 8.5

D. **RESPONSIVENESS TO RFP (10 Points)** 9.5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) 4.5

E. PROPOSAL FEE / COST (30 Points) 26

TOTAL POINTS: 84.5

ADDITIONAL NOTES:

- Firm has past exper. w/ USFS.
- Good team
- Good understanding of project and scope.
- Experience w/ water projects

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: MERIDIAN CONSULTANTS

EVALUATOR (PRINT): Julie L. Hutchinson, BHMWC

EVALUATOR (SIGN): Julie L Hutch

DATE OF EVALUATION: 6/2-6/3, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 10

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) (5)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) (5)

B. **TECHNICAL COMPETENCY (20 Points)** 7

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) (3)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) (4)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 11

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) (6)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) (5)

D. **RESPONSIVENESS TO RFP (10 Points)** 2

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) (2)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. **PROPOSAL FEE / COST (30 Points)** 5

TOTAL POINTS: ~~(44)~~ 35

ADDITIONAL NOTES:

Pros -

(1) Staff seems experienced in EIR, CEQA

Cons -

(1) limited Water conveyance experience ~ projects staff

(2) " " FERC regulatory & USFS.

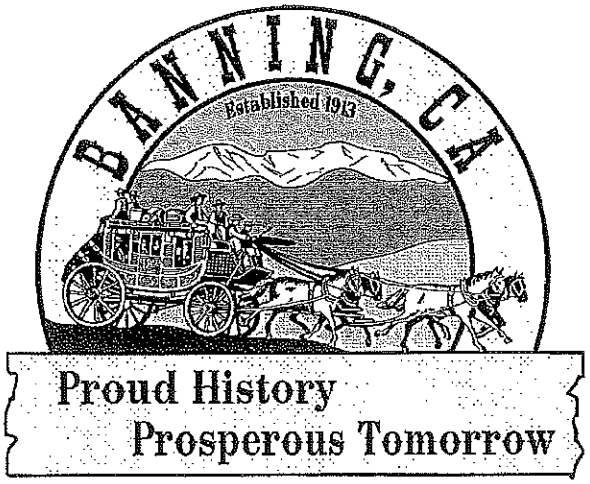
(3) did not provide reference projects of similar nature

(4) Strategy + Implementation Plan very limited and more CEQA/EIR based - not exhibiting broad thinking/alternatives

(5) Overall lacks a understanding of complexities on "on the ground" work and strategy

(6) Fee breakdown Vague

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: MERIDIAN CONSULTANTS 71

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: 6-3-2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 16

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 15

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 16

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 9

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 15

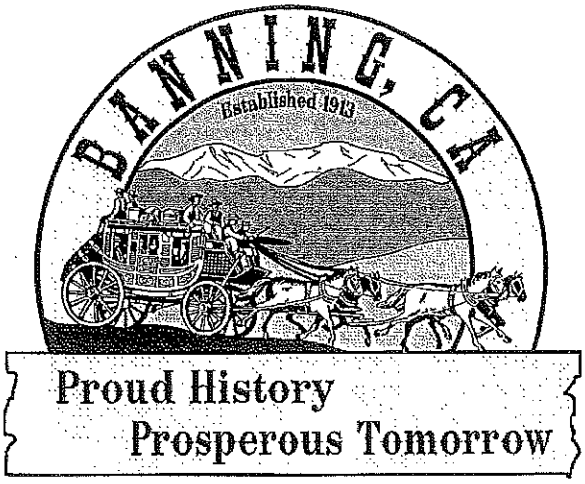
TOTAL POINTS: 71

ADDITIONAL NOTES:

NO FEE ESTIMATE BUT OTHERS DO NOT HAVE FIRM COST ESTIMATES, AS IT IS DIFFICULT TO ESTIMATE AT THIS TIME

GDS

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: KWC ENGINEERS

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): Arturo Vela

DATE OF EVALUATION: 6/5/15

EVALUATION CRITERIA

A. PROJECT UNDERSTANDING AND APPROACH (20 Points) 6

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) ~~3~~ 3
   no references/past projects related to this one
2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 3.

B. TECHNICAL COMPETENCY (20 Points) 8

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) ~~Same~~ only 3
   Attorney/legal experience
2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 5

C. QUALIFICATIONS AND PROJECT TEAM (20 Points) 6

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) No. 3
2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 3
   only for two team members

D. RESPONSIVENESS TO RFP (10 Points) 5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) ~~4~~ 3

Only from a legal perspective.

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) No 2

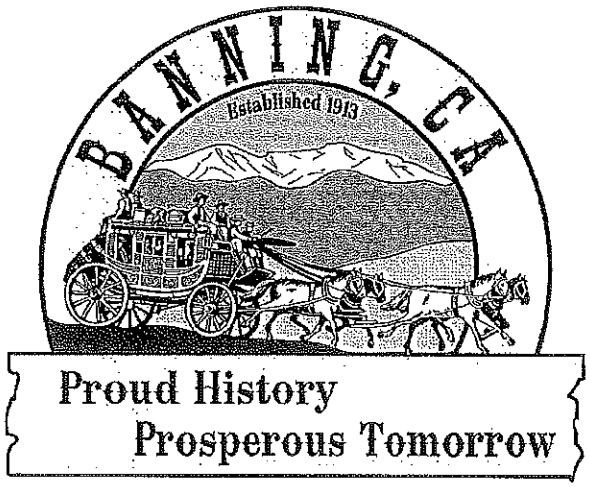
E. PROPOSAL FEE / COST (30 Points) 26

TOTAL POINTS: 51

ADDITIONAL NOTES:

- lacked Team w/ experience. Only info. for two members included.
- Lacked relevant projects.
- Overall not a good proposal.

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: KWC ENGINEERS

EVALUATOR (PRINT): Julie L Hutchinson, BHMWC

EVALUATOR (SIGN): Julie L. Hutchins

DATE OF EVALUATION: 6/3-6/4, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 1

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 0

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 1

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 0

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 0

TOTAL POINTS: 2

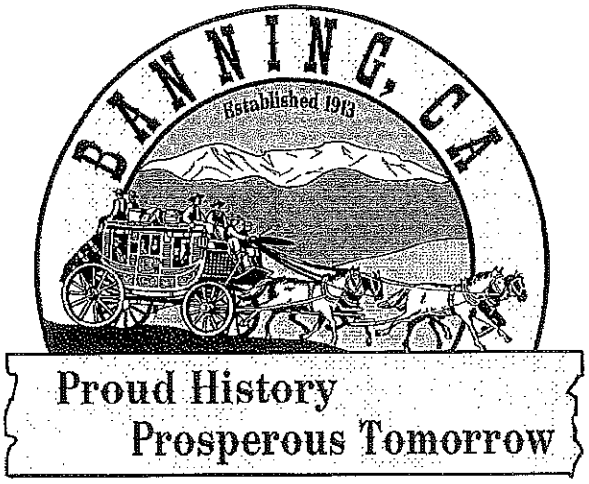
ADDITIONAL NOTES:

I would completely disqualify this RFQ proposal as it in no way meets the RFQ as provided by the city.

The attorneys listed in the RFQ used personal conversations with the BHMWC attorney to be the sole basis of his RFQ submission.

1. NO plan
2. NO experience w/ USFS on water conveyance or w/ FERC
3. RFQ response has no relavance

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: KWC ENGINEERS – 49

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: 6-3-2015

EVALUATION CRITERIA

A. PROJECT UNDERSTANDING AND APPROACH (20 Points) 10

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. TECHNICAL COMPETENCY (20 Points) 14

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. QUALIFICATIONS AND PROJECT TEAM (20 Points) 10

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. RESPONSIVENESS TO RFP (10 Points) 5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. **PROPOSAL FEE / COST (30 Points)** 10

TOTAL POINTS: 49

ADDITIONAL NOTES:

VERY LITTLE PROJECT UNDERSTANDING, HENCE NO BIOLOGICAL BACKGROUND

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CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: ASPEN ENV.

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	~~8~~ 9	90	- TEAM HAS WORKED TOGETHER FOR 2 10YRS.
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	9	90	- COMPLETED ABT 30 ENVIR. DOCS ON FOREST SVC. PROPERTY.
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	~~X~~ 9	135	- GOOD, WELL THOUGHT OUT APPROACH & STRATEGY. - DEMONSTRATED ABILITY TO SUCCESSFULLY COMPLETE THIS PROJECT.
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	~~X~~ 8	40	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	8	40	
GENERAL NOTES: - 90% OF WORK INFRAST. (P.W.). MOSTLY WATER/ELECTRIC. - THE FIRM HAS A LOT OF EXPERIENCE & SUCCESS W/ SIMILIAR PROJECTS			TOTAL		395

NAME: ART VEJA TITLE: ACTING DIR. PUB. WORKS DATE: 6/18/15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: Aspen

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	9	90	Chris Hurley PM 25yrs
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	9	90	Has worked on projects by and Forest Lands, worked Directly w/ Forest -25 yr Permit - STAFF Availability
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	9	135	Review Existing Data • Restoration and Enhancement
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	6	30	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	8	40	Call References
GENERAL NOTES: Power Point Presentation			**TOTAL**		385

NAME: Terry Gregory TITLE: Water/Wastewater DATE: 6/18/15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: ASPEN

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	9	90	
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	9	90	
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	9 ~~10~~	135 ~~240~~	
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	8 ~~9~~	40 ~~50~~	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	~~8~~ 9	40 10	
GENERAL NOTES:			**TOTAL** ~~410~~ 395		

NAME: STEVE STOCKTON TITLE: CONSULTANT DATE: 6-15-15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: PLACE WORKS

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	*PROJECT TEAM* - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	~~8~~ 8	80	- P.M. IS AN ATTORNEY. - Good Biological expr.
2	*FIRM'S CAPABILITIES* - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	7	70	- Mentioned one relevant/recent project of the uses. -
3	*PROJECT UNDERSTANDING AND APPROACH* - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	~~8~~ 8	120	- Good project approach and understanding. -
4	*PROJECT CONTROLS OF OVERSIGHT* - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	~~8~~ 8	40	-
5	*REFERENCES* - Record of producing a quality product on similar projects on time and within budget.	5	8	40	
GENERAL NOTES: · Project team will be run out of L.A. · Compared to ASPEN, PLACEWORKS team was weaker, although professional AND well rounded.			TOTAL		350

NAME: Art Vela TITLE: Acting Dir. Pub. Works DATE: 6/18/15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: Placeworks

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
					Duane means Principle
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	7	70	Jeanne PM 110 Employees Karl 30 years exp. out of LA
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	8	80	organizational chart of documents Technological Reports 30 year sup Angles NF Two Biologist worked on SB NF. Grain Trust ✓
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	8	120	Repairing to Schematic showed that that they have been up.
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	6	30	Committed, Willing to Provide Staff.
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	6	30	
GENERAL NOTES: • Not much work in the S.B.N.F. • Did not seem very Prepared.			**TOTAL**		330

NAME: Peggy Greggs TITLE: WATER/WASTEWATER DATE: 6-18-15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: PLACEWORKS

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	7	70	
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	8	80	
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	7 ~~8~~	105 ~~150~~	
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	8 ~~8~~	40 ~~50~~	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	8 ~~8~~	40 ~~50~~	
GENERAL NOTES:			TOTAL 335		

NAME: STEVE STOCKTON TITLE: CONSULTANT DATE: 6/18-15

ATTACHMENT 4

EXHIBIT "D" – ASPEN ENVIRONMENTAL GROUP
FEE SCHEDULE

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Aspen Team Hourly Fee Schedule

Fiscal Year 2014/2015

Personnel	Classification	Proposed Work	Rates
Jon Davidson	Principal Associate	Principal-in-Charge	$195
Chris Huntley	Senior Associate II	Project Manager, Biological Resources	$165
Scott White	Senior Associate III	Permitting Lead, Biological Resources	$175
Negar Vahidi	Senior Associate III	NEPA/CEQA Lead, Land Use and Planning, Environmental Justice	$160
Scott Debauche	Associate II	Aesthetics, Noise, Population, Housing and Environmental Justice, Public Services and Utilities, Transportation and Traffic	$100
William Walters	Senior Associate III	Air Quality and Greenhouse Gases	$170
Justin Wood	Associate II	Biological Resources	$100
Carla Wakeman	Associate II	Biological Resources	$100
Jared Varonin	Senior Associate I	CDFW/USACE Permitting	$110
Elizabeth Bagwell	Senior Associate I	Cultural and Paleontological Resources	$110
Evan Elliott	Associate I	Cultural and Paleontological Resources	$75
Anton Kozhevnikov	Senior Associate I	Geographic Information Systems	$140
Tracy Popiel	Associate I	Geographic Information Systems	$75
Matthew Long	Associate II	Geology/Soils, Mineral Resources, Surface Hydrology/Water Quality	$210
Philip Lowe	Senior Associate III	Groundwater, Surface Hydrology and Water Quality	$165
Susanne Huerta	Associate II	Land Use and Planning, Public Services and Utilities, Recreation	$87
Jamison Miner	Associate II	Biological Resources	$95
Jennifer Lancaster	Associate II	Biological Resources	$95
Melissa Jordan	Staff I	Administrative Assistant	$65
Maral Koshkarian	Staff I	Accounting	$65
Subconsultants			
James Thurber	Senior Geologist	Geology/Soils, Mineral Resources, Groundwater, Hazards/Hazardous Materials	$180
Aurie Patterson	Senior Geologist	Geology/Soils, Mineral Resources, Hazards/Hazardous Materials	$110
John Kessler	Principal	FERC Regulatory Specialist	$100
William Lahaye	Principal	USFS Special Use Compliance	$110

Aspen Environmental Group

City of Banning

Qualification for Environmental and Permitting Services

Summary Page

	Task 1 Initial Coordination	Task 2 Meetings	Total
Aspen Environmental Group - Labor	$47,492	$29,870	$77,362
Aspen Environmental Group - ODC	$1,183	$1,001	$2,184
ASPEN ENVIRONMENTAL GROUP TOTAL	$48,675	$30,871	$79,546

SUBCONTRACTOR COST:			
Getoechnical Consultants	$792	$792	$1,584
Willaim S. LaHaye	$484	$484	$968
Kessler and Associates	$440	$440	$880
Total Subcontractor Cost	**$1,276**	**$1,276**	**$2,552**

Total Cost Per Task	**$49,951**	**$32,147**	**$82,098**

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Prime Contractor: Aspen Environmental Group

Aspen Labor Costs		Task 1 Data Review and Initial Coordination		Task 2 Meetings		Total	
Key Personnel/Category	Hourly Rate*	Hours	Amount	Hours	Amount	Hours	Amount
Jon Davidson, Vice President	$195.00	8	$1,560	20	$3,900	28	$5,460
Chris Huntley	$165.00	90	$14,850	80	$13,200	170	$28,050
Scott White	$175.00	90	$15,750	40	$7,000	130	$22,750
Negar Vahidi	$160.00	18	$2,880	16	$2,560	34	$5,440
Jared Varonin	$110.00						
Scott White	$175.00						
Phil Lowe	$165.00	30	$4,950	16	$2,640	46	$7,590
Beth Bagwell	$110.00	20	$2,200	4	$440	24	$2,640
Justin Wood	$100.00						
Carla Wakeman	$100.00						
Jamison Miner	$95.00						
Jennifer Lancaster	$95.00						
Susanne Huerta	$87.00	56	$4,872			56	$4,872
Scott Debauche	$100.00						
Will Walters	$170.00						
Tracy Valentovich	$75.00	4	$300			4	$300
Anton Kozhevnikov	$140.00						
Melissa Jordan	$65.00						
Maral Koshkarian	$65.00	2	$130	2	$130	4	$260
TOTAL		318	$47,492	178	$29,870	496	$77,362

* Including fringe benefits, overhead, and fee.

Non-Labor Costs

Direct Project Cost Item	Unit Cost						
Printing & CD reproduction							
Mileage - 2 Wheel Drive (per mile)	$0.55	500	$275	1,200	$660	1700	$935
Mileage - 4 Wheel Drive (per mile)	$0.75						
Travel and Per Diem			$750		$250		$1,000
Postage/Delivery							
Outside Word Processing/Data Entry							
Outside Services Graphics/Mapping							
Document/Data Acquisition							
Miscellaneous		-	$50				$50
Subtotal ODC Cost			**$1,075**		**$910**		**$1,985**
Aspen Fee 10%			**$108**		**$91**		**$199**
Total ODC Cost			**$1,183**		**$1,001**		**$2,184**
Total Cost by Task		**318**	**$48,675**	**178**	**$30,871**	**496**	**$79,546**

Assumptions: Task 1
104 hours for review of existing data by Chris Huntley, Scott White, Negar Vahidi, and Phil Lowe.
24 hours meetings with ANF/Banning for Chris Huntley and Scott White
16 hours misc calls and coordination
40 hours development of draft Project Description and Purpose & Need statement

Assumptions: Task 2
One or two Aspen team leaders in person at all meetings. Others by conference calls as needed.

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Subcontractor Name: Geotechnical Consultants Inc

Aspen Labor Costs		Task 1 and Initial Coordination	Task 2 Meetings	Total
Key Personnel/Category	Hourly Rate*			
Jim Thurber	$180.00	4	4	8
Aurie Patterson	$150.00			
TOTAL		4	4	8

* Including fringe benefits, overhead, and fee.

LABOR COST ($)

Key Personnel/Category			
Jim Thurber	$720	$720	$1,440
Aurie Patterson			
Total Labor Cost	**$720**	**$720**	**$1,440**

Non-Labor Costs

Direct Project Cost Item	Unit Cost			
Internal Copies (per page)	$0.10			
Outside Copies/Printing	cost			
Mileage - 2 Wheel Drive (per mile)	$0.55			
Mileage - 4 Wheel Drive (per mile)	$0.75			
Monitor Vehicle Expenses				
Monitor Meals				
Travel and Per Diem	cost			
Postage/Delivery	cost			
Telephone	cost			
Outside Word Processing/Data Entry	cost			
Outside Services Graphics/Mapping	cost			
Document/Data Acquisition	cost			
Miscellaneous	cost			
Total ODC Cost				

Total Cost by Task		**$720**	**$720**	**$1,440**
Aspen Fee		**$72**	**$72**	**$144**
Total Subcontractor Cost per Task		**$792**	**$792**	**$1,584**

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Subcontractor Name: William Lahaye

Fehr & Peers Labor Costs		Task 1 and Initial Coordination	Task 2 Meetings	Total
Key Personnel/Category	Hourly Rate*			
William Lahaye	$110.00	4	4	8
TOTAL		4	4	8

* Including fringe benefits, overhead, and fee.

LABOR COST ($)

Key Personnel/Category			
William Lahaye	$440	$440	$880
Total Labor Cost	**$440**	**$440**	**$880**

Non-Labor Costs

Direct Project Cost Item	Unit Cost			
Internal Copies (per page)	$0.10			
Outside Copies/Printing	cost			
Mileage - 2 Wheel Drive (per mile)	$0.55			
Mileage - 4 Wheel Drive (per mile)	$0.75			
Monitor Vehicle Expenses				
Monitor Meals				
Travel and Per Diem	cost			
Postage/Delivery	cost			
Telephone	cost			
Outside Word Processing/Data Entry	cost			
Outside Services Graphics/Mapping	cost			
Document/Data Acquisition	cost			
Miscellaneous	cost			
Total ODC Cost				

Total Cost by Task		**$440**	**$440**	**$880**
Aspen Fee		**$44**	**$44**	**$08**
Total Subcontractor Cost per Task		**$484**	**$484**	**$968**

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Subcontractor Name: Kessler and Associates

Fehr & Peers Labor Costs

Key Personnel/Category	Hourly Rate*	Task 1 and Initial Coordination	Task 2 Meetings	Total
John Kessler, FERC Regulatory Specialist	$100.00	4	4	8
TOTAL		4	4	8

* Including fringe benefits, overhead, and fee.

LABOR COST ($)

Key Personnel/Category			
John Kessler, FERC Regulatory Specialist	$400	$400	$800
Total Labor Cost	**$400**	**$400**	**$800**

Non-Labor Costs

Direct Project Cost Item	Unit Cost			
Internal Copies (per page)	$0.10			
Outside Copies/Printing	cost			
Mileage - 2 Wheel Drive (per mile)	$0.55			
Mileage - 4 Wheel Drive (per mile)	$0.75			
Monitor Vehicle Expenses				
Monitor Meals				
Travel and Per Diem	cost			
Postage/Delivery	cost			
Telephone	cost			
Outside Word Processing/Data Entry	cost			
Outside Services Graphics/Mapping	cost			
Document/Data Acquisition	cost			
Miscellaneous	cost			
Total ODC Cost				

Total Cost by Task		**$400**	**$400**	**$800**
Aspen Fee		**$40**	**$40**	**$80**
Total Subcontractor Cost per Task		**$440**	**$440**	**$880**

CITY COUNCIL AGENDA

Date: **July 14, 2015**

TO: **Honorable Mayor and City Council**

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

SUBJECT: **Resolution No. 2015-65 Approving the Exit from the San Juan Generating Station**

RECOMMENDATION: Adopt City Council Resolution No. 2015-65:

I. Approving the exit from the San Juan Generating Station and authorizing the Electric Utility Director to work with the Southern California Public Power Authority ("SCPPA") to execute and complete any and all required obligations to effect said divestiture.

JUSTIFICATION: Under an approved Settlement Agreement with the U.S. Environmental Protection Agency ("EPA"), San Juan Units 2 and 3 will be shut down on or before December 31, 2017. Approval of this Resolution ensures compliance with the Settlement Agreement.

BACKGROUND: Due to a variety of reasons including: Legislative mandates, regulatory requirements, environmental concerns, and political pressure, electric generating facilities which are powered by coal have been under increasing pressure to shut down or implement costly upgrades to reduce emissions. The San Juan Generating Station ("San Juan") has not been immune to this and has been the target of environmental lawsuits, one with the Sierra Club resulted in a settlement in excess of $300M in 2004.

The EPA brought forward a Federal Implementation Plan ("FIP") which would have required San Juan to install Selective Catalytic Reduction ("SCR") equipment to reduce regional haze (i.e. NOx emissions) by October 2016. This forced the San Juan participants to look hard at the future of the power station. The estimated cost of SCR was in the $1 Billion range. After much analysis and negotiations, the EPA and the New Mexico Environmental Improvement Board agreed to a proposal to shut down two of the four units at San Juan (units 2 and 3) by the end of 2017, in return for permission to install much less expensive NOx controls on the remaining two units.

The proposed shutdown of the two San Juan units provided an opportunity for all of the California public agency participants, who were facing many of the same issues as Banning, to elect to leave the San Juan project at the end of 2017. All have elected to do so.

Implementation of this divestiture strategy has been very complex due to the multitude of parties involved, including private and public electric utility participants serving customers across a variety of western states, several Federal and State regulatory agencies and other interested parties including environmental justice groups, Native American tribes, coal suppliers, and organizations representing labor interests.

After over two years of intense negotiations, the participants in the San Juan project have agreed to the final terms and conditions necessary to effectuate the exit from San Juan of all California

public power participants and a multi-state electric power cooperative by no later than December 31, 2017. In addition to Banning, the California parties supporting the shutdown include the Cities of Anaheim, Azusa, Colton, Glendale, Redding, and Santa Clara, as well as the Imperial Irrigation District and the Modesto Irrigation District.

Effectuating the closure of San Juan Unit 3 will require the execution by all participants of three agreements – an umbrella Restructuring Agreement, a Coal Mine Reclamation Agreement and a Decommissioning Agreement. Since SCPPA is technically the owner of Banning's interest in the San Juan Project (Banning acquires all rights and obligations related to SCPPA's interest in San Juan through a Power Sales Agreement or PSA), SCPPA will be the party executing these agreements. Authorization for SCPPA to execute the agreements requires an 80% affirmative vote of the five SCPPA members involved in the San Juan Project. Due to the deadlines that have been established by the New Mexico Public Regulatory Commission, it will be necessary for the SCPPA Board to authorize execution of the three agreements at its July 16, 2015 meeting.

It is recommended that the City Council authorize the Electric Utility Director to vote to approve execution by SCPPA of: (i) the San Juan Project Restructuring Agreement, (ii) Amended and Restated Mine Reclamation and Trust Funds Agreement and (iii) the San Juan Decommissioning and Trust Funds Agreement – the documents necessary to implement a closure of San Juan Unit 3 Generating Station by no later than December 31, 2017, as per the Regional Haze (NO_x) settlement with the EPA. The agreements are attached herewith as Exhibit "A" and are summarized below.

Restructuring Agreement

- Restructuring Fee: In consideration of the costs to restructure the ownership and physical plant for a two unit operation, the Exiting Participants will pay a restructuring fee of $8.8M. SCPPA's share is approximately $4M. Banning's share is 9.8% of that amount or approximately $400K.
- Coal Inventory Sale: On the same day as payment of the Restructuring Fee, the San Juan Plant Manager will purchase the Exiting Participant's share of the coal inventory. The amount of proceeds to be received is estimated at $26M, SCPPA's share is $13M and Banning's share is approximately $1.3M.
- Future Coal Purchases: The San Juan Plant Manager has agreed to supply coal as needed to the Exiting Participants beginning January 1, 2016 at a price of $50/ton. This is less than the current coal price of $58/ton.
- Plant and Units 3&4 Common O&M: The Exiting Participants will have no obligation to pay for these plant and Units 3&4 common facilities retroactively to January 1, 2015. This is estimated to save SCPPA about $35M over the current 2022 term of the San Juan Participation Agreement (Banning's share of these savings is about $3.4M).
- Plant and Units 3&4 Common Capital: Exiting Participants will have no obligation to pay for the capital improvements for these common facilities retroactively to January 1, 2015.
- Demand Charge: In return for the short-term use of new capital improvements prior to December 31, 2017, the Exiting Participants will pay a demand charge of $6.2M. SCPPA's share is only 2.8% or $173.6K (Banning's share is $17K).
- Fuel Oil Inventory: At December 31, 2017, the remaining Participants will purchase the Fuel Oil inventory belonging to the Exiting Participants at book value.
- Ownership: The ownership of SCPPA's share of San Juan will be transferred to the Acquiring Participants on December 31, 2017.

Mine Reclamation and Trust Funds Agreement

The Mine Reclamation and Trust Agreement is necessary to define the power plant participant's obligations related to the reclamation of the on-site coal plant. The basic concept is that the Exiting Participants will only be responsible for their share of coal mine reclamation that results from coal mining activities prior to December 31, 2017. Participants are each required to establish a Mine Reclamation Trust Fund and fully fund their share of estimated mine restoration costs. SCPPA presently has a Trust Fund that is funded at the $3M level. This will be increased to $18M by the end of 2017, and will be funded from coal sale revenues and debt service savings. Banning's share is approximately $1.8M and it will be collected through the usual monthly operating payments made to SCPPA, however there will be no increase to the monthly payments, due to the offset from the coal sale revenue and debt service savings.

Decommissioning and Trust Funds Agreement

The Decommissioning and Trust Funds Agreement is necessary to define each parties responsibility related to the interim and eventual decommissioning of the power plant. The agreement establishes a time based sliding scale for decommissioning such that SCPPA's and Banning's responsibility for plant decommissioning would decline over time after the Unit 3 shutdown at the end of 2017. In this agreement the parties agreed to fund decommissioning trust to a combined level of $30M, which was deemed to be the minimum that might be necessary at total station shutdown, whenever it occurs. SCPPA's share of this minimum trust fund level is $3.8M and Banning's share of this is $380K. There is also an obligation for the parties to fund a "retirement in place" in 2018 following shutdown of Units 2 and 3 in the amount of $1.2M. SCPPA's share is $152K and Banning's share of this is $15K.

FISCAL DATA: The total net direct costs estimated for the San Juan divestiture is $1,312,000. This number is comprised of $2,612,000 in expenses, and $1,300,000 in revenue, as detailed above. These are the "hard" costs for the divestiture and do not take into consideration Banning's O&M savings realized from the early termination of the San Juan Participation Agreement, which are estimated at $3,400,000. The hard costs related to the divestiture will be collected through the monthly operating payment made to SCPPA, however there will be no increase to the monthly payments, due to the offset from the coal sale revenue and debt service savings.

RECOMMENDED BY:

Fred Mason
Electric Utility Director

APPROVED BY:

Dean Martin
Interim City Manager

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RESOLUTION NO. 2015-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE EXIT FROM THE SAN JUAN GENERATING STATION

WHEREAS, the City of Banning ("City") owns and operates its Municipal Electric Utility; and

WHEREAS, the City obtains power from the San Juan Generating Station ("San Juan") through a Power Sales Agreement with the Southern California Public Power Authority ("SCPPA") for output from Unit 3; and

WHEREAS, the New Mexico Environmental Improvement Board and the US Environmental Protection Agency ("EPA") reached a Settlement Agreement to shut down two of the four units at San Juan (units 2 and 3) by December 31, 2017; and

WHEREAS, the San Juan owners have negotiated for over two years to develop the final terms and conditions necessary to effectuate the exit from San Juan of all California public power participants (including the City of Banning) and a multi-state electric power cooperative, by no later than December 31, 2017; and

WHEREAS, effectuating the closure of San Juan Unit 3 will require the execution by all participants of three agreements – an umbrella Restructuring Agreement, a Coal Mine Reclamation Agreement and a Decommissioning Agreement, attached herewith as Exhibit "A"; and

WHEREAS, since SCPPA is technically the owner of Banning's interest in the San Juan Project (Banning acquires all rights and obligations related to SCPPA's interest in San Juan through a Power Sales Agreement), SCPPA will be the party executing these agreements; and

WHEREAS, authorization for the SCPPA Board to execute the agreements requires an 80% affirmative vote of the five SCPPA members involved in the San Juan Project, and due to the deadlines that have been established by the New Mexico Public Regulatory Commission, it will be necessary for the SCPPA Board to authorize execution of the three agreements at its July 16, 2015 meeting; and

WHEREAS, the total net direct costs to the City for the San Juan divestiture are estimated at $1,312,000, which is comprised of $2,612,000 in expenses, and $1,300,000 in revenue, and will be collected through the monthly operating payment made to SCPPA. However there will be no increase to the monthly payments, due to the offset from related revenues and debt service savings; and

WHEREAS, the City wishes to exit from the San Juan Generating Station on or before December 31, 2017;

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

SECTION 1: Adopt Resolution 2015-65 authorizing the Electric Utility Director to work with the Southern California Public Power Authority to execute and complete any and all required obligations to effect divestiture from the San Juan Generating Station within the parameters detailed in the attached: (i) the San Juan Project Restructuring Agreement, (ii) Amended and Restated Mine Reclamation and Trust Funds Agreement and (iii) the San Juan Decommissioning and Trust Funds Agreement.

PASSED, APPROVED, AND ADOPTED this 14th day of July 2015.

Deborah Franklin, 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. 2015-65 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____

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

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Exhibit "A"

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SAN JUAN PROJECT RESTRUCTURING AGREEMENT

AMONG

PUBLIC SERVICE COMPANY OF NEW MEXICO

TUCSON ELECTRIC POWER COMPANY

THE CITY OF FARMINGTON, NEW MEXICO

M-S-R PUBLIC POWER AGENCY

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

CITY OF ANAHEIM

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

July ___, 2015

SAN JUAN PROJECT RESTRUCTURING AGREEMENT

TABLE OF CONTENTS

RECITALS 1
1. Effective Date and Termination 4
1.1 Effective Date. 4
1.2 FERC Filings. 4
1.3 Filings with Governmental Authorities. 5
1.4 Review of Regulatory Orders. 5
1.5 Appellate Decision. 6
1.6 Actions not Arbitrable. 6
1.7 Termination Date. 6
2. Definitions and Rules of Interpretation 6
2.1 Definitions. 6
2.2 Rules of Interpretation. 15
3. Status of PNMR-D under SJPPA 17
3.1 PNMR-D as Party to SJPPA. 17
3.2 Parental Guaranty and Letter of Credit. 17
4. Restructuring Fee, Demand Charge and Voting 17
4.1 Restructuring Fee. 17
4.2 Payment of Restructuring Fee and Common Participation Shares of Shared Coal Inventory. 18
4.3 Costs of Capital Improvements Invoiced after January 1, 2015. 18
4.4 Demand Charge. 19
4.5 Voting on Capital Improvements. 20
5. Fuel Supply 20
5.1 Certain Cost Allocations. 20
5.2 Supply of Coal to Exiting Participants and Remaining Participants. 21
5.3 Relinquishment of Coal Inventory. 21
5.4 Coal Supply for Exiting Participants. 21
5.5 Minimum Purchase Obligations. 21
5.6 Exiting Participant Dispatch Requirements; Invoicing. 21
5.7 Monthly Remaining Participant Coal Invoicing. 22

5.8 Section 23.14 Superseded. 24
6. Exit Date and Ownership Conveyances 24
6.1 Transfer of Exiting Participants' Rights. 24
6.2 Acquisition of Ownership Interests of Exiting Participants. 24
6.3 Plant Ownership after Acquisition of Ownership Interests of Exiting Participants. .. 25
6.4 Unit 1 and Unit 2 Ownerships After Exit Date. 25
6.5 "AS IS" Conveyances. 25
7. Closing of Ownership Conveyances 26
7.1 Closing. 26
7.2 Closing Statement. 26
7.3 Closing Deliveries by the Exiting Participants. 26
7.4 Closing Deliveries by the Acquiring Participants 27
7.5 Conditions Precedent. 27
7.6 Prior Notification of Certain Events. 28
7.7 Prorations. 28
7.8 Governmental Recording and Filing. 28
8. Notifications, Consents and Rights-of-First-Refusal. 28
9. Operation and Maintenance Expenses. 29
10. Replacement Power. 29
11. Other Project Agreements 29
11.1 Other Project Agreements Identified. 29
11.2 Actions with Respect to Other Project Agreements. 29
12. Land Ownership 29
12.1 No Change in Ownership. 29
12.2 Relinquishment of Certain Rights. 29
12.3 Easement and Right of Entry. 29
13. Coal Mine Reclamation Funding. 30
14. Decommissioning. 30
15. Confidentiality 30
15.1 Confidentiality of Negotiations 30
15.2 Non-confidentiality of Restructuring Agreement. 30
16. Taxes 30
16.1 Obligations of Parties. 30
16.2 Notification of Taxing Authorities 30

16.3 IRS Exclusion. 31
17. Representations and Warranties; Opinions of Counsel 31
17.1 Requisite Power and Authority. 31
17.2 No Violation 31
17.3 Opinions of Counsel. 31
18. Relationship of Parties 31
18.1 Several Obligations. 32
18.2 No Joint Venture or Partnership. 32
19. Establishment of Environmental Baseline 32
19.1 Baseline Environmental Study 32
19.2 Scope of BES and Environmental Audit. 32
19.3 Draft Report. 33
19.4 Final Report. 33
19.5 Remediation or Corrective Action. 33
19.6 Further Audit 33
19.7 Subsequently Discovered Environmental Issues. 34
19.8 Claims against Predecessors. 34
20. Liability and Indemnification 34
20.1 Liabilities Defined. 34
20.2 Liabilities Arising Prior to Exit Date. 34
20.3 Liabilities Arising After Exit Date 35
20.4 Apportionment of Liabilities 35
20.5 Limitation of Liability for Willful Action. 35
20.6 Several Liability 35
20.7 Claims Arising After Exit Date 35
20.8 Claims against Predecessors. 37
20.9 PNM Responsibility. 37
20.10 Indemnification Procedures. 37
20.11 Anti-Indemnity Provisions. 39
20.12 Internal Counsel. 39
20.13 Willful Action. 39
20.14 Damages 39
20.15 Mitigation of Damages. 39
20.16 Anaheim and M-S-R. 40

20.17 Southern California Public Power Authority. 40
20.18 Farmington and Los Alamos. 40
20.19 Utah Associated Municipal Power Systems. 40
21. Insurance Coverage for Continuing Obligations 40
21.1 Occurrence-based Policies. 40
21.2 Claims-Made Policies. 41
21.3 Other Insurance Coverage Matters. 42
22. Assignments 42
22.1 Assignment. 42
22.2 Assignee Responsibility. 43
22.3 Parties not Relieved of Obligations. 43
23. Dispute Resolution and Default 43
23.1 Amicable Resolution. 44
23.2 Call for Arbitration. 45
23.3 Selection of Arbitrators. 45
23.4 Arbitration Procedures. 46
23.5 Decision of Arbitrators. 46
23.6 Enforcement of Arbitration Award. 46
23.7 Fees and Expenses. 46
23.8 Interest and Penalty Interest. 46
23.9 Prompt Resolution. 47
23.10 Default. 47
23.11 Consequences of Default. 47
23.12 Legal Remedies. 47
24. Audit Rights; Related Disputes 47
24.1 Right of Audit. 47
24.2 Dispute Resolution. 48
24.3 Adjusted Billing Procedures. 48
24.4 Effectiveness. 48
25. Miscellaneous Provisions 48
25.1 Governing Law. 48
25.2 Venue. 48
25.3 Manner of Giving of Notice. 49
25.4 Other Documents. 51

25.5 Incorporation of Exhibits. 51
25.6 Captions and Headings. 51
25.7 Prior Obligations Unaffected. 51
25.8 Amendment and Modification. 51
25.9 Waivers of Compliance 52
25.10 Uncontrollable Forces. 52
25.11 No Interpretation against Drafter. 52
25.12 No Third Party Beneficiaries. 52
25.13 Compliance with Law. 52
25.14 Independent Covenants. 52
25.15 Invalid Provisions. 52
25.16 Parties' Cost Responsibilities. 53
25.17 Entire Agreement. 53
25.18 Survival of Certain Provisions. 53
25.19 No Admission of Liability. 53
25.20 Other Rights 53
25.21 Execution in Counterparts 53

List of Exhibits

Exhibit A	Regulatory Approvals
Exhibit B	Other Project Agreements
Exhibit C	Form of Instrument of Sale and Conveyance
Exhibit D	Form of Opinion of Counsel
Exhibit E	Parties' Pre-Exit Date Ownership Interests in Project Facilities
Exhibit F	SJGS Plant Site
Exhibit G	Form of Instrument Relinquishing Easement and License
Exhibit H	Form of Easement and Right of Entry
Exhibit I	Form of Parental Guaranty
Exhibit J	Form of Letter of Credit
Exhibit K	Form of Bring-Down Opinion

SAN JUAN PROJECT RESTRUCTURING AGREEMENT

This SAN JUAN PROJECT RESTRUCTURING AGREEMENT ("Restructuring Agreement") is executed as of July __, 2015 ("Execution Date") by and among PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Los Alamos"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"); and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"). The parties to this Restructuring Agreement are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

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

A. The San Juan Project is a four-unit, coal-fired electric generation plant located in San Juan County, near Farmington, New Mexico, also known as the San Juan Generating Station ("SJGS" or the "Project"). On the Execution Date, the owners of the Project are: PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS and Tri-State; these entities, as the owners of the Project on the Execution Date, are sometimes referred to in this Restructuring Agreement as the "Participants."

B. As specified in Sections 6.2.1, 6.2.2 and 6.2.3 of the Amended and Restated San Juan Project Participation Agreement dated March 23, 2006 ("SJPPA"), as of the Execution Date, SJGS Unit 1 and Unit 2 are owned by PNM (50%) and TEP (50%); Unit 3 is owned by PNM (50%), SCPPA (41.8%) and Tri-State (8.2%); and Unit 4 is owned by PNM (38.457%), M-S-R (28.8%), Farmington (8.475%), Los Alamos (7.2%), Anaheim (10.04%) and UAMPS (7.028%). Equipment and facilities associated with more than one SJGS Unit are owned in other ownership percentages, as specified in Sections 6.2.4, 6.2.5 and 6.2.6 of the SJPPA. As provided in the SJPPA, such ownership interests are undivided interests.

C. PNM and PNMR-D are wholly-owned subsidiaries of PNM Resources, Inc. PNMR-D intends, consistent with the provisions of this Restructuring Agreement, to acquire an

Ownership Interest in the Project on the Exit Date and, prior to the acquisition of such Ownership Interest in the Project, to assume certain obligations under this Restructuring Agreement and the SJPPA. PNMR-D is a party to this Restructuring Agreement but is not as of the Execution Date a Participant in the Project.

D. On August 22, 2011, the federal Environmental Protection Agency ("EPA") published its Federal Implementation Plan ("FIP") which included a Best Available Retrofit Technology ("BART") determination to meet regional haze requirements for SJGS. The FIP required the installation of selective catalytic reduction ("SCR") technology on all four Units by September 21, 2016. Thereafter, PNM (in its capacity as SJGS Operating Agent), the Governor of the State of New Mexico and the New Mexico Environmental Department ("NMED") petitioned the United States Court of Appeals for the Tenth Circuit to review this EPA decision. In subsequent discussions between PNM, NMED, EPA and other stakeholders, PNM supported an alternative to the FIP ("BART Alternative") that would be less costly than the FIP while also achieving significant environmental benefits. The specific terms of the BART Alternative were set forth in the EPA Term Sheet, discussed in Recital F.

E. On February 12, 2013, the Participants, through their Coordination Committee representatives, voted (with certain abstentions) to adopt a "Resolution of the San Juan Generating Station Coordination Committee Supporting the Term Sheet with EPA and NMED for the Settlement of the Dispute Relating to the U.S. Environmental Protection Agency Best Available Retrofit Technology Determination for the San Juan Generating Station." The resolution, among other things, approved the EPA Term Sheet (addressed below in Recital F) and contemplated the use of good faith efforts to pursue the approvals necessary to support the implementation of the EPA Term Sheet.

F. On February 15, 2013, PNM, NMED and EPA entered into a Term Sheet (the "EPA Term Sheet") reflecting the terms of a non-binding "tentative agreement" for certain actions intended to address pollution control requirements for SJGS under the federal Clean Air Act's requirements for regional haze and interstate transport for visibility. The EPA Term Sheet provided for the retirement of Unit 2 and Unit 3 by December 31, 2017, and the installation of selective non-catalytic reduction ("SNCR") technology on Unit I and Unit 4 by the later of January 31, 2016 or fifteen (15) months after EPA approval of the BART Alternative.

G. On September 5, 2013, the State of New Mexico approved the BART Alternative as a revision to New Mexico's Regional Haze State Implementation Plan ("RH SIP") and, thereafter, submitted the revision to EPA. Under the terms of the RH SIP, Units 2 and 3 will cease operations by December 31, 2017.

H. By letter dated March I0, 2014, PNM declared in its capacity as Operating Agent that it needed to commence studies, analysis, assessments and design related to the installation of the BART Alternative on Unit 4 in order to comply with the deadlines set forth in the EPA Term Sheet. By letter dated July 14, 2014, PNM declared in its capacity as Operating Agent that it needed to begin incurring capital expenditures for engineering, analysis, computational fluid dynamics modeling and geotechnical evaluation, which was the next phase of the SNCR/balanced draft project for Unit 4. By letter dated March 20, 2015, PNM declared in its

capacity as Operating Agent that it needed to begin incurring equipment fabrication and engineering costs necessary to adhere to the RH-SIP compliance schedule.

I. On October 9, 2014, the EPA issued a final rule approving the BART Alternative and New Mexico's revised RH SIP and issued a separate final rule withdrawing the FIP. EPA's rules became effective November 10, 2014.

J. The California legislature has enacted statutes, and the California Energy Commission has promulgated implementing regulations, limiting the ability of SCPPA, M-S-R and Anaheim to enter into certain life extension projects for coal-fired power plants, including SJGS.

K. As the result of, among other things, the developments described in the foregoing Recitals, the anticipated costs of environmental compliance at SJGS and the California laws and regulations referenced above, the Participants entered into discussions with respect to the restructuring of their respective rights and obligations in the Project. To accomplish this restructuring, several of the Participants are willing or desire to divest or terminate their ownership in the Project while other Participants and PNMR-D are willing or desire to retain, increase or acquire ownership in the Project.

L. To facilitate the discussions referenced in Recital K, the Participants retained the services of an independent mediator. Mediated negotiations commenced in January 2014. In light of PNMR-D's willingness to acquire ownership in the Project, PNMR-D became involved in the mediation in early 2015.

M. On September 12, 2014, the Participants entered into the San Juan Generating Station Fuel and Capital Funding Agreement ("Funding Agreement"). The Funding Agreement was accepted for filing by the Federal Energy Regulatory Commission ("FERC") with an effective date of July 1, 2014. The Funding Agreement terminated by its own terms.

N. PNM has filed an application with the New Mexico Public Regulation Commission ("NMPRC") for approvals required under the New Mexico Public Utility Act for, among other things, approval to abandon SJGS Units 2 and 3 and for a certificate of public convenience and necessity for PNM to own 132 MW of additional capacity in SJGS Unit 4.

O. Concurrently herewith, the Parties are executing: (i) the Amended and Restated Mine Reclamation and Trust Funds Agreement ("Mine Reclamation Agreement"); (ii) the San Juan Decommissioning and Trust Funds Agreement ("Decommissioning Agreement"); (iii) the SJPPA Restructuring Amendment; and (iv) the SJPPA Exit Date Amendment.

P. The Parties desire, by the agreements referenced in Recital O, to establish a comprehensive set of binding agreements with respect to the restructuring of Project ownership interests, rights and cost responsibilities.

Q. The terms, covenants and conditions set out herein are acceptable to each of the Parties and will promote the ability of each Party to provide adequate, efficient, reliable and economical service to its customers in a manner consistent with its legal obligations.

R. The foregoing Recitals are included to provide background regarding this Restructuring Agreement, and while certain Recitals may be referenced in this Restructuring Agreement, they are neither part of nor incorporated into the terms, covenants and conditions of this Restructuring Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises and obligations reflected in the covenants, terms and conditions in this Restructuring Agreement, all of which together provide the consideration for this Restructuring Agreement, the Parties agree as follows:

1. Effective Date and Termination

1.1 Effective Date. Conditioned upon due execution and delivery of this Restructuring Agreement by all of the Parties, the effective date of this Restructuring Agreement ("Effective Date") is the date of the last to occur of the following: (i) FERC has approved the FPA Section 203 applications and has accepted for filing the FPA Section 205 application referenced in Section 1.2.1, in each case without conditions or with conditions acceptable to the Parties as provided in Section 1.4; (ii) the NMPRC has granted PNM authority to abandon Units 2 and 3 and has also granted a certificate of public convenience and necessity to own an additional interest in Unit 4, without conditions or with conditions acceptable to the Parties as provided in Section 1.4; or (iii) the effective date of the CSA.

1.2 FERC Filings.

1.2.1 Within fifteen (15) Business Days after the Execution Date (i) PNM and PNMR-D will file applications with FERC under Section 203 of the FPA for approval of the transactions provided for in Section 6, with a request for expedited consideration; and (ii) PNM will file an application with FERC under Section 205 of the FPA for acceptance of an amendment to the SJPPA incorporating relevant provisions of this Restructuring Agreement. The aforementioned amendment to the SJPPA (the "SJPPA Restructuring Amendment") is being executed by the Parties concurrently with the execution of this Restructuring Agreement. PNM will be responsible for the preparation and filing of the Section 205 application, and PNM and PNMR-D will be responsible for the preparation and filing of their respective Section 203 applications. At least ten (10) Business Days prior to making the Section 203 and 205 applications referenced in this Section 1.2.1, PNM and PNMR-D will provide drafts thereof to the other Parties. PNM's Section 205 filing of the SJPPA Restructuring Amendment will request that the effective date for the SJPPA Restructuring Amendment be the effective date of this Restructuring Agreement; provided, however, that such effective date is conditioned upon PNM providing notice to FERC that all of the other conditions for the effectiveness of this Restructuring Agreement, as identified in Section 1.1, have occurred. If necessary, PNM's filing of the

SJPPA Restructuring Amendment will request any waivers of FERC's regulations that may be necessary to request an effective date for such revisions as specified in the previous sentence of this Section 1.2.1.

1.2.2 Additionally, prior to the Exit Date, PNM will file with FERC a further amendment to the SJPPA under FPA Section 205 (the "SJPPA Exit Date Amendment") to reflect the exit from the Project of the Exiting Participants and to set forth the terms of the SJPPA under which the Remaining Participants will continue their participation in the Project, including the Remaining Participants' operation and maintenance of Units 1 and 4 after the Exit Date. The SJPPA Exit Date Amendment is being executed by the Parties concurrently with the execution of this Restructuring Agreement. PNM will make this Section 205 filing of the SJPPA Exit Date Amendment not less than sixty (60) days nor more than one hundred twenty (120) days prior to the Exit Date and will request that the SJPPA Exit Date Amendment become effective on the Exit Date. At least ten (10) Business Days prior to filing the SJPPA Exit Date Amendment, PNM will provide a draft thereof to the other Parties.

1.2.3 If PNM and PNMR-D have complied with the obligation to provide drafts of the Section 203 and 205 filings set forth in Sections 1.2.1 and 1.2.2, and if such filings are consistent with the terms of this Restructuring Agreement, then all other Parties will support or not oppose PNM and/or PNMR-D's FERC filings by the prompt filing at FERC of certificates or letters of concurrence; by intervening at FERC in support of the filings; or by not taking any action to oppose the filings.

1.3 Filings with Governmental Authorities. PNM and PNMR-D will provide each of the other Parties a copy of the FERC filings referenced in Sections 1.2.1 and 1.2.2, and will keep the other Parties reasonably apprised of the status of all filings to obtain Regulatory Approvals including copies of any Regulatory Approvals or other pertinent orders issued by Governmental Authorities with respect to such filings. PNM and PNMR-D will also provide each of the other Parties a copy of any motion for rehearing or reconsideration filed with respect to any Regulatory Approval and any notice of appeal or petition for review filed with respect to any Regulatory Approval within five (5) Business Days of receipt thereof, and in the manner provided in Section 25.3.

1.4 Review of Regulatory Orders.

1.4.1 Following issuance of an order by any Governmental Authority with regard to a Regulatory Approval, each Party will review such order to determine whether such Governmental Authority has (i) changed or modified a condition, deleted a condition or imposed a new condition with regard to the filing; or (ii) conditioned its approval of the filing upon changes or modifications to a condition, deletion of a condition or imposition of a new condition (the actions described in Sections 1.4.1(i) and 1.4.1(ii) hereinafter collectively referred to as "Regulatory Revision"). The Party receiving such order will provide a copy thereof to the other Parties in the manner provided in Section 25.3 within five (5) Business Days.

1.4.2 Within ten (10) Business Days after delivery of the copy of the order, the Parties will provide written notice to each other of their acceptance or objection to the Regulatory Revision, specifying in such notice in the case of an objection each Regulatory Revision on which such objection is based and the reason for the objection. A failure to notify within said ten (10) Business Day period will be equivalent to a notification of acceptance of the Regulatory Revision.

1.4.3 If any Party objects to a Regulatory Revision, the Parties will attempt, in good faith, to renegotiate the terms and conditions of this Restructuring Agreement to resolve the Regulatory Revision leading to such objection to the satisfaction of the Parties and obtain necessary Board approvals within ninety (90) days after the date of notice of objection to such Regulatory Revision under Section 1.4.2, or such other period as the Parties may agree upon in writing.

1.4.4 If the Parties reach agreement on renegotiated terms and conditions, they will thereafter seek to obtain requisite Regulatory Approval of such renegotiated agreement, with any filings necessary to seek such Regulatory Approval being made within twenty (20) Business Days after the execution of the renegotiated agreement.

1.4.5 If the Parties fail to agree on such renegotiated terms and conditions within the ninety (90) day period referenced in Section 1.4.3, or such other period as the Parties may agree upon in writing, this Restructuring Agreement will not take effect.

1.5 Appellate Decision. A Party receiving a copy of an opinion or other decision affecting a Regulatory Approval or the terms or conditions thereof ("Decision") of an appellate court will, within five (5) Business Days and in the manner provided in Section 25.3, provide a copy thereof to each other Party. Following receipt of the Decision, each Party will review the Decision to determine the potential effect of the Decision on the transactions provided for in this Restructuring Agreement. The Parties will confer in good faith regarding the effect, if any, of the Decision and will attempt, within seventy-five (75) days of receipt of a copy of the Decision, or such other period as the Parties may determine, to mutually agree upon the appropriate course of action in light of the Decision.

1.6 Actions not Arbitrable. Neither a dispute between or among the Parties arising under, nor a Party's action or failure to act under this Section 1, is arbitrable under Section 23.

1.7 Termination Date. Unless otherwise agreed by the Parties, following the Effective Date, this Restructuring Agreement will continue until six (6) months after the later of the termination or expiration of (i) the Mine Reclamation Agreement; or (ii) the Decommissioning Agreement (the "Termination Date").

2. Definitions and Rules of Interpretation

2.1 Definitions. The following terms, when used herein with initial capitalization, have the meanings specified below:

2.1.1 AAA means the American Arbitration Association.

2.1.2 Acquiring Participants means PNM and PNMR-D.

2.1.3 Affiliate means with respect to any person: (i) each person that, directly or indirectly, controls or is controlled by or is under common control with such designated person; (ii) any person that beneficially owns or holds 50% or more of any class of voting securities of such designated person or 50% or more of the equity interest in such designated person; and (iii) any person of which such designated person beneficially owns or holds 50% or more of any class of voting securities or in which such designated person beneficially owns or holds 50% or more of the equity interest; provided, however, that members of a Party will not be deemed to be Affiliates of each such Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise; PNM and PNMR-D are Affiliates.

2.1.4 Arbitration Award means an award of the arbitrators, as provided for in Section 23.5.

2.1.5 Arbitration Notice has the meaning provided for in Section 23.2.

2.1.6 Arbitration Organization means an organization described in Section 23.3.2.

2.1.7 Available Pre-existing Stockpile Tons has the meaning provided for in Section 12.1(C)(1) of the CSA.

2.1.8 BART means Best Available Retrofit Technology.

2.1.9 BART Alternative means the alternative to the FIP, as identified in Recital D.

2.1.10 Baseline Environmental Study or BES means the study provided for in Section 19.1.

2.1.11 Board means the governing body of a Party.

2.1.12 Business Day means any day other than a Saturday, Sunday or federal holiday.

2.1.13 Capital Improvements means any property, land or land rights added to the Project or the substitution, replacement, enlargement or improvement of any units of property, structures, facilities, equipment, property, land or land rights constituting a part of the Project, which in accordance with accounting practice would be capitalized, and

also including the costs of removal, salvage or disposal of any units of property being replaced or substituted.

2.1.14 CCBDA means the existing Coal Combustion Byproducts Disposal Agreement between PNM, TEP and SJCC.

2.1.15 CCR means ash and gypsum byproducts produced by the Project.

2.1.16 CCRDA means the new Coal Combustion Residuals Disposal Agreement entered into between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.17 Charter Documents means with respect to any Party, the certificate or articles of incorporation or organization and by-laws, the limited partnership agreement, the partnership agreement, the limited liability company agreement or trust agreement, or other organizational documents of such Party.

2.1.18 Claims-Made Policy has the meaning provided for in Section 21.2.1.

2.1.19 Clean Air Act means 42 U.S.C. § 7401 *et seq.* (1970).

2.1.20 Closing means the closing, as provided for in Section 7, of the conveyance of the Ownership Interests as provided for in Section 6.

2.1.21 Closing Date means the date of the Closing as provided for in Section 7.1.

2.1.22 Closing Statement has the meaning provided for in Section 7.2.

2.1.23 Coal Tonnage Components means coal tonnage categories as defined in the CSA and comprised of Pre-existing Stockpile Coal, Force Majeure Tons, Available Pre-existing Stockpile Tons, Tier 1 Tons, and Tier 2 Tons.

2.1.24 Common Participation Share means a Participant's share of equipment and facilities common to all of the Units as set out in Section F in Exhibit E.

2.1.25 Common Participation Share of Shared Coal Inventory means a Party's share of equipment and facilities common to all of the Units (as shown in Section F in Exhibit E) multiplied by the sum of (i) coal tons stockpiled on SJCC's property, and (ii) coal tons stockpiled on the SJGS Plant Site.

2.1.26 Condition Precedent means an event that, unless waived, must occur prior to Closing as provided for in Section 7.5.

2.1.27 Consultant means the consultant retained pursuant to Section 19.1.

2.1.28 Continuing Coverage has the meaning provided for in Section 21.2.2.

2.1.29 Credit Rating means the rating publicly assigned to PNMR's senior, unsecured long-term debt obligations (not supported by third-party credit enhancements) by a Rating Agency or, if PNMR does not have a public rating for its senior, unsecured long-term debt, the rating publicly assigned to PNMR by a Rating Agency as its corporate credit rating, or long term issuer rating, as applicable.

2.1.30 CSA means the new Coal Supply Agreement entered into between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.31 Decision has the meaning provided for in Section 1.5.

2.1.32 Decommissioning Agreement means the San Juan Decommissioning and Trust Funds Agreement executed concurrently herewith.

2.1.33 Default has the meaning provided for in Section 23.10.

2.1.34 Draft Report means the draft report provided for in Section 19.3.

2.1.35 EAF means "equivalent availability factor" as defined in the North American Electric Reliability Corporation's Generating Availability Data System Data Reporting Instructions.

2.1.36 Effective Date has the meaning provided for in Section 1.1.

2.1.37 Environmental Audit means the audit provided for in Section 19.1.

2.1.38 EPA means the federal Environmental Protection Agency or its successor agency.

2.1.39 EPA Term Sheet means the term sheet referenced in Recital F.

2.1.40 Escrow Interest has the meaning provided for in Section 23.8.

2.1.41 Execution Date has the meaning provided for in the introductory paragraph of this Restructuring Agreement.

2.1.42 Exit Date means the date upon which the Exiting Participants transfer all of their respective rights, titles and interests in and to their Ownership Interests to the Acquiring Participants as provided in Section 6 and terminate their active involvement in the operation of the SJGS, except as expressly provided for in this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement; the Exit Date is anticipated to be on or about December 31, 2017.

2.1.43 Exiting Participants means those Participants that will transfer all of their respective rights, titles and interests in and to their Ownership Interests to the Acquiring

Participants as provided in Section 6, and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement; the Exiting Participants are M-S-R, Anaheim, SCPPA and Tri-State.

2.1.44 Federal Implementation Plan or FIP has the meaning provided for in Recital D.

2.1.45 Federal Power Act or FPA means 16 U.S.C. §§ 791a *et seq.*

2.1.46 FERC means the Federal Energy Regulatory Commission or any successor thereto.

2.1.47 Final Report means the final report provided for in Section 19.4.

2.1.48 Force Majeure Tons has the meaning provided for in Section 12.1(C)(1) of the CSA.

2.1.49 Fuels Committee means the committee established in the SJPPA to facilitate the discussion of Project coal issues.

2.1.50 Funding Agreement means the San Juan Generating Station Fuel and Capital Funding Agreement among the Participants, dated September 12, 2014.

2.1.51 Further Audit means the audit provided for in Section 19.6.

2.1.52 Governmental Authority means any federal, state, tribal, local, municipal or foreign governmental or regulatory authority, department, agency, commission, body, court or other governmental authority other than a Party.

2.1.53 Guaranteed Parties has the meaning provided for in the form of Parental Guaranty Agreement attached as Exhibit I.

2.1.54 Indemnified Party means a Party that is seeking or entitled to indemnification or is being indemnified, as provided in Section 20.10.1.

2.1.55 Indemnifying Party means a Party indemnifying another Party, as provided in Section 20.10.1.

2.1.56 Initiating Party means a Party initiating an audit as provided for in Section 24.1.

2.1.57 Law means statutes, rules, regulations, ordinances, orders and codes of federal, state and local Governmental Authorities.

2.1.58 Legacy Costs means those costs payable under Sections 8.2, 8.3 and 8.4 of the CSA

2.1.59 Letter of Credit has the meaning provided for in Section 3.2.2.

2.1.60 Liability means those liabilities described in Section 20.1.

2.1.61 Liens and Encumbrances means, as to each Exiting Participant, all liens, mortgages, claims, assignments, taxes, assessments, governmental charges, filings, pledges, grants of security interests and any other form of encumbrance on the Exiting Participant's Ownership Interest created by each such Exiting Participant.

2.1.62 Mine Reclamation Agreement means the Amended and Restated San Juan Mine Reclamation and Trust Funds Agreement, executed concurrently herewith.

2.1.63 Minimum Annual Generation ("MAG") (expressed in MWh) means Net Maximum Capacity ("NMC") (of Unit 3 or Unit 4, as applicable), and expressed in MW, multiplied by each Participant's percentage Ownership Interest ("I") in a Unit multiplied by 0.85 multiplied by (the Unit 3 Equivalent Availability Factor ("EAF") for SCPPA and Tri-State or the Unit 4 EAF for M-S-R and Anaheim) multiplied by the total annual hours in the calendar year ("AH"). The AH in calendar year 2016 equals 8784 hours and the AH in calendar year 2017 equals 8760 hours. The foregoing is expressed in the following formula: $MAG = NMC * I * 0.85 * EAF * AH$.

2.1.64 Minimum Annual Tonnage Purchase Obligation ("MTO") means Minimum Annual Generation multiplied by the Participant's respective actual average net unit heat rate ("NUHR"), expressed in Btu/kWh, for the year, divided by two times the weighted average heat content ("HC"), expressed in Btu/Lb, of coal delivered by SJCC in the year. The foregoing is expressed in the following formula: $MTO = (MAG * NUHR)/(2 * HC)$.

2.1.65 Minimum Credit Threshold means an investment grade Credit Rating of both Baa3 from Moody's and BBB- from S&P.

2.1.66 Moody's means Moody's Investors Services, Inc. or its successors.

2.1.67 Net Maximum Capacity means the maximum continuous ability of each Unit to produce power, as defined by the North American Electric Reliability Corporation in its Generating Availability Data System Data Reporting Instructions.

2.1.68 NMED means the New Mexico Environment Department or its successor agency.

2.1.69 NMPRC means the New Mexico Public Regulation Commission or its successor agency.

2.1.70 Notice of Dispute has the meaning provided for in Section 23.1.1.

2.1.71 Noticing Party has the meaning provided for in Section 23.1.1.

2.1.72 Operating Agent means the Participant or other entity which has been selected by the Participants as the entity responsible for the operation and maintenance of the Project pursuant to the SJPPA; as of the Effective Date, PNM is the Operating Agent. Unless otherwise specifically provided for, when in this Restructuring Agreement a reference is made to the "agent" of a Party, such reference will not be deemed to include reference to the Operating Agent.

2.1.73 Operating Insurance means policies of insurance secured or to be secured by the Operating Agent as provided for in the SJPPA.

2.1.74 Operating Work means engineering, contract preparation and administration, purchasing, repair, supervision, training, expediting, inspection, testing, protection, operation, use, management, replacement, retirement, reconstruction and maintenance of and for the benefit of the Project, including the administration of the SJPPA, environmental compliance activities and the procurement of fuel and water and other necessary materials and supplies.

2.1.75 Operation and Maintenance ("O&M") Expenses means expenses incurred by the Operating Agent in the performance of Operating Work and chargeable to the Parties pursuant to the SJPPA and this Restructuring Agreement.

2.1.76 Other Project Agreements means agreements entered into between or among one or more of the Parties and/or other persons prior to the Execution Date in connection with the Parties' respective purchases of Ownership Interests in the Project or the operation of the Project; the Other Project Agreements that have been identified by the Parties are listed in **Exhibit B**.

2.1.77 Ownership Interest means a Party's percentage undivided ownership interest in a Unit and in common equipment and facilities and as increased, decreased, acquired or transferred as provided in this Restructuring Agreement, and rights incidental thereto.

2.1.78 Parental Guaranty has the meaning provided for in Section 3.2.1.

2.1.79 Participant means any one of PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS or Tri-State.

2.1.80 Participant Coal Consumption means each Participant's total San Juan Project coal consumption in tons as determined by the Operating Agent. A Participant's Coal Consumption is comprised of its share of coal consumed in its Unit(s) plus its share of coal consumed for common loads, auxiliary loads and start-up for all Units.

2.1.81 Party means any one of the Participants as well as PNMR-D.

2.1.82 Penalty Interest means interest awarded by the arbitrators pursuant to Section 23.8.

2.1.83 PNMR means PNM Resources, Inc., a New Mexico corporation.

2.1.84 Predecessor means any person, including a Party, that, at any time prior to the Execution Date, held ownership of the Ownership Interest of a Party that is seeking indemnity or contribution for environmental Liability under Sections 19 or 20.

2.1.85 Pre-existing Stockpile Coal means coal that as of the Effective Date is stockpiled on SJCC property.

2.1.86 Project has the meaning described in Recital A.

2.1.87 Project Coal Inventory means the sum of coal in coal storage piles, silos, conveying systems, hoppers and all other coal storage at the Project as accounted in FERC Account 151.

2.1.88 Protest has the meaning provided for in Section 23.1.2.

2.1.89 Protesting Party means a Party making a protest in accordance with Section 23.1.2.1.

2.1.90 Rating Agency means Moody's or S&P.

2.1.91 Refined Coal Supply Agreement means the Refined Coal Supply Agreement by and between San Juan Fuels, LLC and PNM dated June 21, 2013.

2.1.92 Regulatory Approval means an authorization, consent, license, certificate, permit, waiver, privilege, acceptance or approval issued or granted by a Governmental Authority. Regulatory Approvals identified by the Parties as required in connection with this Restructuring Agreement are set out in **Exhibit A**.

2.1.93 Regulatory Revision has the meaning provided for in Section 1.4.1.

2.1.94 Remaining Participants means those Parties that will continue participation, or acquire an Ownership Interest, in the Project on and after the Exit Date; the Remaining Participants are PNM, TEP, Farmington, UAMPS, Los Alamos and PNMR-D.

2.1.95 Restructuring Agreement has the meaning provided for in the introductory paragraph of this agreement.

2.1.96 RH SIP has the meaning provided for in Recital G.

2.1.97 RSA means the new Reclamation Services Agreement entered into between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.98 SCR means selective catalytic reduction.

2.1.99 SJCC means San Juan Coal Company, a Delaware corporation, or its successors or assigns.

2.1.100 SJCC Environmental Force Majeure has the meaning provided for in Section 12.1(C)(1) of the CSA.

2.1.101 SJGS means the San Juan Generating Station.

2.1.102 SJGS Plant Site means what are identified as Parcels A, B, D, E and F in **Exhibit F**.

2.1.103 SJPPA means the Amended and Restated San Juan Project Participation Agreement, dated March 23, 2006.

2.1.104 SJPPA Exit Date Amendment means the amendment to the SJPPA as provided for in Section 1.2.2.

2.1.105 SJPPA Restructuring Amendment means the amendment to the SJPPA as provided for in Section 1.2.1.

2.1.106 SNCR means selective non-catalytic reduction.

2.1.107 S&P means the Standard & Poor's Financial Services, LLC (a subsidiary of McGraw-Hill Companies) or its successor.

2.1.108 Termination Date has the meaning provided for in Section 1.7.

2.1.109 Tier 1 Tonnage Allocation means a schedule allocating Tier 1 Tons on a monthly basis based on the SJGS monthly planned coal consumption.

2.1.110 Tier 1 Tons means, with respect to: (i) each of 2016 and 2017, 5.750 million tons; (ii) each of 2018 and 2019, 2.8 million tons; (iii) each of 2020 and 2021, 2.65 million tons; and (iii) 2022, 1.4 million tons.

2.1.111 Tier 2 Tons means all tons delivered to and accepted by SJGS in a year in excess of Tier 1 Tons.

2.1.112 UG-CSA means the Underground Coal Sales Agreement between PNM, TEP and SJCC executed on August 31, 2001.

2.1.113 UG-CSA Termination Agreement means the Underground Coal Sales Agreement Termination and Mutual Release Agreement among PNM, TEP, SJCC and BHP Billiton New Mexico Coal.

2.1.114 Uncontrollable Forces has the meaning provided for in Section 25.10.

2.1.115 Unit means Unit 1, Unit 2, Unit 3 or Unit 4 of the Project.

2.1.116 Willful Action means: (i) action taken or not taken by a Party (or the Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance under this Restructuring Agreement, which 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 (ii) action taken or not taken by a Party (or the Operating Agent) at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default hereunder and which action occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default, or if no time to cure is specified therein, occurs or continues beyond a reasonable time to cure such default; or (iii) action taken or not taken by a Party (or the Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default hereunder. The phrase "employees having management or administrative responsibility," as used in this Section 2.1.116, means employees of a Party who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Restructuring Agreement; provided, however, that, with respect to employees of the Operating Agent acting in its capacity as such and not in its capacity as a Party, but only during such time as any one of Unit 1, 2, 3 or 4 is commercially producing electrical power, such phrase refers only to: (x) the senior employee of the Operating Agent on duty at the Project who is responsible for the operation of the Units, and (y) anyone in the organizational structure of the Operating Agent between such senior employee and an officer. After such time as none of Unit 1, 2, 3 or 4 is commercially producing electrical power, the phrase "employees having management or administrative responsibility" as used in this Section 2.1.116 will mean employees of any Party (including the Operating Agent), who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Restructuring Agreement. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

2.2 Rules of Interpretation. Unless a clear contrary intention appears, this Restructuring Agreement will be construed and interpreted as follows:

2.2.1 Any reference to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization, governmental entity or other entity;

2.2.2 Any reference to a day, week, month or year is to a calendar day, week, month or year, unless otherwise specified as a Business Day;

2.2.3 Any act required to occur by or on a certain day is required to occur before or on that day unless the day falls on a Saturday, Sunday or federal holiday, in which case the act must occur before or on the next Business Day;

2.2.4 The singular includes the plural and *vice versa*;

2.2.5 Reference to the feminine, masculine or neutral gender includes reference to all other genders;

2.2.6 Reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Restructuring Agreement;

2.2.7 Unless expressly stated otherwise, reference to any agreement (including this Restructuring Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended, supplemented, replaced or modified and in effect from time-to-time;

2.2.8 Reference to any Law means such Law as amended, modified, codified supplemented or reenacted, in whole or in part, and in effect from time-to-time, including, if applicable, rules and regulations promulgated thereunder;

2.2.9 Unless expressly stated otherwise, reference to any article, section, exhibit or appendix means such article, section, exhibit or appendix of this Restructuring Agreement, as the case may be;

2.2.10 "Hereunder," "hereof," "herein," "hereto" and words of similar import are deemed references to this Restructuring Agreement as a whole and not to any particular provision hereof;

2.2.11 "Including," "include" and "includes" are deemed to be followed by the phrase "without limitation" and will not be construed to mean the examples given constitute an exclusive list of the matters covered;

2.2.12 Relating to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; and

2.2.13 Whenever an act is required to be performed by a particular time of day, prevailing Mountain Time will be the standard by which performance is measured.

3. Status of PNMR-D under SJPPA

3.1 PNMR-D as Party to SJPPA. As reflected in this Restructuring Agreement, PNMR-D will not acquire an Ownership Interest in the Project until the Exit Date. However, the SJPPA will be amended to provide that PNMR-D will be a party to the SJPPA upon the Effective Date. The purpose of adding PNMR-D as a party to the SJPPA is to set out certain financial obligations PNMR-D will assume, and rights it will have, in contemplation of its acquisition of an Ownership Interest on the Exit Date as described in Sections 6.1 and 6.2.

3.2 Parental Guaranty and Letter of Credit.

3.2.1 Parental Guaranty. As a condition of PNMR-D becoming a party to the SJPPA as provided in Section 3.1, PNMR-D's parent company, PNM Resources, Inc. ("PNMR"), will enter into, on or before the Execution Date, a parental guaranty of PNMR-D's obligations under the Restructuring Agreement, the Decommissioning Agreement, the Mine Reclamation Agreement and the SJPPA ("Parental Guaranty"). The form of the Parental Guaranty is attached hereto as **Exhibit I**.

3.2.2 Letter of Credit. If PNMR's Credit Rating falls below the Minimum Credit Threshold, then PNMR will provide the Operating Agent with a letter of credit (the "Letter of Credit") in the amount of ten million dollars ($10,000,000) with the Operating Agent as the beneficiary. The form of the Letter of Credit is attached hereto as **Exhibit J**. PNMR will deliver the Letter of Credit to the Operating Agent for the benefit of the Guaranteed Parties within ten (10) Business Days following: (i) the effective date of the Credit Rating downgrade that results in PNMR not meeting the Minimum Credit Threshold; or (ii) the withdrawal of PNMR from being rated by one or more of the Rating Agencies. Upon a failure of PNMR to make payment under the Parental Guaranty or a failure of PNMR to procure a conforming replacement Letter of Credit no later than twenty (20) days before expiration of the existing Letter of Credit, the beneficiary will promptly draw upon the Letter of Credit. If appropriate, the Operating Agent will prorate among the Guaranteed Parties the funds drawn against the Letter of Credit. If the issuer of the Letter of Credit notifies the Operating Agent that the issuer's long term obligation rating has fallen below the rating established in the Letter of Credit, PNMR will have twenty-five (25) days within which to replace the Letter of Credit with a new letter of credit from an issuer that meets the minimum long term obligation rating established in the Letter of Credit. If PNMR fails to procure a new letter of credit as provided in the previous sentence, the beneficiary will draw upon the Letter of Credit for the benefit of the Guaranteed Parties.

4. Restructuring Fee, Demand Charge and Voting

4.1 Restructuring Fee. In consideration of costs to restructure the ownership of the Project as provided for herein and for the restructuring of rights and obligations of the Parties in

relation to the Project, the Exiting Participants will pay and the Remaining Participants will accept a restructuring fee in the amount of eight million eight hundred thousand dollars ($8,800,000) ("Restructuring Fee").

4.1.1 The responsibility to pay the Restructuring Fee is allocated among the Exiting Participants in the following percentages: M-S-R – 32.22%; Anaheim – 11.48%; SCPPA – 47.08%; and Tri-State – 9.22%.

4.1.2 The receipt of the Restructuring Fee is allocated as follows: PNM – 0%; TEP – 0%; Farmington – 17.24%; LAC – 22.20%; UAMPS – 22.20%; and PNMR-D – 38.36%.

4.2 Payment of Restructuring Fee and Common Participation Shares of Shared Coal Inventory. Payment of the Restructuring Fee, and payment for the Common Participation Shares of Shared Coal Inventory pursuant to Section 5.3, will occur on the same date, in the manner agreed upon by the Parties, which date will be no later than thirty (30) days after the Effective Date. Each Exiting Participant will pay its proportionate share of the Restructuring Fee as set forth in Section 4.1.1 to the Remaining Participants entitled to receive such payment as provided in Section 4.1.2.

4.3 Costs of Capital Improvements Invoiced after January 1, 2015. The provisions of Section 7 of the SJPPA, Capital Improvements and Retirements of San Juan Project and Participants' Solely Owned Facilities, are modified by this Section 4.3 as follows:

4.3.1 The Remaining Participants are responsible for the costs of Capital Improvements invoiced after January 1, 2015, and the Exiting Participants have no ownership interest in such Capital Improvements. The Exiting Participants will have no responsibility for costs of the SNCR/balanced draft project to be placed on Units 1 and 4. Costs of Capital Improvements invoiced after January 1, 2015, are allocated to the Remaining Participants as follows:

4.3.1.1 For Unit 4 and for all equipment and facilities directly related to Unit 4 only, in accordance with the following percentages:

4.3.1.1.1	PNM:	64.482%
4.3.1.1.2	Farmington:	8.475%
4.3.1.1.3	LAC:	7.200%
4.3.1.1.4	UAMPS:	7.028%
4.3.1.1.5	PNMR-D	12.815%

4.3.1.2 For equipment and facilities common to Units 3 and 4 only, in accordance with the following percentages:

4.3.1.2.1	PNM:	64.482%
4.3.1.2.2	Farmington:	8.475%
4.3.1.2.3	LAC:	7.200%

4.3.1.2.4	UAMPS:	7.028%
4.3.1.2.5	PNMR-D	12.815%

4.3.1.3 For equipment and facilities common to all of the Units in accordance with the following percentages:

4.3.1.3.1	PNM:	58.671%
4.3.1.3.2	TEP:	20.068%
4.3.1.3.3	Farmington:	5.076%
4.3.1.3.4	LAC:	4.309%
4.3.1.3.5	UAMPS:	4.203%
4.3.1.3.6	PNMR-D:	7.673%

4.3.2 The modifications to Section 7 of the SJPPA set out in Section 4.3.1 replace and supersede the provisions of Section 7.13 of the SJPPA accepted for filing as PNM Rate Schedule No. 144 and currently on file with the FERC.

4.4 Demand Charge. For the period July 1, 2014, through December 31, 2017, the Exiting Participants will pay a Demand Charge for the use of new Capital Improvements implemented on Unit 4, facilities common to Units 3 and 4, and facilities common to all Units.

4.4.1 The total Demand Charge is six million two hundred thousand dollars ($6,200,000) of which five million three hundred fourteen thousand two hundred eighty-six dollars ($5,314,286) remains unpaid. The Demand Charge will be paid regardless of the output of Unit 3 or 4. The Exiting Participants will be invoiced by the Operating Agent for and will pay the unpaid balance of the Demand Charge in monthly amounts of no less than 1/36th of the unpaid balance; provided, the sum of the monthly amounts which would have accrued between January 1, 2015 and the Effective Date will be paid within forty-five (45) days of the Effective Date.

4.4.2 The Exiting Participants will pay the Demand Charge as follows:

4.4.2.1	M-S-R	71.650%
4.4.2.2	Anaheim	25.000%
4.4.2.3	SCPPA	2.800%
4.4.2.4	Tri-State	0.550%

4.4.3 The Remaining Participants will be paid the Demand Charge as follows from July 1, 2014 through December 31, 2014:

4.4.3.1	PNM	0.000%
4.4.3.2	TEP	0.000%
4.4.3.3	Farmington	55.600%
4.4.3.4	LAC	22.200%
4.4.3.5	UAMPS	22.200%
4.4.3.6	PNMR-D	0.000%

4.4.4 The Remaining Participants will be paid the Demand Charge as follows from January 1, 2015 through December 31, 2017:

4.4.4.1	PNM	0.000%
4.4.4.2	TEP	0.000%
4.4.4.3	Farmington	17.24%
4.4.4.4	LAC	22.20%
4.4.4.5	UAMPS	22.20%
4.4.4.6	PNMR-D	38.36%

4.4.5 With respect to any Demand Charges paid or received between July 1, 2014 and December 31, 2014, any Exiting Participant that made such a Demand Charge payment and any Remaining Participant that received a Demand Charge payment and did not return it will be credited the amount of that payment or receipt as follows: the amount of any such payment will be proportionately offset against the amount of the Demand Charge payment each such Exiting Participant is obligated to pay under Sections 4.4.1 through 4.4.4, and the amount of any such receipt by a Remaining Participant will be proportionately offset against the amount of the Demand Charge payment each such Remaining Participant is entitled to receive under Sections 4.4.1 through 4.4.4. The Demand Charge payments made by Exiting Participants to the Operating Agent between July 1, 2014, and December 31, 2014, were as follows: M-S-R - $634,614; Anaheim - $221,429; SCPPA - $24,800; and Tri-State - $4,871. The Demand Charge payments received by the Remaining Participants between July 1, 2014, and December 31, 2014, and not returned to the Operating Agent were as follows: Farmington - $492,457. For a Remaining Participant that returned Demand Charge payments received between July 1, 2014 and December 31, 2014, such Remaining Participant will receive a disbursement from the Operating Agent constituting the Remaining Participant's entire proportionate share of Demand Charge payments as set forth in Sections 4.4.1, 4.4.3 and 4.4.4.

4.5 Voting on Capital Improvements. As of the Effective Date, for purposes of the application of the double voting procedures set out in Section 18.4 of the SJPPA, the Ownership Interests and the number of individual Parties required to approve a Capital Improvement will be as provided in Section 4.3.1.

5. Fuel Supply

5.1 Certain Cost Allocations. Payment obligations for coal supply, reclamation and CCR disposal will be allocated as follows:

5.1.1 For payments under the UG-CSA, the CCBDA, the UG-CSA Termination Agreement and the CCBDA Termination Agreement, Sections 23.1 through 23.13 of the SJPPA (as those sections were in effect on March 23, 2006) will apply.

5.1.2 Sections 23.1 through 23.13 of the SJPPA (as those sections were in effect on March 23, 2006) will apply for allocation of any fuel-related payments (other than for

coal) incurred through December 31, 2017 and chargeable to FERC Account 501, including limestone, fuel oil, CCR disposal, fuel handling or start-up or auxiliary power and energy.

5.1.3 For payments arising under the CSA and the CCRDA, Sections 5.2 through 5.7 of this Restructuring Agreement will apply.

5.1.4 Payments arising under the RSA will be allocated as determined under the Mine Reclamation Agreement.

5.2 Supply of Coal to Exiting Participants and Remaining Participants. Beginning on January 1, 2016, PNM will supply coal to (i) the Exiting Participants under the provisions of Sections 5.3 through 5.6; and (ii) the Remaining Participants under the provisions of Section 5.7. PNM will have all cost obligations under the CSA for coal supplied to the Exiting Participants and PNM will have all rights to the Exiting Participants' inventory relinquished to PNM under Section 5.3.

5.3 Relinquishment of Coal Inventory. The Exiting Participants will relinquish to PNM their Common Participation Shares of Shared Coal Inventory that exist as of January 1, 2016, at the following values: (i) $16.88/ton for coal tons stockpiled on SJCC's property and $22.69/ton for coal tons stockpiled on the SJGS Plant Site. The total sum paid by PNM for Common Participation Shares of Shared Coal Inventory will be allocated as follows:

5.3.1	M-S-R	32.22%
5.3.2	Anaheim	11.48%
5.3.3	SCPPA	47.08%
5.3.4	Tri-State	9.22%

5.4 Coal Supply for Exiting Participants. From January 1, 2016 through the Exit Date, the Exiting Participants will receive coal monthly to meet their Participant Coal Consumption from PNM at a cost of $50/ton in 2016 and 2017. This $50/ton covers all payment obligations for coal supplied to the Exiting Participants that might otherwise be due under (i) this Restructuring Agreement; (ii) the CSA, including Legacy Costs, taxes and royalties; and (iii) gross receipts taxes under the Refined Coal Supply Agreement or otherwise. This $50/ton does not include payments for reclamation costs under the RSA or disposal costs under the CCRDA.

5.5 Minimum Purchase Obligations. The Exiting Participants will not have any take-or-pay or minimum purchase obligations under the CSA; provided, however, the Exiting Participants must comply with the dispatch requirements described in Section 5.6.

5.6 Exiting Participant Dispatch Requirements; Invoicing. The Exiting Participants will dispatch their respective shares of the Units to no less than their Minimum Annual Generation. The Exiting Participants will be billed monthly based on their Participant Coal Consumption. At the end of each of 2016 and 2017, any Exiting Participant that has not met its Minimum Annual Tonnage Purchase Obligation will be billed at $50/ton for the difference between its actual Participant Coal Consumption and its Minimum Annual Tonnage Purchase

Obligation; provided, in the event that at any time during 2016 or 2017 PNM is unable to supply coal to the Exiting Participants as provided in Section 5.4, then the Minimum Annual Tonnage Purchase Obligation will be proportionately reduced to account for any such period of time in which PNM is unable to supply coal.

5.7 Monthly Remaining Participant Coal Invoicing. For purposes of the calculations in this Section 5.7, PNM's Common Participation Share will include the Exiting Participants' Common Participation Share, and PNM's Participant Coal Consumption will include the Exiting Participants' Participant Coal Consumption. SJCC will invoice PNM monthly as provided under the CSA. PNM will invoice each Remaining Participant monthly by Coal Tonnage Component and such Coal Tonnage Component will be paid for as follows:

5.7.1 Pre-existing Stockpile Coal Tons. Pre-existing Stockpile Coal tons as invoiced by SJCC will be allocated by a Remaining Participant's Common Participation Share as of the Effective Date and will be paid for by each Remaining Participant at the price per ton charged by SJCC in its monthly invoicing to PNM.

5.7.2 Tier 1 Tons. Each year, PNM will develop a monthly Tier 1 Tonnage Allocation schedule with SJCC in the annual operating plan process as provided for in Section 7.2 of the CSA. With input from the Remaining Participants, PNM will develop a monthly allocation by Remaining Participant of such Tier 1 Tons (such individual allocation, its "Tier 1 Tonnage Allocation"). Such monthly Tier 1 Tonnage Allocation will be paid for by Remaining Participants whether or not their Participant Coal Consumption exceeded their Tier 1 Tonnage Allocation in the month. Monthly, for each Remaining Participant, its Tier 1 Tonnage Allocation, net of its invoiced Pre-existing Stockpile Coal for such month will be paid for at the then-existing price for Tier 1 Tons under the CSA. In each of 2016 and 2017, five million six hundred thousand (5,600,000) tons will be allocated by Remaining Participant Share, and then PNM will be allocated an additional one hundred fifty thousand (150,000) tons in each of those years. In each of 2018 and 2019, two million eight hundred thousand (2,800,000) tons will be allocated by Remaining Participant Share. In each of 2020 and 2021, two million eight hundred thousand (2,800,000) tons will be allocated by Remaining Participant Share, and then PNM's allocation will be reduced by one hundred fifty thousand (150,000) tons in each of those years. In 2022, one million four hundred thousand (1,400,000) tons will be allocated by Remaining Participant Share.

5.7.3 Tier 2 Tons. To the extent that a Remaining Participant's Participant Coal Consumption in a month exceeds its Tier 1 Tonnage Allocation for such month, PNM will invoice such Remaining Participant such excess as Tier 2 Tons to be paid for at the then existing price for Tier 2 Tons under the CSA.

5.7.4 Legacy Costs. Legacy Costs as invoiced monthly by SJCC will be allocated using a Remaining Participant's Common Participation Share for that year.

5.7.5 Reclamation Bond Premium. Cost for SJCC's reclamation bond premium invoiced through the CSA will be allocated using a Remaining Participant's Common Participation Share for that year.

5.7.6 Weight-based Taxes. Weight-based taxes will be applied to the tonnages as invoiced by PNM to each Remaining Participant at the then-existing rates applicable to SJCC invoices.

5.7.7 Revenue-based Taxes and Royalties. Revenue-based taxes and royalties will be applied to the tonnages and total coal costs as invoiced by PNM to each Remaining Participant at the then-existing rates applicable to SJCC invoices.

5.7.8 SJCC Environmental Force Majeure. In the event of an SJCC Environmental Force Majeure, then Available Pre-existing Stockpile Tons will be allocated in the same manner as Pre-existing Stockpile Coal tons, and Force Majeure Tons will be allocated in the same manner as Tier 1 Tons unless otherwise approved by the Remaining Participants in the Fuels Committee. Such calculations will be on an annual basis.

5.7.9 Other Costs. Any other costs billed by SJCC under the CSA and not specifically addressed in this Section 5.7 will be apportioned among and paid for by the Remaining Participants on the basis of Remaining Participant's Common Participation Share for that year unless otherwise annually approved by the Remaining Participants in the Fuels Committee.

5.7.10 Annual Year-End Reconciliation Process.

5.7.10.1 At the end of each year, the Operating Agent will reconcile the sum of each Remaining Participant's monthly CSA-related payments to a properly allocable share of annual Tier 1 Tons, Tier 2 Tons, Pre-existing Stockpile Coal tons, and cost associated with any change in Project Coal Inventory and invoice or refund any such reconciliation amounts to each Remaining Participant.

5.7.10.2 Any net consumption of Project Coal Inventory tons will be charged to FERC Account 501 and apportioned among and paid for by the Remaining Participants on the basis of the percentage that each Remaining Participant's annual Tier 2 Tons after the reconciliation process bears to the total annual Tier 2 Tons consumption after the reconciliation process for all Units. The price for such tons will be determined by dividing the total recorded cost in FERC Account 151 by the total number of tons of coal in Project Coal Inventory, both as recorded on January 1 of said year. The total amount of any such payment for consumed Project Coal Inventory tons will subsequently be credited to FERC Account 151 and apportioned to the Remaining Participants based on the Remaining Participant's Common Participation Share for that year.

5.7.10.3 The costs of any net addition to Project Coal Inventory tons, as invoiced by SJCC, will be charged to FERC Account 151 and apportioned to and paid for by the Remaining Participants based on the Remaining Participant's Common Participation Share for that year.

5.7.10.4 If, at the end of any year, the Operating Agent has collected amounts in excess of those due SJCC under the CSA, such over-collection will be refunded to the Remaining Participants. The refund to each Remaining Participant will be an amount equal to the total amount of the over-collection multiplied by the tons each Remaining Participant's Coal Consumption was less than its total annual Tier 1 Tonnage Allocation divided by the total amount by which all such Remaining Participants' Coal Consumption was less than their Tier 1 Tonnage Allocation.

5.8 Section 23.14 Superseded. The provisions of this Section 5 replace and supersede the provisions of Section 23.14 of the SJPPA accepted for filing as PNM Rate Schedule No. 144 and currently on file with the FERC.

6. Exit Date and Ownership Conveyances

6.1 Transfer of Exiting Participants' Rights. The Exiting Participants will each transfer all of their respective rights, titles and interests in and to their Ownership Interests to the Acquiring Participants as specified in Section 6.2 and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement. The Remaining Participants will purchase fuel oil inventory from the Exiting Participants at book value on the Exit Date. On the first monthly invoice following the Exit Date, the Operating Agent will credit each of the Exiting Participants for its share of the book value for fuel oil inventory, and charge each of the Remaining Participants for its share of such book value. Each Exiting Participant's share of fuel oil inventory will be calculated using its Common Participation Share prior to the Exit Date. Each Remaining Participant's share will be calculated using its Common Participation Share after the Exit Date.

6.2 Acquisition of Ownership Interests of Exiting Participants. On the Exit Date and in accordance with this Restructuring Agreement and with all other instruments referenced herein:

6.2.1 SCPPA and Tri-State will convey all of their respective rights, titles and interests in and to their Ownership Interests to PNM, and PNM (an "Acquiring Participant") will acquire all of SCPPA's and Tri-State's respective rights, titles and interests in and to their Ownership Interests; and

6.2.2 M-S-R and Anaheim will convey all of their respective rights, titles and interests in and to their Ownership Interests to PNM and PNMR-D, and PNM and PNMR-D ("Acquiring Participants") will acquire all of M-S-R's and Anaheim's respective rights, titles and interests in and to their Ownership Interests, including

approximately 132 MW of Unit 4 in the case of PNM (an additional 26.025% ownership of Unit 4) and approximately 65 MW of Unit 4 in the case of PNMR-D (a 12.815% ownership of Unit 4).

6.2.3 TEP, Los Alamos, Farmington and UAMPS will not acquire any ownership of Unit 3 or any additional Ownership Interest in Unit 4; and PNMR-D will not acquire any ownership of Unit 3, but all Remaining Participants will have shares of plant common and Unit 3 and 4 common as set forth in Section 6.3.

6.3 Plant Ownership after Acquisition of Ownership Interests of Exiting Participants. Upon completion of the transfers provided for in Section 6.2, the Remaining Participants will hold the following Ownership Interests in Units 3 and 4, Unit 3 and 4 common and in plant common equipment and facilities, which change in Ownership Interests will be reflected in the SJPPA Exit Date Amendment:

	Unit 3	Unit 4	Unit 3&4 Common	Plant Common
PNM	100.00%	64.482%	64.482%	58.671%
PNMR-D	0.000%	12.815%	12.815%	7.673%
TEP	0.000%	0.000%	0.000%	20.068%
Farmington	0.000%	8.475%	8.475%	5.076%
LAC	0.000%	7.200%	7.200%	4.309%
UAMPS	0.000%	7.028%	7.028%	4.203%
Exiting Participants	0.000%	0.000%	0.000%	0.000%
Total	100.00%	100.000%	100.000%	100.000%

6.4 Unit 1 and Unit 2 Ownerships After Exit Date. This Restructuring Agreement does not alter the ownership of Units 1 and 2. After the Exit Date, Units 1 and 2 will continue to be owned 50% by PNM and 50% by TEP.

6.5 "AS IS" Conveyances. Except as otherwise provided in this Restructuring Agreement: (i) THE TRANSFERS PROVIDED FOR IN THIS SECTION 6 ARE TO BE ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS; (ii) NO EXITING PARTICIPANT MAKES ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, QUANTITY, CONDITION, SALABILITY, OBSOLESCENCE, MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR WORKING ORDER OF, ALL OR ANY PART OF THE OWNERSHIP INTERESTS TO BE TRANSFERRED HEREUNDER OR AS TO ANY PORTION OF THE PROJECT; AND (iii) NO EXITING PARTICIPANT REPRESENTS OR WARRANTS THAT THE USE OR OPERATION OF AN OWNERSHIP INTEREST OR ANY PORTION OF THE PROJECT WILL NOT VIOLATE OR CONFLICT WITH ANY PATENT, TRADEMARK OR SERVICE MARK RIGHTS OF ANY THIRD PARTY. EACH ACQUIRING PARTICIPANT ACCEPTS ALL SUCH TRANSFERS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS RESTRUCTURING AGREEMENT.

7. Closing of Ownership Conveyances

7.1 Closing. The date of Closing of the conveyances provided for in Section 6.2 ("Closing Date") will take place on or before the Exit Date at a time and place agreeable to the Exiting Participants and the Acquiring Participants, will be effective as of the Exit Date and may occur via the exchange of electronically transmitted signatures contained in counterpart signature pages for any required Closing documents. Closing will occur after all conditions to Closing set forth in this Restructuring Agreement (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived.

7.2 Closing Statement. At least sixty (60) days prior to the anticipated Closing Date, the Exiting Participants and the Acquiring Participants will have jointly prepared a preliminary closing statement setting out relevant details concerning the Closing and relevant post-Closing items; and at least seven (7) days prior to the anticipated Closing Date, the Exiting Participants and the Acquiring Participants will have jointly prepared a final closing statement ("Closing Statement"). Copies of the preliminary closing statement and the Closing Statement will be provided to all of the Parties.

7.3 Closing Deliveries by the Exiting Participants. At the Closing, the Exiting Participants will deliver, or will cause to be delivered, to the Acquiring Participants, each of the following:

7.3.1 Instruments of Sale and Conveyance in substantially the form of **Exhibit C**, duly executed by the Exiting Participants.

7.3.2 Evidence, in form and substance reasonably satisfactory to the Acquiring Participants and their counsel, of the Exiting Participants' receipt of: (i) Board approvals authorizing the conveyance of the Exiting Participants' Ownership Interests in SJGS to the Acquiring Participants; (ii) any required Regulatory Approvals; and (iii) the release of all Liens and Encumbrances (exclusive of taxes and charges that are prorated as of the Exit Date).

7.3.3 A certificate by each Exiting Participant, duly executed by an authorized officer or agent of the Exiting Participant, identifying the name and title and bearing the signatures of the representatives of each Exiting Participant authorized to execute and deliver documents at the Closing.

7.3.4 A bring-down opinion by each Exiting Participant's counsel, in form and substance reasonably acceptable to the Acquiring Participants and their counsel, in the form set forth in **Exhibit K**.

7.3.5 As provided in Section 12.2, an appropriate instrument in the form of **Exhibit G**, relinquishing their easements and license rights in lands associated with the Project.

7.3.6 All such other agreements, documents, instruments and writings required by the Acquiring Participants to be delivered at or prior to the Closing Date pursuant to this Restructuring Agreement or necessary to sell, assign, convey, transfer and deliver all of the Exiting Participants' rights, titles and interests in and to Ownership Interests to be transferred pursuant to and in accordance with this Restructuring Agreement and, where necessary and desirable, in recordable form.

7.4 Closing Deliveries by the Acquiring Participants. At the Closing, the Acquiring Participants will deliver, or will cause to be delivered, to the Exiting Participants, each of the following:

7.4.1 Evidence, in form and substance reasonably satisfactory to the Exiting Participants and their counsel, of the Acquiring Participants' receipt of: (i) Board approvals authorizing the acquisition of the Exiting Participants' Ownership Interests in SJGS; and (ii) any required Regulatory Approvals.

7.4.2 A certificate by each Acquiring Participant, duly executed by an authorized officer or agent of the Acquiring Participant, identifying the name and title and bearing the signatures of the representatives of each Acquiring Participant authorized to execute and deliver documents at the Closing.

7.4.3 A bring-down opinion by each Acquiring Participant's counsel, in form and substance reasonably acceptable to the Exiting Participants and their counsel, in the form set forth in **Exhibit K**.

7.4.4 An instrument as described in Section 12.3, the form of which is shown in **Exhibit H**, by which PNM and TEP provide to the Exiting Participants all access and use rights necessary to exercise their rights, protect their interests and fulfill their obligations under this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement.

7.4.5 All such other agreements, documents, instruments and writings required by the Exiting Participants to be delivered at or prior to the Closing Date pursuant to this Restructuring Agreement or necessary to acquire, accept, own and operate all of the Acquiring Participants' rights, titles and interests to be acquired pursuant to and in accordance with this Restructuring Agreement and, where necessary and desirable, in recordable form.

7.5 Conditions Precedent. The obligations of the Exiting Participants to complete the Closing are subject to the satisfaction or waiver, on or prior to the Closing Date, of each of the following conditions precedent by the Acquiring Participants (each a "Condition Precedent"); and the obligations of the Acquiring Participants to complete the Closing are subject to the satisfaction or waiver, on or prior to the Closing Date, of each of the following Conditions Precedent by the Exiting Participants. To the extent any Condition Precedent has not been satisfied or waived, the Party required to satisfy the condition will take prompt steps to do so.

7.5.1 All Acquiring Participants and Exiting Participants have performed or complied in all material respects with all covenants, agreements and conditions contained in this Restructuring Agreement, the Mine Reclamation Agreement and the SJPPA.

7.5.2 All Acquiring Participants and Exiting Participants have received Regulatory Approvals required for the Closing to occur.

7.5.3 The representations and warranties of the Acquiring Participants and Exiting Participants set forth in Section 17 are true and correct in all material respects as of the Closing Date, in each case as though made as of the Closing Date.

7.5.4 All consents or approvals to the Closing that may be required from any lender or creditor of an Acquiring Participant or an Exiting Participant have been obtained and all requirements related to the Closing have been satisfied in respect of master indentures or other financing instruments or arrangements to which such Acquiring Participant or Exiting Participant may be parties.

7.6 Prior Notification of Certain Events. No later than ninety (90) days prior to the scheduled or anticipated Closing Date, if as a result of uncertainties resulting from pending judicial or regulatory proceedings, a Party is uncertain of its ability to satisfy the conditions for Closing as referenced in Sections 7.3, 7.4 or 7.5, such Party will provide written notice to the other Parties of such uncertainty. Upon receipt of any notification given pursuant to this Section 7.6, the Parties will confer in good faith regarding the circumstances set out in the notification and will attempt, within seventy-five (75) days of receipt of the notification, or such other period as the Parties may determine, to mutually agree upon the appropriate course of action in light of the notification, including negotiating a layoff agreement with Unit 4 Exiting Participants, such layoff agreement to be effective between January 1, 2018, and the Closing Date or the expiration of the SJPPA, whichever occurs first.

7.7 Prorations. Except as may otherwise be provided in this Restructuring Agreement, all of the ordinary and recurring items normally charged to the Participants, including property taxes, insurance premiums and O&M Expenses in any period prior to the Exit Date relating to the operation of the Project, as provided for in the SJPPA, will be prorated and charged as of the Exit Date. All Parties will be liable for their prorated share of such expenses to the extent such items relate to all time periods prior to the Exit Date and the Remaining Participants will be liable to the extent such items relate to all time periods on and after the Exit Date.

7.8 Governmental Recording and Filing. To the extent required, and as addressed in the Closing Statement, the Exiting Participants and the Acquiring Participants will cause appropriate releases, terminations, conveyances, deeds and other instruments reflecting the transfers provided for in Section 6 to be filed in a timely manner in the real estate records of San Juan County, New Mexico and/or in the offices of other appropriate Governmental Authorities.

8. Notifications, Consents and Rights-of-First-Refusal. To effectuate the transfers provided for in Section 6, all Parties hereby expressly: (i) give any and all prior

notifications and grant any and all required consents that they have or may have a right to give or grant under the SJPPA (including under Section 10 of the SJPPA) or under any other agreements; and (ii) waive, relinquish or decline to exercise, any rights they have or may have under Section 11 of the SJPPA or under any other agreements with respect to the exercise of any right-of-first-refusal in connection with the transfers provided for in Section 6.

9. Operation and Maintenance Expenses. Through December 31, 2017, the Exiting Participants will continue to pay all O&M Expenses associated with their Ownership Interests in accordance with Section 28 of the SJPPA and will have no responsibility for ongoing O&M work thereafter, except as required by Section 19.

10. Replacement Power. Each Participant will be solely responsible for its own replacement power requirements resulting from: (i) in the case of the Exiting Participants, the Exiting Participant's exit from active involvement in the operation of SJGS; or (ii) in the case of all affected Participants, the retirement of Unit 2 or Unit 3.

11. Other Project Agreements

11.1 Other Project Agreements Identified. The Other Project Agreements are shown in **Exhibit B**.

11.2 Actions with Respect to Other Project Agreements. Each Party will undertake an analysis of those Other Project Agreements to which it is a party and will address with each counterparty to each Other Project Agreement whether such Other Project Agreement should be retained, amended, terminated or superseded. The affected Parties that are parties to Other Project Agreements will act in a timely fashion prior to the Exit Date to execute any requisite instruments to amend, terminate or supersede such Other Project Agreements and to seek and obtain any requisite Regulatory Approvals in regard thereto.

12. Land Ownership

12.1 No Change in Ownership. Nothing in this Restructuring Agreement will be construed to effect a change of ownership interests in real property, as provided in Section 6.1 of the SJPPA, except as may be provided in Sections 7.3.5, 7.4.4, 12.2 and 12.3 of this Restructuring Agreement.

12.2 Relinquishment of Certain Rights. Upon the transfer of Ownership Interests on the Exit Date, the Exiting Participants will deliver appropriate instruments in the form of **Exhibit G** relinquishing their easements and license rights in lands associated with the Project, as provided in Section 7.3.5.

12.3 Easement and Right of Entry. Upon the transfer of the Ownership Interests on the Exit Date, PNM and TEP will deliver an instrument in the form of **Exhibit H** to each of the Exiting Participants providing them all access and use rights necessary to exercise their rights, protect their interests and fulfill tbeir obligations under this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement, as provided in Section 7.4.3.

13. Coal Mine Reclamation Funding. The arrangements under which mine reclamation will be undertaken, and the Parties' agreed funding responsibilities for mine reclamation, will be as provided in the Mine Reclamation Agreement.

14. Decommissioning. The arrangements under which Project decommissioning will be undertaken, and the Parties' agreed funding responsibilities for decommissioning, will be as provided in the Decommissioning Agreement, and such agreement will become effective as of the Exit Date.

15. Confidentiality

15.1 Confidentiality of Negotiations. The Parties' discussions and negotiations that led to the development of this Restructuring Agreement, the Decommissioning Agreement, the Mine Reclamation Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment, including discussions taking place in the context of mediation, were conducted in confidence and will remain confidential; provided, that nothing herein will prevent a Party from making disclosures pursuant to a requirement of Law (including laws related to the inspection of public records and securities), including subpoena or discovery request. If any Party determines that it is legally obligated to make a disclosure, the Party obligated to make such disclosure will make reasonable efforts to notify the other Parties prior to such disclosure and will reasonably cooperate with any other Party in seeking an order of a Governmental Authority preventing or limiting such disclosure; provided further, however, that the Party seeking any such order to prevent or limit disclosure will be responsible for all costs for seeking such an order. Prior to making disclosure, a Party will, as available or appropriate, attempt to utilize a confidentiality agreement to protect the confidentiality of the information disclosed.

15.2 Non-confidentiality of Restructuring Agreement. While negotiations were and remain confidential as addressed in Section 15.1, neither this Restructuring Agreement nor any version of it publicly disclosed pursuant to applicable Law is confidential.

16. Taxes

16.1 Obligations of Parties. All taxes or assessments levied against each Party's Ownership Interest, excepting those taxes or assessments levied against an individual Party on behalf of other Parties, will be the sole responsibility of the Party upon whom said taxes and assessments are levied, subject to proration as set forth in Section 7.7. If any taxes or assessments are levied and assessed in a manner other than specified in this Section 16.1, it will be the responsibility of the Parties to establish equitable standard practices and procedures for the apportionment among the Parties of such taxes and assessments and the payment thereof.

16.2 Notification of Taxing Authorities. In conjunction with the Closing, the Acquiring Participants and the Exiting Participants will work together to provide timely notification to taxing authorities of the Closing and will use commercially reasonable efforts to have any taxing authority imposing any taxes or assessments on or with respect to the Project assess and levy such taxes or assessments directly against each Party in accordance with its

respective Ownership Interest in the property taxed. The manner of making such notifications will be addressed in the Closing Statement.

16.3 IRS Exclusion. The Parties hereby elect to be excluded from the application of Subchapter "K" of Chapter 1 of Subtitle "A" of the Internal Revenue Code of 1986, or such portion or portions thereof as may be permitted or authorized by the Secretary of the Treasury or its delegate insofar as such subchapter, or any portion or portions thereof, may be applicable to the Parties hereunder.

17. Representations and Warranties; Opinions of Counsel

17.1 Requisite Power and Authority. Each Party represents and warrants to the other Parties that it has the requisite power and authority to execute this Restructuring Agreement and that the person executing this Restructuring Agreement on its behalf has the requisite authority to do so and, subject to the receipt of requisite Regulatory Approvals, to perform its obligations set out in this Restructuring Agreement; the execution and delivery of this Restructuring Agreement and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party; and the obligations set out herein are valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions hereof, except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at law.

17.2 No Violation. Each Party, to the best of its knowledge and upon reasonable inquiry, represents and warrants to the other Parties that the execution and delivery of this Restructuring Agreement by such Party, and the performance by such Party of all of its obligations hereunder, will not violate any term, condition or provision of its Charter Documents; any applicable Law by which the Party is bound; any applicable court or administrative order or decree; or any agreement or contract to which it is a party. Further, each Party represents and warrants to the other Parties that, to the best of its knowledge and upon reasonable inquiry, there is no claim pending or threatened against it which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Restructuring Agreement or which could result in the filing of any mechanic's or materialman's lien against the SJGS Plant Site, other than a disclosed appeal of a Regulatory Approval.

17.3 Opinions of Counsel. On or before the Execution Date, counsel for each Party will provide its opinion to each of the other Parties, in form and substance reasonably acceptable to the Party to which such opinion is delivered, that the Party is in compliance with the representations and warranties given in this Section 17. The form of such opinion of counsel is provided in **Exhibit D**.

18. Relationship of Parties

18.1 Several Obligations. The covenants, obligations and liabilities of the Parties are, except as otherwise specifically provided herein, intended to be several and not joint or collective. At no time will a non-defaulting Party be responsible for making payments required under this Restructuring Agreement on behalf of any other Party. Each Party will be individually responsible for its own covenants, obligations and liabilities as provided for herein.

18.2 No Joint Venture or Partnership. Nothing in this Restructuring Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties. No Party or group of Parties will be under the control of or will be deemed to control any other Party or the Parties as a group. Except as expressly provided in this Restructuring Agreement, the Mine Reclamation Agreement, the Decommissioning Agreement and the SJPPA, no Party will be the agent of or have a right or power to bind any other Party without its express written consent.

19. Establishment of Environmental Baseline

19.1 Baseline Environmental Study. In furtherance of their common interest with respect to the identification of potential environmental Liabilities, the Participants have engaged an independent, third-party environmental consultant ("Consultant") to complete a confidential baseline environmental self-evaluation ("Baseline Environmental Study" or "BES") of SJGS and its operations. Associated with the BES will be a multi-media compliance audit ("Environmental Audit") to determine compliance with applicable environmental requirements from the previous SJGS audit to the present. The BES and the Environmental Audit will be funded as Operating Work under the SJPPA. The purpose of the BES and the Environmental Audit is to establish a baseline of environmental conditions in anticipation of the Exiting Participants' exit from active involvement in the operation of SJGS on the Exit Date. It is the intent of the Participants that the Consultant's work and communications be protected to the fullest legal extent possible under Law, including under any attorney-client privilege, environmental audit privilege, self-critical analysis privilege and the attorney work product doctrine. The Consultant has been engaged and is being directed by counsel jointly representing the Participants. The Consultant's work and communications, including the Draft Report, Final Report and Further Audit addressed below, have been and will continue to be treated as privileged and confidential pursuant to the retention agreement between the Consultant and the counsel retained by the Participants pursuant to this Section 19.1, and will be included as Defense Materials pursuant to the Joint Defense and Confidentiality Agreement effective December 9, 2009 and the Addendum to Joint Defense and Confidentiality Agreement effective January 31, 2010.

19.2 Scope of BES and Environmental Audit. The scope of work for the BES and Environmental Audit has been developed by agreement of all Participants and will include: (i) review and analysis of data, documents and information, such as monitoring data for air emissions, surface and groundwater discharges, to identify potential or actual emissions, spills or leaks related to SJGS; and (ii) interviews of key past or present Operating Agent personnel (as identified and agreed upon by all Participants) with knowledge of past and present SJGS operations. The BES and Environmental Audit may identify environmental issues that require further assessment or investigation. To the extent possible (based upon regulatory requirements)

and by agreement of all the Participants, additional environmental assessments such as document review, studies, data collection, sampling, analysis of soil, surface water, and groundwater sampling and similar activities may be conducted with a desired completion date of June 30, 2015, or as otherwise agreed by the Participants. Issues of concern that are already identified and that are the current subject of monitoring, investigative and remediation activities in accordance with regulatory, permitting or other legal requirements will be excluded from further assessment in the BES; provided, however, that such issues and remediation activities will be identified and listed in the Final Report.

19.3 Draft Report. The Consultant will prepare and provide a draft confidential baseline environmental report ("Draft Report") setting forth the Consultant's findings and recommendations, which Draft Report will be distributed to all the Participants for review and comment.

19.4 Final Report. After receiving and considering the Participants' comments, the Consultant will prepare a confidential final BES report for SJGS and its operations ("Final Report") setting forth the Consultant's findings and recommendations, if any, to address any environmental issues in accordance with any applicable environmental Laws. The Final Report will be directed to all the Participants and each and all of the Participants may rely on the Final Report. The Draft Report, Final Report and Further Audit are privileged and confidential pursuant to this Section 19. If the Operating Agent or a Participant is requested by an insurance carrier or broker, in connection with an application for coverage, or renewal of coverage, or in connection with a claim filed by the Operating Agent or a Participant, to provide information in regard to the operation or environmental compliance of SJGS, the Operating Agent or the Participant may provide factual information to the insurance carrier or broker pertinent to the application for coverage, or renewal of coverage, or the filed claim, including based upon findings contained in the Draft Report, the Final Report or the Further Audit but may not provide a copy of the Draft Report, Final Report or the Further Audit. Any Participant providing such factual information to an insurance carrier or broker will seek an agreement from the insurance carrier or broker to maintain the confidentiality of such information.

19.5 Remediation or Corrective Action. If the Final Report identifies any environmental issues at SJGS that require remediation or corrective action or similar activities that are not being currently addressed, then, as part of Operating Work and funded as such, the Operating Agent will to the extent possible (given any constraints and/or schedule that may be imposed by the regulatory agency overseeing the remediation) on or before thirty (30) days prior to the Exit Date remediate, or commence the remediation of, any and all environmental issues identified in the Final Report, with responsibility for the cost of such remediation, corrective action, or similar activities to be borne by Parties or, if applicable, their respective insurance carriers, based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the Liability.

19.6 Further Audit. After the Final Report, but prior to the Exit Date, the Operating Agent will complete an additional environmental audit of SJGS (the "Further Audit") to identify environmental issues, if any, that may have arisen subsequent to the completion of the Final Report. The scope of work for the Further Audit will be developed by agreement of all the

Participants. The Further Audit will be treated as confidential, as set forth in Section 19.1, and will be directed to all the Participants (all of whom may rely on the Further Audit). The Further Audit and any remediation undertaken pursuant to the Further Audit will be funded as Operating Work, the cost responsibilities for which will be borne by Parties based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the Liability. The Final Report may be supplemented to the extent updates are required by the Further Audit.

19.7 Subsequently Discovered Environmental Issues. The Parties acknowledge that: (i) the BES, the Final Report and the Further Audit may not discover or report all environmental issues that existed prior to the date thereof; and (ii) there may be exposure to claims for environmental Liabilities for changes in applicable Law after the Exit Date. Liabilities for environmental issues identified after the Exit Date will be resolved pursuant to Section 20.

19.8 Claims against Predecessors. Nothing in this Section 19 affects the right of a Party to seek contribution from or otherwise make claims against any Predecessor with respect to environmental Liabilities arising from an event prior to such Party's acquisition of its Ownership Interest, provided that any Party seeking such contribution is not relieved of its obligation to pay any amounts it owes under this Section 19.

20. Liability and Indemnification

20.1 Liabilities Defined. Except as expressly limited, the term "Liabilities" as used in this Restructuring Agreement means all liabilities, claims, demands, actions, damages, fines, penalties, remedial or corrective action costs, and causes of action whatsoever, including without limitation the reasonable fees and disbursements of the applicable Party's external attorneys and their staff, and costs and expenses, including but not limited to costs of consultants and experts and other litigation costs reasonably incurred in investigating, preparing, prosecuting or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character for which indemnification is provided hereunder. The term "Liabilities" specifically and expressly includes: (i) all liabilities of any kind or character arising out of or related to the contamination of the SJGS Plant Site by any hazardous substance, hazardous waste or any environmental pollutant or contaminant; or (ii) the violation of any permit applicable to SJGS; or (iii) the violation of any environmental Law, including violations of the Comprehensive Environmental Response Compensation and Liability Act, the Federal Clean Air Act, the Federal Clean Water Act and the Federal Resource Conservation and Recovery Act; provided, however, that "Liabilities" under this Restructuring Agreement do not include costs for planning or implementing decommissioning of the San Juan Project, which are addressed in the Decommissioning Agreement, or the costs of mine reclamation, which are addressed in the Mine Reclamation Agreement.

20.2 Liabilities Arising Prior to Exit Date. Except in situations when the event giving rise to the Liability is the result of Willful Action of the Operating Agent or a Party, all Parties will be responsible for Liabilities arising from SJGS plant operations and ownership prior to the Exit Date, based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the liability. If the Liability is the result of Willful Action of the Operating Agent

or a Party, the Operating Agent or the Party will be responsible for such Liabilities within the limitations of the SJPPA.

20.3 Liabilities Arising After Exit Date. Only the Remaining Participants will be responsible for Liabilities arising from SJGS plant operations or ownership after the Exit Date based on the Remaining Participants' respective post-Exit Date plant ownership interests in the facilities giving rise to the Liability.

20.4 Apportionment of Liabilities. It is recognized that some events giving rise to Liabilities may potentially begin prior to the Exit Date and continue after the Exit Date; in such event, responsibility will be apportioned based on the relative time periods before and after tbe Exit Date and pursuant to the provisions of Sections 20.2 and 20.3.

20.5 Limitation of Liability for Willful Action. For claims made prior to the Exit Date, the ten million dollar ($10,000,000) limitation of liability in Sections 36.6 and 36.9 of the SJPPA will apply. For claims made on or after the Exit Date, the limitation of liability for each occurrence of Willful Action will be fourteen million dollars ($14,000,000). As of the Exit Date, all references in Sections 36.6 and 36.9 of the SJPPA to a limitation of liability of ten million dollars ($10,000,000) for each occurrence of Willful Action will be amended to increase that amount to a limitation of liability of fourteen million dollars ($14,000,000) for each occurrence of Willful Action.

20.6 Several Liability. All Parties' obligations for Liability and indemnity hereunder will be several and not joint or collective. Each Party will be individually responsible for its own covenants, obligations and Liabilities as provided for herein.

20.7 Claims Arising After Exit Date. If on or after the Exit Date a claim for Liability arising from SJGS operations or ownership is made against one or more of the Parties, or by any Party against another Party (in each case, including the Operating Agent), then the following will occur:

20.7.1 In the event a claim for Liability is brougbt against any Party asserting claims for Liability arising from ownership or operation of SJGS, said Party will notify the other Parties in writing within ten (10) Business Days after the Party learns of the claim for Liability.

20.7.2 The Exiting Participants and the Remaining Participants will confer promptly to determine if the event giving rise to the Liability occurred prior to or on or after the Exit Date.

20.7.3 If all the Exiting Participants and the Remaining Participants agree that the event giving rise to the Liability occurred prior to the Exit Date, all Parties will bear their respective proportionate shares of any resulting Liability, based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the Liability. The Parties' pre-Exit Date Ownership Interests in the Project facilities are shown in **Exhibit E**.

20.7.4 If all the Exiting Participants and the Remaining Participants agree that the event giving rise to the Liability occurred on or after the Exit Date, the Remaining Participants, based on their respective post-Exit Date Ownership Interests in the facilities giving rise to the Liability, will indemnify, defend and hold harmless the Exiting Participants and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against any and all Liabilities of any kind or character resulting from such claim for Liability arising out of or related to SJGS operations and ownership on or after the Exit Date.

20.7.5 If all the Exiting Participants and the Remaining Participants cannot agree whether the event giving rise to the Liability occurred prior to, on or after the Exit Date, then the Parties will unanimously agree upon the retention of an independent third-party consultant (with expertise in the subject matter giving rise to the liability) who will be tasked with determining whether the event giving rise to the Liability occurred before or on or after the Exit Date (or the extent to which the event giving rise to the liability occurred before or on or after the Exit Date). To the extent permitted by law, the Parties will provide for the confidentiality of the independent third-party consultant's determination and will share equitably in the consultant's fees and costs. The determination of the independent third-party consultant will be final and binding on the Parties except as provided in Sections 20.7.8 and 20.7.9 and is not arbitrable under Section 23.

20.7.6 To the extent the independent third-party consultant determines that the event giving rise to the Liability occurred prior to the Exit Date, the provisions of Section 20.7.3 will apply.

20.7.7 To the extent the independent third-party consultant determines that the event giving rise to the Liability occurred on or after the Exit Date, the provisions of Section 20.7.4 will apply.

20.7.8 If all the Parties have agreed, or the independent third-party consultant has determined, that the event giving rise to the Liability occurred prior to the Exit Date, but there is a final judicial determination that the event giving rise to the Liability occurred (fully or partially) on or after the Exit Date, the Remaining Participants, based on their respective post-Exit Date plant ownership interests in the facilities giving rise to the Liability, will indemnify, defend and hold harmless the Exiting Participants and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against any and all Liabilities of any kind or character resulting from such claim for Liability arising out of or related to SJGS plant operations and ownership on or after the Exit Date (to the extent the event is judicially determined to have occurred after the Exit Date), including a refund to the Exiting Participants of sums paid by the Exiting Participants for any Liability; provided, that no Party will: (a) commence a lawsuit seeking a judicial determination to reverse the agreement of the Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred; or (b) assert or support a position in a lawsuit commenced by a third party that would have the effect of reversing the agreement of the

Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred. As used in Sections 20.7.8 and 20.7.9, "final judicial determination" refers to: (x) the decision of a trial court that has become final by virtue of the appeal period having expired without an appeal having been taken; or (y) the final decision of an appellate court from which no rehearing or further appeal may be taken.

20.7.9 If all the Parties have agreed, or the independent third-party consultant has determined, that the event giving rise to the Liability occurred on or after the Exit Date, but there is a final judicial determination that the event giving rise to the Liability occurred (fully or partially) before the Exit Date, the Exiting Participants, based on their pre-Exit Date plant ownership interests in the facilities giving rise to the Liability, will indemnify, defend and hold harmless the Remaining Participants and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against the Exiting Participants' individual proportionate shares of said Liability arising out of or related to SJGS plant operations and ownership prior to the Exit Date (to the extent the event is judicially determined to have occurred before the Exit Date), including a refund to the Remaining Participants of a proportionate share of sums paid by the Remaining Participants for any Liability; provided, however, that no Party will: (a) commence a lawsuit seeking a judicial determination to reverse the agreement of the Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred; or (b) assert or support a position in a lawsuit commenced by a third party that would have the effect of reversing the agreement of the Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred.

20.8 Claims against Predecessors. Nothing in this Section 20 affects the right of a Party to seek contribution from or otherwise make claims against any Predecessor with respect to environmental Liabilities arising from an event prior to such Party's acquisition of its Ownership Interest, provided that any Party seeking such contribution is not relieved of its obligation to pay any amounts it owes under this Section 20.

20.9 PNM Responsibility. PNM will defend, indemnify and hold harmless the other Parties and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against Liabilities to the extent arising from the development, operation and/or ownership by PNM (or PNM's affiliate, assignee, successor, licensee or lessee) of any new future use of property at or adjacent to the SJGS Plant Site, including the development, operation or ownership of any future gas-fueled electric generating plant to be developed by PNM (or PNM's affiliate, assignee, successor, licensee or lessee) at or adjacent to the SJGS Plant Site.

20.10 Indemnification Procedures.

20.10.1 A Party seeking indemnification hereunder (the "Indemnified Party") will give prompt written notice to the Party from whom indemnification is sought (the "Indemnifying Party") of the assertion of any Liability for which indemnification is

sought. The notice will set forth in reasonable detail the factual basis asserted for the Liability and the claimed or estimated amount of the Liability. Notwithstanding the foregoing, the failure or delay of the Indemnified Party to so notify the Indemnifying Party will not relieve the Indemnifying Party of its indemnification obligations under this Restructuring Agreement unless, and only to the extent that, such failure or delay materially and adversely prejudiced the Indemnifying Party. Nothing in this Section 20.10.1 is intended nor will be construed to toll or otherwise affect the operation of any applicable statute of limitations.

20.10.2 With respect to any Liability as to which indemnification is sought, if the Indemnifying Party has acknowledged in writing its indemnification obligations under this Restructuring Agreement without qualification or reservation of rights, the Indemnifying Party has the right at its own expense to conduct and control the defense, compromise or settlement of such Liability, utilizing counsel of its choice, subject to the limitations set forth in this Section 20.10. Such counsel must be reasonably acceptable to the Indemnified Party. The Indemnified Party may participate at its own expense in such defense, compromise or settlement utilizing its own counsel. Notwithstanding the foregoing, the Indemnified Party has the right to conduct and control the defense, compromise or settlement of any Liability with counsel of its choice and at the Indemnifying Party's expense if: (i) the Indemnifying Party has not delivered the written acknowledgement of indemnification obligations and given notice of its decision to conduct and control the defense of such Liability within thirty (30) days after notice of such Liability is served; (ii) the Indemnifying Party fails to conduct such defense diligently and in good faith; (iii) the Indemnified Party reasonably determines, based upon the advice of counsel (including in-house counsel), that the use of counsel selected by the Indemnifying Party to represent the Indemnified Party would present such counsel with an actual or potential conflict of interest to which the Indemnified Party and, if necessary, the Indemnifying Party has not consented in writing; (iv) the claim for Liability seeks injunctive or other non-monetary relief against the Indemnified Party; or (v) the Liability relates to or otherwise arises in connection with any criminal or regulatory proceeding.

20.10.3 The Indemnifying Party and the Indemnified Party will, and will cause their respective Affiliates and representatives to, cooperate with the defense or prosecution of any claim. Such cooperation includes furnishing such records, information and witnesses and attending such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party of the Indemnified Party or the Indemnified Party of the Indemnifying Party in connection with the defense or prosecution of any claim.

20.10.4 Except as set forth below, no claim may be settled or compromised by the Indemnified Party without the prior written consent of the Indemnifying Party or by the Indemnifying Party without the prior written consent of the Indemnified Party, in each case which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Indemnified Party has the right to pay, settle or compromise any Liability, provided that the Indemnified Party waives all rights against

the Indemnifying Party to indemnification under this Section 20 with respect to such Liability unless the Indemnified Party sought the consent of the Indemnifying Party to such payment, settlement or compromise but the Indemnifying Party unreasonably withheld, conditioned or delayed such consent. The Indemnifying Party has the right to consent to the entry of a judgment or enter into a settlement with respect to any Liability without the prior written consent of the Indemnified Party, if the judgment or settlement (i) involves only the payment of money damages to be paid in full by the Indemnifying Party concurrently with the effectiveness of such judgment of settlement; (ii) does not contain any restriction or condition that would reasonably be expected to have a future adverse effect on the Indemnified Party or the conduct of its business; (iii) does not include any admission of wrongdoing; (iv) includes in any settlement documents and/or release a statement that the matter is being settled without agreement of the Indemnified Party as allowed by this Section 20.10.4; and (v) includes, as a condition to any settlement or other resolution, a complete and irrevocable release of the Indemnified Party from all liability for the claim on which the judgment or settlement is based.

20.11 Anti-Indemnity Provisions. The Parties acknowledge the potential applicability of NMSA 1978, §§ 56-7-1 and 56-7-2. Any agreement to indemnify contained herein will be enforced only to the extent it requires the Indemnifying Party to indemnify and hold harmless the Indemnified Party, including its agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns, against liabilities: (i) only to the extent that the liabilities are caused by, or arise out of, the acts or omissions or negligence of the Indemnifying Party or its agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns; and (ii) except to the extent such liabilities arise out of the negligence, actions or omissions of an Indemnified Party or such Indemnified Party's agents or employees or independent contractors.

20.12 Internal Counsel. There will be no indemnification with respect to fees or expenses of internal counsel of a Party.

20.13 Willful Action. No Party (including the Operating Agent) committing Willful Action will be indemnified or held harmless by the other Parties for the consequences of the Party's Willful Action.

20.14 Damages. Notwithstanding Section 20.1, in no event will any Party be liable under any provision of this Restructuring Agreement for any indirect, punitive or incidental damages or costs of any other Party (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and the Parties hereby waive, release and discharge one another from all such indirect, punitive and incidental damages and costs; provided, that this Section 20.14 does not affect or negate the provisions of Section 23.8 regarding Penalty Interest or the provisions of Section 20 regarding obligations to indemnify.

20.15 Mitigation of Damages. Each Party will take appropriate and prudent actions reasonably to mitigate any damages such Party may suffer as a result of the conduct or Default of another Party.

20.16 Anaheim and M-S-R. Anaheim (which includes its Public Utilities Department) and M-S-R are governmental entities whose liability is limited by the California Government Claims Act (Government Code §§ 810 – 998.3) and any Liability or indemnity assumed by Anaheim or M-S-R in this Restructuring Agreement will be limited by the provisions of the California Government Claims Act. Nothing in this Restructuring Agreement is intended to create or will be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend which is against public policy, void and unenforceable. Notwithstanding any other provision of this Restructuring Agreement, the payment for all purchases, fees or charges made by Anaheim or M-S-R under this Restructuring Agreement will be made from the legally available revenues of M-S-R or the legally available revenues of the Anaheim Electric System. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or general taxing power of Anaheim or of M-S-R or any of the members of M-S-R.

20.17 Southern California Public Power Authority. SCPPA is a joint exercise of powers agency organized under the laws of the State of California, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of SCPPA.

20.18 Farmington and Los Alamos. Farmington (and the Farmington Electric Utility System) and Los Alamos are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington and the Farmington Electric Utility System or Los Alamos in this Restructuring Agreement will be limited by the provisions of the New Mexico Tort Claims Act. Notwithstanding any other provisions of this Restructuring Agreement, the payment for all purchases, fees or charges made by Farmington and Los Alamos under this Restructuring Agreement will be made from the legally available revenues of Farmington's and/or Los Alamos's Electric Utility System. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or Los Alamos.

20.19 Utah Associated Municipal Power Systems. UAMPS is a joint action agency organized under the laws of the State of Utah, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of UAMPS.

21. Insurance Coverage for Continuing Obligations

21.1 Occurrence-based Policies. All occurrence-based policies of Operating Insurance required by the SJPPA will be in effect on the Exit Date (auto liability, workers' compensation, general liability, crime and property). The Exiting Participants will not be eligible for inclusion in occurrence-based Operating Insurance renewed after the Exit Date.

21.2 Claims-Made Policies.

21.2.1 Except as provided in Section 21.2.2, after the Exit Date the Exiting Participants will not be eligible for inclusion in the Operating Insurance policies that are claims-made policies (environmental liability, excess liability, fiduciary liability and employment practices liability) (each a "Claims-Made Policy") and, as of the Exit Date, all obligations of the Operating Agent to procure Claims-Made Policies for the benefit or protection of the Exiting Participants will cease.

21.2.2 If an Exiting Participant desires to purchase continuing or stand-alone "tail" coverage (collectively, "Continuing Coverage") under a Claims-Made Policy that would or may provide coverage for risks insurable under the insurance coverage form in effect at the time of a covered loss, for which the Exiting Participant has potential responsibility, the Operating Agent will, upon timely written notice from the Exiting Participant, work with the Exiting Participant to provide the Exiting Participant the opportunity to obtain such Continuing Coverage. Continuing Coverage may be procured through the purchase of a stand-alone Claims-Made Policy issued to the Exiting Participant or by one or more endorsements on Claims-Made Policies purchased by the Operating Agent. If requested in writing by an Exiting Participant, the Operating Agent will provide an analysis to the Exiting Participant as to coverage options. The availability, if any, of Continuing Coverage is dependent on market conditions. Upon the renewal of a Claims-Made Policy under which an Exiting Participant has Continuing Coverage, the Operating Agent, upon written request, will provide the Exiting Participant a copy of the policy with all endorsements demonstrating compliance with this Section 21.2.2; provided, however, that if in the judgment of the Operating Agent portions of a policy are proprietary, confidential or otherwise not disclosable, and these portions of the policy do not impact the premium allocated or relate specifically to the SJGS Plant Site, including exposures, loss experience, severity and frequency of loss, then the Operating Agent may redact such portions with a full explanation to the Exiting Participant of the reason for the redaction.

21.2.3 Each Exiting Participant electing Continuing Coverage under a Claims-Made Policy procured by the Operating Agent for or on behalf of the Exiting Participant will pay for the Continuing Coverage during the period in which the Continuing Coverage is or will be in effect as set forth below.

21.2.3.1 If Continuing Coverage is procured by the purchase of a stand-alone Claims-Made Policy issued to the Exiting Participant, the Exiting Participant will pay the associated premium to the Operating Agent.

21.2.3.2 If Continuing Coverage is procured by one or more endorsements on Claims-Made Policies purchased by the Operating Agent, the Exiting Participant will pay its allocated share of the premium associated with the Continuing Coverage. The determination of the allocated share will be based on factors customarily employed, including the property affected, exposures, loss experience and severity and frequency of loss.

21.2.3.3 With respect to Continuing Coverage procured as provided in Section 21.2.3.2, the Operating Agent will invoice the allocated share of the premium to the Exiting Participant, with necessary and sufficient supporting information, and will timely provide all additional supporting information as the Exiting Participant may reasonably request. If there is a dispute between the Operating Agent and the Exiting Participant as to the Exiting Participant's allocable share of the premium, the Exiting Participant will pay the invoice and the disputing Parties will retain the services of a mutually agreed independent third party (broker or other consultant) with expertise in insurance matters to resolve the dispute. The fees and expenses of the independent third party will be shared equally among the disputing Parties. Upon the resolution of the dispute, an appropriate adjustment will be made to the invoice, if required. Any disputes under this Section 21.2.3 are not arbitrable under Section 23.

21.2.4 Nothing in this Section 21.2 prevents an Exiting Participant that may wish to purchase Continuing Coverage from doing so on its own, and at its own expense, without involvement of the Operating Agent. The Operating Agent will reasonably cooperate with the Exiting Participant in its efforts to obtain Continuing Coverage.

21.2.5 In the event an Exiting Participant that has obtained Continuing Coverage no longer desires to have Continuing Coverage under any Claims-Made Policy procured by the Operating Agent, the Exiting Participant must give the Operating Agent at least one hundred and fifty (150) days written notice prior to the next incepting coverage term of the Claims-Made Policy.

21.3 Other Insurance Coverage Matters. Prior to the Exit Date, if requested by an Exiting Participant, the Operating Agent will consult with the Exiting Participant in reference to insurance issues related to the departure of the Exiting Participants, including insuring physical property on a cash value basis.

21.4 Obligation to Maintain Policies. The Operating Agent and the Remaining Participants will continue to obtain and maintain Operating Insurance as provided for in the SJPPA, and the Operating Agent will, upon written request, including email, provide within five (5) Business Days an Exiting Participant a certificate of insurance as proof of continued coverage. For insurance policies required to be provided by vendors or service providers whose services, in the reasonable opinion of the Operating Agent, could expose a Party to Liability, then, where permitted by such policies, such Party will be included as an additional insured on such policies, including all applicable endorsements.

22. Assignments

22.1 Assignment. This Restructuring Agreement and the rights, duties and obligations hereunder may not be assigned or delegated by any Party without the prior written consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); provided,

however, any Party may without the consent of any other Party (and without relieving itself from liability hereunder) but with prior notice to the other Parties:

22.1.1 transfer, sell, pledge, encumber or assign this Restructuring Agreement as collateral in connection with any financing arrangements;

22.1.2 transfer or assign this Restructuring Agreement to an Affiliate of such Party so long as (i) such Affiliate's creditworthiness is equal to or higher than that of the assigning Party; and (ii) such assignee has agreed in writing to unconditionally assume and be bound by the terms and conditions hereof and all of the transferring Party's obligations hereunder; or

22.1.3 transfer or assign this Restructuring Agreement to any entity succeeding to all or substantially all of the assets of the transferring Party so long as the assignee's creditworthiness is equal to or higher than that of the assigning Party and such assignee has agreed in writing to unconditionally assume and be bound by the terms and conditions hereof and all of the transferring Party's obligations hereunder.

Any (i) mortgagee, trustee or secured party under present or future deeds of trust, mortgages, indentures or security agreements of any of the Parties and any successor or assign thereof; (ii) receiver, referee, or trustee in bankruptcy or reorganization of any of the Parties, and any successor by action of law or otherwise; and (iii) purchaser, transferee or assignee or any thereof may, without need for the prior consent of the other Parties and subject to the provisions of Section 22.2, succeed to and acquire all the rights, titles and interests of such Party in this Restructuring Agreement, and upon such succession or acquisition, will assume all of the obligations of such Party in this Restructuring Agreement arising from and after the date of the succession and may take over possession of or foreclose upon said property, rights, titles and interests of such Party.

22.2 Assignee Responsibility. Any (i) mortgagee, trustee or secured party; (ii) receiver, referee or trustee appointed pursuant to the provisions of any present or future mortgage, deed of trust, indenture or security agreement creating a lien upon or encumbering the rights, titles or interests of any Party in, to and under this Restructuring Agreement and any successor thereof by action of law or otherwise; and (iii) purchaser, transferee or assignee of any thereof, will not be obligated to pay any monies accruing on account of any of the obligations or duties of such Party under this Restructuring Agreement incurred prior to the taking of possession, the effectiveness of transfer, or the initiation of foreclosure or other remedial proceedings by such mortgagee, trustee or secured party.

22.3 Parties not Relieved of Obligations. No Party will be relieved of any of its obligations and duties to the other Parties by a transfer or assignment under this Section 22 without the express prior written consent of the remaining Parties, which consent will not be unreasonably withheld, conditioned or delayed.

23. Dispute Resolution and Default

23.1 Amicable Resolution. If a dispute between or among any of the Parties should arise under this Restructuring Agreement, or in relation to the rights or obligations of the Parties under this Restructuring Agreement, the Parties will first seek to resolve the dispute as set forth in this Section 23.1.

23.1.1 The dispute resolution process will be initiated by the delivery of a written notice by a Party ("Noticing Party") of the dispute ("Notice of Dispute") to the Party with which a dispute is claimed. The Notice of Dispute will specify the existence, nature and extent of the dispute. Copies of the Notice of Dispute will also be served on all other Parties. The Notice of Dispute will specifically state the sums allegedly due, any non-monetary obligation allegedly not performed, or both if applicable.

23.1.2 Within fifteen (15) Business Days of receipt of the Notice of Dispute, the Party alleged not to be performing will (i) pay any undisputed amount to the Party entitled to such payment, and deposit any disputed amount into escrow in accordance with an escrow agreement consistent with this Section 23; and (ii) commence performance of any disputed non-monetary obligation, but in either case may do so under protest (the "Protest").

23.1.2.1 The Protest will be in writing, will accompany the disputed payment into escrow or precede the commencement of performance of the disputed non-monetary obligation, and will specify the basis of the Protest. Copies of the Protest will be served by the protesting Party ("Protesting Party") on all other Parties.

23.1.2.2 The escrow agreement will (i) provide that amounts deposited into escrow will be held in escrow until the Noticing Party and the Protesting Party mutually direct otherwise or until an award of arbitrators directs otherwise; (ii) direct the escrow agent to deposit the escrowed amounts into an interest-bearing account with appropriate liquidity considering the nature and likely duration of the dispute; and (iii) provide that fees for establishing the escrow be paid by the Protesting Party and that fees for other services of the escrow agent may be deducted periodically from the funds held in escrow or as otherwise agreed by the Noticing Party, Protesting Party and escrow agent. The escrow agreement may contain other appropriate terms customarily required in such agreements by escrow agents.

23.1.3 Within fifteen (15) Business Days of the giving of a Notice of Dispute under Section 23.1.1, or within ten (10) Business Days after the service of a Protest under Section 23.1.2, executive representatives of the Parties involved in the dispute with authority to resolve the dispute will meet at a mutually acceptable time and place to attempt to negotiate a timely and amicable resolution of the dispute. If an executive of a Party involved in the dispute intends to be accompanied by counsel, the other Party or Parties involved in the dispute must be given at least five (5) Business Days' written notice of such intent and such other Parties may also be accompanied by counsel. All negotiations will be confidential and will be treated as compromise and settlement

negotiations under New Mexico law. If the executive representatives of the Parties are unable to resolve the dispute within sixty (60) days of the Notice of Dispute (or such other period as they may agree to), any Party involved in the dispute may call for submission of the dispute to arbitration, which call will be binding upon all other affected Parties.

23.2 Call for Arbitration. The Party calling for arbitration must give written notice to all other Parties ("Arbitration Notice"), setting forth in the Arbitration Notice in adequate detail the entity against whom relief is sought, the nature of the dispute, the amount, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, which may include monetary, equitable and declaratory relief. Within twenty (20) Business Days after receipt of the Arbitration Notice, any other Party may submit its own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated, with copies of such notice provided to all other Parties. Thereafter, the Party calling for arbitration will have ten (10) Business Days in which to submit a written rebuttal statement, copies of which must be provided to all other Parties.

23.3 Selection of Arbitrators.

23.3.1 The Parties involved in the arbitration will seek to agree upon a panel of three (3) neutral arbitrators as follows. Within ten (10) days after service of the written rebuttal statement, the Parties representing each side of the dispute will provide to the Parties representing the other side of the dispute a list of up to five (5) suggested arbitrators having the qualifications required by Section 23.3.2 and a summary of each such suggested arbitrator's experience and qualifications. Within five (5) Business Days thereafter, the Parties involved in the arbitration will meet and confer by telephone or in person to seek to agree upon a panel of three (3) neutral arbitrators from the lists that have been exchanged. If such agreement is not reached as the result of such meeting, the Parties representing each side of the dispute will provide a second list of suggested arbitrators to one another, and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon a panel of three (3) neutral arbitrators. If such agreement on arbitrators is reached, the Parties will proceed to arbitration as further set forth in this Section 23.

23.3.2 If the Parties involved in the arbitration are not able to agree upon a complete panel of three (3) neutral arbitrators, such Parties will select the arbitrators upon which agreement has not been reached as follows. The Parties will request from the American Arbitration Association ("AAA") (or similar organization as the arbitrating Parties agree upon) ("Arbitration Organization") a list of seven (7) arbitrators with names and biographical sketches and specific qualifications relating to the case to be heard. The proposed arbitrators must be retired judges or other attorneys with experience in complex business disputes. The Parties involved in the arbitration will each advise the Arbitration Organization of its order of preference of such arbitrators by numbering from one (1) to seven (7) each name on the list (with one (1) being the most preferred arbitrator) and submitting the numbered lists in writing to the Arbitration Organization. Depending upon the number of arbitrators to be selected, the name or names with the lowest

combined numbers will be appointed as the remaining neutral arbitrator(s). In the event more than one name on the list has the same lowest combined score, the tie will be broken by lot. Should the Parties agree that one list of seven (7) is insufficient to obtain a total of three (3) neutral arbitrators with the required qualifications, an additional list of arbitrators may be requested from the Arbitration Organization.

23.3.3 No person will be eligible for appointment as an arbitrator who is an officer or employee of any of the Parties to the dispute or is otherwise interested in the matter to be arbitrated.

23.4 Arbitration Procedures. Except as otherwise provided in this Section 23 or otherwise agreed by the Parties to the dispute, the Parties will utilize in the arbitration the AAA's Commercial Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Commercial Disputes) or similar rules and practices of another Arbitration Organization from time-to-time in force, except that if such rules and practices, as modified herein, conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico law then in force that are specifically applicable to arbitration proceedings, such New Mexico laws will govern. The arbitration will be conducted at a location in Albuquerque, New Mexico, unless otherwise agreed by the affected Parties.

23.5 Decision of Arbitrators. The arbitrators will hear evidence submitted by the respective Parties or group or groups of Parties and may call for additional information, which additional information must be furnished by the Party having such information. The decision of a majority of the arbitrators ("Arbitration Award") must be rendered no later than twenty (20) days after the conclusion of the arbitration hearing and will be binding upon all the Parties and must be based on the provisions of this Restructuring Agreement and applicable New Mexico or federal Law. The Arbitration Award must be in writing and must explain in reasonable detail the basis of the award.

23.6 Enforcement of Arbitration Award. This agreement to arbitrate is specifically enforceable, and the Arbitration Award will be final and binding upon the Parties to the extent provided by the laws of the State of New Mexico. Any Arbitration Award may be filed with a court of competent jurisdiction in New Mexico and upon motion of a Party the court shall enter a judgment in conformity therewith as provided by the New Mexico Uniform Arbitration Act. Said judgment shall be enforceable in other States and Territories of the United States under the Full Faith and Credit provisions of the United States Constitution and other Laws.

23.7 Fees and Expenses. The non-prevailing Party will be responsible for reimbursing the prevailing Party for the fees and expenses of the arbitrators, unless the Arbitration Award specifies some other apportionment of such fees and expenses. All other expenses and costs of the arbitration, including attorney fees and expert witness fees, will be borne by the Party incurring the same.

23.8 Interest and Penalty Interest. The arbitrators will award the amount of interest actually earned during deposit of the disputed amounts in the escrow account ("Escrow Interest") to the Party who prevails in the arbitration. The arbitrators will further calculate interest on the

monetary portion of the Arbitration Award at the Wall Street Journal Prime Rate (or any successor to that rate) plus five percent (5%). The arbitrators will subtract Escrow Interest from the interest calculated pursuant to the immediately preceding sentence and also award the result of that calculation ("Penalty Interest") to the prevailing Party. The arbitrators will have no discretion to refuse to award either Escrow Interest or Penalty Interest.

23.9 Prompt Resolution. The Parties acknowledge the importance of prompt dispute resolution and will cooperate toward the rendering of an Arbitration Award no later than two hundred and seventy (270) days after the Arbitration Notice is served.

23.10 Default. A default under this Restructuring Agreement ("Default") will occur only if a Party (i) has received a Notice of Dispute and fails to follow the procedures in Section 23.1.2, or (ii) does not comply with all of the terms and conditions of an Arbitration Award against it (unless the effect of such Arbitration Award is stayed).

23.11 Consequences of Default. Any Party in Default under this Restructuring Agreement will lose its rights under this Restructuring Agreement, the Decommissioning Agreement (if the Decommissioning Agreement is in effect), and the Mine Reclamation Agreement so long as the Party remains in Default. This consequence of Default is in addition to and cumulative of any other remedy to which the Party in Default may be subject. If and when the Party in Default remedies the Default, its rights under such agreements will be restored.

23.12 Legal Remedies. Nothing in this Section 23 will be deemed to prevent a Party from commencing judicial action: (i) to obtain a provisional remedy to protect the effectiveness of the arbitration proceeding; (ii) to confirm, enforce, modify, correct, vacate or challenge an Arbitration Award on grounds provided for in the New Mexico Uniform Arbitration Act; (iii) to obtain relief in instances where the arbitrators are unable or unwilling to act within the time provided for in Section 23.9; or (iv) where, as the result of the unreasonable or dilatory conduct of another Party, a Party is not able to obtain a timely valid and enforceable Arbitration Award.

24. Audit Rights; Related Disputes

24.1 Right of Audit. The Operating Agent will maintain complete and accurate records of all expenses and transactions for which a Party may have cost responsibility under this Restructuring Agreement. Such records will be maintained from the date an expense is billed to a Party hereunder for a period of the longer of: (i) the expiration of the statute of limitations for actions based on contract; or (ii) the date the records may be destroyed under the Operating Agent's document retention policy. Any Party (an "Initiating Party") may, upon reasonable advance written notice to the Operating Agent, conduct an audit of all records, invoices, costs, expenses or Liabilities charged to the Initiating Party or for which the Initiating Party has or may have cost responsibility. Parties desiring to perform an audit will cooperate with one another so as to minimize the number of audits and any undue burden upon the Operating Agent. Each such audit will be carried out by an auditor of the Initiating Party's choosing and at the expense of the Initiating Party, except as provided in Section 24.3. The Operating Agent will cooperate with the Initiating Party and the Initiating Party's auditor and will make available its relevant business records at reasonable times and places, upon reasonable advance notice. A copy of the audit

report will be provided to all Parties by the Initiating Party within fifteen (15) days of receipt of the audit report.

24.2 Dispute Resolution. If any Party disagrees with an audit finding from an audit conducted under Section 24.1, the Party may within fifteen (15) Business Days of the receipt of the audit report request in writing that the audit be reviewed by providing such request to all of the Parties. After any such request, the affected Parties will review the expenditure and will endeavor to agree upon whether an over- or under-billing occurred. If, after the review, the affected Parties determine that the expenditure was over- or under-billed, an adjustment to the billing that is the subject of the audit finding will be made to eliminate the over- or under-billing and an adjusted bill will be sent as provided for in Section 24.3. Each Party that receives a payment as a result of under- or over-billing will reimburse the Initiating Party as provided for in Section 24.3. If within thirty (30) Business Days of the date of the mailing of the written request for review the affected Parties are unable to agree in writing on a modification of the expenditure to eliminate the over- or under-billing, the matter will be submitted to dispute resolution pursuant to Section 23.

24.3 Adjusted Billing Procedures. If as the result of an audit and any related dispute resolution procedures under Section 23.1 or Section 23.2 it is determined that there was an under- or over-billing, the Operating Agent will issue invoices to correct the under- or over-billing with interest at the Wall Street Journal Prime Rate (or any successor to that rate). Interest will be calculated from the due date for payments on the prior invoices that included the under-or over-billed amounts to the date of the revised billings. The owing Party will pay any amounts owed on the corrected invoices within twenty (20) Business Days of receipt of the revised billing reflecting the result of the audit report. Each Party (other than an Initiating Party) that receives a payment or credit as a result of an audit report will reimburse the Initiating Party for the cost of the audit based on the amount received by such Party as a percentage of the total amount of payments and credits received by Parties; provided, that if the amount received by a Party is less than the lower of (i) $5,000 or (ii) ten percent (10%) of the amount of the disputed billing, no reimbursement for the audit costs will be required.

24.4 Effectiveness. The provisions of this Section 24 will become effective as of the Exit Date. Matters requiring audit arising before the Exit Date will be addressed in a manner consistent with the audit provisions of the SJPPA.

25. Miscellaneous Provisions

25.1 Governing Law. This Restructuring Agreement is made under and will be governed by New Mexico law, without regard to conflicts of law or choice of law principles that would require the application of the laws of a different jurisdiction.

25.2 Venue. Venue with respect to any judicial proceeding arising out of or relating to this Restructuring Agreement will lie exclusively in the state or federal courts in Albuquerque, New Mexico, and the Parties irrevocably consent and submit to the exclusive jurisdiction of such courts for such purpose and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner

recognized by such courts. A final judgment of the state or federal court will be enforceable in other states under applicable Law.

25.3 Manner of Giving of Notice. Any notice, demand, protest or request provided for in this Restructuring Agreement, or served, given or made in connection with it, will be deemed properly served, given or made: (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next Business Day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

25.3.1 Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

with a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

25.3.2 Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

25.3.3 City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

with a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

25.3.4 M-S-R Public Power Agency
c/o General Manager
1231 11th Street

Modesto, CA 95354

25.3.5 Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

25.3.6 City of Anaheim
c/o City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

25.3.7 Incorporated County of
Los Alamos, New Mexico
c/o County Clerk
P.O. Box 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of
Los Alamos, New Mexico
c/o Utilities Manager
P.O. Drawer 1030
170 Central Park Square
Suite 130
Los Alamos, NM 87544

25.3.8 Utah Associated Municipal Power Systems
c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

25.3.9 Tri-State Generation and Transmission
Association, Inc.
c/o Chief Executive Officer

1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

25.3.10 PNMR Development and Management Corporation
c/o Corporate Secretary
PNM Resources
Corporate Headquarters
414 Silver Ave. SW
Albuquerque, NM 87158-1245

A Party may, at any time or from time-to-time, by written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Restructuring Agreement.

25.4 Other Documents. Each Party agrees, upon request of another Party, to make, execute and deliver any and all documents and instruments reasonably required to carry into effect the terms of this Restructuring Agreement; provided, that such documents and instruments will not increase or expand the obligations of a Party hereunder.

25.5 Incorporation of Exhibits. All exhibits attached to, or referred to in, this Restructuring Agreement are incorporated in this Restructuring Agreement by this reference.

25.6 Captions and Headings. The captions and headings appearing in this Restructuring Agreement are inserted merely to facilitate reference and will have no bearing upon the interpretation of the provisions hereof.

25.7 Prior Obligations Unaffected. Except as otherwise provided herein, nothing in this Restructuring Agreement will be deemed to relieve the Parties of their obligations in effect prior to the Effective Date and such obligations will continue in full force and effect until satisfied or as otherwise mutually agreed.

25.8 Amendment and Modification. Except as otherwise provided herein, this Restructuring Agreement may be amended, modified or supplemented only by written instrument executed by all of the Parties with the same formality as this Restructuring Agreement.

25.9 Waivers of Compliance. Except as otherwise provided herein, any failure by a Party to comply with any obligation, covenant, agreement or condition of this Restructuring Agreement may be waived by the Party entitled to the benefits thereof only by written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition will not operate as a waiver of, or estoppel with respect to, any earlier or subsequent or other failure.

25.10 Uncontrollable Forces. No Party will be considered to be in default in the performance of any of its obligations hereunder (other than obligations of a Party to pay costs and expenses) if failure of performance is due to Uncontrollable Forces. The term "Uncontrollable Forces" means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, fire, lightning, epidemic or pandemic, war, riot, civil disturbance, labor dispute, sabotage or terrorism, restraint by court order or public authority, or failure to obtain approval from a necessary Governmental Authority which by exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it is unable to overcome. Nothing contained herein requires a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces will promptly provide notice to the other Parties and will exercise due diligence to remove such inability with all reasonable dispatch.

25.11 No Interpretation against Drafter. This Restructuring Agreement has been drafted with full participation by all of the Parties and their counsel of choice and no provision hereof will be construed against any Party on the ground that such Party or its counsel was the author of such provision. All of the provisions of this Restructuring Agreement will be construed in a reasonable manner to give effect to the intentions of the Parties in executing this Restructuring Agreement.

25.12 No Third Party Beneficiaries. The terms and provisions of this Restructuring Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

25.13 Compliance with Law. The Parties will comply with all applicable Laws in the performance of their respective obligations under this Restructuring Agreement.

25.14 Independent Covenants. The covenants and obligations contained in this Restructuring Agreement are independent covenants, not dependent covenants, and the obligation of a Party to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by another Party of all of the covenants and obligations to be kept and performed by it. Nothing in this Section 25.14 affects the rights of the Parties under the dispute resolution and default provisions of Section 23.

25.15 Invalid Provisions. If any provision of this Restructuring Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Restructuring Agreement will not be materially and adversely affected

thereby, such provision will be fully severable, this Restructuring Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Restructuring Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and the Parties will negotiate in good faith to attempt to agree upon a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

25.16 Parties' Cost Responsibilities. Each Party will be solely responsible for its own costs and expenses, including fees and costs of counsel, incurred in connection with the negotiation of this Restructuring Agreement and with any actions associated with the implementation of this Restructuring Agreement, including obtaining Regulatory Approvals.

25.17 Entire Agreement. This Restructuring Agreement, together with the schedules and exhibits hereto, supersedes all prior negotiations, agreements and understandings between the Parties with respect to the covenants and obligations agreed upon in this Restructuring Agreement.

25.18 Survival of Certain Provisions. Termination of this Restructuring Agreement will not relieve a Party of any obligation or liability incurred by such Party before and existing as of the Termination Date, or any obligations resulting from such Party's Default hereunder.

25.19 No Admission of Liability. The terms of this Restructuring Agreement are the product of compromise between and among the Parties. Neither any conduct nor statements made in its negotiation, nor entry by the Parties into it, will constitute evidence of, or an admission of, liability; provided, however, nothing in this Section 25.19 will be construed or interpreted to excuse any Party from, or be used by any Party to argue against, that Party's performance of any of its obligations under this Restructuring Agreement.

25.20 Other Rights. Subject to Sections 20.14, 23.1.3 and 23.12, the rights and remedies provided in this Restructuring Agreement will be in addition to any other rights and remedies the non-defaulting Parties have in law or equity.

25.21 Execution in Counterparts. This Restructuring Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the Parties to the aggregated counterparts had signed the same instrument. Any signature page of this Restructuring Agreement may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon and may be attached to any other counterpart of this Restructuring Agreement identical in form thereto but having attached to it one or more additional pages. Electronic or pdf signatures will have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties have caused this Restructuring Agreement to be executed on their behalf and the signatories hereto represent that they have been duly authorized to enter into this Restructuring Agreement on behalf of the Party for whom they sign.

[Signatures on succeeding pages]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Its: _____
Date: _____

TUCSON ELECTRIC POWER COMPANY

By: _____
Its: _____
Date: _____

THE CITY OF FARMINGTON, NEW MEXICO

By: _____
Its: _____
Date: _____

M-S-R PUBLIC POWER AGENCY

By: _____
Its: _____
Date: _____

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Its: _____
Date: _____

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Its: _____
Date: _____

CITY OF ANAHEIM

By: _____
Its: _____
Date: _____

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: _____
Its: _____
Date: _____

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

By: _____
Its: _____
Date: _____

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

By: _____
Its: _____
Date: _____

EXHIBIT A

Regulatory Approvals

The Parties have identified the following Regulatory Approvals required in connection with this Restructuring Agreement:

A. Public Service Company of New Mexico

a. New Mexico Public Regulation Commission
   i. Approval for abandonment of interests in Unit 2 and Unit 3 pursuant to NMSA 1978, § 62-9-5;
   ii. A certificate of public convenience and necessity pursuant to NMSA 1978, § 62-9-1 to own and operate Unit 4 with a greater ownership interest.

b. Federal Energy Regulatory Commission
   i. Approvals for the transfer of ownership interests in jurisdictional assets pursuant to Section 203 of the Federal Power Act.
   ii. Approvals pursuant to Section 205 of the Federal Power Act.

B. Tucson Electric Power Company

None

C. City of Farmington, New Mexico

None

D. M-S-R Public Power Agency

None

E. County of Los Alamos

None

F. Southern California Public Power Agency

None

G. City of Anaheim

None

H. Utah Associated Municipal Power Systems

None

I. Tri-State Generation and Transmission Association, Inc.

None

J. PNMR Development and Management Corporation

Federal Energy Regulatory Commission

i. Approvals for the transfer of ownership interests in jurisdictional assets pursuant to Section 203 of the Federal Power Act.

EXHIBIT B

Other Project Agreements

The Parties have identified the following Other Project Agreements:

Contract Title	Contract Date	Contract Parties
Amended and Restated San Juan Project Participation Agreement	3/23/2006	San Juan Participants
San Juan Project Designated Representative Agreement and amendment No. 1 thereto	4/29/1994; 10/31/2000	San Juan Participants
San Juan Project Operating Procedure No. 1, Energy Accounting under SJ Project Participation Agreement	10/11/2000	San Juan Participants
Mine Reclamation and Trust Funds Agreement	6/1/2012	San Juan Participants
San Juan Unit 3 Purchase Agreement	3/25/1993	Century Power and SCPPA
San Juan Unit 3 Purchase Agreement	6/1/1994	Century Power and Tri-State
1st Amendment to the San Juan Unit 3 Purchase Contract	5/20/1993	Century Power Corporation and Southern California Public Power Authority
Amended and Restated Interconnection Agreement	10/7/1992	Tucson Electric Power and Century
Assignment and Amendment to Amended and Restated Interconnection Agreement	3/1/1993	Tucson Electric Power and Century Power Corporation
San Juan Unit 4 Purchase and Participation Agreement and Amendment No. 1	4/26/1991 and 10/27/1999	PNM and Anaheim
Instrument of Sale and Conveyance	8/12/1993	PNM and Anaheim
Insurance Policy endorsements adding Anaheim as named insured on SJ Project insurance policies	8/12/1993	PNM and Anaheim
Assumption Agreement (Pollution Control Bond Operation, Maintenance and Insurance Covenants)	8/12/1993	PNM and Anaheim
Interconnection Agreement	4/26/1991	PNM and Anaheim

Contract Title	Contract Date	Contract Parties
Letters to Anaheim from PNM re: exchange of economy energy under 5ervice Schedule C of the Interconnection Agreement dated 4/26/1991	5/22/1992; 5/19/2003	PNM and Anaheim
Interconnection Agreement, 5ervice 5chedule E, Interruptible Transmission 5ervice	4/26/1991	PNM and Anaheim
Interconnection Agreement, 5ervice, Schedule F, 5an Juan Unit 4 Transmission 5ervice	4/26/1991	PNM and Anaheim
Operating Procedure No. 1 under the Purchase and Participation Agreement	12/27/1995	PNM and Anaheim
Letter to PNM from Anaheim (notice of intent to become CAISO member)	6/20/2002	PNM and Anaheim
Recovery System Water Agreement	8/31/2012	PNM and BHP Navajo Coal Co
Water Use Agreement Amendment 1 Amendment 2	12/1/2009 10/26/2011 6/1/2013	PNM and BHP Navajo Coal Co
Amended Instrument of 5ale and Conveyance (Installment 5ale Agreement; pollution control systems) (PNM grantee, Farmington, grantor)	5/16/1979	PNM and Farmington
Amended Instrument of 5ale and Conveyance (Installment 5ale Agreement; pollution control systems) (PNM grantor, Farmington grantee)	5/16/1979	PNM and Farmington
Purchase Agreement and Participation Agreement and amendments 1 and 2 thereto	11/17/1981; 10/31/1984 & 10/27/1999	PNM and Farmington
Instrument of 5ale and Conveyance	11/17/1981	PNM and Farmington
Insurance (adding Farmington to Project insurance policies)	11/1981	PNM and Farmington
First Amended and Restated Interconnection Agreement	6/19/2007	PNM and Farmington
First Amended and Restated Construction and Interconnection Agreement	6/19/2007	PNM and Farmington
Operating Procedure No. 1 for Hazard 5haring Obligation, Rev. 2, in conjunction with 5ervice 5chedule E of Interconnection Agreement	5/31/2007	PNM and Farmington
Operating Procedure No. 2 for Blackstart Restoration Plan, Rev. 2, in conjunction with Interconnection Agreement dated 11/17/1981	5/31/2007	PNM and Farmington

Contract Title	Contract Date	Contract Parties
Operating Procedure No. 3 for Normal and Emergency Operation of the Hogback Substation	6/7/2007	PNM and Farmington
Operating Procedure No. 4 for Notification of Maintenance or Testing	6/7/2007	PNM and Farmington
Operating Procedure No. S for Clearance and Switching Coordination Agreement (First Amended and Restated Interconnection Agreement)	6/7/2007	PNM and Farmington
San Juan to Shiprock Transmission System Participation Agreement	S/24/1982	PNM and Farmington
Managed Business Relationship Agreement	7/1/2004	PNM and GE
Water Supply Agreement	7/17/2000	PNM and Jicarilla Apache Tribe
Amended and Restated San Juan Unit 4 Purchase and Participation Agreement and Amendment No. 1 thereto	12/28/1984 and 10/27/1999	PNM and Los Alamos County
Instrument of Sale and Conveyance	7/1/198S	PNM and Los Alamos County
Los Alamos County added as additional insured on Project insurance policies	7/1/198S	PNM and Los Alamos County
Interconnection Agreement	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule A, Emergency Generation Service	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule B, Economy Energy Interchange	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule C, Hazard Sharing	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule G, Transmission Service through the Norton 11S KV Switching Station	11/26/1984	PNM and Los Alamos County
Third Revised Service Agreement for Network Integration Transmission Service	7/3/2012	PNM and Los Alamos County
Third Revised Network Operating Agreement	7/3/2012	PNM and Los Alamos County
Agreement of the Operating Committee (cost sharing of telemetry and data acquisition at SJ Units 3 and 4, SJ Switching Station) (supersedes 2 operating committee agreements dated 7/11/198S)	7/22/1986	PNM and Los Alamos County
PNM-LAC Operating Procedure Number II, Substitute Energy	S/1/1991	PNM and Los Alamos County

Contract Title	Contract Date	Contract Parties
Operating Procedure Number III, Hazard Sharing obligation, Service Schedule C of Interconnection Agreement (SJ Units 3 and 4)	9/29/1992	PNM and Los Alamos County
PNM-LAC Operating Procedure Number IV, Area Control Accounting (Service Schedule H) (entitlement to SJ generation)	S/1/1991	PNM and Los Alamos County
Operating Procedure Number V, Determination of Credit for Self Supply of Reactive Supply & Voltage Control Service from Generation Sources (attachment refers to SJ Ratio)	9/20/1999	PNM and Los Alamos County
Replacement for the Revised & Restated Operating Procedure No. VI, Energy Imbalance Accounts & Derivation of Monthly Invoices (SJ Station)	7/26/2002	PNM and Los Alamos County
Letter Agreement between PNM and Incorporated Los Alamos County of Los Alamos re: defining and agreeing on interruptible schedules (San Juan)	4/16/1998	PNM and Los Alamos County
Interconnection Agreement	9/26/1983	PNM and M-S-R
San Juan Unit 4 Early Purchase and Participation Agreement, as amended	9/26/1983; 12/16/1987; 10/31/1989; 10/27/1999	PNM and M-S-R
Instrument of Sale and Conveyance	12/31/1983	PNM and M-S-R
Certificate of Insurance	12/28/1983	PNM and M-S-R
Interconnection Agreement, Service Schedule A, Economy Energy Interchange (SJ Units 3 and 4)	9/26/1983	PNM and M-S-R
Amendment No. 1 to Service Schedule A, to the Interconnection Agreement (to permit seller to offer economy energy at current market price or actual costs to generate energy)	1/22/1986	PNM and M-S-R
SSB - Economy Energy Brokerage	9/26/1983	PNM and M-S-R
SSC - Power Exchange	9/26/1983	PNM and M-S-R
San Juan Unit 4 Operating Procedure No. 1	4/2S/199S	PNM and M-S-R
Coal Feedstock Purchase Agreement	6/21/2013	PNM and San Juan Fuels, LLC
Pre-Closing Coal Inventory Purchase Agreement	6/21/2013	PNM and San Juan Fuels, LLC
Refined Coal Supply Agreement	6/21/2013	PNM and San Juan Fuels, LLC
Surface Use Lease Agreement	1/1/2003	PNM and SJCC
Water Use Agreement - SJCC Pit Dewatering	4/24/1989	PNM and SJCC
Purchase Agreement	S/16/1979	PNM and TEP

Contract Title	Contract Date	Contract Parties
Instrument of Sale and Conveyance	S/16/1979	PNM and TEP
Tucson Assignment	S/16/1979	PNM and TEP
Amended Interconnection Agreement	12/19/1997	PNM and TEP
Amendment No. 1 to the Amended Interconnection Agreement	7/13/1998	PNM and TEP
Amendment No. 2 to the Amended Interconnection Agreement	1/1/2003	PNM and TEP
Amendment No. 3 to the 1997 Amended Interconnection Agreement	3/14/2007	PNM and TEP
Amended Interconnection Agreement, Service Schedule A - Reserve Sharing, Exhibit 1 - Revised 2009 (Springerville Unit)	1/1/2009	PNM and TEP
Letter to Tucson Electric from PNM re: agreement for SJGS Curtailment Energy Sales (1/2S/1979 Interconnection Agreement)	4/26/1982	PNM and TEP
Power Exchange and Transmission Agreement (SJGS, SJ 34SkV Switchyard), as amended	4/26/1982; 10/12/2006	PNM and TEP
Network Interface Control Document (power control systems data exchange)	9/23/1985	PNM and TEP
Assignment of Water Contract (delivery of 20,200 acre feet of water per annum)	12/1/2009	PNM and TEP
Fourth Revised Service Agreement for Network Integration Transmission Service	7/31/2006	PNM and Tri-State
Fourth Revised Operating Agreement	7/31/2006	PNM and Tri-State
Schedule of Tri-State Generation and Transmission Assoc Network Resources (SJ Unit 3)	8/26/2010	PNM and Tri-State
Operating Procedures Agreement, Contract No. TS-00-0020, with Operating Agreement Nos. 1 through 6 (signed 2/2001) re: adoption of operating procedures between PNM/Plains subsequent to merger of Plains and Tri-State to provide SCADA for PNM assets purchased from Plains.	7/1/2000	PNM and Tri-State
Revision 2 to Operating Procedure 06, Real Time Metering Data and Equipment Status to be Exchanged (SJ Units 3 & 4)	1/31/2007	PNM and Tri-State
Operating Procedure 03, Restoration and Operating Guidelines (San Juan-Ojo 34SkV line)	8/7/2008; 1/30/2010	PNM and Tri-State
Operating Procedure 8 rev S - Tri-State Load Within PNM Balancing Authority	1/1/2013	PNM and Tri-State
Operating Procedure 10 - Energy Imbalance accounts & Derivations of Monthly Invoices, under Specification 4 of the Service Agreement for Network Integration Transmission Service (SJGS)	2/28/2001	PNM and Tri-State

Contract Title	Contract Date	Contract Parties
Op Proc No 11 Defining the Methodology for Determination of a Credit for Tri-State's Reactive Supply (attachment re: San Juan)	2/28/2001	PNM and Tri-State
First Revised Op Proc No 12 Rev 1 Reserve Methodology Activation and Scheduling, under First Revised Reserve Obligation Agreement effective 10/1/04	9/27/2004	PNM and Tri-State
Op Proc No 13 Pyramid Generating Station Deliveries (ALIS), under Second Revised Service Agreement for Network Integration Transmission Service dated 4/1/2003 (San Juan 34SkV)	1/1/2013	PNM and Tri-State
Op Proc No 14 Hourly Check-Out (of key energy schedules and meter data), under Network Service Agreement (PNM Control Area)	S/1/2004	PNM and Tri-State
Op Proc No 1S After the Fact Check-Out (of key energy schedules and meter data), under network integration transmission service agreement (NITSA) in PNM Control Area)	S/1/2004	PNM and Tri-State
Restoration and Operating Guidelines 03-02 Western New Mexico Area 115kV Line Overloads (San Juan-BA 34SkV Line listed as a probable contingency)	S/27/2010	PNM and Tri-State
Instrument of Sale and Conveyance	1/2/1996	Century and Tri-State
Assignment and Assumption Agreement	1/2/1996	Century and Tri-State
Assignment and Assumption of Easement and License	1/2/1996	Century and Tri-State
Assignment and Amendment No. 2 to Amended and Restated Interconnection Agreement	1/2/1996	TEP, Century, SCPPA and Tri-State
Assignment and Amendment No. 2 to Assumption Agreement	1/2/199S	TEP, Century, SCPPA and Tri-State
Delegation Agreement and Acknowledgment	6/18/2007	All San Juan Participants
Various Letter Agreements	1/13/98, 1/29/1999, 1/1/2000, 1/24/2001, 1/1/2002, 2/12/2003, 1/31/2004, 1/7/200S,	PNM, TEP, Los Alamos, Farmington, MSR, SCPPA, Anaheim, UAMPS and Tri-State

Contract Title	Contract Date	Contract Parties
	and 2/13/2006	
Contract No. TS-99-003S for Purchase of Firm Power (SJ 34SkV Bus)	7/1/2000	PNM and Tri-State
Restated and Amended San Juan Unit 4 Purchase and Participation Agreement and Amendment No. 1 thereto	S/27/1993 and 10/27/1999	PNM and UAMPS
Instrument of Sale and Conveyance	6/2/1994	PNM and UAMPS
PNM Certificate adding UAMPS as named insured on all San Juan Project Insurance Policies	6/2/1994	PNM and UAMPS
Assumption Agreement (assumes PNM's obligations for PCB Operation, Maintenance and Insurance Covenants under ISAs)	6/2/1994	PNM and UAMPS
Interconnection Agreement	S/27/1993	PNM and UAMPS
Service Schedule A to Interconnection Agreement, Emergency Assistance	S/27/1993	PNM and UAMPS
Service Schedule B, to Interconnection Agreement Banked Energy	S/27/1993	PNM and UAMPS
Service Schedule C to Interconnection Agreement, Short Term Firm Capacity	S/27/1993	PNM and UAMPS
Amendment Number One to Service Schedule C to Interconnection Agreement	11/12/1993	PNM and UAMPS
Service Schedule D to Interconnection Agreement, Interruptible Transmission Service	S/27/1993	PNM and UAMPS
Amendment Number One to Service Schedule D to Interconnection Agreement	11/12/1993	PNM and UAMPS
Service Schedule E to Interconnection Agreement, San Juan Unit 4 Transmission Service	S/27/1993	PNM and UAMPS
Amended Number One to Service Schedule E to Interconnection Agreement	7/20/1994	PNM and UAMPS
Operating Procedure Number 1 re: scheduling of UAMPS SJ Unit 4 entitlement pursuant to Section 12 of the Purchase and Participation Agreement	S/31/1994	PNM and UAMPS
The Further Assurance Agreement (with regard to certain costs and liabilities arising in future re: contamination of soil or groundwater allocable to PNM ownership prior to purchase)	S/20/1994	PNM and UAMPS
Non-Exclusive Technology License Agreement	6/21/2013	PNM and VRC Technology, LLC
Easement and License	8/12/1993	PNM, TEP, and

Contract Title	Contract Date	Contract Parties
		Anaheim
Easement and License	11/17/1981	PNM, TEP, and Farmington
Easement and License	7/1/198S	PNM, TEP, and Los Alamos County
Easement and License	12/31/1983	PNM, TEP, and M-S-R
Low Water Weir Lease	7/9/1971	PNM, TEP, and Navajo Tribe of Indians
Environmental Indemnity Agreement	6/21/2013	PNM, TEP, and San Juan Fuels, LLC
License and Access Agreement	6/21/2013	PNM, TEP, and San Juan Fuels, LLC
Underground Coal Sales Agreement; Amendments 1, 2, 3, 4, S	8/31/2001; 12/1S/2003; 9/1S/2004; S/11/200S; 3/7/2007; 12/21/2007	PNM, TEP, and SJCC
Closing Agreement (Amendment One to Underground Coal Sales Agreement)	12/1S/2003	PNM, TEP, and SJCC
Letter Agreement (Reimbursement of taxes and royalties under the Underground Coal Sales Agreement)	12/1S/2003	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 1 - Post Retirement Medical Benefits (FAS-106) Settlement Agreement	4/29/200S	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 8 - Operating Cost Treatment for SJCC Asset Disposal	1/1/2006	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 2 - Operating Cost Clarification	11/28/2006	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 4 - Settlement of 2007 Issues	12/21/2007	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number S - Revision of Base Year for Implicit Price Deflator, Gross Domestic Product	8/10/2009	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 6 - Accounting Guidance Regarding Labor and Services to Install Fixed Assets Underground	12/1/2009	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 7 - Settlement and Future Treatment of Gatebelt Drive Installation Costs	12/1/2009	PNM, TEP, and SJCC

Contract Title	Contract Date	Contract Parties
UG-CSA Joint Committee Resolution Number 9 - Extension of Operating Cost Definition for Third Party Audit to years 2006-2009	7/30/2010	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 10 - Costs Arising from Sierra Club's December 2009 RCRA and SMCRA Notice of Intent Letters and Sierra Club's April 8, 2010 Complaint	7/30/2010	PNM, TEP, and SJCC
Coal Combustion Byproduct Disposal Agreement Closing Agreement	1/1/2008	PNM, TEP, and SJCC
Coal Combustion Byproduct Disposal Agreement	1/1/2008	PNM, TEP, and SJCC
Easement (grant of easement to SJCC) (undated but in file with 3/10/89 Water Use Agreement)	3/10/1989	PNM, TEP, and SJCC
Refined Coal Facility Agreement	1/1/2012	PNM, TEP, and TCG Global, LLC
Easement and License	6/2/1994	PNM, TEP, and UAMPS
Grant of Authority	8/18/1980	PNM, TEP, and Utah International Inc.
Payment Allocation and Process Agreement Jicarilla Agreement	9/14/2007	PNM; APS; BHP Navajo Coal Company
Letter Agreement	3/28/1996	PNM; BHP Navajo Coal Co; BHP Minerals International, Inc.
Recommendations for San Juan River Operations and Administration for 2013 through 2016	7/2/2012	PNM; BHP; APS; Navajo Nation
Water Supply Agreement	3/2/2007	PNM; Jicarilla Apache Nation; APS; BHP Navajo Coal Company
Installment Sale Agreement (air and water pollution control facilities at San Juan Generation Station)	11/1/1977	TEP and Farmington
Installment Sale Agreement (air and water pollution control facilities at San Juan Generation Station)	1/1/1978	TEP and Farmington
Amendment No. 1 to Installment Sale Agreement	5/16/1979	TEP and Farmington
Amendment No. 2 to Installment Sale Agreement	S/16/1979	TEP and

Contract Title	Contract Date	Contract Parties
		Farmington
Agreement (Installment Sale Agreement; pollution control systems facilities to be acquired, constructed and installed at San Juan Generating Station)	5/16/1979	TEP and Farmington
San Juan Unit No. 4 Sale of Option Agreement	11/29/1982	TEP and M-S-R
Assignment of Option by TEP	11/29/1982	TEP and M-S-R
Instrument of Sale and Conveyance by TEP	11/29/1982	TEP and M-S-R
Title Commitment re: Interest created by Easement and License	5/27/1994 (land) 6/2/1994 (easement)	UAMPS (In favor of)
Fuel and Capital Funding Agreement	09/2014	All Participants
Capacity Option and Funding Agreement	05/2015	PNM, PNMR, PNMR-D, Anaheim and M-S-R

EXHIBIT C

Form of Instrument of Sale and Conveyance

[Exiting Participant], a _____ ("_____"), in consideration of the mutual covenants and agreements contained in that certain San Juan Project Restructuring Agreement dated as of _____, 2015 (the "Restructuring Agreement"), which Restructuring Agreement is incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, bargains, sells and conveys to [Acquiring Participant], a _____ ("_____"), all of its rights, titles and interests consisting of an undivided _____% of the Ownership Interest (as defined in the Restructuring Agreement) previously conveyed to [Exiting Participant] in that certain Instrument of Sale and Conveyance (the "Original Instrument") granted by [Grantor] to [Exiting Participant] dated [_____] and recorded in the Records of the County Clerk of San Juan County, New Mexico on [_____] in Book ____, Page _____ ("Conveyed Assets"), including all subsequent changes, additions, improvements, substitutions and accessions to the Conveyed Assets. Capitalized terms used in this document have the meaning as defined in the Restructuring Agreement unless specifically defined herein.

1. This Instrument of Sale and Conveyance is intended to, and does include all of [Exiting Participant's] rights, titles and interests in and to all fixtures which are part of or related to the Conveyed Assets situate upon the real property described in the Original Instrument, but is not intended to and does not convey title to the underlying real property described in the Original Instrument.

2. [Exiting Participant] represents and warrants to [Acquiring Participant] and [Acquiring Participant's] authorized successors, trustees and representatives that the Conveyed Assets are free from all encumbrances made by [Exiting Participant] and that [Exiting Participant] shall warrant and defend the same to [Acquiring Participant] and its authorized successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under [Exiting Participant], but against none other. Such representation and warranty by [Exiting Participant] are subject to the following disclaimer:

> EXCEPT AS OTHERWISE PROVIDED HEREIN: (1) THE CONVEYED ASSETS ARE CONVEYED BY [EXITING PARTICIPANT] TO [ACQUIRING PARTICIPANT] ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS; (2) [EXITING PARTICIPANT] MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, QUANTITY, CONDITION, SALABILITY, OBSOLESCENCE, MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR WORKING ORDER OF, ALL OR ANY PART OF THE CONVEYED ASSETS; AND (3) [EXITING PARTICIPANT] DOES NOT REPRESENT OR WARRANT THAT THE USE OR OPERATION OF THE CONVEYED ASSETS WILL NOT VIOLATE OR CONFLICT WITH PATENT, TRADEMARK OR SERVICE MARK RIGHTS OF ANY THIRD PARTY. [ACQUIRING PARTICIPANT] ACCEPTS THE CONVEYANCE OF CONVEYED ASSETS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE RESTRUCTURING AGREEMENT.

3. NOTWITHSTANDING THE FOREGOING, [Acquiring Participant] shall have the benefit, in proportion to its interest in the Conveyed Assets, of all manufacturers' and vendors' warranties (to the extent [Exiting Participant] may have a right or benefit thereof) in connection with the Conveyed Assets.

4. NOTWITHSTANDING THE FOREGOING, (i) [Exiting Participant] covenants and warrants that title to the Conveyed Assets is free from all former grants, sales, taxes, assessments, liens, trusts, mortgages and encumbrances created by or through [Exiting Participant] through the Exit Date; and (ii) nothing contained berein shall be construed to relieve [Exiting Participant] from its duties under the Restructuring Agreement, the Decommissioning Agreement and the Mine Reclamation Agreement.

5. [Exiting Participant], by execution and delivery of this Instrument of Sale and Conveyance, and [Acquiring Participant], by its acceptance hereof, hereby waive and renounce for themselves, their successors, transferees and assigns, any and all rights, titles and interests of any kind or nature whatsoever, legal or equitable, as a tenant in common in the Conveyed Assets, to partition or equitable accounting.

6. This Instrument of Sale and Conveyance and the terms and conditions contained herein shall bind and inure to the benefit of the respective successors, assigns, trustees and representatives of [Exiting Participant] and [Acquiring Participant].

This Instrument of Sale and Conveyance shall be governed and construed in accordance with New Mexico law.

IN WITNESS WHEREOF, [Exiting Participant] has caused this Instrument of Sale and Conveyance to be executed as of the ___ day of ___, 2017.

[Exiting Participant]
By: _____
Its: _____

ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2017 by _____, as _____ of _____, a _____.

_____
Notary Public

My Commission Expires: _____

EXHIBIT D

Form of Opinion of Counsel

The legal opinions of counsel for each of the Parties required by Section 17.3 of the Restructuring Agreement will be to the following effect:

[Addressed to Parties]

Ladies and Gentlemen: [Expand as appropriate to encompass customary qualifications and limitations and other relevant language]

We have acted as counsel to _____ [Insert name of the Party on whose behalf this opinion is provided] in connection with the San Juan Project Restructuring Agreement among Public Service Company of New Mexico; Tucson Electric Power Company; The City of Farmington, New Mexico; M-S-R Public Power Agency; The Incorporated County of Los Alamos, New Mexico; Southern California Public Power Authority; City of Anaheim; Utah Associated Municipal Power Systems; Tri-State Generation and Transmission Association, Inc.; and PNMR Development and Management Corporation, dated as of _____, 2015 ("Restructuring Agreement") (each a "Party" and collectively the "Parties"). Section 17 of the Restructuring Agreement contains certain representations and warranties of the Parties to one another; and Section 17.3 provides that counsel for each Party will provide its opinion to each of the other Parties that the Party is in compliance with the representations and warranties given in Section 17. This opinion of counsel is given in accordance with Section 17.3 of the Restructuring Agreement.

We are of the opinion that the representations and warranties made by _____ [Insert name of the Party on whose behalf this opinion is provided] pursuant to Section 17 of the Restructuring Agreement are true and correct in all material respects as of the Execution Date of the Restructuring Agreement (as that date is defined in the Restructuring Agreement). No facts have come to our attention, after reasonable inquiry, which would lead us to believe that the Section 17 representations and warranties of _____ [Insert name of the Party on whose behalf this opinion is provided] contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which they are being made, not misleading.

The opinions expressed herein are based only on the laws of the State of _____ [Insert State] in effect as of the date of this opinion and in all respects are subject to and may be limited by future legislation, as well as developing case law. We undertake no duty to advise you of the same.

This letter is furnished by us as _____ [Insert Title, e.g., – General Counsel] to _____ [Insert name of the Party on whose behalf this opinion is provided]. No attorney-client relationship has existed or exists between us and you in connection with the transactions provided for in the Restructuring Agreement or by virtue of this letter. This letter is delivered to you and is solely for your benefit and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person.

EXHIBIT E

Parties' Pre-Exit Date Ownership Interests in Project Facilities

The Parties' pre-Exit Date Ownership Interests in the Project are the following:

A. For Units 1 and 2 and for all equipment and facilities directly related to Units 1 and 2 only, in accordance with the following percentages:

- PNM: 50 percent
- TEP: 50 percent
- M-S-R: 0 percent
- Farmington: 0 percent
- Tri-State: 0 percent
- LAC: 0 percent
- SCPPA: 0 percent
- Anaheim: 0 percent
- UAMPS: 0 percent
- PNMR-D: 0 percent

B. For Unit 3 and for all equipment and facilities directly related to Unit 3 only, in accordance with the following percentages:

- PNM: 50 percent
- TEP: 0 percent
- M-S-R: 0 percent
- Farmington: 0 percent
- Tri-State: 8.2 percent
- LAC: 0 percent
- SCPPA: 41.8 percent
- Anaheim: 0 percent
- UAMPS: 0 percent
- PNMR-D: 0 percent

C. For Unit 4 and for all equipment and facilities directly related to Unit 4 only, in accordance with the following percentages:

- PNM: 38.457 percent
- TEP: 0 percent
- M-S-R: 28.8 percent
- Farmington: 8.475 percent
- Tri-State: 0 percent
- LAC: 7.20 percent
- SCPPA: 0 percent

- Anaheim: 10.04 percent
- UAMPS: 7.028 percent
- PNMR-D: 0 percent

D. For equipment and facilities common to Units 1 and 2 only, in accordance with the following percentages:

- PNM: 50 percent
- TEP: 50 percent
- M-S-R: 0 percent
- Farmington: 0 percent
- Tri-State: 0 percent
- LAC: 0 percent
- SCPPA: 0 percent
- Anaheim: 0 percent
- UAMPS: 0 percent
- PNMR-D: 0 percent

E. For equipment and facilities common to Units 3 and 4 only, in accordance with the following percentages:

- PNM: 44.119 percent
- TEP: 0 percent
- M-S-R: 14.4 percent
- Farmington: 4.249 percent
- Tri-State: 4.1 percent
- LAC: 3.612 percent
- SCPPA: 20.9 percent
- Anaheim: 5.07 percent
- UAMPS: 3.55 percent
- PNMR-D: 0 percent

F. For equipment and facilities common to all of the Units in accordance with the following percentages:

- PNM: 46.297 percent
- TEP: 19.8 percent
- M-S-R: 8.7 percent
- Farmington: 2.559 percent
- Tri-State: 2.49 percent
- LAC: 2.175 percent
- SCPPA: 12.71 percent
- Anaheim: 3.10 percent
- UAMPS: 2.169 percent

- PNMR-D: 0 percent

EXHIBIT F

SJGS Plant Site

The SJGS Plant Site consists of Parcels A, B, D, E and F in the property descriptions below.

PARCEL A

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 16: SW 1/4
Section 20: NE 1/4, N 1/2 SE 1/4, SW 1/4SE 1/4
Section 21: NW 1/4 NW 1/4
Section 29: NE 1/4

PARCEL B

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SW 1/4, SW 1/4 SE 1/4
Section 20: E 1/2 NW 1/4, NE 1/4 SW 1/4
Section 29: NW 1/4, N 1/2 SW 1/4
Section 30: NE 1/4, E 1/2 NW 1/4, N 1/2 SE 1/4

PARCEL D

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 17: SE 1/4 SW 1/4, S1/2 SE 1/4

PARCEL E

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SE 1/4
NE 1/4 SE 1/4
E 1/2 NW 1/4 SE 1/4

S 1/2 S 1/2 SE 1/4 NE 1/4

Section 20: SE 1/4 SW 1/4
SW 1/4 SW 1/4
NW 1/4 SW 1/4
S 1/2 SW 1/4 SW 1/4 NW 1/4

Containing 235 acres, more or less.

PARCEL F

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 20: SE 1/4 SE 1/4

EXHIBIT G

Form of Instrument Relinquishing Easement and License

TERMINATION AND RELINQUISHMENT

_____, a _____organized under the laws of the State of _____, hereby terminates and relinquishes all interests acquired as Grantee in that certain Easement and License dated _____ and recorded at Book _____, record number _____, page _____of Records of San Juan County, New Mexico.

Dated effective this ____ day of _____, 2017.

_____
[_____]

_____
Name and title

STATE OF)
) ss
COUNTY OF)

The foregoing document was acknowledged before me this _____ day of _____, 2017 by _____, as _____ of _____.

_____
Notary Public

_____
My Commission Expires

EXHIBIT H

Form of Easement and Right of Entry

PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, and TUCSON ELECTRIC POWER COMPANY, an Arizona corporation (together, the "Grantors"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grant and convey to _____, a _____ organized under the laws of the State of _____ ("Grantee"), and to Grantee's employees, contractors, subcontractors, representatives, agents and licensees, a non-exclusive easement and right of entry to, including rights of ingress and egress upon, over and across, the SJGS Plant Site, described in Exhibit 'A', attached hereto and made a part hereof (the "Premises") and to all buildings and personal property located thereon (collectively, the "Facilities"), for the purposes set forth below.

The rights and privileges granted herein give Grantee the right to access the Premises and Facilities for the purposes of Grantee exercising its rights, protecting its interests and fulfilling its obligations under the San Juan Project Restructuring Agreement dated _____, 2015, ("Restructuring Agreement"), the Amended and Restated Mine Reclamation and Trust Funds Agreement dated _____, 2015 ("Mine Reclamation Agreement"), and the San Juan Decommissioning and Trust Funds Agreement dated _____, 2015 ("Decommissioning Agreement"), to which Grantors and Grantee are parties (collectively, the "Purposes").

Grantors will make and keep available to Grantee all reasonable accommodations appropriate for Grantee's full use and enjoyment of this Easement and Right of Entry for carrying out the Purposes, including, without limitation, parking and security clearances appropriate for passage to and from the Premises and the Facilities, all upon reasonable advance notice and consistent with the San Juan Project Operating Agent's safety and security rules and other requirements applicable to persons who come upon the Premises and the Facilities.

This Easement and Right of Entry shall automatically expire, without any further or additional document or act, upon the last to occur of the following: (i) the termination or expiration of the Restructuring Agreement; (ii) the termination or expiration of the Mine Reclamation Agreement; and (iii) the termination or expiration of the Decommissioning Agreement. Further, this instrument is not assignable or transferable in whole or in part by Grantee without the prior written approval of such assignment by Grantors which approval will not be unreasonably conditioned, delayed or denied. Upon the last to occur of items (i), (ii) or (iii), above, Grantors may, upon thirty (30) days' written notice to Grantee, execute and record in the real estate records of San Juan County, New Mexico, a written instrument certifying that this Easement and Right of Entry has terminated.

Dated effective this ____ day of _____, 2017.

Public Service Company of New Mexico

By:_____
Name:_____
Title:_____

Tucson Electric Power Company

By:_____
Name:_____
Title:_____

STATE OF NEW MEXICO)
) ss
COUNTY OF)

The foregoing document was acknowledged before me this _____ day of _____, 2017 by _____, as _____ of Public Service Company of New Mexico.

_____
Notary Public

_____
My Commission Expires:

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing document was acknowledged before me this _____ day of _____, 2017 by _____, as _____ of Tucson Electric Power Company.

_____
Notary Public

_____
My Commission Expires:

EXHIBIT A
TO EASEMENT AND RIGHT OF ENTRY

DESCRIPTION OF SJGS PLANT SITE

PARCEL A

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 16: SW 1/4
Section 20: NE 1/4, N 1/2 SE 1/4, SW 1/4SE 1/4
Section 21: NW 1/4 NW 1/4
Section 29: NE 1/4

PARCEL B

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SW 1/4, SW 1/4 SE 1/4
Section 20: E 1/2 NW 1/4, NE 1/4 SW 1/4
Section 29: NW 1/4, N 1/2 SW 1/4
Section 30: NE 1/4, E 1/2 NW 1/4, N 1/2 SE 1/4

PARCEL D

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 17: SE 1/4 SW 1/4, S1/2 SE 1/4

PARCEL E

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SE 1/4
NE 1/4 SE 1/4
E 1/2 NW 1/4 SE 1/4
S 1/2 S 1/2 SE 1/4 NE 1/4

Section 20: SE 1/4 SW 1/4
SW 1/4 SW 1/4
NW 1/4 SW 1/4
S 1/2 SW 1/4 SW 1/4 NW 1/4

Containing 235 acres, more or less.

PARCEL F

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 20: SE 1/4 SE 1/4

EXHIBIT I

Form of Parental Guaranty

PARENTAL GUARANTY AGREEMENT

Reference is hereby made to the following agreements: (1) SAN JUAN PROJECT RESTRUCTURING AGREEMENT ("Restructuring Agreement"), executed as of _____, 2015 by and among PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Los Alamos"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"); and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"); (2) SAN JUAN PROJECT DECOMMISSIONING AND TRUST FUNDS AGREEMENT ("Decommissioning Agreement"), dated as of _____, 2015, by and among PNM; TEP; Farmington; M-S-R; LAC; SCPPA; Anaheim; UAMPS; Tri-State; and PNMR-D; (3) AMENDED AND RESTATED MINE RECLAMATION AND TRUST FUNDS AGREEMENT ("Mine Reclamation Agreement"), executed as of _____, 2015, by and among PNM; TEP; Farmington; M-S-R; LAC; SCPPA; Anaheim; UAMPS; Tri-State; and PNMR-D; and (4) AMENDED AND RESTATED SAN JUAN PROJECT PARTICIPATION AGREEMENT ("SJPPA") dated as of March 23, 2006, as amended, by and among PNM; TEP; Farmington; M-S-R; LAC; SCPPA; Anaheim; UAMPS; Tri-State; and PNMR-D. The Restructuring Agreement, Decommissioning Agreement, Mine Reclamation Agreement and SJPPA are hereinafter collectively referred to as "Guaranteed Agreements," and TEP, M-S-R, LAC, PNM, Farmington, Anaheim, UAMPS, SCPPA and Tri-State are hereinafter collectively referred to as "Guaranteed Parties."

FOR VALUE RECEIVED, and in consideration of any loans, advances, payments, extensions of credit and/or other financial accommodations heretofore, now or hereafter made, granted or extended by the Guaranteed Parties, and their respective successors and assigns, or which the Guaranteed Parties and/or their respective successors and assigns have or will become obligated to make, grant or extend, to or for the account of PNMR-D, and in consideration of any obligations heretofore, now or hereafter incurred by PNMR-D to the Guaranteed Parties and/or their respective successors and assigns, Guarantor hereby absolutely and unconditionally guarantees to each of the Guaranteed Parties and their respective successors and assigns the prompt and complete payment and performance when due in accordance with their terms

(whether by reason of demand, maturity, acceleration or otherwise) of any and all present and future obligations of PNMR-D to any one or more of the Guaranteed Parties, including, without limitation, all obligations of PNMR-D to the Guaranteed Parties under the Guaranteed Agreements (herein referred to as the "Guaranteed Obligations"). In addition, Guarantor shall and agrees to be liable to the Guaranteed Parties for all costs and expenses incurred by the Guaranteed Parties in attempting or effecting collection under this Parental Guaranty Agreement (whether or not litigation shall be commenced in aid thereof) and in connection with representation of the Guaranteed Parties in connection with bankruptcy or insolvency proceedings relating to or affecting this Parental Guaranty Agreement, including, without limitation, reasonable Attomeys' Fees for outside counsel for Guaranteed Parties, and interest payable on the Guaranteed Obligations as provided for in the Guaranteed Agreements or under applicable law. Guarantor agrees, represents and warrants that its obligations under this Parental Guaranty Agreement are, and will remain until all of its obligations hereunder have been fully and unconditionally performed and satisfied, ranked on parity with other unsecured and unsubordinated obligations of Guarantor to any other person or entity. Except as may be otherwise provided herein, in no event will Guarantor be liable under any provision of this Parental Guaranty Agreement for any indirect, special, punitive or incidental damages or costs of the Guaranteed Parties (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and the Guaranteed Parties hereby waive, release and discharge Guarantor from all such indirect, special, punitive and incidental damages and costs.

Notice of the acceptance of this Parental Guaranty Agreement, and of the incurrence of any of the Guaranteed Obligations, and presentment, demand for payment, notice of dishonor, protest, notice of protest and of default by PNMR-D are hereby waived by Guarantor. Guarantor hereby agrees that (a) this Parental Guaranty Agreement is a guaranty of payment and not of collection, and the obligations of such Guarantor under this Parental Guaranty Agreement may be enforced directly against such Guarantor independently of and without proceeding against PNMR-D with respect to any or all of the Guaranteed Obligations or foreclosing any collateral pledged to the Guaranteed Parties, and (b) the Guaranteed Parties may from time to time, in their sole and absolute discretion and without notice to or consent of such Guarantor and without releasing such Guarantor from any of its obligations under this Parental Guaranty Agreement, (i) extend the time of payment, change the interest rates and renew or change the manner, place, time and/or terms of payment of and make any other changes with respect to any or all of the Guaranteed Obligations, (ii) sell, exchange, release, surrender and otherwise deal with any collateral pledged to the Guaranteed Parties by PNMR-D or any other person to secure any or all of the Guaranteed Obligations, (iii) release and otherwise deal with any other guarantor(s) of any or all of the Guaranteed Obligations, (iv) exercise or refrain from exercising any rights against PNMR-D of any or all of the Guaranteed Obligations and otherwise act or refrain from acting with respect to PNMR-D of any or all of the Guaranteed Obligations and/or (v) settle or compromise any or all of the Guaranteed Obligations with PNMR-D.

Guarantor will not have any right of subrogation, reimbursement, contribution or indemnity whatsoever with respect to PNMR-D of any or all of the Guaranteed Obligations or any right of recourse to or with respect to any assets or property of PNMR-D of any or all of the Guaranteed Obligations or to any collateral or other security for the payment of any or all of the

Guaranteed Obligations unless and until (a) all of the Guaranteed Obligations have been fully, finally and indefeasibly paid in cash (except with respect to contingent indemnification obligations), (b) none of the Guaranteed Parties has any further commitment or obligation to advance funds, make loans, extend credit to or for the account of PNMR-D under the Guaranteed Agreements and/or enter into any Guaranteed Obligations and (c) this Parental Guaranty Agreement has been terminated. Nothing will discharge or satisfy the liability of Guarantor under this Parental Guaranty Agreement except the full performance and payment of all of the Guaranteed Obligations and all obligations of such Guarantor under this Parental Guaranty Agreement.

The books and records of the Guaranteed Parties showing the account between the Guaranteed Parties and PNMR-D shall be admissible in evidence in any action or proceeding and shall constitute prima facie proof of the items therein set forth.

No invalidity, irregularity or unenforceability of any or all of the Guaranteed Obligations or of any collateral or any other guarantees therefor shall affect, impair or be a defense to this Parental Guaranty Agreement. The liability of the Guarantor under this Parental Guaranty Agreement will in no way be affected or impaired by any acceptance by the Guaranteed Parties of any collateral for or other guarantees of any of the Guaranteed Obligations, or by any failure, neglect or omission on the part of the Guaranteed Parties to realize upon or protect any of the Guaranteed Obligations or any collateral therefor or guarantees thereof. No act of commission or omission of any kind by the Guaranteed Parties (including, without limitation, any act or omission which impairs, reduces the value of, releases or fails to perfect a security interest in and/or a lien on, any collateral for or guarantee of any of the Guaranteed Obligations) shall affect or impair the obligations of Guarantor under this Parental Guaranty Agreement in any manner.

Guarantor hereby waives any right to require the Guaranteed Parties to (a) proceed against PNMR-D, (b) marshal assets or proceed against or exhaust any security held from PNMR-D, (c) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from PNMR-D, (d) take any action or pursue any other remedy in the Guaranteed Parties' power and/or (e) make any presentment or demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor under this Parental Guaranty Agreement or in connection with any obligations or evidences of obligations held by the Guaranteed Parties as security for or which constitute in whole or in part the Guaranteed Obligations, or in connection with the creation of new or additional Guaranteed Obligations.

Guarantor hereby waives any defense to its obligations under this Parental Guaranty Agreement based upon or arising by reason of (a) any disability or other defense of PNMR-D or any other person or entity, (b) the cessation or limitation from any cause whatsoever, other than indefeasible payment in full, of the Guaranteed Obligations, (c) any lack of authority of any officer, director, partner, agent or any other person or entity acting or purporting to act on behalf of PNMR-D, or any defect in the formation of PNMR-D, (d) the application by PNMR-D of the proceeds of any of the Guaranteed Obligations for purposes other than the purposes represented by PNMR-D to, or intended or understood by, the Guaranteed Parties and/or the Guarantor, (e) any act or omission by the Guaranteed Parties which directly or indirectly results in or aids the discharge of PNMR-D or all or any portion of the Guaranteed Obligations by operation of law or

otherwise, or which in any way impairs or suspends any rights or remedies of the Guaranteed Parties against PNMR-D, (f) any impairment of the value of any interest in any security for the Guaranteed Obligations or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security, (g) any modification of any or all of the Guaranteed Obligations, in any form whatsoever, including, without limitation, the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, the Guaranteed Obligations or any portion thereof, including increasing or decreasing the rate of interest thereon and/or (h) any requirement that the Guaranteed Parties give any notice of aeceptance of this Guaranty. Guarantor hereby further waives all rights and defenses which such Guarantor may have arising out of (a) any election of remedies by the Guaranteed Parties, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Guaranteed Obligations, impairs, diminishes, negates or destroys such Guarantor's rights of subrogation or such Guarantor's rights to proceed against PNMR-D for reimbursement or (b) any loss of rights such Guarantor may suffer by reason of any rights, powers or remedies of PNMR-D in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging the Guaranteed Obligations, whether by operation of law or otherwise, including any rights which such Guarantor may have to a fair market value hearing to determine the size of a deficiency following any foreclosure sale or other disposition of any real property security for any portion of the Guaranteed Obligations. Guarantor acknowledges and agrees that the waivers in the immediately preceding sentence constitute unconditional and irrevocable waivers of any rights and defenses Guarantor may have, and that such rights and defenses include, without limitation, any rights and defenses based upon any and all applicable state statutes.

GUARANTOR HEREBY FURTHER WAIVES ANY AND ALL OTHER SURETYSHIP DEFENSES.

Guarantor hereby represents and warrants to the Guaranteed Parties that (a) such Guarantor is a New Mexico company duly formed, validly existing and in good standing under the laws of the State of New Mexico, (b) the execution, delivery and performance by such Guarantor of this Parental Guaranty Agreement (i) are within company powers of such Guarantor, (ii) have been duly authorized by all necessary company action on the part of such Guarantor, (iii) require no action by or in respect of, consent or approval of or filing or recording with, any governmental or regulatory body, instrumentality, authority, agency or official or any other person or entity and (iv) do not conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under or result in any violation of, the terms of the Articles of Incorporation, Bylaws and any other governing document of Guarantor, any applicable law, rule, regulation, order, writ, judgment or decree of any court or govemmental or regulatory body, instrumentality, authority, agency or official or any agreement, document or instrument to which such Guarantor is a party or by which such Guarantor or any of its property or assets is bound or to which Guarantor or any of its property or assets is subject and (c) this Parental Guaranty Agreement constitutes the legal, valid and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency or similar laws affecting the

enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

No delay by the Guaranteed Parties in exercising any of their options, powers or rights under this Parental Guaranty Agreement and/or any partial or single exercise thereof shall constitute a waiver thereof. No waiver of any of the rights and/or remedies of the Guaranteed Parties under this Parental Guaranty Agreement and no modification or amendment of this Parental Guaranty Agreement shall be deemed to be made by the Guaranteed Parties unless the same shall be in writing, duly signed on behalf of the Guaranteed Parties and each such waiver (if any) shall apply only with respect to the specific instance involved and shall in no way impair the rights of the Guaranteed Parties or the obligations of the Guarantor to the Guaranteed Parties in any other respect at any other time. In the event any one or more of the provisions contained in this Parental Guaranty Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Parental Guaranty Agreement shall not be affected or impaired thereby.

All payments made under or pursuant to this Parental Guaranty Agreement shall be paid for the benefit of the Guaranteed Parties and shall be allocated among the principal, interest and other portions of the Guaranteed Obligations and the other obligations of the Guarantor under this Parental Guaranty Agreement in the order and manner set forth in the Guaranteed Agreements.

Guarantor hereby covenants and agrees to deliver to the Guaranteed Parties (a) such publicly-available financial statements and other publicly-available financial information regarding the Guarantor as reasonably requested by the Guaranteed Parties~~:~~, and (b) notice and a true and correct executed copy of any other guaranty executed by Guarantor to guarantee any obligations of PNMR-D entered into at any time after the date this Parental Guaranty Agreement is executed and before the date of termination hereof.

This Parental Guaranty Agreement is a continuing guaranty which will remain in full force and effect and will not be terminable unless and until (a) all of the Guaranteed Obligations have been fully and finally paid in cash (except with respect to contingent indemnification obligations), (b) none of the Guaranteed Parties has any further commitment or obligation to advance funds, make loans, extend credit to or for the account of PNMR-D under the Guaranteed Agreements, and/or enter into any Guaranteed Obligations and (c) the Guaranteed Agreements have expired or been terminated in accordance with their terms. The dissolution of the Guarantor shall not effect a termination of this Parental Guaranty Agreement. If claim is ever made on the Guaranteed Parties for repayment or recovery of any amount or amounts received by the Guaranteed Parties in payment or on account of any of the Guaranteed Obligations (including payment under a guaranty or from application of collateral) and the Guaranteed Parties repay or disgorge all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over the Guaranteed Parties or any of the property or assets of the Guaranteed Parties or (b) any settlement or compromise of any such claim effected by the Guaranteed Parties with any such claimant (including, without limitation, PNMR-D and/or Guarantor), then and in such event Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on such Guarantor, notwithstanding any cancellation of any note or other instrument or agreement evidencing such Guaranteed

Obligations or of this Parental Guaranty Agreement, and Guarantor will be and remain liable to the Guaranteed Parties under this Parental Guaranty Agreement for the amount so repaid, recovered or disgorged to the same extent as if such amount had never originally been received by the Guaranteed Parties. This Parental Guaranty Agreement will continue to be effective or be reinstated, as the case may be, if (a) at any time any payment of any of the Guaranteed Obligations is rescinded, cancelled, voided or must otherwise be returned by or is disgorged from the Guaranteed Parties for any reason including, without limitation, the insolvency, bankruptcy or reorganization of PNMR-D, Guarantor or otherwise, all as though such payment had not been made or (b) this Parental Guaranty Agreement is released or the liability of Guarantor under this Parental Guaranty Agreement is reduced in consideration of a payment of money or transfer of property or grant of a security interest by PNMR-D, Guarantor or any other person and such payment, transfer or grant is rescinded, cancelled, voided or must otherwise be returned by or disgorged from the Guaranteed Parties for any reason including, without limitation, the insolvency, bankruptcy or reorganization of such person or otherwise, all as though such payment, transfer or grant had not been made.

Any notice, demand or other communication to Guarantor under this Parental Guaranty Agreement will be in writing and delivered in person or sent by facsimile, recognized overnight courier or registered or certified mail (return receipt requested) to Guarantor at the address or facsimile number for the Guarantor set forth on the signature page(s) of this Parental Guaranty Agreement, or at such other address or facsimile number as the Guarantor may designate as its address or facsimile number for communications under this Parental Guaranty Agreement. Such notices will be deemed effective on the day on which delivered or sent if delivered in person or sent by facsimile, on the first (1st) business day after the day on which sent, if sent by recognized overnight courier or on the third (3rd) business day after the day on which sent, if sent by registered or certified mail.

This Parental Guaranty Agreement will be understood to be for the benefit of the Guaranteed Parties, individually and collectively, and for such other person or persons as may from time to time become or be the holder or owner of any of the Guaranteed Obligations or any interest therein and this Parental Guaranty Agreement will be transferable to the same extent and with the same force and effect as any of the Guaranteed Obligations may be transferable, and any one or more of the Guaranteed Parties may, but is not required to, demand payment or performance hereunder by the Guarantor. This Parental Guaranty Agreement cannot be changed or terminated orally, will be governed by and construed in accordance with the substantive laws of the State of New Mexico (without reference to conflict of law principles), will be binding on the successors and permitted assigns of Guarantor and will inure to the benefit of the respective successors and assigns of the Guaranteed Parties. Guarantor may not assign or delegate any of its rights, obligations or duties under this Parental Guaranty Agreement without the prior written consent of the Guaranteed Parties.

GUARANTOR HEREBY IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW MEXICO STATE COURT OR FEDERAL COURT IN ALBUQUERQUE, NEW MEXICO, AS THE GUARANTEED PARTIES MAY ELECT, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS PARENTAL GUARANTY AGREEMENT, (B) AGREES THAT ALL CLAIMS IN

RESPECT TO ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE HELD AND DETERMINED IN ANY OF SUCH COURTS, (C) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH GUARANTOR MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, (D) WAIVES ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND (E) WAIVES ALL RIGHTS OF ANY OTHER JURISDICTION WHICH GUARANTOR MAY NOW OR HEREAFTER HAVE BY REASON OF ITS PRESENT OR SUBSEQUENT DOMICILES. **GUARANTOR (AND BY THEIR ACCEPTANCE HEREOF) THE GUARANTEED PARTIES HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH GUARANTOR, ON THE ONE HAND, AND THE GUARANTEED PARTIES, ON THE OTHER HAND, ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS PARENTAL GUARANTY AGREEMENT.**

Executed as of the ____ day of_____.

PNM RESOURCES, INC., a New Mexico corporation

Guarantor

By_____

Title: _____

Contact information of Guarantor, Guaranteed Parties and PNMR-D for purpose of Notices:

PNM Resources, Inc.
414 Silver Avenue SW
Albuquerque, NM 87102
Attention: Secretary
FAX No. (505) 241-2368

PNMR Development and Management Corporation
414 Silver Avenue SW
Albuquerque, NM 87102
Attention: Secretary
FAX No. (505) 241-2368

Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

With a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

With a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

Incorporated County of Los Alamos, New Mexico
c/o County Clerk
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of Los Alamos, New Mexico
c/o Utilities Manager
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

Utah Associated Municipal Power Systems
c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

City of Anaheim

Attention: City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

City of Anaheim
Attention: Public Utilities General Manager
201 South Anaheim Blvd., Suite 1101
Anaheim, CA 92805
FAX No. (714) 765-4138

M-S-R Public Power Agency
Attention: General Manager
1231 11th Street
Modesto, CA 95354
FAX No. (209) 526-7574

Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

EXHIBIT J

FORM OF LETTER OF CREDIT

L/C NUMBER AMOUNT EXPIRATION DATE

BENEFICIARY NAME
BENEFICIARY ADDRESS
BENEFICIARY ADDRESS

APPLICANT NAME
APPLICANT ADDRESS
APPLICANT ADDRESS

WE HEREBY OPEN OUR IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR IN CONNECTION WITH _____ AGREEMENT DATED AS OF_____ FOR THE ACCOUNT OF THE ABOVE REFERENCED APPLICANT IN THE AGGREGATE AMOUNT OF (Ten Million Dollars) WHICH IS AVAILABLE BY PAYMENT WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A DRAFT AT SIGHT DRAWN ON _____, DULY ENDORSED ON ITS REVERSE SIDE THEREOF BY THE BENEFICIARY, SPECIFICALLY REFERENCING THIS LETTER OF CREDIT NUMBER.

2. THE ORIGINAL LETTER OF CREDIT AND ANY AMENDMENTS ATTACHED THERETO.

3. COPY OF INVOICE MARKED UNPAID IN THE CASE OF ITEM 4.A, AND

4. A STATEMENT ISSUED ON THE LETTERHEAD OF AND PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY STATING THE FOLLOWING:

A. THE APPLICANT HAS NOT MADE PAYMENT ON INVOICE NUMBER (INSERT INVOICE NUMBER) PER OUR AGREED TERMS. WE THEREFORE DEMAND PAYMENT IN THE AMOUNT OF (INSERT AMOUNT) AS SAME IS DUE AND OWING; or

B. AT THE TIME OF ISSUANCE OF LETTER OF CREDIT NO. [INSERT NUMBER], [NAME OF ISSUING BANK] HAD A LONG TERM OBLIGATION RATING FROM ONE OR MORE OF THE FOLLOWING CREDIT RATING AGENCIES OF AT LEAST: MOODY'S, A3 OR BETTER; STANDARD & POOR'S, A- OR BETTER; AND/OR FITCH, A- OR BETTER. SAID RATING(S) HAS/HAVE FALLEN BELOW THAT EXISTING AT THE TIME OF ISSUANCE OF THE LETTER OF CREDIT.

INVOICE(S) IN EXCESS OF AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT ARE ACCEPTABLE, HOWEVER, DRAWINGS UNDER THIS LETTER OF CREDIT MAY NOT EXCEED AMOUNT AVAILABLE.

PARTIAL DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED.

MULTIPLE DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED.

ALL BANKING CHARGFS OF THE ISSUER ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED EACH YFAR WITHOUT AMENDMFNT FOR A PERIOD OF AT LEAST ONE YEAR FROM THE EXPIRATION DATE HEREOF, AS EXTENDED, UNLESS AT LEAST FORTY-FIVE (45) DAYS PRIOR TO THE EXPIRATION DATE, WE NOTIFY THE BENEFICIARY AND APPLICANT BY A NATIONALLY RECOGNIZED OVERNIGHT COURIER OR CERTIFIED MAIL THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD (THE PRESENT OR ANY FUTURE EXPIRATION DATE AS AFORESAID IS REFERRED TO HEREIN AS THE "EXPIRATION DATE"). WE WILL GIVE NOTICE OF NON-EXTENSION TO THE BENEFICIARY AT THE BENEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE TO US IN WRITING AT OUR LETTERHEAD ADDRESS. FOLLOWING RECEIPT BY THE BENEFICIARY OF SUCH NOTICE, AND NO EARLIER THAN TWENTY (20) DAYS BEFORE THE EXPIRATION DATE, THE BENEFICIARY MAY DRAW THE FULL AMOUNT HEREUNDER.

IF OUR CREDIT RATING(S) FALL BELOW OUR LONG TERM OBLIGATION RATING EXISTING AT THE TIME OF ISSUANCF OF THE LETTFR OF CREDIT, WE WILL GIVE NOTICE OF SUCH EVENT TO THE BENFFICIARY AND APPLICANT BY A NATIONALLY RECOGNIZED OVERNIGHT COURIER OR CERTIFIED MAIL. WE WILL GIVE SUCH NOTICE TO THE BENEFICIARY AT THE BFNEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE TO US IN WRITING AT OUR LETTERHEAD ADDRFSS. FOLLOWING RECEIPT BY THE BENEFICIARY OF SUCH NOTICE, AND NO EARLIER THAN TWENTY-FIVE (25) DAYS AFTER RECEIPT OF SUCH NOTICE, THE BENEFICIARY MAY DRAW THE FULL AMOUNT HEREUNDER.

THIS IRREVOCABLE LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT, AGREEMENT REFERENCED TO HEREIN.

WE HEREBY AGREE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED IF PRESENTED TOGETHERWITH DOCUMENT(S) AS SPECIFIED AT OUR OFFICE LOCATED AT _____ ATTENTION: STANDBY LETTERS OF CREDIT ON OR BEFORE _____

THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED EXPIRY DATE IF APPLICABLE. DRAFT(S) DRAWN UNDER THIS LETTER OF CREDIT MUST SPECIFICALLY REFERENCE OUR LETTER OF CREDIT NUMBER.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98").

SINCERELY,

AUTHORIZED SIGNATURE

XXX

PLEASE DIRECT ANY CORRESPONDENCE INCLUDING DRAWING OR INQUIRY QUOTING OUR LETTER OF CREDIT NUMBER TO:

EXHIBIT K

Form of Bring-Down Opinion of Counsel

The legal opinions of counsel for each of the Exiting Participants and Acquiring Participants required by Sections 7.3.4 and 7.4.3 of the Restructuring Agreement will be to the following effect:

[Addressed to Exiting and Acquiring Participants]

Ladies and Gentlemen: [Expand as appropriate to encompass customary qualifications and limitations and other relevant language]

We have acted as counsel to _____ [Insert name of Party on whose behalf this opinion is provided] in connection with the San Juan Project Restructuring Agreement among Public Service Company of New Mexico; Tucson Electric Power Company; The City of Farmington, New Mexico; M-S-R Public Power Agency; The Incorporated County of Los Alamos, New Mexico; Southern California Public Power Authority; City of Anaheim; Utah Associated Municipal Power Systems; Tri-State Generation and Transmission Association, Inc.; and PNMR Development and Management Corporation, dated as of _____, 2015 ("Restructuring Agreement") (each a "Party" and collectively the "Parties"). We have been advised that in accordance with Section 7 of the Restructuring Agreement all of the transactions contemplated to take place at the Closing are ready to close and all of the conditions precedent to the Closing have been satisfied or waived. Section [7.3.4 or 7.4.2] of the Restructuring Agreement provides for the giving of this bring-down opinion.

Pursuant to Section 17.3 of the Restructuring Agreement, we rendered to the other Parties a legal opinion, dated _____, 2015 [Date of Prior Opinion] ("Prior Opinion"), with respect to _____ [Insert name of the Party on whose behalf this opinion is provided]. In connection with the Closing, as defined in Section 7 of the Restructuring Agreement, we hereby reaffirm the Prior Opinion, as though it was dated the date hereof, in the form it was so rendered on _____, 2015 [Date of Prior Opinion].

In addition to the foregoing, we are of the opinion that the representations and warranties made by _____ [Insert name of the Party on whose behalf this opinion is provided] pursuant to Section 17.3 of the Restructuring Agreement were true and correct in all material respects as of the date of the Prior Opinion and are true and correct in all material respects as of the date hereof, and no facts have come to our attention, after reasonable inquiry, which would lead us to believe that such representations and warranties contained or contain any untrue statement of a material fact or omitted to state or omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which they were made, not misleading.

The opinions expressed herein are based only on the laws of the State of _____ [Insert State] in effect as of the date of this opinion and in all respects are subject to and may be

limited by future legislation, as well as developing case law. We undertake no duty to advise you of the same.

This letter is furnished by us as _____

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FINAL VERSION 06/18/2015
(SUBJECT TO CONFORMING CHANGES)

AMENDED AND RESTATED

MINE RECLAMATION AND

TRUST FUNDS AGREEMENT

AMONG

PUBLIC SERVICE COMPANY OF NEW MEXICO

TUCSON ELECTRIC POWER COMPANY

THE CITY OF FARMINGTON, NEW MEXICO

M-S-R PUBLIC POWER AGENCY

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

CITY OF ANAHEIM

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

July ___, 2015

TABLE OF CONTENTS

RECITALS 1
1.0 TERM AND TERMINATION 3
1.1 Effective Date. 3
1.2 Termination. 3
2.0 DEFINITIONS AND RULES OF INTERPRETATION 3
2.1 Definitions 3
2.2 Rules of Interpretation. 11
3.0 RECOGNITION OF OBLIGATIONS 12
3.1 Reclamation Trust Funding Obligations. 12
3.2 Cost Obligations 12
3.3 Definition of Reclamation Shares 13
4.0 FUNDING OF RECLAMATION TRUSTS AND OF MAKE-UP ACCOUNTS 13
4.1 Establishment and Funding of Reclamation Trusts. 13
4.2 Investment Policies 13
4.3 Mandatory Provisions 14
4.4 Only Purposes 14
4.5 Initial Funding of Reclamation Trusts 14
4.6 Subsequent Funding of Reclamation Trusts 14
4.7 Reclamation Recovery Deposits and Reclamation Correcting Deposits 14
4.8 Make-up Reclamation Trust Funds 15
4.9 Return of Funds in a Reclamation Trust 16
4.10 Status Reports 16
4.11 Compliance 16
5.0 ADJUSTMENTS TO RECLAMATION FUNDING CURVES 16
5.1 Adjustments to Reclamation Funding Curves 16
5.2 Reclamation Costs Review 17
5.3 Adjustment Requests 17
5.4 Costs of Reclamation Costs Review 18
6.0 RECLAMATION INVESTMENT COMMITTEE 18
6.1 Establishment of Reclamation Investment Committee 18
6.2 Reclamation Investment Committee Membership 18
6.3 Functions and Responsibilities of Reclamation Investment Committee 18
6.4 Make-up Funding Curves 20

6.5 Decisions of Reclamation Investment Committee 21
6.6 Meetings of Reclamation Investment Committee 22
7.0 RECLAMATION OVERSIGHT COMMITTEE 22
7.1 Establishment of Reclamation Oversight Committee 22
7.2 Reclamation Oversight Committee Membership 22
7.3 Functions and Responsibilities of Reclamation Oversight Committee 23
7.4 Decisions of Reclamation Oversight Committee 23
7.5 Meetings of Reclamation Oversight Committee 24
8.0 RECLAMATION TRUST FUNDS OPERATING AGENT 25
8.1 Selection of Reclamation Trust Funds Operating Agent 25
8.2 PNM as Initial Reclamation Trust Funds Operating Agent 25
8.3 Responsibilities of the Reclamation Trust Funds Operating Agent 25
8.4 Annual Budgets 28
8.5 Reimbursement of Costs and Expenses 28
8.6 Reclamation Administrative and General Expenses 29
8.7 Payment of Reclamation Cost Invoices 29
8.8 No Fee 29
8.9 Liability of Reclamation Trust Funds Operating Agent. 29
8.10 Resignation of Reclamation Trust Funds Operating Agent 30
8.11 Removal of Reclamation Trust Funds Operating Agent 30
9.0 CERTAIN RIGHTS OF PARTIES 30
9.1 Participant Representatives 30
9.2 Opt-out Right 31
10.0 DECLARATION OF DEFAULT 31
10.1 Definition of Default 31
10.2 Default Notice 32
10.3 Cure of Default 32
10.4 Protest of Default 32
10.5 Declaration of Default 32
10.6 Consequences of Default 33
10.7 No Stay for Arbitration 33
10.8 Termination of Default 33
10.9 Other Rights 33
10.10 No Waiver 33

11.0 FAILURE TO FUND RECLAMATION TRUST THROUGH DECEMBER 31, 2017 . 33
11.1 Shortfall in Trust Funds ... 33
11.2 Make-up Reclamation Trust Funds ... 33
11.3 Payment of Defaulting Party's Invoices for Reclamation Costs ... 34
11.4 Failure to Pay Other Costs ... 34
12.0 FAILURE TO FUND RECLAMATION TRUST AFTER DECEMBER 31, 2017 ... 34
12.1 Opt-in Participants ... 34
12.2 Payment of Defaulting Party's Invoices for Reclamation Costs ... 35
12.3 Opt-out Participants ... 35
12.4 Failure to Pay Other Costs ... 35
13.0 DISPUTE RESOLUTION ... 35
13.1 Amicable Resolution ... 35
13.2 Call for Arbitration ... 36
13.3 Selection of Arbitrators. ... 36
13.4 Arbitration Procedures ... 37
13.5 Decision of Arbitrators ... 37
13.6 Enforcement of Arbitration Award ... 37
13.7 Fees and Expenses ... 37
13.8 Legal Remedies ... 37
13.9 Rights of SJCC ... 38
13.10 Prompt Resolution ... 38
14.0 POWER AND AUTHORITY ... 38
14.1 Requisite Power and Authority ... 38
14.2 No Violation ... 38
15.0 RELATIONSHIP OF PARTIES ... 38
15.1 Several Obligations ... 38
15.2 No Joint Venture or Partnership ... 39
15.3 Parental Guaranty ... 39
16.0 SUCCESSORS AND ASSIGNS ... 39
16.1 Successors and Assigns ... 39
16.2 Third Party Beneficiaries ... 39
16.3 No Right to Mortgage ... 39
16.4 Prior Written Consent ... 39
17.0 OPT-IN/OPT-OUT ELECTION OF SUCCESSORS AND ASSIGNS ... 40

17.1 Protection of Parties' Rights 40
17.2 Assignee's Right of Election 40
17.3 Assignee's Funding of Principal Reclamation Trust Fund 40
17.4 Assignee's Funding of Make-up Reclamation Trust Fund(s) 40
17.5 Assigning Party's Right of Refund 41
18.0 AUDIT RIGHTS; RELATED DISPUTES 41
18.1 Right of Audit 41
18.2 Dispute Resolution. 42
18.3 Adjusted Billing Procedures. 42
18.4 Audit of Reclamation A&G Expenses 43
18.5 Effectiveness. 43
19.0 UNCONTROLLABLE FORCES 43
20.0 INVALID PROVISIONS 43
21.0 APPLICABLE LAW AND VENUE 43
21.1 Compliance with Law 43
21.2 New Mexico Law 43
21.3 Venue 44
22.0 ENTIRE AGREEMENT 44
22.1 Entire Agreement 44
22.2 Amendment and Modification 44
22.3 Prior Obligations Unaffected 44
23.0 WAIVER 44
24.0 NO INTERPRETATION AGAINST DRAFTER 44
25.0 INDEPENDENT COVENANTS 45
26.0 OTHER DOCUMENTS 45
27.0 NOTICES 45
27.1 Manner of Giving of Notice 45
27.2 Notices to SJCC 47
27.3 Changes in Designation 48
28.0 CAPTIONS AND HEADINGS 48
29.0 EFFECT OF MUNICIPAL LAW 48
29.1 Farmington and Los Alamos 48
29.2 Anaheim and M-S-R 48
29.3 Southern California Public Power Authority 48

29.4 Utah Associated Municipal Power Systems 48
30.0 PARTIES' COST RESPONSIBILITIES 49
31.0 CONFIDENTIALITY 49
31.1 Confidentiality of Negotiations 49
31.2 Non-confidentiality of Mine Reclamation Agreement 49
32.0 ORIGINAL TRUST FUNDS AGREEMENT 49
33.0 LIMITATIONS ON DAMAGES 49
34.0 EXECUTION IN COUNTERPARTS 50

List of Exhibits

EXHIBITS 1A - 1C REGARDING PRE-2017YE RECLAMATION LIABILITY:

EXHIBIT 1A: RECLAMATION FUNDING CURVES FOR 70%/30% EQUITY/FIXED INCOME PORTFOLIO.....1A-1

EXHIBIT 1B: RECLAMATION FUNDING CURVES FOR FIXED INCOME PORTFOLIO 1B-1

EXHIBIT 1C: FIXED INCOME PORTFOLIO RECLAMATION FUNDING CURVE WITH 3% RISK ADJUSTMENT.....1C-1

EXHIBITS 1D – 1F REGARDING POST-2017YE RECLAMATION LIABILITY [Reserved]

EXHIBIT 2: PERMITTED INVESTMENTS 2-1

EXHIBIT 3: MANDATORY PROVISIONS 3-1

EXHIBIT 4: ASSUMPTIONS, PROCEDURES AND PRINCIPLES FOR REVISIONS TO EXHIBITS 1A, 1B AND 1C 4-I

EXHIBIT 5: EXAMPLE OF RETURN RATE STUDY 5-1

EXHIBIT 6: SJCC SITE AREA 6-I

EXHIBIT 7: DISTURBANCE/RECLAMATION SURVEYS OF THE SJCC SITE AREA...7-1

EXHIBIT 8: COMPOSITE RECLAMATION SHARES.....8-1

AMENDED AND RESTATED
MINE RECLAMATION AND TRUST FUNDS AGREEMENT

This AMENDED AND RESTATED MINE RECLAMATION AND TRUST FUNDS AGREEMENT ("Mine Reclamation Agreement"), is executed as of July ___, 2015 ("Execution Date"), among PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("LAC"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"), and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"). PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS, Tri-State and PNMR-D are hereinafter sometimes referred to individually as a "Party" and collectively as "Parties."

RECITALS

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

A. The San Juan Project is a four-unit, coal-fired electric generation plant located in San Juan County, near Farmington, New Mexico, also known as the San Juan Generating Station ("SJGS" or the "Project"). On the Execution Date, the owners of the Project are: PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS and Tri-State; these entities, as the owners of the Project on the Execution Date, are sometimes referred to in this Mine Reclamation Agreement as the "Participants." Concurrently herewith, the Parties are executing: (i) the San Juan Project Restructuring Agreement ("Restructuring Agreement"); (ii) the San Juan Decommissioning and Trust Funds Agreement ("Decommissioning Agreement"); (iii) the SJPPA Restructuring Amendment; and (iv) the SJPPA Exit Date Amendment.

B. Under the terms of the Restructuring Agreement, the Parties have agreed to the restructuring of Project ownership interests, rights and cost responsibilities. Certain of the Participants (the "Exiting Participants") will cease their active involvement in the operation of the Project on the Exit Date, but the Exiting Participants will nonetheless remain "Parties" for purposes of this Mine Reclamation Agreement and the obligations herein contained. PNM and

PNMR-D will assume certain of the Exiting Participants' ownership interests, rights and cost responsibilities as of the Exit Date.

C. PNMR-D is a wholly-owned subsidiary of PNM Resources, Inc., and intends, consistent with the provisions of the Restructuring Agreement, to acquire an Ownership Interest in the Project on the Exit Date and, prior to the acquisition of such Ownership Interest, to assume certain obligations under this Mine Reclamation Agreement, the Restructuring Agreement and the SJPPA. PNMR-D is a party to this Mine Reclamation Agreement but is not as of the Execution Date a Participant in the Project. After the Exit Date, PNMR-D will become a Remaining Participant in the Project.

D. Coal for the operation of the Project is mined from the San Juan Mine, located adjacent to SJGS. PNM and TEP and San Juan Coal Company ("SJCC") are the parties to an Underground Coal Sales Agreement dated August 31, 2001 ("UG-CSA"), which is anticipated to terminate January 1, 2016. Thereafter, coal will be supplied under a new Coal Supply Agreement ("CSA") between SJCC and PNM.

E. PNM and TEP are required by Section 7.3(A) of the UG-CSA to "compensate SJCC for all reclamation and related liabilities, obligations and costs associated with disturbance on the SJCC Site Area resulting in any way from the supply of coal for San Juan Station . . . ." and are required under Section 7.3(B) of the UG-CSA to make certain arrangements for post-term reclamation obligations. Under Section 7.4 of the CSA, PNM is required to make arrangements under this Mine Reclamation Agreement to assure PNM's post-term reclamation obligations under the CSA. Concurrently with the CSA, PNM will enter into a Reclamation Services Agreement ("RSA") with SJCC for SJCC's performance of reclamation services.

F. To address PNM's and TEP's reclamation responsibilities under the UG-CSA, the Participants entered into the "Mine Reclamation and Trust Funds Agreement among the Participants," dated June 1, 2012 (the "Original Trust Funds Agreement"). The Original Trust Funds Agreement provided for the establishment by the Participants of certain irrevocable trusts ("Reclamation Trusts") to satisfy their respective obligations to pay for Reclamation Costs. Consistent with the Original Trust Funds Agreement, the Participants have established and funded their respective Reclamation Trusts.

G. PNM, TEP and SJCC will execute the UG-CSA Termination Agreement that provides for the termination of the UG-CSA and the termination of the mine reclamation obligations thereunder.

H. The Parties desire, by this Mine Reclamation Agreement, to amend and restate the Original Trust Funds Agreement, to address the replacement of the UG-CSA with the CSA and the establishment of the RSA, to add PNMR-D as a Party to the Mine Reclamation Agreement and to provide for the establishment, continuation and maintenance of irrevocable Reclamation Trusts to satisfy their respective responsibilities to pay for Reclamation Costs. The Reclamation Trusts must continue in effect until reclamation has been completed as determined by Reclamation Bond Release.

I. The foregoing Recitals are included to provide background regarding this Mine Reclamation Agreement, and while certain Recitals may be referenced in this Mine Reclamation Agreement, they are neither part of nor incorporated into the terms, covenants and conditions of this Mine Reclamation Agreement.

AGREEMENT

The Parties, for and in consideration of the mutual covenants to be by them kept and performed, agree as follows.

1.0 TERM AND TERMINATION

1.1 Effective Date. This Mine Reclamation Agreement will become effective (the "Effective Date") on the effective date of the Restructuring Agreement.

1.2 Termination. This Mine Reclamation Agreement will continue in full force and effect until one hundred and eighty (180) days after Reclamation Bond Release.

2.0 DEFINITIONS AND RULES OF INTERPRETATION

2.1 Definitions. The following terms used in this Mine Reclamation Agreement, with initial capitalization, have the meanings set out below.

2.1.1 AAA has the meaning provided for in Section 13.3.2.

2.1.2 Adjustment Request has the meaning provided for in Section 5.3.

2.1.3 Affiliate means with respect to any person: (i) each person that, directly or indirectly, controls or is controlled by or is under common control with such designated person; (ii) any person that beneficially owns or holds 50% or more of any class of voting securities of such designated person or 50% or more of the equity interest in such designated person; and (iii) any person of which such designated person beneficially owns or holds 50% or more of any class of voting securities or in which such designated person beneficially owns or holds 50% or more of the equity interest; provided, however, that members of a Party will not be deemed to be Affiliates of each such Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise; PNM and PNMR-D are Affiliates.

2.1.4 Arbitration Notice has the meaning provided for in Section 13.2.

2.1.5 Arbitration Organization has the meaning provided for in Section 13.3.2.

2.1.6 Arbitration Award has the meaning provided for in Section 13.5.

2.1.7 Assigning Party means a Party making a transfer or assignment as described in Section 17.1.

2.1.8 Business Day means any day other than a Saturday, Sunday or federal holiday.

2.1.9 Catalogue ID means the unique identifier assigned to each Disturbance Area within the SJCC Site Area.

2.1.10 CCR Disposal Costs means those costs incurred under the CCRDA.

2.1.11 CCRDA means the new Coal Combustion Residuals Disposal Agreement between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.12 Coal Combustion Residuals or CCR means ash and gypsum byproducts produced by the Project.

2.1.13 Composite Reclamation Shares means shares calculated as set forth in Exhibit 8.

2.1.14 CSA means the new Coal Supply Agreement between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.15 Decommissioning Agreement means the San Juan Project Decommissioning and Trust Funds Agreement executed concurrently herewith.

2.1.16 Default means a default in performance of a Party's obligations under this Mine Reclamation Agreement, as defined more particularly in Section 10.1.

2.1.17 Default Declaration means a declaration of default as defined in Section 10.5.

2.1.18 Default Notice means a notice of default as defined in Section 10.2.

2.1.19 Dispute Protest has the meaning provided for in Section 13.1.2.

2.1.20 Disturbance means a surface or underground physical disturbance resulting from or associated with coal mining activities, including mine pits, facilities, roads, ponds, topsoil and overburden removal, buildings, pipelines, power lines, water systems, fencing or auxiliary facilities that are subject to the Reimbursement Obligation.

2.1.21 Disturbance Area means a discrete area with a similar nature of Disturbance that can be classified as Pre-2017YE Reclamation Liability, Post-2017YE Reclamation Liability or a combination thereof, subject to reclassification as appropriate based on future activities as provided in Exhibit 7.

2.1.22 Effective Date means the date established in Section 1.1 for the effectiveness of this Mine Reclamation Agreement.

2.1.23 Exit Date means the date upon which the Exiting Participants transfer all of their respective rights, titles and interests in and to their Ownership Interests to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of the SJGS, except as expressly provided for in this Mine Reclamation Agreement, the Restructuring Agreement and the Decommissioning Agreement; the Exit Date is anticipated to be on or about December 31, 2017.

2.1.24 Exiting Participants means those Participants that will transfer all of their respective rights, titles and interests in and to their Ownership Interests to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in the Restructuring Agreement, this Mine Reclamation Agreement and the Decommissioning Agreement; the Exiting Participants are M-S-R, Anaheim, SCPPA and Tri-State.

2.1.25 Final Reclamation Report means a report provided by the Reclamation Trust Funds Operating Agent to the Reclamation Oversight Committee pursuant to Section 5.2.

2.1.26 Full Principal Funding Date means the date by which a particular Reclamation Funding Curve calculation indicates a Reclamation Trust needs no additional capital contributions.

2.1.27 Governmental Authority means any federal, state, tribal, local, municipal or foreign governmental or regulatory authority, department, agency, commission, body, court or other governmental authority other than a Party.

2.1.28 Initiating Party has the meaning provided for in Section 18.1.

2.1.29 Law means statutes, rules, regulations, ordinances, orders and codes of federal, state and local Governmental Authorities.

2.1.30 Make-up Funding Curve means the make-up funding curves established by the Reclamation Investment Committee pursuant to Section 6.4.

2.1.31 Make-up Reclamation Trust Fund means a sub-account within a Party's Reclamation Trust, as provided in Sections 4.1 and 4.8.

2.1.32 Mandatory Provisions means those provisions which must be included in each Party's Reclamation Trust Agreement, as described in Exhibit 3.

2.1.33 Notice means a notification given in accordance with Section 28.

2.1.34 Notice of Dispute has the meaning provided for in Section 13.1.1.

2.1.35 Noticing Party has the meaning provided for in Section 13.1.1.

2.1.36 Notification of Intent means a notification of intent to declare a Party in default, as defined in Section 10.5.

2.1.37 Operating Agent means the Participant or other entity which has been selected by the Participants as the entity responsible for the operation and maintenance of the Project pursuant to the SJPPA; as of the Effective Date, PNM is the Operating Agent. Unless otherwise specifically provided for, when in this Mine Reclamation Agreement a reference is made to the "agent" of a Party, such reference will not be deemed to include reference to the Operating Agent.

2.1.38 Opt-in Participant means a Party that has elected pursuant to Section 9.2 to become an Opt-in Participant.

2.1.39 Opt-out Participant means a Party that does not elect to become an Opt-in Participant.

2.1.40 Original Trust Funds Agreement means the Mine Reclamation and Trust Funds Agreement among the Participants dated June 1, 2012.

2.1.41 Ownership Interest means a Party's percentage of undivided ownership interest in a Unit and in common equipment and facilities and as increased, decreased, acquired or eliminated as provided in the Restructuring Agreement, and rights incidental thereto.

2.1.42 Participant means any one of PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS or Tri-State.

2.1.43 Participant Representative has the meaning provided for in Section 9.1.

2.1.44 Party means any one of the Participants as well as PNMR-D.

2.1.45 Permitted Investments means investments identified as permitted investments for Opt-out Participants and Opt-in Participants, as set out in Exhibit 2.

2.1.46 Post-2017YE Reclamation Liability means liability to reimburse costs for reclamation of all Disturbances that are not classified as Pre-2017YE Reclamation Liability; provided that Post-2017YE Reclamation Liability does not include Reclamation A&G Expenses or costs of Reclamation Work.

2.1.47 Post-2017YE Reclamation Liability Costs means the sum of costs for Post-2017YE Reclamation Liability; provided that Post-2017YE Reclamation Liability

Costs do not include CCR Disposal Costs and other costs such as coal supply that may be incurred by SJCC.

2.1.48 Pre-2017YE Reclamation Liability means liability to reimburse costs for reclamation of (i) all Disturbance on the SJCC Site Area existing as of the Effective Date as identified in Survey 1, for which there exists a Reimbursement Obligation as of the Effective Date, except those Disturbances before the Effective Date that occur as a result of activities associated with the post-2017 fuel supply; and (ii) all Disturbance on the SJCC Site Area existing as of the Exit Date as identified in Survey 2, for which there exists a Reimbursement Obligation as of the Exit Date, except those Disturbances after the Effective Date that occur as a result of activities associated with the post-2017 fuel supply; provided that Pre-2017YE Reclamation Liability does not include Reclamation A&G Expenses or costs of Reclamation Work.

2.1.49 Pre-2017YE Reclamation Liability Costs means the sum of costs for Pre-2017YE Reclamation Liability; provided that Pre-2017YE Reclamation Liability Costs do not include CCR Disposal Costs and other costs such as coal supply that may be incurred by SJCC.

2.1.50 Prime Rate means the interest rate per annum (sometimes referred to as the base rate) for large commercial loans to creditworthy entities announced from time-to-time by Wells Fargo Bank, N.A. (New York) or its successor bank or, if such rate is not announced, the rate published in the Wall Street Journal as the "prime rate" from time-to-time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay arises.

2.1.51 Principal Reclamation Trust Fund means a sub-account within a Party's Reclamation Trust.

2.1.52 Project has the meaning provided for in Recital A.

2.1.53 Protest means a protest made under Section 10.4.

2.1.54 Protesting Party has the meaning provided for in Section 13.1.2.

2.1.55 Purchase Transaction has the meaning provided for in Section 17.2.

2.1.56 Reclamation A&G Expenses means administrative and general expenses incurred by the Reclamation Trust Funds Operating Agent associated with its Reclamation Work as provided for in Section 8.6.

2.1.57 Reclamation Bond Release means the date as of which full reclamation bond release of the SJCC Site Area has been achieved, as defined by New Mexico Energy, Minerals, and Natural Resources Department, Mining and Minerals Division.

2.1.58 Reclamation Correcting Deposits means deposits to a Party's Reclamation Trust as required by Sections 4.7.1 and 4.7.2.2.

2.1.59 Reclamation Correction Period means the time in which Reclamation Correcting Deposits must be completed as provided for in Sections 4.7.1.1 and 4.7.2.

2.1.60 Reclamation Costs means the sum of Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs; Reclamation Costs do not include CCR Disposal Costs and other costs such as coal supply that may be incurred by SJCC.

2.1.61 Reclamation Costs Review means a review of Reclamation Costs undertaken pursuant to Section 5.2.

2.1.62 Reclamation Funding Curves means the Reclamation Funding Floor Curve and the Reclamation Funding Target Curve of Exhibit 1A (in the case of an Opt-in Participant), Exhibit 1B or Exhibit 1C (in the case of an Opt-out Participant) and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created. Exhibits 1A, 1B, and 1C, pertain to Pre-2017YE Reclamation Liability. Exhibits 1D, 1E, and 1F will pertain to Post-2017YE Reclamation Liability when they are created. Exhibits 1B and 1E are calculated as precursors to Exhibits 1C and 1F, respectively.

2.1.63 Reclamation Funding Floor Amount means the respective annual dollar amounts in the Reclamation Funding Floor Curves of Exhibit 1A, Exhibit 1B, or Exhibit 1C, for any given year and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.64 Reclamation Funding Floor Curve means the set of numbers in Exhibit 1A, Exhibit 1B, or Exhibit 1C, labeled as such and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.65 Reclamation Funding Target Amount means the respective annual dollar amounts in the Reclamation Funding Target Curves of Exhibit 1A, Exhibit 1B, or Exhibit 1C, for any given year and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.66 Reclamation Funding Target Curve means the set of numbers in Exhibit 1A, Exhibit 1B, or Exhibit 1C, labeled as such and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.67 Reclamation Investment Committee means the committee established in Section 6.

2.1.68 Reclamation Oversight Committee means the committee established in Section 7.

2.1.69 Reclamation Recovery Deposit means deposits to a Party's Reclamation Trust as required by Section 4.7.2.

2.1.70 Reclamation Recovery Period means the time in which Reclamation Recovery Deposits must be completed as provided for in Section 4.7.2.2.

2.1.71 Reclamation Share means a Party's proportionate funding and cost responsibility, as specified in Section 3.3, and applied for various purposes in this Mine Reclamation Agreement.

2.1.72 Reclamation Trust means a trust maintained by a Party with a Trustee pursuant to Section 4.

2.1.73 Reclamation Trust Agreement means a trust agreement entered into between a Party and its Trustee as provided for in Section 4.1.

2.1.74 Reclamation Trust Funds Operating Agent means the agent of the Parties, selected in accordance with Section 8, undertaking to perform the Reclamation Work.

2.1.75 Reclamation Work means the work undertaken by the Reclamation Trust Funds Operating Agent pursuant to Section 8.3.

2.1.76 Reimbursement Obligation means the obligation of PNM to pay SJCC, as provided for in the RSA.

2.1.77 Remaining Participants means those Parties that will continue participation, or acquire an Ownership Interest, in the Project on and after the Exit Date; the Remaining Participants are PNM, TEP, Farmington, UAMPS, Los Alamos and PNMR-D.

2.1.78 Restructuring Agreement means the San Juan Project Restructuring Agreement among the Parties, executed concurrently herewith.

2.1.79 Review Cost has the meaning provided for in Section 5.4.

2.1.80 RSA means the new Reclamation Services Agreement between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.81 SJCC means San Juan Coal Company, a Delaware corporation, or its successors or assigns.

2.1.82 SJCC Site Area means the land identified in Exhibit 6.

2.1.83 SJPPA means the Amended and Restated San Juan Project Participation Agreement dated March 23, 2006.

2.1.84 Status Report means a status report prepared and provided to the Parties and to SJCC in accordance with Section 4.10.

2.1.85 Survey means Survey 1, Survey 2, Survey 3 or other Surveys, as provided for in Exhibit 7.

2.1.86 Surveyor has the meaning provided for in Exhibit 7.

2.1.87 Trustee means a financial institution selected by a Party at which the Party's Reclamation Trust is or will be held.

2.1.88 UG-CSA means the Underground Coal Sales Agreement between PNM, TEP and SJCC.

2.1.89 Uncontrollable Forces has the meaning provided for in Section 19.

2.1.90 Willful Action means: (i) action taken or not taken by a Party (or the Reclamation Trust Funds Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance under this Mine Reclamation Agreement, which 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 (ii) action taken or not taken by a Party (or the Reclamation Trust Funds Operating Agent) at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default hereunder and which action occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default, or if no time to cure is specified therein, occurs or continues beyond a reasonable time to cure such default; or (iii) action taken or not taken by a Party (or the Reclamation Trust Funds Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default hereunder. The phrase "employees having management or administrative responsibility," as used in this Section 2.1.90, means employees of a Party who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Mine Reclamation Agreement; provided, however, that, with respect to employees of the Reclamation Trust Funds Operating Agent acting in its capacity as such and not in its capacity as a Party, but only during such time as any one of Unit 1, 2, 3 or 4 is commercially producing electrical power, such phrase refers only to: (x) the senior employee of the Reclamation Trust Funds Operating Agent on duty at the Project who is responsible for the operation of the Units, and (y) anyone in the organizational structure of the Reclamation Trust Funds Operating Agent between such senior employee and an officer. After such time as none of Unit 1, 2, 3 or 4 is commercially producing electrical power, the phrase "employees

having management or administrative responsibility" as used in this Section 2.1.90 will mean employees of any Party (including the Reclamation Trust Funds Operating Agent), who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Mine Reclamation Agreement. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

2.2 Rules of Interpretation. Unless a clear contrary intention appears, this Mine Reclamation Agreement will be construed and interpreted as follows:

2.2.1 Any reference to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization, governmental entity or other entity;

2.2.2 Any reference to a day, week, month or year is to a calendar day, week, month or year, unless otherwise specified as a Business Day;

2.2.3 Any act required to occur by or on a certain day is required to occur before or on that day unless the day falls on a Saturday, Sunday or federal holiday, in which case the act must occur before or on the next Business Day;

2.2.4 The singular includes the plural and *vice versa*;

2.2.5 Reference to the feminine, masculine or neutral gender includes reference to all other genders;

2.2.6 Reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Mine Reclamation Agreement;

2.2.7 Unless expressly stated otherwise, reference to any agreement (including this Mine Reclamation Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended, supplemented, replaced or modified and in effect from time-to-time;

2.2.8 Reference to any Law means such Law as amended, modified, codified supplemented or reenacted, in whole or in part, and in effect from time-to-time, including, if applicable, rules and regulations promulgated thereunder;

2.2.9 Unless expressly stated otherwise, reference to any article, section, exhibit or appendix means such article, section, exhibit or appendix of this Mine Reclamation Agreement, as the case may be;

2.2.10 "Hereunder," "hereof," "herein," "hereto" and words of similar import are deemed references to this Mine Reclamation Agreement as a whole and not to any particular provision hereof;

2.2.11 "Including," "include" and "includes" are deemed to be followed by the phrase "without limitation" and will not be construed to mean the examples given constitute an exclusive list of the matters covered;

2.2.12 Relating to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; and

2.2.13 Whenever an act is required to be performed by a particular time of day, prevailing Mountain Time will be the standard by which performance is measured.

3.0 RECOGNITION OF OBLIGATIONS

3.1 Reclamation Trust Funding Obligations. Each Party acknowledges and recognizes its respective obligation to have a balance in its Reclamation Trust sufficient to fund its Reclamation Share of the appropriate Reclamation Funding Target Curve in any given year during the term hereof, subject to the provisions of Section 4. The initial Reclamation Funding Curve for Opt-in Participants, having a Full Principal Funding Date of December 31, 2022, is set out in Exhibit 1A, as adjusted from time-to-time in accordance with Sections 5 and 6.3.3. The initial Reclamation Funding Curve for Opt-out Participants, having a Full Principal Funding Date of December 31, 2017, is set out in Exhibit 1C, as adjusted from time-to-time in accordance with Sections 5 and 6.3.3. Other funding curves will, as appropriate, be created with respect to Post-2017YE Reclamation Liability and adjusted from time-to-time in accordance with Sections 5 and 6.3.3. An adjustment to a Reclamation Funding Curve will not be deemed an amendment to this Mine Reclamation Agreement but rather will be considered an element of the administration and implementation of this Mine Reclamation Agreement; upon approval of a Reclamation Funding Curve adjustment, as provided for herein, such adjusted Reclamation Funding Curve will replace the Reclamation Funding Curve previously in effect.

3.2 Cost Obligations.

3.2.1 Each Party acknowledges and recognizes its obligation to pay its Reclamation Share of: (i) Reclamation Costs as provided herein; and (ii) costs of Reclamation Work and Reclamation A&G Expenses as provided in Sections 8.5 and 8.6.

3.2.2 In light of the fact that under the Restructuring Agreement the Exiting Participants will be terminating their active involvement in the operation of the Project on the Exit Date, the Reclamation Trust Funds Operating Agent will conduct, or cause to be conducted, the Surveys provided for in Exhibit 7 to identify Pre-2017YE Reclamation Liability and Post-2017YE Reclamation Liability.

3.2.3 Reclamation Costs are distinguished from the costs of other services (e.g., coal supply and CCR disposal). In particular, CCR is currently placed in the mine pits for disposal. Cover or spoil material over the CCR, as required by the CCRDA, will be assigned to the CCR disposal activity, not to Reclamation Costs, for so long as CCR

disposal is ongoing at San Juan mine. Any joint use of equipment, infrastructure or facilities in connection with Reclamation Costs activities and other services activities will be equitably allocated to each such activity by the Reclamation Trust Funds Operating Agent.

3.3 Definition of Reclamation Shares. The Reclamation Shares of the Parties for purposes of determining the proportionate funding and for cost responsibilities hereunder of each Party are the following:

		For Pre-2017YE Reclamation Liability	For Post-2017YE Reclamation Liability
3.3.1	PNM:	46.297 percent	58.671 percent
3.3.2	PNMR-D:	0.000 percent	7.673 percent
3.3.3	TEP:	19.800 percent	20.068 percent
3.3.4	M-S-R:	8.700 percent	0.000 percent
3.3.5	Farmington:	2.559 percent	5.076 percent
3.3.6	Tri-State:	2.490 percent	0.000 percent
3.3.7	Los Alamos:	2.175 percent	4.309 percent
3.3.8	SCPPA:	12.710 percent	0.000 percent
3.3.9	Anaheim:	3.100 percent	0.000 percent
3.3.10	UAMPS:	2.169 percent	4.203 percent

4.0 FUNDING OF RECLAMATION TRUSTS AND OF MAKE-UP ACCOUNTS

4.1 Establishment and Funding of Reclamation Trusts. Within ninety (90) days after the Effective Date of this Mine Reclamation Agreement, each Party will either execute or, if necessary, amend a separate Reclamation Trust Agreement between that Party and its Trustee for the establishment of an irrevocable Reclamation Trust to carry out the purposes of this Mine Reclamation Agreement. The Trustee will not be an Affiliate of a Party establishing a Reclamation Trust. To the extent not already provided, a copy of each Reclamation Trust Agreement will upon execution be provided to each other Party and to SJCC. Each Reclamation Trust will be funded as provided for in Sections 4.5, 4.6, 4.7 and 4.8. Each Reclamation Trust will be segregated into one or more sub-accounts: a Principal Reclamation Trust Fund and, if necessary, a Make-up Reclamation Trust Fund. Opt-out Participants will have a Principal Reclamation Trust Fund and may have Make-up Reclamation Trust Funds for the pre-Exit Date period, and Opt-in Participants will have a Principal Reclamation Trust Fund and may have Make-up Reclamation Trust Funds for both the pre- and post-Exit Date periods.

4.2 Investment Policies. Subject to compliance with the Permitted Investments standards set out in Exhibit 2, each Party may implement its own policies in relation to the investment of funds in its Reclamation Trust. Each Party may, at its discretion, appoint one or more investment managers to direct the investment of all or parts of funds held in trust.

4.3 Mandatory Provisions. Each Reclamation Trust Agreement must contain and maintain certain Mandatory Provisions. The Mandatory Provisions are described in Exhibit 3. Proposed amendments to any Mandatory Provision in a Party's Reclamation Trust Agreement are subject to review and approval by the Reclamation Investment Committee, as provided for in Section 6.3.6. A Party desiring to amend a Mandatory Provision must submit such proposed amendment to the Reclamation Investment Committee for prior review in accordance with procedures established by the Reclamation Investment Committee.

4.4 Only Purposes. Funds held in a Party's Reclamation Trust will be utilized for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Reclamation Trust, including the fees and expenses of the Trustee; and (b) to pay the Party's Reclamation Share (as defined in Section 3.3) of Reclamation Costs.

4.5 Initial Funding of Reclamation Trusts. Consistent with the Original Trust Funds Agreement, the Participants have established and funded, and are continuing to fund, their Reclamation Trusts. Within ninety (90) days after the Effective Date of this Mine Reclamation Agreement, PNMR-D will deposit into its Reclamation Trust immediately available funds sufficient to satisfy its Reclamation Share of the Reclamation Funding Target Amount for calendar year 2015.

4.6 Subsequent Funding of Reclamation Trusts. By December 31 of each year during the term hereof, each Party will have a balance in its Reclamation Trust sufficient to comply with the provisions of Section 3.1, 4.8 and this Section 4.6. Except as provided in Sections 4.9, 8.7, 11.3, 12.2 and 17.5, during the term hereof, no Party will be permitted to withdraw funds in its Reclamation Trust, including net earnings on accumulations in the Reclamation Trust. No additional funding of a Reclamation Trust will be required of a Party if the funds in its Reclamation Trust are sufficient by December 31 of each year during the term hereof, to satisfy the Party's Reclamation Share of the Reclamation Funding Target Amount for that year.

4.7 Reclamation Recovery Deposits and Reclamation Correcting Deposits.

4.7.1 In the event that, as of December 31 of any year during the term hereof, the value of funds in a Party's Reclamation Trust is less than its Reclamation Share of the Reclamation Funding Target Amount, but greater than its Reclamation Share of the Reclamation Funding Floor Amount for such year, then the Party will make one or more Reclamation Correcting Deposits. The amount and timing of such Reclamation Correcting Deposits will be made in conformance with policies established by the Reclamation Investment Committee under Section 6.3.4.

4.7.1.1 Reclamation Correcting Deposits in the aggregate will be sufficient to ensure that the value of funds in a Party's Reclamation Trust is equal to or greater than its Reclamation Share of the Reclamation Funding Target Amount at the end of the applicable Reclamation Correction Period determined as provided in Section 4.7.1.2.

4.7.1.2 The applicable Reclamation Correction Period during which one or more Reclamation Correcting Deposits must be made pursuant to Section 4.7.1.1 will be two (2) years.

Example:

Assuming the value of funds in Party A's Reclamation Trust is less than the Reclamation Funding Target Amount for Party A but greater than or equal to the Reclamation Funding Floor Amount for Party A at the end of 2015, then the Reclamation Correction Period expires December 31, 2017.

4.7.2 In the event that, as of December 31 of any year during the term hereof, the value of funds in a Party's Reclamation Trust is less than its share of the Reclamation Funding Floor Amount for such year, then the Party will make one or more Reclamation Recovery Deposits. The amount and timing of such Reclamation Recovery Deposits will be made in conformance with policies established by the Reclamation Investment Committee under Section 6.3.4.

4.7.2.1 Reclamation Recovery Deposits in the aggregate will be sufficient to ensure that the value of funds in a Party's Reclamation Trust is equal to or greater than its Reclamation Share of the Reclamation Funding Floor Amount at the end of the applicable Reclamation Recovery Period determined as provided in Section 4.7.2.2.

4.7.2.2 The applicable Reclamation Recovery Period during which one or more Reclamation Recovery Deposits must be made pursuant to Section 4.7.2.1 will be one (1) year, subject thereafter to the obligation to make one or more Reclamation Correcting Deposits within a Reclamation Correction Period equal to one (1) additional year.

Example:

Assuming the value of funds in Party A's Reclamation Trust is less than the Reclamation Funding Floor Amount for Party A at the end of 2015, the Reclamation Recovery Period expires December 31, 2016; such Party would then, however, be required to make Reclamation Correcting Deposits no later than December 31, 2017.

4.7.3 If any Party fails to make any Reclamation Correcting Deposit or Reclamation Recovery Deposit when due, then, within ten (10) days after the applicable due date, the chairperson of the Reclamation Investment Committee will report such failure by the Party to each representative on the Reclamation Investment Committee, to the Reclamation Oversight Committee and to the Reclamation Trust Funds Operating Agent.

4.8 Make-up Reclamation Trust Funds. In the event of a Default Declaration, made pursuant to Section 10.5, that a Party is in Default in regard to the funding of its Reclamation

Trust, each of the non-defaulting Parties will fund a Make-up Reclamation Trust Fund within its Reclamation Trust in the manner provided for, and subject to the various requirements and limitations set out in, Sections 6.4, 9.2, 11 and 12.

4.9 Return of Funds in a Reclamation Trust. Any funds remaining in a Party's Reclamation Trust after Reclamation Bond Release will be returned to the Party pursuant to the Party's Reclamation Trust Agreement. Any funds remaining in a Party's Make-up Reclamation Trust Fund may, at the election of the Party, and subject to the provisions of the Party's Reclamation Trust Agreement, be returned to the Party if a defaulting Party has cured the Default the existence of which led to the creation and funding of the Make-up Reclamation Trust Fund.

4.10 Status Reports. Each Party will prepare on an annual basis a funding status report regarding the funds in its Reclamation Trust (in both the Principal Reclamation Trust Fund and any Make-up Reclamation Trust Fund), as of December 31 of each year during the term hereof and will provide such annual funding status report to each of the other Parties, to the Reclamation Investment Committee and to SJCC. To demonstrate compliance with Exhibit 2, the funding status report will include a detailed summary of the investments made by the Party in its Reclamation Trust during the period covered by the status report. The funding status report will be prepared and provided to the other Parties, to the Reclamation Investment Committee and to SJCC no later than thirty (30) days following the end of a calendar year unless otherwise directed by the Reclamation Investment Committee. In addition to such annual funding status reports, on the written request of any other Party or of SJCC, for reasonable cause (*e.g.*, changes in market conditions that could significantly affect the value of funds in a Reclamation Trust), each Party will provide special funding status reports, in the same format and content as annual funding status reports, to the other Parties, to the Reclamation Investment Committee and to SJCC; provided, that such special reports will not be required of any Party more frequently than once in any calendar quarter.

4.11 Compliance. A Party whose funding of its Reclamation Trust (Principal Reclamation Trust Fund or any Make-up Reclamation Trust Fund) has been determined by the Reclamation Investment Committee, pursuant to Section 6.3.2, not to be in compliance with the requirements of this Mine Reclamation Agreement will act promptly to bring itself into compliance therewith. A Party, the Mandatory Provisions of whose Reclamation Trust Agreement have been determined by the Reclamation Investment Committee, pursuant to Section 6.3.6, not to be in compliance with the requirements of this Mine Reclamation Agreement, will act promptly to bring itself into compliance therewith and will promptly inform the Reclamation Investment Committee of actions taken to bring itself into compliance.

5.0 ADJUSTMENTS TO RECLAMATION FUNDING CURVES

5.1 Adjustments to Reclamation Funding Curves. The Parties acknowledge the appropriateness of adjusting, from time-to-time, the Reclamation Funding Curves for both Opt-in Participants and Opt-out Participants.

5.2 Reclamation Costs Review. A Reclamation Costs Review is a technical assessment performed (or caused to be performed) by the Reclamation Trust Funds Operating Agent of reclamation methods, status and costs using appropriate reclamation scenarios as determined by the Reclamation Oversight Committee. An initial Reclamation Costs Review will be commenced as soon as practicable after Survey 1 is both completed and approved by the Reclamation Oversight Committee as provided in Exhibit 7. A second Reclamation Costs Review will be performed as soon as practicable after Survey 2 is both completed and approved by the Reclamation Oversight Committee as provided in Exhibit 7. At the request of any Party made at any time after the second Reclamation Costs Review, the Reclamation Trust Funds Operating Agent will perform (or cause to be performed) a further Reclamation Costs Review; provided, such further review will not be required more frequently than every two (2) years. The Reclamation Costs Review will report estimated Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs based on the results of the most current Survey. The Reclamation Oversight Committee will establish reasonable goals, timelines and procedures with respect to the manner in which the required Reclamation Costs Review is to be conducted.

5.2.1 In performing the Reclamation Costs Review, the Reclamation Trust Funds Operating Agent (and its contractor or agent) will consult with SJCC and will utilize, as appropriate, information that may be provided by SJCC in reassessing reclamation methods, status and costs, including SJCC's anticipated annual reclamation expenditures.

5.2.2 The study period for purposes of a Reclamation Costs Review will be from January 1 of the year that the Reclamation Costs Review commences through Reclamation Bond Release.

5.2.3 The Reclamation Trust Funds Operating Agent will present a Final Reclamation Report to the Reclamation Oversight Committee.

5.2.4 The Reclamation Oversight Committee will, consistent with the voting procedures set out in Section 7.4, promptly either (i) approve the Final Reclamation Report; or (ii) direct that further study or revisions be made to the Final Reclamation Report. In the event the Reclamation Oversight Committee directs further study or revisions, the Reclamation Trust Funds Operating Agent will submit a new Final Reclamation Report to the Reclamation Oversight Committee. Upon approval of the Final Reclamation Report by the Reclamation Oversight Committee, the Reclamation Oversight Committee will forward a copy of the Final Reclamation Report to the members of the Reclamation Investment Committee for the establishment by the Reclamation Investment Committee of new Reclamation Funding Curves as necessary.

5.3 Adjustment Requests. A Party may request a Reclamation Costs Review by serving a written request ("Adjustment Request") upon the Reclamation Trust Funds Operating Agent, the members of the Reclamation Oversight Committee and SJCC, setting out in detail the facts relied on by the Party making the request.

5.4 Costs of Reclamation Costs Review. The cost of performing the Reclamation Costs Review ("Review Cost") will be allocated among the Parties based on the following calculation: Review Cost multiplied by the Composite Reclamation Shares of each Party as determined by Exhibit 8. The Reclamation Trust Funds Operating Agent will issue appropriate invoices to the Parties for such costs based on the Composite Reclamation Shares determined for the previously approved Reclamation Costs Review and then reallocate costs based on, and following the completion and approval of, the latest Reclamation Costs Review.

6.0 RECLAMATION INVESTMENT COMMITTEE

6.1 Establishment of Reclamation Investment Committee. The Original Trust Funds Agreement established a Reclamation Investment Committee. The Reclamation Investment Committee will remain in existence during the term of this Mine Reclamation Agreement. The Reclamation Investment Committee will have no authority to modify any of the provisions of this Mine Reclamation Agreement.

6.2 Reclamation Investment Committee Membership. The Reclamation Investment Committee will consist of one representative from each Party who must be an officer or other authorized representative of the Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Reclamation Investment Committee in the absence of the regular representative on the Reclamation Investment Committee or to act on specified occasions or with respect to specified matters. Each Party must notify the other Parties promptly, in writing, of the designation of its representative and alternate representative on the Reclamation Investment Committee and of any subsequent changes in such designations. The chairperson of the Reclamation Investment Committee will be a representative of the Reclamation Trust Funds Operating Agent if the Reclamation Trust Funds Operating Agent is a Party. If the Reclamation Trust Funds Operating Agent is not a Party, the chairperson will be elected by a majority of the individual representatives on the Reclamation Investment Committee. Each Party will be responsible for the costs of its Reclamation Investment Committee representative, including fees and travel reimbursement.

6.3 Functions and Responsibilities of Reclamation Investment Committee. The Reclamation Investment Committee will have the following functions and responsibilities:

6.3.1 Establish and revise the format and content to be used for each Party's annual funding status report;

6.3.2 Review each Party's annual and special funding status report(s), including, as to each Party, whether the investments in the Party's Reclamation Trust have been made in a manner consistent with Exhibit 2 and report the review findings to the Reclamation Oversight Committee;

6.3.3 Upon receipt from the Reclamation Oversight Committee of a copy of a Final Reclamation Report, as provided for in Section 5.2.4, establish and provide to each of the Parties new Reclamation Funding Curves for Opt-in Participants and for Opt-out Participants. The new Reclamation Funding Curves will be incorporated in new Exhibits

1A, 1B, and 1C and similarly for Exhibits 1D, 1E and 1F when they are created which will be substituted for the then-existing Exhibits 1A, 1B, 1C, 1D, 1E, and 1F. The new Exhibits 1A, 1B, and 1C will utilize the same assumptions, procedures and principles, to the extent possible, as are reflected in Exhibits 1A, 1B, and 1C attached hereto on the Effective Date. Such assumptions, procedures and principles are set out in Exhibit 4. In establishing a new Exhibit 1C, the Reclamation Funding Target Curve values and Reclamation Funding Floor Curve values in Exhibit 1B that occur during or after 2017 will be adjusted upward by a risk adjustment factor of three percent (3%). Exhibits 1A, 1B, and 1C pertain to Pre-2017YE Reclamation Liability. New Exhibits 1D, 1E and 1F, analogous to Exhibits 1A, 1B and 1C, will be created for Post-2017YE Reclamation Liability Cost estimates as soon as practicable after any such estimates are available;

6.3.4 Establish, consistent with Section 4.7, policies regarding the number and timing of Reclamation Correcting Deposits and Reclamation Recovery Deposits;

6.3.5 Audit, or cause to be audited, as determined to be necessary, compliance of Parties in meeting their obligations under Sections 3.1, 4.5, 4.6, 4.7 and 4.8;

6.3.6 Under procedures to be established in a timely fashion by the Reclamation Investment Committee, (i) promptly upon execution of each Party's Reclamation Trust Agreement, review the Mandatory Provisions of each such Reclamation Trust Agreement to assure that the Mandatory Provisions of each such Reclamation Trust Agreement conform to the requirements of Section 4.3 and of Exhibit 3; and (ii) review any proposed amendment to a Mandatory Provision in a Party's Reclamation Trust Agreement. If the Reclamation Investment Committee representatives (other than the representative representing any Party whose compliance is under review) conclude that a Party's initial Reclamation Trust Agreement is inconsistent with Section 4.3 and Exhibit 3, or that a proposed amendment to a Mandatory Provision is inconsistent with the purposes of this Mine Reclamation Agreement, the Reclamation Investment Committee will inform the Party of the reasons why, in the judgment of the Reclamation Investment Committee, the Mandatory Provisions of its initial Reclamation Trust Agreement are inconsistent with Section 4.3 and Exhibit 3 or why the proposed amendment to the Mandatory Provision is inconsistent with this Mine Reclamation Agreement. No Party may amend a Mandatory Provision in its Reclamation Trust Agreement in a manner contrary to a determination of the Reclamation Investment Committee;

6.3.7 In the event of a Default Declaration against a Party resulting from the Party's failure to fund its Reclamation Trust as required by Sections 3.1, 4.1, 4.5, 4.6 and 4.7, establish funding curves for Make-up Reclamation Trust Funds, consistent with Section 6.4;

6.3.8 Perform such other tasks as the Reclamation Oversight Committee will from time-to-time assign to the Reclamation Investment Committee; and

6.3.9 Perform such other tasks as may be delegated under this Mine Reclamation Agreement to the Reclamation Investment Committee.

6.4 Make-up Funding Curves. In the event a Default Declaration is made against a Party on the basis of the Party's failure to fund its Reclamation Trust (including making required Reclamation Recovery Deposits and Reclamation Correcting Deposits) in the manner provided for in this Mine Reclamation Agreement, the Reclamation Investment Committee will act promptly to provide the non-defaulting Parties with appropriate funding curves for their Make-up Reclamation Trust Funds ("Make-up Funding Curves").

6.4.1 Investments in a Make-up Reclamation Trust Fund will be subject to the same Permitted Investment limitations as those applicable to each Party's respective Principal Reclamation Trust Fund.

6.4.2 With regard to Pre-2017YE Reclamation Liability, the Reclamation Investment Committee will develop two sets of Make-up Funding Curves: the first, applicable to Opt-in Participants, will assume the return and discount rates of Exhibit 1A; the second, applicable to Opt-out Participants, will assume the return and discount rates of Exhibit 1B. However, after December 31, 2017, Opt-out Participants will have no further liability for defaulting Parties and any shortfalls in the Make-up Reclamation Trust Funds of the Opt-out Participants will be made up by non-defaulting Opt-in Participants as described in Section 11.3. Subject to Section 4.9, such Opt-out Participant Make-up Reclamation Trust Funds will remain available to pay any relevant invoices. After December 31, 2017, a set of Make-up Funding Curves for Opt-out Participants is not necessary.

6.4.3 With regard to Post-2017YE Reclamation Liability, the Reclamation Investment Committee will develop two sets of Make-up Funding Curves: the first, applicable to Opt-in Participants, will assume the return and discount rates of Exhibit 1D; the second, applicable to Remaining Opt-out Participants, will assume the return and discount rates of Exhibit 1E. After December 31, 2017, Remaining Opt-out Participants will have no further liability for defaulting Parties and any shortfalls in the Make-up Reclamation Trust Funds of the Remaining Opt-out Participants will be made up by non-defaulting Opt-in Participants as described in Section 11.3. Subject to Section 4.9, such Remaining Opt-out Participant Make-up Reclamation Trust Funds will remain available to pay any relevant invoices.

6.4.4 The Make-up Funding Curves will be based on the defaulting Party's projected reclamation liability remaining after all funds in the defaulting Party's Reclamation Trust are exhausted when using the reclamation costs underlying Exhibit 1A and Exhibit 1B, or Exhibit 1D and Exhibit 1E, as the case may be, at the time of the Default Declaration.

6.4.5 The Make-up Funding Curves will be revised when revisions and updates are made to Exhibit 1A and Exhibit 1B or Exhibit 1D and Exhibit 1E, as the case may be.

6.4.6 The same general financial analysis principles will be applied to the calculation of the Make-up Funding Curves as were applied in developing the

Reclamation Funding Curves of Exhibit 1A and Exhibit 1B, or Exhibit 1D and Exhibit 1E, as the case may be, as set forth in Exhibit 4.

6.4.7 As to Make-up Funding Curves that are established before the expiration of the CSA (as extended or replaced), the Make-up Funding Curves will be calculated to reach full principal funding upon expiration of the CSA (as extended or replaced); and such Make-up Funding Curves will be developed by assuming equal annual payments for the period between the Default Declaration and the expiration of the CSA, with the exception that the first year's Make-up funding target will be modified to reflect the existing balance in the defaulting Party's Reclamation Trust, *i.e.*, any funding shortage should be made up in the year of the Default Declaration. For Opt-out Participants, the date of expiration, extension, or replacement of the CSA for purposes of this Section 6.4.7 will be fixed at December 31, 2017. From the Effective Date until December 31, 2017, for Opt-in Participants, the date of expiration, extension, or replacement of the CSA, for purposes of this Section 6.4.7, will be fixed at December 31, 2022. After December 31, 2017, Opt-in Participants may request the Reclamation Trust Investment Committee to modify their Make-up Funding Curves to reflect any extension or replacement of the CSA with an expiration date subsequent to December 31, 2022.

6.4.8 With respect to Make-up Funding Curves for Defaults that occur after the expiration of the CSA (as extended or replaced), the Make-up Funding Curves will be developed by assuming a single, lump sum contribution is made by December 31 of the year in which the Make-up Reclamation Trust Funds are established to fully fund the shortfall in the defaulting Party's Reclamation Trust.

6.4.9 Annual funding requirements for Make-up Reclamation Trust Funds will be analogous to the provisions of Sections 4.6 and 4.7. The Make-up Reclamation Funding Floor Curve will be one hundred percent (100%) of the Make-up Funding Target Curve by the expiration date of the CSA (or any extension or replacement thereof) for Opt-in Participants and by December 31, 2017 for Opt-out Participants.

6.5 Decisions of Reclamation Investment Committee. Any actions or determinations brought before the Reclamation Investment Committee will require the affirmative vote of the representatives on the Reclamation Investment Committee as set out in Sections 6.5.1 and 6.5.2. Matters approved by the requisite majority of the Reclamation Investment Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default, such Party will not have a right to vote, and the requisite majorities for actions or determinations of the Reclamation Investment Committee will be adjusted in proportion to the number of Reclamation Investment Committee members whose right to vote has not been suspended. The outcome of any vote of the Reclamation Investment Committee properly conducted in accordance with this Mine Reclamation Agreement will not be subject to the dispute resolution provisions of Section 13.

6.5.1 If the matter involves purely Pre-2017YE Reclamation Liability issues or purely Post-2017YE Reclamation Liability issues, the affirmative vote is required of: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Reclamation

Shares of the Parties as set out in Section 3.3; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties with Reclamation Shares of greater than zero percent (0%).

6.5.2 If the matter involves both Pre-2017YE Reclamation Liability issues and Post-2017YE Reclamation Liability issues, the affirmative vote is required of: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Composite Reclamation Shares of the Parties as set out in Exhibit 8; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties.

6.6 Meetings of Reclamation Investment Committee. The Reclamation Investment Committee will meet no less frequently than annually. Special meetings will be held promptly at the written request of any Party, such request to be delivered to the chairperson of the Reclamation Investment Committee. The Reclamation Investment Committee will keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Reclamation Investment Committee will be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Reclamation Investment Committee. Reclamation Investment Committee representatives will be permitted, by prior notification to the chairperson of the Reclamation Investment Committee, to attend a meeting of the Reclamation Investment Committee by conference call or video conferencing. A Reclamation Investment Committee representative who is unable to attend a meeting of the Reclamation Investment Committee will be permitted to vote in absentia by delivering to the chairperson of the Reclamation Investment Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

7.0 RECLAMATION OVERSIGHT COMMITTEE

7.1 Establishment of Reclamation Oversight Committee. The Original Trust Funds Agreement provides for a Reclamation Oversight Committee. The Reclamation Oversight Committee will be activated on the Effective Date of this Mine Reclamation Agreement and will remain in existence during the term of this Mine Reclamation Agreement. The Reclamation Oversight Committee will have no authority to modify any of the provisions of this Mine Reclamation Agreement.

7.2 Reclamation Oversight Committee Membership. The Reclamation Oversight Committee will consist of one representative from each Party who will be an officer or other authorized representative of a Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Reclamation Oversight Committee in the absence of the regular representative on the Reclamation Oversight Committee or to act on specified occasions or with respect to specified matters. Each Party will notify the other Parties promptly, in writing, of the designation of its representative and alternate representative on the Reclamation Oversight Committee and of any subsequent changes in such designations. The chairperson of the Reclamation Oversight Committee will be a representative of the Reclamation Trust Funds

Operating Agent. Each Party will be responsible for the costs of its Reclamation Oversight Committee representative, including fees and travel reimbursement.

7.3 Functions and Responsibilities of Reclamation Oversight Committee. The Reclamation Oversight Committee will have the following functions and responsibilities:

7.3.1 Oversee the Reclamation Work of the Reclamation Trust Funds Operating Agent;

7.3.2 Vote as to matters assigned to the Reclamation Oversight Committee, including amendments to provisions of the RSA or a new agreement for the performance of reclamation services for Disturbances at the SJCC Site Area;

7.3.3 Establish goals, timelines and procedures with respect to Reclamation Costs Reviews and perform related functions, as provided for in Section 5.2;

7.3.4 Establish goals, timelines and procedures with respect to the Surveys;

7.3.5 Require reports or updates from the Reclamation Trust Funds Operating Agent and the Participant Representatives on negotiations and discussions with SJCC concerning reclamation activities;

7.3.6 Review, provide input on and act on proposed RSA Annual Operating Plans (including SJCC's budget for Reclamation Costs) as forwarded to the Reclamation Oversight Committee by the Reclamation Trust Funds Operating Agent;

7.3.7 Approve revisions to a previously-approved budget;

7.3.8 Perform other tasks delegated to the Reclamation Oversight Committee by this Mine Reclamation Agreement; and

7.3.9 Such other tasks as the Parties will from time-to-time by unanimous agreement assign to the Reclamation Oversight Committee.

7.4 Decisions of Reclamation Oversight Committee. Any actions or determinations brought before the Reclamation Oversight Committee will require the affirmative vote of the representatives on the Reclamation Oversight Committee as set out in Sections 7.4.1 and 7.4.2. Matters approved by the requisite majority of the Reclamation Oversight Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default such Party will not have a right to vote, and the requisite majorities for actions or determinations of the Reclamation Oversight Committee will be adjusted in proportion to the number of Reclamation Oversight Committee members whose right to vote has not been suspended. The outcome of any vote of the Reclamation Oversight Committee properly conducted in accordance with this Mine Reclamation Agreement will not be subject to the dispute resolution provisions of Section 13.

7.4.1 Except as provided for in Section 7.4.2, approval of any actions or determinations brought before the Reclamation Oversight Committee will require the following affirmative vote:

7.4.1.1 If the matter involves purely Pre-2017YE Reclamation Liability issues or purely Post-2017YE Reclamation Liability issues: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Reclamation Shares of the Parties as set out in Section 3.3; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties with Reclamation Shares of greater than zero percent (0%).

7.4.1.2 If the matter involves both Pre-2017YE Reclamation Liability issues and Post-2017YE Reclamation Liability issues: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Composite Reclamation Shares of the Parties as set out in Exhibit 8; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties.

7.4.2 Approval of any actions or determinations brought before the Reclamation Oversight Committee regarding: (i) an amendment of any provisions of the RSA; or (ii) a new agreement for the provision of reclamation services, will require the following affirmative vote:

7.4.2.1 If such amendment or new agreement involves purely Pre-2017YE Reclamation Liability issues or purely Post-2017YE Reclamation Liability issues: (i) more than an eighty-two percent (82%) majority of the Reclamation Shares of the Parties as set out in Section 3.3; and (ii) a minimum of sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties with Reclamation Shares of greater than zero percent (0%).

7.4.2.2 If such amendment or new agreement involves both Pre-2017YE Reclamation Liability issues and Post-2017YE Reclamation Liability issues: (i) more than an eighty two percent (82%) majority of the Composite Reclamation Shares of the Parties as set out in Exhibit 8; and (ii) a minimum of sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties.

7.5 Meetings of Reclamation Oversight Committee. The Reclamation Oversight Committee will meet no less frequently than twice a year. Special meetings will be held promptly at the written request of any Party, such request to be delivered to the chairperson of the Reclamation Oversight Committee. The Reclamation Oversight Committee will keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Reclamation Oversight Committee will be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Reclamation Oversight Committee. Reclamation Oversight Committee representatives may, by prior arrangement with the chairperson of the Reclamation Oversight Committee, attend a meeting of the Reclamation Oversight Committee by conference call or video conferencing. A Reclamation

Oversight Committee representative who is unable to attend a meeting of the Reclamation Oversight Committee may vote in absentia by delivering to the chairperson of the Reclamation Oversight Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

8.0 RECLAMATION TRUST FUNDS OPERATING AGENT

8.1 Selection of Reclamation Trust Funds Operating Agent.

8.1.1 The Parties agree to the selection of a Reclamation Trust Funds Operating Agent to carry out the responsibilities assigned to the Reclamation Trust Funds Operating Agent hereunder. The Reclamation Trust Funds Operating Agent will be the agent of the Parties and will exercise only such authority as is conferred upon it by this Mine Reclamation Agreement.

8.1.2 Through December 31, 2017, the functions and responsibilities of the Reclamation Trust Funds Operating Agent will be performed by the Operating Agent; all references herein to the Reclamation Trust Funds Operating Agent will, through December 31, 2017, be deemed to refer to the Operating Agent and all costs and expenses provided hereunder to be incurred by the Reclamation Trust Funds Operating Agent before December 31, 2017 will be billed under the SJPPA to the Parties as work of the Operating Agent. After December 31, 2017, the Reclamation Trust Funds Operating Agent will invoice Parties for the costs of Reclamation Work and Reclamation A&G Expenses in accordance with this Mine Reclamation Agreement.

8.2 PNM as Initial Reclamation Trust Funds Operating Agent. The Parties hereby appoint PNM as the initial Reclamation Trust Funds Operating Agent, and PNM agrees to undertake, as the agent of the Parties, and as principal on its own behalf, the performance of the responsibilities assigned herein to the Reclamation Trust Funds Operating Agent.

8.3 Responsibilities of the Reclamation Trust Funds Operating Agent. The Reclamation Trust Funds Operating Agent will have the following responsibilities (the "Reclamation Work"):

8.3.1 Serve as liaison for the coordination of all interchanges and discussions among the Parties in connection with matters arising under this Mine Reclamation Agreement;

8.3.2 If the Reclamation Trust Funds Operating Agent is a party to the RSA, conduct negotiations and discussions with SJCC in connection with matters arising under the RSA, with participation of Participant Representatives as provided for in Section 9.1, and communicate with the Parties in relation thereto; if PNM is no longer the Reclamation Trust Funds Operating Agent, but is a party to the RSA, PNM will perform the functions provided for in this Section 8.3.2;

8.3.3 Review all reclamation cost information and estimates from SJCC, including quarterly reports provided pursuant to RSA Section 3.4, and provide to the Parties quarterly appropriate summaries of such information as well as summaries of any other cost information or analysis from third-party contractors of the Reclamation Trust Funds Operating Agent;

8.3.4 Upon the delivery of an Adjustment Request by a Party pursuant to Section 5.3, perform (or cause to be performed) a Reclamation Costs Review and prepare a Final Reclamation Report for submission to the Reclamation Oversight Committee;

8.3.5 Monitor the operations of SJCC;

8.3.6 Receive invoices for Reclamation Costs associated with the Reimbursement Obligation submitted to PNM by SJCC, review the form, content and cost distribution of such invoices and, where appropriate, approve such invoices for payment;

8.3.7 Issue Reclamation Costs invoices to each Party (categorized by Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs) for payment either directly from other funds or, if permitted by this Mine Reclamation Agreement, out of each Party's Reclamation Trust pursuant to the terms of each Party's Reclamation Trust Agreement; appropriate back-up information will accompany each invoice, and the Reclamation Trust Funds Operating Agent will provide any additional back-up information that a Party may reasonably request;

8.3.8 Provide summaries and reports to the Parties and to SJCC by February 10 of each year during the term hereof concerning the total amount of funds in the Parties' Reclamation Trusts (Principal Reclamation Trust Fund and any Make-up Reclamation Trust Funds) as of December 31 of the previous calendar year;

8.3.9 Subject to Section 8.1.2, issue invoices to the Parties for their share of expenses incurred by the Reclamation Trust Funds Operating Agent in the performance of the Reclamation Work and for Reclamation A&G Expenses;

8.3.10 Furnish from its own resources or contract for the procurement of goods or services necessary for the performance of the Reclamation Work;

8.3.11 Administer, perform and enforce all contracts entered into by the Reclamation Trust Funds Operating Agent;

8.3.12 Comply with all Law applicable to its performance of the Reclamation Work;

8.3.13 Maintain in the name of the Parties and for the purposes of this Mine Reclamation Agreement an operating account for monies collected in connection with the Reclamation Work;

8.3.14 Keep and maintain records of monies expended and received, obligations incurred, credits accrued and contracts entered into in the performance of Reclamation Work hereunder, and provide an annual report of such records to the Parties;

8.3.15 Cooperate with the Reclamation Investment Committee in the conduct of any audits of a Party's compliance with its funding of its Reclamation Share of the Reclamation Funding Curves (and, if applicable, Make-up Funding Curves), and to otherwise carry into effect policies established by the Reclamation Investment Committee and the Reclamation Oversight Committee;

8.3.16 Prepare recommendations covering the matters that may be reviewed and acted upon by the Parties, the Reclamation Investment Committee and the Reclamation Oversight Committee;

8.3.17 Keep the Parties fully and promptly advised of material changes in conditions or other material developments affecting the implementation of this Mine Reclamation Agreement and of any Defaults under this Mine Reclamation Agreement;

8.3.18 Provide the Reclamation Investment Committee and the Reclamation Oversight Committee with all records, information and reports that may be relevant to such committees in the perfomance of their respective responsibilities;

8.3.19 As provided in Section 10, provide copies of any Default Notice, Notification of Intent or Default Declaration to the representatives on the Reclamation Oversight Committee, the persons identified in Section 28.1, and the Trustee of a defaulting Party's Reclamation Trust;

8.3.20 Enforce the obligations of each Party to fund its Reclamation Share of the Reclamation Funding Curves, make Reclamation Recovery Deposits or Reclamation Correcting Deposits, fund any required Make-up Reclamation Trust Fund, or to pay invoices submitted hereunder to the Parties or to their Trustees;

8.3.21 Perform all other obligations and duties that the Parties or the Reclamation Oversight Committee may from time-to-time delegate to the Reclamation Trust Funds Operating Agent;

8.3.22 Conduct, or cause to be conducted the Surveys and promptly provide Survey results to the Parties; and

8.3.23 Perform all other obligations and duties that are assigned herein to the Reclamation Trust Funds Operating Agent or that are reasonably necessary in connection with the performance of its obligations and duties hereunder.

8.4 Annual Budgets.

8.4.1 Not fewer than two hundred (200) days prior to the beginning of each calendar year, the Reclamation Trust Funds Operating Agent will provide to the Reclamation Oversight Committee for its review and approval the proposed RSA Annual Operating Plan from SJCC setting forth SJCC's budget for Reclamation Costs for such calendar year. The Reclamation Oversight Committee will vote on the proposed budget for Reclamation Costs not fewer than one hundred (100) days before the beginning of such calendar year. In the event the budget for Reclamation Costs is not approved by the Reclamation Oversight Committee, the Reclamation Trust Funds Operating Agent will not approve the RSA Annual Operating Plan, but will direct SJCC to continue to efficiently and economically perform reclamation services while resolving any dispute over the approval of the RSA Annual Operating Plan pursuant to Section 3.3 of the RSA.

8.4.2 Reclamation Costs will be allocated to Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs in accordance with this Mine Reclamation Agreement.

8.4.3 Not fewer than ninety (90) days prior to January 1, 2018, and not fewer than ninety (90) days prior to the beginning of each calendar year thereafter, the Reclamation Trust Funds Operating Agent will provide to the Reclamation Oversight Committee for its review and approval a budget for the performance of Reclamation Work and Reclamation A&G Expenses for such calendar year. The Reclamation Oversight Committee will vote on the budget for Reclamation Work and Reclamation A&G Expenses not fewer than sixty (60) days after its submission. In the event the budget for Reclamation Work and Reclamation A&G Expenses is not approved, the Reclamation Trust Funds Operating Agent will nevertheless continue to perform Reclamation Work in an efficient and economical manner until a budget has been approved and the Parties will continue to pay such costs as invoiced.

8.4.4 Cost of Reclamation Work and Reclamation A&G Expenses will be budgeted based on the ratios of: (i) Pre-2017YE Reclamation Liability Costs to Reclamation Costs and (ii) Post-2017YE Reclamation Liability Costs to Reclamation Costs, or as otherwise provided in this Mine Reclamation Agreement.

8.5 Reimbursement of Costs and Expenses. Beginning January 1, 2018, the Parties will reimburse the Reclamation Trust Funds Operating Agent for all its reasonable costs and expenses incurred in its performance of the Reclamation Work. The Reclamation Trust Funds Operating Agent will invoice the Parties for such costs and expenses, including Reclamation A&G Expenses, by the end of the month following the month in which such costs and expenses were incurred, and the Parties will pay such invoices within ten (10) Business Days of receipt of the invoice. Except as provided in Section 5.4, the cost and expenses of Reclamation Work and Reclamation A&G Expenses will be allocated as provided in Section 8.4.4 and will be apportioned to the Parties in accordance with the Reclamation Shares set out in Section 3.3.

8.6 Reclamation Administrative and General Expenses. Beginning January 1, 2018, Reclamation A&G Expenses will include administrative and general expenses directly chargeable to FERC Accounts 920, 921, 923, 926, 930.2, 931 and 935, will include payroll loads for administrative and general expenses, payroll taxes, injuries and damages and pension and benefits, and will be added to the monthly billings in proportion to the dollars of direct labor billed. The Reclamation Trust Funds Operating Agent will prepare, for the approval of the Reclamation Oversight Committee, operating procedures for the accounting of Reclamation A&G Expenses in its performance of the Reclamation Work and will recommend updates thereof no fewer than every three (3) years. An annual true-up of Reclamation A&G Expenses will be made each year once such expenses have been recorded.

8.7 Payment of Reclamation Cost Invoices. To assure timely payment of Reclamation Costs by Parties directly or by Parties' Trustees, the Reclamation Trust Funds Operating Agent will bill the Parties, in writing, for Reclamation Costs invoiced by SJCC at least ten (10) Business Days prior to the date that payment is due SJCC. Parties may begin withdrawing funds from their Reclamation Trusts to pay Reclamation Costs beginning with the billing of January 2018 Reclamation Costs.

8.8 No Fee. The Reclamation Trust Funds Operating Agent will receive no fee or profit hereunder, unless otherwise agreed unanimously by the Parties.

8.9 Liability of Reclamation Trust Funds Operating Agent.

8.9.1 The provisions of this Section 8.9 are intended to address limitations on the liability of the Reclamation Trust Funds Operating Agent acting solely in the capacity of Reclamation Trust Funds Operating Agent; to the extent the actions of the Reclamation Trust Funds Operating Agent are carried out in its capacity as a party to the RSA or a Party or in any other capacity, the limitation of liability provisions in this Section 8.9 are not applicable.

8.9.2 Except for any judgment debt for damage resulting from Willful Action or as necessary to enforce an Arbitration Award, each Party hereby extends to the Reclamation Trust Funds Operating Agent, its employees, officers, directors and agents, its covenant not to execute, levy or otherwise enforce a judgment obtained against the Reclamation Trust Funds Operating Agent, including recording or effecting a judgment lien, for any direct, indirect or consequential damage, claim, cost, charge or expense, whether or not resulting from the negligence of the Reclamation Trust Funds Operating Agent, its employees, officers, directors or agents, or any person or entity whose negligence would be imputed to the Reclamation Trust Funds Operating Agent arising out of its performance or non-performance hereunder. With respect to the Reclamation Trust Funds Operating Agent's liability for Willful Action, such liability will in no event exceed (i) a total of ten million dollars ($10,000,000) per occurrence before the Exit Date; and (ii) a total of fourteen million dollars ($14,000,000) per occurrence on and after the Exit Date. The Parties extend to the Reclamation Trust Funds Operating Agent, its employees, officers, directors and agents, their covenant not to execute, levy or otherwise enforce a judgment against any of them for any such liability for Willful Action in excess

of amounts set out in the previous sentence. In the event that Parties' claims made or judgments obtained against the Reclamation Trust Funds Operating Agent or its employees, officers, directors and agents exceed ten million dollars ($10,000,000) or fourteen million dollars ($14,000,000), as applicable, per occurrence, such claims or judgments will be prorated among the successful Parties consistent with the limitation on Willful Action liability established herein.

8.10 Resignation of Reclamation Trust Funds Operating Agent. Subject to Section 8.11, the Reclamation Trust Funds Operating Agent will serve during the term of this Mine Reclamation Agreement unless it resigns as Reclamation Trust Funds Operating Agent by giving notice to the Parties at least one (1) year in advance of the effective date of the resignation. Upon receipt of such notice, the Reclamation Oversight Committee must convene promptly to address the selection of a replacement Reclamation Trust Funds Operating Agent which may, but need not, be a Party.

8.11 Removal of Reclamation Trust Funds Operating Agent. The Reclamation Trust Funds Operating Agent may be removed by the Parties, if, in the judgment of the Parties, their best interests require such removal. Any Party seeking the removal of the Reclamation Trust Funds Operating Agent will serve a notice on the Reclamation Trust Funds Operating Agent and on each of the Parties, detailing the reasons why, in the judgment of the initiating Party, the Reclamation Trust Funds Operating Agent should be removed. Within thirty (30) days after receipt by the Reclamation Trust Funds Operating Agent of this written statement, the Reclamation Trust Funds Operating Agent will prepare and serve upon the Parties its response, which will contain a detailed rebuttal of the allegations made in the initiating statement. Within the same thirty (30) day period, any other Party may also serve upon the Reclamation Trust Funds Operating Agent and the Parties a statement responding to the allegations in the initiating statement. Within twenty (20) days after service of all such response statements, the Parties will meet to consider what actions, if any, to take in regard to the removal of the Reclamation Trust Funds Operating Agent. The Reclamation Trust Funds Operating Agent may be removed by the vote of more than a sixty-six and two thirds percent (66 2/3%) majority of the Pre-2017YE Reclamation Shares of the Parties and more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties; provided, however, that a Party that is the Reclamation Trust Funds Operating Agent will not be entitled to vote on the issue of its own removal, and the requisite voting percentages will be based upon the number of eligible voting Parties other than the Reclamation Trust Funds Operating Agent and their respective Reclamation Shares. If the Reclamation Trust Funds Operating Agent is removed by vote of the Parties, the Reclamation Oversight Committee will convene promptly to address the selection of a replacement Reclamation Trust Funds Operating Agent which may, but need not, be a Party.

9.0 CERTAIN RIGHTS OF PARTIES

9.1 Participant Representatives. Parties not signatories to the RSA are granted (i) the right to review all materials exchanged in the negotiations and discussions with SJCC conceming reclamation activities, subject to the obligation to execute and abide by a confidentiality agreement protecting the materials exchanged and (ii) the collective right to have two (2) representatives ("Participant Representatives"), one selected by and representing the Exiting

Participants and one selected by and representing the Remaining Participants, present at negotiations and discussions with SJCC concerning reclamation activities. The following special procedures will apply to all negotiations or discussion with SJCC concerning reclamation activities.

9.1.1 No Participant Representative will engage in bilateral negotiations or discussions with SJCC regarding reclamation activities for the San Juan Project; provided, however, that nothing herein will be construed to prevent the Operating Agent, the Reclamation Trust Funds Operating Agent, or the Parties that are signatories to the UG-CSA (for as long as such agreement is in effect), or the RSA, in the conduct of its or their day-to-day operational responsibilities, from performing Reclamation Work, engaging in either business contacts and communications with SJCC or the administration of the RSA.

9.1.2 Participant Representatives will be designated in writing to PNM. Participant Representatives may be changed by written notice to PNM.

9.1.3 Participant Representatives will agree in writing to: (i) avoid any conflict of interest with SJCC or providers of reclamation services that would be detrimental to SJCC reclamation activities; and (ii) maintain all proprietary information obtained through such discussions and negotiations in confidence pursuant to the terms of a confidentiality agreement to be prepared by PNM.

9.2 Opt-out Right. For Defaults occurring after December 31, 2017, a Party not wishing to pay for a defaulting Party's obligations to pay for Reclamation Costs may elect to "opt out" of such payment (each such Party, an "Opt-out Participant"). Opt-out Participants will have no obligation for a defaulting Party's Reclamation Trust shortfall or for the failure of a Party's Trustee to pay an invoice for Reclamation Costs for Defaults occurring after December 31, 2017. All Parties except PNM are deemed to be Opt-out Participants unless they deliver written notice of their election to become Opt-in Participants; such notice must be delivered to the Reclamation Trust Funds Operating Agent and to the other Parties, no later than seventy-five (75) days after the Effective Date.

10.0 DECLARATION OF DEFAULT

10.1 Definition of Default. A Party's failure to perform any of the following obligations is a Default under this Mine Reclamation Agreement: (i) fund its Reclamation Trust under the terms of this Mine Reclamation Agreement (including making only Permitted Investments in its Reclamation Trust) and consistent with its Reclamation Trust Agreement; (ii) make any required Reclamation Recovery Deposits or Reclamation Correcting Deposits; (iii) establish and fund any Make-up Reclamation Trust Fund required by this Mine Reclamation Agreement to be established and funded; (iv) cause the payment of its Reclamation Share of the Reimbursement Obligation pursuant to invoices for Reclamation Costs, costs of Reclamation Work and Reclamation A&G Expenses rendered to the Party consistent with this Mine Reclamation Agreement; and (v) carry out all other performances, duties and obligations agreed to be paid or performed by it pursuant to this Mine Reclamation Agreement.

10.2 Default Notice. If the Reclamation Trust Funds Operating Agent (either on its own motion or at the suggestion of a Party or SJCC) deems a Party to be in Default, the Reclamation Trust Funds Operating Agent will serve upon the defaulting Party a written notice of default (the "Default Notice"). The Reclamation Trust Funds Operating Agent will also serve a copy of the Default Notice on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Party's Reclamation Trust. The Default Notice will specify the existence, nature and extent of the Default.

10.3 Cure of Default. Upon receipt of the Default Notice, the defaulting Party will: (a) pay any monies due under this Mine Reclamation Agreement (including funding of its Reclamation Trust (Principal Reclamation Trust Fund and any Make-up Reclamation Trust Fund(s) and making any required Reclamation Recovery Deposits or Reclamation Correcting Deposits) within fifteen (15) days; or (b) commence within fifteen (15) days the performance of any non-monetary obligation and continue thereafter the diligent completion of such non-monetary obligation.

10.4 Protest of Default. If the defaulting Party disputes a Default Notice, such Party will nonetheless pay the disputed payment or commence performance of the disputed obligation, but may do so under protest (the "Protest"). The Protest will be in writing, will accompany the disputed payment or precede the commencement of performance of the disputed obligation(s), and will specify the reason upon which the Protest is based. Copies of the Protest will be served by the defaulting Party on the Reclamation Trust Funds Operating Agent and also on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Party's Reclamation Trust. Within seven (7) days after the service of the Protest, authorized representatives of the Parties will meet, in person or by conference call or video conference, to address the Protest and to determine what actions, if any, to take as a result of the Protest.

10.5 Declaration of Default. If the defaulting Party fails to cure the Default pursuant to Section 10.3, or protests the Default Notice pursuant to Section 10.4 but fails to timely pay the disputed payment or commence performance of the disputed obligation, the Reclamation Trust Funds Operating Agent will notify the defaulting Party in writing of the Reclamation Trust Funds Operating Agent's intent to declare the defaulting Party in Default unless there is a prompt cure of the Default ("Notification of Intent"). The Notification of Intent will afford the defaulting Party a minimum of fifteen (15) additional days after the giving of the Notification of Intent to cure the Default. The pendency of a Protest will not prevent the Reclamation Trust Funds Operating Agent from issuing a Notification of Intent. If the Default has not been cured within the period of time identified in the Notification of Intent, the Reclamation Trust Funds Operating Agent may give written notice to the defaulting Party declaring that the defaulting Party is in Default (the "Default Declaration"). The Reclamation Trust Funds Operating Agent will serve a copy of the Notification of Intent and of the Default Declaration on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Party's Reclamation Trust. The pendency of a Protest will not prevent the Reclamation Trust Funds Operating Agent from making a Default Declaration.

10.6 Consequences of Default. Upon delivery of the Default Declaration, the Party in Default under this Mine Reclamation Agreement will lose all its rights but retain its obligations under this Mine Reclamation Agreement, the Decommissioning Agreement (if the Decommissioning Agreement is in effect), and the Restructuring Agreement so long as the Default is in effect. This consequence of Default is in addition to and cumulative of any other remedy to which the Party in Default may be subject, including the loss of the right to vote on the Reclamation Investment Committee and the Reclamation Oversight Committee. If and when the Party in Default remedies the Default, its rights under such agreements will be restored.

10.7 No Stay for Arbitration. A demand for arbitration or other dispute resolution procedure will not stay: (i) the right of the Reclamation Trust Funds Operating Agent to issue a Default Notice, a Notification of Intent or a Default Declaration; or (ii) the suspension of the rights of a defaulting Party.

10.8 Termination of Default. The Default will be terminated, and the full rights of the defaulting Party restored when: (i) the Default has been cured and all costs incurred by the non-defaulting Parties resulting from the Default of the defaulting Party, including monies placed by non-defaulting Parties into Make-up Reclamation Trust Funds and expended by the Trustee, have been reimbursed in full by the defaulting Party, with interest thereon at the Prime Rate plus two percent (2%) per annum or the maximum legal rate of interest, whichever is less, from the date of payment to the date of reimbursement; (ii) other arrangements acceptable to the non-defaulting Parties have been made; or (iii) the defaulting Party prevails in an arbitration or other legal proceeding in which the default status of the defaulting Party is at issue.

10.9 Other Rights. Subject to Sections 13.1.3, 13.8 and 33, the rights and remedies provided in this Mine Reclamation Agreement will be in addition to any rights and remedies the Reclamation Trust Funds Operating Agent and the non-defaulting Parties have in law or equity.

10.10 No Waiver. The Reclamation Trust Funds Operating Agent will not waive any of its rights with respect to a Default under this Mine Reclamation Agreement without the approval of the Reclamation Oversight Committee.

11.0 FAILURE TO FUND RECLAMATION TRUST THROUGH DECEMBER 31, 2017

11.1 Shortfall in Trust Funds. If a Participant fails, during the period through December 31, 2017, to fund its Reclamation Trust to the Reclamation Target Funding Amount and such failure results in a Default Declaration, then each non-defaulting Participant will fund a share of the defaulting Participant's shortfall in a Make-up Reclamation Trust Fund within the non-defaulting Participant's Reclamation Trust based upon the relation of the Reclamation Share of each such non-defaulting Participant to the Reclamation Shares of all non-defaulting Participants. The Make-up Reclamation Trust Fund will be funded by each non-defaulting Participant as provided in Sections 4.1, 4.8 and 11.2.

11.2 Make-up Reclamation Trust Funds. Make-up Reclamation Trust Funds are segregated sub-accounts to be funded in a non-defaulting Party's Reclamation Trust in a manner

consistent with each Party's Reclamation Trust Agreement. When a Default has resulted in a shortfall in the defaulting Party's Reclamation Trust, the Reclamation Investment Committee will act promptly to develop and provide to the non-defaulting Parties appropriate Make-up Funding Curves for the Make-up Reclamation Trust Funds, as provided in Section 6.4. Within thirty (30) days of receipt of a Make-up Funding Curve from the Reclamation Investment Committee, each non-defaulting Party, if required under Sections 6.4 and 11.1, will fund its Make-up Reclamation Trust Fund to its share of the Make-up Funding Curve target amount for the calendar year in which the Default Declaration was issued. If a defaulting Party cures its Default in accordance with Section 10.8, monies in a non-defaulting Party's Make-up Reclamation Trust Fund may be returned to the non-defaulting Party under Section 4.9 and the terms of that Party's Reclamation Trust Agreement.

11.3 Payment of Defaulting Party's Invoices for Reclamation Costs. Reclamation Costs accrued after December 31, 2017, that are the responsibility of a Party that defaulted under Section 11.1, will be paid by such Party's Trustee until the defaulting Party's Reclamation Trust has been exhausted. Once the defaulting Party's Reclamation Trust has been exbausted, the non-defaulting Parties' Trustees will pay any Reclamation Costs remaining unpaid based upon the relation of the Reclamation Share of each such non-defaulting Party to the Reclamation Shares of all non-defaulting Parties from (i) any Make-up Reclamation Trust Funds established pursuant to Section 11.2; or (ii) any other source of funds outside the Reclamation Trust. Upon the exhaustion of any Opt-out Participant's Make-up Reclamation Trust Fund, the Opt-out Participant's share of the defaulting Party's unpaid Reclamation Cost responsibilities will be allocated to the Opt-in Participants.

11.4 Failure to Pay Other Costs. If the Default Declaration arises from the defaulting Party's failure to pay costs hereunder other than Reclamation Costs, such as the costs of the Reclamation Work and Reclamation A&G Expenses, such costs will be borne by the non-defaulting Parties in proportion to their Reclamation Shares, subject to all legal rights of non-defaulting Parties to require repayment of such costs from the defaulting Party.

12.0 FAILURE TO FUND RECLAMATION TRUST AFTER DECEMBER 31, 2017

12.1 Opt-in Participants. If a Party fails, after December 31, 2017, to fund its Reclamation Trust to the post-2017 Reclamation Funding Target Amount and such failure results in a Default Declaration, then each Opt-in Participant will fund a share of the defaulting Party's shortfall in a Make-up Trust Fund within the non-defaulting Party's Reclamation Trust Fund based upon the relation of the Reclamation Share of each such non-defaulting Opt-in Participant to the Reclamation Shares of all non-defaulting Opt-in Participants. The Reclamation Investment Committee will act promptly to develop and provide to the Opt-in Participants appropriate Make-up Funding Curves for the Make-up Reclamation Trust Funds, as provided for in Section 6.4. Upon receipt of a Make-up Funding Curve from the Reclamation Investment Committee, each Opt-in Participant will promptly fund its Make-up Reclamation Trust Fund to its share of the Make-up Funding Curve target amount for the calendar year in which the Default Declaration was issued. If a defaulting Party cures its Default in accordance with Section 10.8, monies in an Opt-in Participant's Make-up Reclamation Trust Fund may be returned to the Opt-in Participant under Section 4.9 and the terms of that Party's Reclamation Trust Agreement.

12.2 Payment of Defaulting Party's Invoices for Reclamation Costs. Reclamation Costs incurred after December 31, 2017, that are the responsibility of a Party that defaulted under Section 12.1, will be paid first by the defaulting Party's Trustee until the defaulting Party's Reclamation Trust has been exhausted; once the defaulting Party's Reclamation Trust has been exhausted, the Opt-in Participants will pay any Reclamation Costs remaining unpaid based upon the relation of the Reclamation Share of each such non-defaulting Opt-in Participant to the Reclamation Shares of all non-defaulting Opt-in Participants from its (i) Make-up Reclamation Trust Funds; or (ii) any other source of funds outside the Reclamation Trust.

12.3 Opt-out Participants. For Defaults occurring after December 31, 2017, Opt-out Participants will have no obligation for a defaulting Party's failure to fund its Reclamation Trust as required herein, including the defaulting Party's failure to make any required Make-up Reclamation Trust Fund payments, Reclamation Recovery Deposits or Reclamation Correcting Deposits or for any unpaid Reclamation Cost responsibilities of a defaulting Party.

12.4 Failure to Pay Other Costs. If the Default Declaration arises from the defaulting Party's failure to pay costs hereunder other than Reclamation Costs, such as the costs of Reclamation Work and Reclamation A&G Expenses, such costs will be borne by the non-defaulting Parties in proportion to their Reclamation Shares, subject to all legal rights of non-defaulting Parties to require repayment of such costs from the defaulting Party.

13.0 DISPUTE RESOLUTION

13.1 Amicable Resolution. If a dispute between or among any of the Parties should arise under this Mine Reclamation Agreement, or in relation to the rights or obligations of the Parties under this Mine Reclamation Agreement, executive representatives of the Parties with authority to resolve the dispute will first seek to resolve the dispute as set forth in this Section 13.1.

13.1.1 The dispute process will be initiated by the delivery of a written notice by a Party ("Noticing Party") of the dispute ("Notice of Dispute") to the Party with which a dispute is claimed. The Notice of Dispute will specify the existence, nature and extent of the dispute. Copies of the Notice of Dispute will be served on all other Parties. The Notice of Dispute will specifically state the sums allegedly due, any non-monetary obligation allegedly not performed, or both if applicable.

13.1.2 Within fifteen (15) Business Days of receipt of the Notice of Dispute, the Party alleged not to be performing may protest in writing any or all of the matters set forth in the Notice of Dispute ("Dispute Protest"), specifying the basis of the Dispute Protest. Copies of the Dispute Protest will be served by the protesting Party ("Protesting Party") on all other Parties.

13.1.3 Within fifteen (15) Business Days of the giving of a Notice of Dispute under Section 13.1.1 or within ten (10) Business Days after the service of a Dispute Protest under Section 13.1.2, the executive representatives of the Parties involved in the dispute will meet at a mutually agreeable time and place to attempt to negotiate a timely

and amicable resolution of the dispute. If an executive of a Party intends to be accompanied by counsel, the other Parties will be given at least five (5) Business Days' written notice of such intent and may also be accompanied by counsel. All negotiations will be confidential and will be treated as compromise and settlement negotiations under New Mexico Law. If the executive representatives of the Parties are unable to resolve the dispute within sixty (60) days of the Notice of Dispute (or such other period as they may agree to), any Party involved in the dispute may call for submission of the dispute to arbitration, which call will be binding upon all of the other affected Parties except as provided in Section 13.8.

13.2 Call for Arbitration. The Party calling for arbitration will give written notice to all other Parties ("Arbitration Notice"), setting forth in the Arbitration Notice in adequate detail the entity against whom relief is sought, the nature of the dispute, the amount, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, which may include monetary, equitable and declaratory relief. Within twenty (20) Business Days after receipt of the Arbitration Notice, any other Party may submit its own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated with copies of such notice provided to all other Parties. Thereafter, the Party calling for arbitration will have ten (10) Business Days in which to submit a written rebuttal statement, copies of which will be provided to all other Parties.

13.3 Selection of Arbitrators.

13.3.I The Parties involved in the arbitration will seek to agree upon a panel of three (3) neutral arbitrators as follows. Within ten (I0) days after service of the written rebuttal statement, the Parties representing each side of the dispute will provide to the Parties representing the other side of the dispute a list of up to five (5) suggested arbitrators having the qualifications required by Section 13.3.2 and a summary of each such suggested arbitrator's experience and qualifications. Within five (5) Business Days thereafter, the Parties involved in the arbitration will meet and confer by telephone or in person to seek to agree upon a panel of three (3) neutral arbitrators from the lists that have been exchanged. If such agreement is not reached as the result of such meeting, the Parties representing each side of the dispute will provide a second list of suggested arbitrators to one another, and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon a panel of three (3) neutral arbitrators. If such agreement on arbitrators is reached, the Parties will proceed to arbitration as further set forth in this Section 13.

13.3.2 If the Parties involved in the arbitration are not able to agree upon a complete panel of three (3) neutral arbitrators, such Parties will select the arbitrators upon which agreement has not been reached as follows. The Parties will request from the American Arbitration Association ("AAA") (or similar organization as the arbitrating Parties agree upon) ("Arbitration Organization") a list of seven (7) arbitrators with names and biographical sketches and specific qualifications relating to the case to be heard. All arbitrators will be persons skilled and experienced in the field that gives rise to the dispute, and no person will be eligible for appointment as an arbitrator who is an officer or employee of any of the Parties to the dispute or is otherwise interested in the matter to

be arbitrated. The Parties involved in the arbitration will each advise the Arbitration Organization of its order of preference of such arbitrators by numbering from one (1) to seven (7) each name on the list (with one (1) being the most preferred arbitrator) and submitting the numbered lists in writing to the Arbitration Organization. Depending upon the number of arbitrators to be selected, the name or names with the lowest combined numbers will be appointed as the remaining neutral arbitrator(s). In the event more than one name on the list has the same lowest combined score, the tie will be broken by lot. Should the Parties agree that one list of seven (7) is insufficient to obtain a total of three (3) neutral arbitrators with the required qualifications, an additional list of arbitrators may be requested from the Arbitration Organization.

13.4 Arbitration Procedures. Except as otherwise provided in this Section 13 or otherwise agreed by the Parties to the dispute, the Parties will utilize in the arbitration the AAA's Commercial Arbitration Rules and Mediation Procedures including Procedures for Large, Complex Commercial Disputes or similar rules and practices of another Arbitration Organization from time-to-time in force, except that if such rules and practices, as modified herein, conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico law then in force which are specifically applicable to arbitration proceedings, such New Mexico law will govern. The arbitration will be conducted at a location in Albuquerque, New Mexico, unless otherwise agreed by the affected Parties.

13.5 Decision of Arbitrators. The arbitrators will hear evidence submitted by the respective Parties or group or groups of Parties and may call for additional information, which additional information will be furnished by the Parties having such information. The decision of a majority of the arbitrators ("Arbitration Award") will be rendered no later than twenty (20) days after the conclusion of the arbitration hearing and will be binding upon all the Parties and will be based on the provisions of this Mine Reclamation Agreement and applicable New Mexico or federal Law. The Arbitration Award must be in writing and must explain in reasonable detail the basis of the award.

13.6 Enforcement of Arbitration Award. This agreement to arbitrate is specifically enforceable, and the Arbitration Award will be final and binding upon the Parties to the extent provided by the laws of the State of New Mexico. Any Arbitration Award may be filed with a court of competent jurisdiction in New Mexico and upon motion of a Party the court shall enter a judgment in conformity therewith as provided by the New Mexico Uniform Arbitration Act. Said judgment is enforceable in other States and Territories of the United States under the Full Faith and Credit provisions of the United States Constitution and other Laws.

13.7 Fees and Expenses. Fees and expenses of the arbitrators will be paid by the non-prevailing Party, unless the Arbitration Award specifies some other apportionment of such fees and expenses. All other expenses and costs of the arbitration, including attorney fees and expert witness fees, will be borne by the Party incurring the same.

13.8 Legal Remedies. Nothing in this Section 13 will be deemed to prevent a Party from commencing judicial action: (i) to obtain a provisional remedy to protect the effectiveness of the arbitration proceeding; (ii) to confirm, enforce, modify, correct, vacate or challenge an

Arbitration Award on grounds provided for in the New Mexico Uniform Arbitration Act; (iii) to obtain relief in instances where the arbitrators are unable or unwilling to act within the time provided for in Section 13.10; (iv) where, as the result of the unreasonable or dilatory conduct of another Party, a Party is not able to obtain a timely valid and enforceable Arbitration Award; or (v) if a Party is prohibited by Law from participating in binding arbitration.

13.9 Rights of SJCC. No arbitration as between the Parties or the Reclamation Trust Funds Operating Agent will affect the rights of SJCC or the obligations of parties under the CSA or the RSA.

13.10 Prompt Resolution. The Parties acknowledge the importance of prompt dispute resolution. Accordingly, it is agreed that any arbitration proceeding hereunder will be scheduled and conducted in such a manner that the decision of the arbitrators is rendered no later than two hundred and seventy (270) days after an Arbitration Notice is served pursuant to Section 13.2.

14.0 POWER AND AUTHORITY

14.1 Requisite Power and Authority. Each Party represents and warrants to the other Parties that it has the requisite power and authority to execute this Mine Reclamation Agreement and to perform its obligations set out in this Mine Reclamation Agreement. The execution and delivery of this Mine Reclamation Agreement and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party. The obligations set out herein will, upon execution hereof by each Party, be valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions hereof, except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at Law.

14.2 No Violation. Each Party, to the best of its knowledge and upon reasonable inquiry, represents and warrants to the other Parties that the execution and delivery of this Mine Reclamation Agreement by such Party, and the performance by such Party of all of its obligations hereunder, will not violate any term, condition or provision of its charter documents; any applicable Law by which the Party is bound; any applicable court or administrative order or decree; or any agreement or contract to which it is a party. Further, each Party represents and warrants to the other Parties that, to the best of its knowledge and upon reasonable inquiry, there is no claim pending or threatened against it which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Mine Reclamation Agreement or which could result in the filing of any mechanic's or materialman's lien against the SJGS Plant Site.

15.0 RELATIONSHIP OF PARTIES

15.1 Several Obligations. The covenants, obligations and liabilities of the Parties are, except as otherwise specifically provided herein, intended to be several and not joint or collective.

Each Party will be individually responsible for its own covenants, obligations and liabilities as herein provided.

15.2 No Joint Venture or Partnership. Nothing in this Mine Reclamation Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties. No Party or group of Parties will be under the control of or will be deemed to control any other Party or the Parties as a group. Except as provided in this Mine Reclamation Agreement, the Restructuring Agreement and the Decommissioning Agreement, no Party will be the agent of or have a right or power to bind any other Party without its express written consent.

15.3 Parental Guaranty. As provided in the Restructuring Agreement, PNM Resources, Inc., will guarantee the obligations of PNMR-D under this Mine Reclamation Agreement.

16.0 SUCCESSORS AND ASSIGNS

16.1 Successors and Assigns. This Mine Reclamation Agreement will be binding upon and inures to the benefit of the Parties and their respective authorized successors and assigns.

16.2 Third Party Beneficiaries. SJCC is an intended third party beneficiary under this Mine Reclamation Agreement; provided, however, that if another party assumes SJCC's reclamation obligations, then SJCC will cease to be a third party beneficiary hereunder. Except as provided in the previous sentence, nothing in this Mine Reclamation Agreement will create or be deemed to create any third party beneficiary rights in any person not a party to this Mine Reclamation Agreement.

16.3 No Right to Mortgage. No Party will have the right to mortgage, create or provide for a security interest in or convey in trust its rights, titles and interests in a Reclamation Trust created pursuant to this Mine Reclamation Agreement, or in funds held in a Reclamation Trust created pursuant to this Mine Reclamation Agreement, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for their present or future bonds or other obligations or securities, and to any successors or assigns thereof.

16.4 Prior Written Consent. No Party may assign its rights, or delegate its obligations, under this Mine Reclamation Agreement, including as provided for in Section 17, without the prior written consent of the other Parties, which consent will not be unreasonably delayed or denied. Such prior consent of the other Parties will not be required in the event of the transfer or assignment by a Party of its interest in the Project to a duly authorized successor; provided, however, that such successor has agreed in writing with the remaining Parties to fully perform and discharge all of the obligations hereunder of the Assigning Party and the remaining Parties have agreed in writing to the substitution of the successor, in place of the Assigning Party, which consent will not be unreasonably delayed or denied.

17.0 OPT-IN/OPT-OUT ELECTION OF SUCCESSORS AND ASSIGNS

17.1 Protection of Parties' Rights. The Parties acknowledge that an Assigning Party's ("Assigning Party") assignee may not wish to elect the same status, of an Opt-in Participant or an Opt-out Participant, as the Assigning Party. The assignee of an Opt-in Participant (other than PNM) may elect to become an Opt-out Participant; or the assignee of an Opt-out Participant may elect to become an Opt-in Participant. The Parties desire to accommodate such assignee elections in a manner that will: (i) not unduly restrict or interfere with an Assigning Party's ability to transfer or assign its rights, titles and interests in the Project and under this Mine Reclamation Agreement; and (ii) assure that the rights and expectations of the non-assigning Parties, as well as SJCC and PNM, are fully protected by providing for appropriate levels of funding of a Reclamation Trust established by the assignee of the Assigning Party.

17.2 Assignee's Right of Election. An assignee of an Assigning Party will have the right to elect to become an Opt-in Participant or an Opt-out Participant, irrespective of the Assigning Party's status as an Opt-in Participant or an Opt-out Participant, subject to compliance with the provisions of Sections 17.3, 17.4 and 17.5; provided, however, that the assignee of PNM must he an Opt-in Participant. As a condition of the consummation of any transaction in which the Assigning Participant assigns its rights, titles and interests in the Project and under this Mine Reclamation Agreement to an assignee (a "Purchase Transaction"), the assignee will execute all legal instruments necessary to become, and to assume the rights, obligations and responsibilities of, an Opt-in Participant or an Opt-out Participant, as applicable. Among the contracts that the assignee must have executed in connection with a Purchase Transaction is a Reclamation Trust Agreement with a financial institution, consistent with the requirements of this Mine Reclamation Agreement. Pursuant to such Reclamation Trust Agreement, the assignee will establish and fund a Reclamation Trust with a Principal Reclamation Trust Fund and one or more Make-up Reclamation Trust Funds, as applicable.

17.3 Assignee's Funding of Principal Reclamation Trust Fund. The assignee will, effective as of the date of the consummation of the Purchase Transaction, fully fund its Principal Reclamation Trust Fund to the appropriate Reclamation Funding Target Amount. If the assignee elects to become an Opt-in Participant, it will satisfy its Reclamation Share of the Reclamation Funding Target Amount set out in Exhibit 1A and Exhibit 1D, as applicable, for December 31 of the year in which the consummation of the Purchase Transaction takes place. If the assignee elects to become an Opt-out Participant, it will satisfy its Reclamation Share of the Reclamation Funding Target Amount set out in Exhibit 1C and/or Exhibit 1F, as applicable, for December 31 of the year in which the consummation of the Purchase Transaction takes place. After the consummation of the Purchase Transaction, the assignee will maintain such Principal Reclamation Trust Fund in the same manner as would have been required of the Assigning Party if the Assigning Participant had originally held the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4 Assignee's Funding of Make-up Reclamation Trust Fund(s). The assignee will establish the same number of Make-up Reclamation Trust Fund(s) as held by the Assigning Party and will fund and maintain such Make-up Reclamation Trust Fund(s) as follows:

17.4.1 For any assignment effective on or before December 31, 2017, by an Assigning Party to an assignee that elects to change or not to change from the Assigning Party's status as an Opt-in Participant or an Opt-out Participant, the assignee will, on the effective date of the Purchase Transaction, fully fund its Make-up Reclamation Trust Fund to the Make-up Funding Curve that would have been applicable to the Assigning Party under the status of an Opt-in Participant or an Opt-out Participant elected by the assignee for December 31 of the year in which the Purchase Transaction is effective; and will maintain such Make-up Reclamation Trust Fund in the same manner as would have been required of the Assigning Party if the Assigning Party had originally held the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4.2 For any assignment effective at any time after December 31, 2017 (i) by an Assigning Party that is an Opt-in Participant to an assignee that elects to become an Opt-in Participant; or (ii) by an Assigning Party to an assignee that elects to change from the Assigning Party's status as either an Opt-in Participant or an Opt-out Participant, the assignee will, on the effective date of the Purchase Transaction, fully fund its Make-up Reclamation Trust Fund to the Make-up Funding Curve that would be applicable to the Assigning Party under the status (of an Opt-in Participant or an Opt-out Participant) elected by the assignee for December 31 of the year in which the Purchase Transaction is effective; and will maintain such Make-up Reclamation Trust Fund in the same manner as would have been required of the Assigning Party if the Assigning Party had originally held the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4.3 For any assignment effective at any time after December 31, 2017, by an Assigning Party that is an Opt-out Participant to an assignee that elects to become an Opt-out Participant, the assignee will, on the effective date of the Purchase Transaction, fund its Make-up Reclamation Trust Fund to the level of the Assigning Party's Make-up Reclamation Trust Fund on the effective date of the Purchase Transaction; and will maintain such Make-up Reclamation Trust Fund in the same manner that the Assigning Party was required to maintain such fund.

17.5 Assigning Party's Right of Refund. Upon an assignee's having: (i) executed all legal instruments necessary to become an Opt-in Participant or an Opt-out Participant, as applicable, as provided for in Section 17.2; (ii) fully funded its Principal Reclamation Trust Fund to its Reclamation Share of the applicable Reclamation Funding Target Amount consistent with Section 17.3; and (iii) fully funded its Reclamation Share of any applicable Make-up Reclamation Trust Fund consistent with Section 17.4, the Assigning Party will be: (x) released from further obligations under this Mine Reclamation Agreement; and (y) entitled to a return of all monies remaining in its Principal Reclamation Trust Fund and Make-up Reclamation Trust Fund.

18.0 AUDIT RIGHTS; RELATED DISPUTES

18.1 Right of Audit. The Reclamation Trust Funds Operating Agent will maintain complete and accurate records of all expenses and transactions for which a Party may have cost

responsibility under this Mine Reclamation Agreement. Such records will be maintained from the date an expense is billed to a Party hereunder for a period of the longer of: (i) the expiration of the statute of limitations for actions based on contract; or (ii) the date the records may be destroyed under the Reclamation Trust Funds Operating Agent's document retention policy. Any Party (an "Initiating Party") may, upon reasonable advance written notice to the Reclamation Trust Funds Operating Agent, conduct an audit of all records, invoices, costs, expenses or liabilities charged to the Initiating Party or for which the Initiating Party has or may have cost responsibility. Parties desiring to perform an audit will cooperate with one another so as to minimize the number of audits and any undue burden upon the Reclamation Trust Funds Operating Agent. Each such audit will be carried out by an auditor of the Initiating Party's choosing and at the expense of the Initiating Party, except as provided in Section 18.3. The Reclamation Trust Funds Operating Agent will cooperate with the Initiating Party and the Initiating Party's auditor and will make available its relevant business records at reasonable times and places, upon reasonable advance notice. A copy of the audit report will be provided to all Parties by the Initiating Party within fifteen (15) days of receipt of the audit report.

18.2 Dispute Resolution. If any Party disagrees with an audit finding from an audit conducted under Section 18.1, the Party may within fifteen (15) Business Days of the receipt of the audit report request in writing that the audit be reviewed by providing such request to all of the Parties. After any such request, the affected Parties will review the expenditure and will endeavor to agree upon whether an over- or under-billing occurred. If, after the review, the affected Parties determine that the expenditure was over- or under-billed, an adjustment to the billing that is the subject of the audit finding will be made to eliminate the over- or under-billing and an adjusted bill will be sent as provided for in Section 18.3. Each Party that receives a payment as a result of under- or over-billing will reimburse the Initiating Party as provided for in Section 18.3. If within thirty (30) Business Days of the date of the mailing of the written request for review the affected Parties are unable to agree in writing on a modification of the expenditure to eliminate the over- or under-billing, the matter will be submitted to dispute resolution pursuant to Section 13.

18.3 Adjusted Billing Procedures. If as the result of an audit and any related dispute resolution procedures under Section 13.1 or Section 13.2 it is determined that there was an under- or over-billing, the Reclamation Trust Funds Operating Agent will issue invoices to correct the under- or over-billing with interest at the Prime Rate (or any successor to that rate). Interest will be calculated from the due date for payments on the prior invoices that included the under-or over-billed amounts to the date of the revised billings. The owing Party will pay any amounts owed on the corrected invoices within twenty (20) Business Days after receipt of the revised billing reflecting the result of the audit report. Each Party (other than an Initiating Party) that receives a payment or credit as a result of an audit report will reimburse the Initiating Party for the cost of the audit based on the amount received by such Party as a percentage of the total amount of payments and credits received by Parties; provided, that if the amount received by a Party is less than the lower of (i) $5,000 or (ii) ten percent (10%) of the amount of the disputed billing, no reimbursement for the audit costs will be required.

18.4 Audit of Reclamation A&G Expenses. To the extent practicable, any audit of Reclamation A&G Expenses will be coordinated with audits of A&G expenses under any other San Juan Project-related agreements.

18.5 Effectiveness. The provisions of this Section 18 will become effective as of the Exit Date. Matters requiring audit arising before the Exit Date will be addressed in a manner consistent with the audit provisions of the SJPPA.

19.0 UNCONTROLLABLE FORCES

No Party will be considered to be in Default in the performance of any of its obligations hereunder (other than obligations of a Party to pay costs and expenses and to fully fund its Reclamation Trust (Principal Reclamation Trust Fund and any Make-up Reclamation Trust Fund)) if failure of performance is due to Uncontrollable Forces. The term "Uncontrollable Forces" means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, fire, lightning, epidemic or pandemic, war, riot, civil disturbance, labor dispute, sabotage or terrorism, restraint by court order or public authority, or failure to obtain approval from a necessary Governmental Authority which by exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it is unable to overcome. Nothing contained herein requires a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces will promptly provide notice to the other Parties and will exercise due diligence to remove such inability with all reasonable dispatch.

20.0 INVALID PROVISIONS

If any provision of this Mine Reclamation Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Mine Reclamation Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Mine Reclamation Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Mine Reclamation Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and the Parties will negotiate in good faith to attempt to agree upon a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

21.0 APPLICABLE LAW AND VENUE

21.1 Compliance with Law. The Parties will comply with all applicable Law in the performance of their respective obligations under this Mine Reclamation Agreement.

21.2 New Mexico Law. This Mine Reclamation Agreement is made under and will be governed by New Mexico law, without regard to any conflicts of Law or choice of Law principles that would require the application of the Law of a different jurisdiction.

21.3 Venue. Venue with respect to any judicial proceeding arising out of or relating to this Mine Reclamation Agreement will lie exclusively in the state or federal courts in Albuquerque, New Mexico and the Parties irrevocably consent and submit to the exclusive jurisdiction of such courts for such purpose and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner recognized by such courts. A final judgment of the state or federal court will be enforceable in other states under applicable Law.

22.0 ENTIRE AGREEMENT

22.1 Entire Agreement. This Mine Reclamation Agreement, together with all schedules and exhibits hereto and the Reclamation Trust Agreements, supersede all prior negotiations, agreements and understandings among the Parties with respect to the covenants and obligations agreed upon in this Mine Reclamation Agreement.

22.2 Amendment and Modification. Except as otherwise provided herein, the Parties may, at any time, amend, modify or supplement this Mine Reclamation Agreement in a writing executed by all the Parties.

22.3 Prior Obligations Unaffected. Except as otherwise provided herein, nothing in this Mine Reclamation Agreement will be deemed to relieve the Parties of their obligations in effect prior to the Effective Date and such obligations will continue in full force and effect until satisfied or as otherwise mutually agreed.

23.0 WAIVER

No waiver by the Reclamation Trust Funds Operating Agent or by any Party of any term or condition of this Mine Reclamation Agreement will be effective unless the Reclamation Trust Funds Operating Agent or Party granting such waiver does so in writing, and no such waiver or failure to insist upon strict compliance with any obligation, covenant, agreement or condition will operate as a waiver of, or estoppel with respect to, any other previous or subsequent default or matter. No delay short of the statutory period of limitations in asserting or enforcing any right hereunder will be deemed a waiver of such right.

24.0 NO INTERPRETATION AGAINST DRAFTER

This Mine Reclamation Agreement has been drafted with the full participation by all of the Parties and their counsel of choice, and no provision of this Mine Reclamation Agreement will be construed against any Party on the ground that such Party or its counsel was the author of such provision. All of the provisions of this Mine Reclamation Agreement will be construed in a reasonable manner to give effect to the intentions of the Parties in executing this Mine Reclamation Agreement.

25.0 INDEPENDENT COVENANTS

The covenants and obligations contained in this Mine Reclamation Agreement are independent covenants, not dependent covenants, and the obligation of a Party to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by another Party of all of the covenants and obligations to be kept and performed by it. Nothing in this Section 25 affects the rights of the Parties under the dispute resolution and default provisions of Sections 10.1 through 10.10.

26.0 OTHER DOCUMENTS

Each Party agrees, upon request by another Party, to make, execute and deliver any and all documents and instruments reasonably required to carry into effect the terms of this Mine Reclamation Agreement; provided that such documents and instruments will not increase or expand the obligations of a Party hereunder.

27.0 NOTICES

27.1 Manner of Giving of Notice. Any notice, demand or request provided for in this Mine Reclamation Agreement, or served, given or made in connection with it, will be deemed properly served, given or made (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day after mailing if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next Business Day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

27.1.1 Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

with a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

27.1.2 Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

27.1.3 City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

with a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

27.1.4 M-S-R Public Power Agency
c/o General Manager
1231 11th Street
Modesto, CA 95354

27.1.5 Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

27.1.6 City of Anaheim
c/o City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

27.1.7 Incorporated County of
Los Alamos, New Mexico
c/o County Clerk
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of
Los Alamos, New Mexico

c/o Utilities Manager
P.O Drawer 1030
170 Central Park Square
Suite 130
Los Alamos, NM 87544

27.1.8 Utah Associated Municipal Power Systems
c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

27.1.9 Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

27.1.10 PNMR Development and Management Corporation
c/o Corporate Secretary
PNM Resources
Corporate Headquarters
414 Silver Ave. SW
Albuquerque, NM 87158-1245

27.2 Notices to SJCC. Any notices provided hereunder to be delivered or given to SJCC will be provided to the persons specified below:

27.2.1 San Juan Coal Company
300 West Arrington, Suite 200
Farmington, NM 87401
Attn: President

with a copy addressed as follows:

San Juan Coal Company
P.O. Box 155
Fruitland, NM 87416
Attn: San Juan Mine Manager

27.3 Changes in Designation. A Party or SJCC may, at any time or from time-to-time, by written notice to the other Parties and SJCC, change the designation or address of the person so specified as the one to receive notices pursuant to this Mine Reclamation Agreement.

28.0 CAPTIONS AND HEADINGS

The captions and headings appearing in this Mine Reclamation Agreement are inserted merely to facilitate reference and have no bearing upon the interpretation of the provisions hereof.

29.0 EFFECT OF MUNICIPAL LAW

29.1 Farmington and Los Alamos. Farmington (and the Farmington Electric Utility System) and Los Alamos are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington or the Farmington Electric Utility System or Los Alamos in this Mine Reclamation Agreement will be limited by the provisions of the New Mexico Tort Claims Act. Notwithstanding any other provision of this Mine Reclamation Agreement, the payment for all purchases, fees or charges made by Farmington and Los Alamos under this Mine Reclamation Agreement will be made from the legally-available revenues of Farmington's and/or Los Alamos's Electric Utility System. In no event will the obligation to pay under this Mine Reclamation Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or Los Alamos.

29.2 Anaheim and M-S-R. Anaheim (which includes its Public Utilities Department) and M-S-R are governmental entities whose liability is limited by the California Government Claims Act (Government Code §§ 810 – 998.3) and any liability or indemnity assumed by Anaheim or M-S-R in this Mine Reclamation Agreement will be limited by the provisions of the California Government Claims Act. Nothing in this Mine Reclamation Agreement is intended to create or will be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend which is against public policy, void and unenforceable. Notwithstanding any other provision of this Mine Reclamation Agreement, the payment for all purchases, fees or charges made by Anaheim or M-S-R under this Mine Reclamation Agreement will be made from the legally-available revenues of M-S-R or the legally-available revenues of the Anaheim Electric System. In no event will the obligation to pay under this Mine Reclamation Agreement be considered an obligation against the general faith and credit or general taxing power of Anaheim or of M-S-R or any of the members of M-S-R.

29.3 Southern California Public Power Authority. SCPPA is a joint exercise of powers agency organized under the laws of the State of California, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of SCPPA.

29.4 Utah Associated Municipal Power Systems. UAMPS is a joint action agency organized under the laws of the State of Utah, created to acquire, construct, finance, operate and

maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of UAMPS.

30.0 PARTIES' COST RESPONSIBILITIES

Except for costs incurred by the Reclamation Trust Funds Operating Agent in its capacity as Reclamation Trust Funds Operating Agent, each Party will be solely responsible for its own costs and expenses, including fees and costs of counsel, incurred in connection with the negotiation of this Mine Reclamation Agreement and with any actions associated with the implementation of this Mine Reclamation Agreement.

31.0 CONFIDENTIALITY

31.1 Confidentiality of Negotiations. The Parties' discussions and negotiations that led to the development of this Mine Reclamation Agreement, the Restructuring Agreement, the Decommissioning Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment, including discussions taking place in the context of mediation, were conducted in confidence and will remain confidential; provided, that nothing herein will prevent a Party from making disclosures pursuant to a requirement of Law (including Laws related to the inspection of public records and securities), including subpoena or discovery request. If any Party determines that it is legally obligated to make a disclosure, the Party obligated to make such disclosure will make reasonable efforts to notify the other Parties prior to such disclosure and will reasonably cooperate with any other Party in seeking an order of a Governmental Authority preventing or limiting such disclosure; provided further, however, that the Party seeking any such order to prevent or limit disclosure will be responsible for all costs for seeking such an order. Prior to making disclosure, a Party will, as available or appropriate, attempt to utilize a confidentiality agreement to protect the confidentiality of the information disclosed.

31.2 Non-confidentiality of Mine Reclamation Agreement. While negotiations were and remain confidential as addressed in Section 32.1, neither this Mine Reclamation Agreement nor any version of it publicly disposed pursuant to applicable Law is confidential.

32.0 ORIGINAL TRUST FUNDS AGREEMENT

Upon the Effective Date of this Mine Reclamation Agreement, the Original Trust Funds Agreement is superseded by this Mine Reclamation Agreement.

33.0 LIMITATIONS ON DAMAGES

In no event will any Party be liable under any provision of this Mine Reclamation Agreement for any indirect, punitive or incidental damages or costs of any other Party (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and the Parties hereby waive, release and discharge one another from all such indirect, punitive and incidental damages and costs.

34.0 EXECUTION IN COUNTERPARTS

This Mine Reclamation Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the Parties to the aggregated counterparts had signed the same instrument. Any signature page of this Mine Reclamation Agreement may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon and may be attached to any other counterpart of this Mine Reclamation Agreement identical in form thereto but having attached to it one or more additional pages. Electronic or pdf signatures will have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties have caused this Mine Reclamation Agreement to be executed on their behalf, and the signatories hereto represent that they have been duly authorized to enter into this Mine Reclamation Agreement on behalf of the Party for whom they signed.

[Signatures on succeeding pages]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Its: _____
Dated: _____

TUCSON ELECTRIC POWER COMPANY

By: _____
Its: _____
Dated: _____

THE CITY OF FARMINGTON, NEW MEXICO

By: _____
Its: _____
Dated: _____

M-S-R PUBLIC POWER AGENCY

By: _____
Its: _____
Dated: _____

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Its: _____
Dated: _____

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Its: _____
Dated: _____

CITY OF ANAHEIM

By: _____
Its: _____
Dated: _____

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: _____
Its: _____
Dated: _____

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

By: _____
Its: _____
Dated: _____

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

By: _____
Its: _____
Dated: _____

EXHIBIT 1A: RECLAMATION FUNDING CURVES FOR 70%/30% EQUITY/FIXED INCOME PORTFOLIO

Note: Exhibit 1A is subject to adjustment as provided for in this Mine Reclamation Agreement.

Year	Funding Target Curve	Funding Target Floor
2014	$ 11,150,315	$ 8,920,252
2015	$ 21,122,757	$ 16,898,206
2016	$ 30,430,895	$ 24,344,716
2017	$ 40,517,946	$ 32,414,357
2018	$ 51,449,093	$ 43,217,238
2019	$ 63,294,968	$ 55,699,572
2020	$ 76,132,118	$ 70,041,549
2021	$ 90,043,494	$ 86,441,754
2022	$ 105,118,988	$ 105,118,988
2023	$ 91,366,063	$ 91,366,063
2024	$ 75,838,282	$ 75,838,282
2025	$ 56,074,220	$ 56,074,220
2026	$ 42,109,553	$ 42,109,553
2027	$ 26,681,069	$ 26,681,069
2028	$ 9,073,047	$ 9,073,047
2029	$ 8,609,561	$ 8,609,561
2030	$ 8,070,609	$ 8,070,609
2031	$ 7,448,774	$ 7,448,774
2032	$ 6,735,987	$ 6,735,987
2033	$ 5,923,471	$ 5,923,471
2034	$ 5,001,676	$ 5,001,676
2035	$ 3,960,221	$ 3,960,221
2036	$ 2,787,815	$ 2,787,815
2037	$ 1,472,188	$ 1,472,188
2038	$ (0)	$ (0)

Exhibit 1B: Reclamation Funding Curves for Fixed Income Portfolio

Note: Exhibit 1B is subject to adjustment as provided in this Mine Reclamation Agreement.

Year	Funding Target Curve	Funding Target Floor
2014	$ 22,287,687	$ 19,613,164
2015	$ 52,248,092	$ 48,068,244
2016	$ 93,217,851	$ 89,489,137
2017	$ 135,135,334	$ 135,135,334
2018	$ 131,259,095	$ 131,259,095
2019	$ 128,320,382	$ 128,320,382
2020	$ 128,128,506	$ 128,128,506
2021	$ 127,921,529	$ 127,921,529
2022	$ 126,823,566	$ 126,823,566
2023	$ 107,846,902	$ 107,846,902
2024	$ 87,824,949	$ 87,824,949
2025	$ 64,486,169	$ 64,486,169
2026	$ 47,849,570	$ 47,849,570
2027	$ 30,541,256	$ 30,541,256
2028	$ 11,969,273	$ 11,969,273
2029	$ 11,058,072	$ 11,058,072
2030	$ 10,090,150	$ 10,090,150
2031	$ 9,063,126	$ 9,063,126
2032	$ 7,974,532	$ 7,974,532
2033	$ 6,821,809	$ 6,821,809
2034	$ 5,602,305	$ 5,602,305
2035	$ 4,313,272	$ 4,313,272
2036	$ 2,951,862	$ 2,951,862
2037	$ 1,515,124	$ 1,515,124
2038	$ 0	$ 0

Exhibit 1C: Fixed Income Portfolio Reclamation Funding Curve with 3% Risk Adjustment

Note: Exhibit 1C is subject to adjustment as provided in this Mine Reclamation Agreement.

Year	Funding Target Curve	Funding Target Floor
2014	$ 22,287,687	$ 19,613,164
2015	$ 52,248,092	$ 48,068,244
2016	$ 93,217,851	$ 89,489,137
2017	$ 139,189,394	$ 139,189,394
2018	$ 135,196,868	$ 135,196,868
2019	$ 132,169,994	$ 132,169,994
2020	$ 131,972,361	$ 131,972,361
2021	$ 131,759,174	$ 131,759,174
2022	$ 130,628,273	$ 130,628,273
2023	$ 111,082,309	$ 111,082,309
2024	$ 90,459,697	$ 90,459,697
2025	$ 66,420,754	$ 66,420,754
2026	$ 49,285,057	$ 49,285,057
2027	$ 31,457,494	$ 31,457,494
2028	$ 12,328,352	$ 12,328,352
2029	$ 11,389,814	$ 11,389,814
2030	$ 10,392,854	$ 10,392,854
2031	$ 9,335,020	$ 9,335,020
2032	$ 8,213,768	$ 8,213,768
2033	$ 7,026,463	$ 7,026,463
2034	$ 5,770,374	$ 5,770,374
2035	$ 4,442,670	$ 4,442,670
2036	$ 3,040,418	$ 3,040,418
2037	$ 1,560,577	$ 1,560,577
2038	$ 0	$ 0

EXHIBIT 2

PERMITTED INVESTMENTS

Consistent with Section 4.2 of the Mine Reclamation Agreement, the following Permitted Investments standards are established for investments in the Parties' Trusts. These standards will apply until such time as they may be amended as provided for in the Mine Reclamation Agreement.

Each Party will invest the funds in its Trust pursuant to its investment objectives, risk tolerance and policies, if any. To the extent the Party exercises discretion in the investment of such funds, the investments must be prudent, reasonably diversified, and must be demonstrably capable of liquidation to provide funds for the payment of Reclamation Costs hereunder. Trust funds will be maintained and invested only in Permitted Investments. Permitted Investments include any of the following:

A. Opt-out Participants' Fund Investments Criteria and Permitted Investments

1. Cash and Cash Equivalents. Cash and cash equivalents will include (i) legal tender of the United States of America and (ii) deposits in federally insured national or state banks that are payable on demand.

2. Acceptable Debt Securities. Acceptable debt securities include:
Obligations of the United States of America, which are taken into consideration for purposes of determining the public debt limit of the United States of America;

   a. Obligations issued or guaranteed by a person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America, including, without limitation, obligations of the Federal National Mortgage Association, Federal Intermediate Credit Bank, Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation and Government National Mortgage Association;

   b. Commercial paper maturing within two hundred seventy (270) days of the highest ranking or of the highest letter and number rating as provided for by at least two Nationally Recognized Statistical Rating Organizations ("NRSRO");

   c. Deposit accounts (which may be represented by certificates of deposit) payable on demand or maturing within three hundred ninety-seven (397) days, in federally insured national or state banks; provided, however, if the aggregate amount of such deposit accounts in a bank is one million dollars ($1,000,000) or more, such bank will have combined capital and surplus, as of its last report of condition, exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of investment grade;

d. Repurchase agreements, fully secured [and delivery accepted] by any of the foregoing obligations or securities, maturing within ninety-two (92) days with any federally insured national or state bank or any other financial institution that is a nationally recognized dealer that reports to the Market Reports Division of the Federal Reserve Bank of New York; provided, however, if the aggregate face amount of such repurchase agreements with an issuer is one million dollars ($1,000,000) or more, the issuer will have combined capital and surplus exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of investment grade;

e. Bonds issued by any state, any possession of the United States of America, the District of Columbia, or any political subdivision thereof, any state agency or any municipal corporation that are rated A2/A/A or better by Moody's Investor Service ("Moody's"), Standard & Poor's Corporation ("S&P"), Fitch Ratings ("Fitch") or other NRSRO or, if not rated by any such service, are given a rating comparable to or better than the aforementioned ratings by the investment manager engaged by a Party to manage the investments of its Trust;

f. Bankers acceptances with a maximum maturity of one hundred eighty (180) days issued by qualified banks which have a long term debt rating of A2/A/A or higher by Moody's, S&P or Fitch; and

g. Forward delivery agreements (sometimes referred to as guaranteed investment contracts) with a federally-insured national or state bank, and such bank will have combined capital and surplus, as of its last report of condition, exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of A2/A/A or higher by Moody's, S&P or Fitch.

3. Pooled Funds. Acceptable pooled funds are funds that are invested in what are otherwise considered Permitted Investments listed above for an Opt-out Participant and that are Securities and Exchange Commission ("SEC")-registered mutual funds, bank commingled funds, or pooled funds of registered investment advisors whose portfolio is designed to track a fixed income market index.

4. Interests in Property. Acceptable interests in property are those debt securities issued by any governmental agency secured by real and/or personal property pledged as collateral.

5. Other Permitted Investments. Other Permitted Investments are those investments not included in the foregoing paragraphs 1 through 4, above, that the Reclamation Investment Committee will have approved.

B. Opt-in Participants' Fund Investments Criteria and Permitted Investments
In addition to the Permitted Investments in Section A, above, for Opt-out Participants, Opt-in Participants may also be invested in the following:

1. Equity Securities. Equity securities are high-quality equity securities (i.e., common, preferred or preference stock) listed on a major domestic or international stock exchange or traded on a nationally recognized trading network.

2. Corporate Debt Securities. Bonds issued by a private corporation rated A2/A/A or better by Moody's, S&P, Fitch or other NRSRO or, if not rated by any such service, are given a rating comparable to or better than the aforementioned ratings by the investment manager engaged by a Party to manage the investments in its Trust.

3. Derivatives. Derivative instruments, defined as financial instruments whose value is derived, in whole or in part, from the value of any one or more underlying securities or assets, an index of securities or assets, or a risk factor.

   a. Derivatives include futures contracts, forward contracts, swaps and all forms of options, but will not include a broader range of securities including mortgage backed securities, structured notes, convertible bonds, and exchange traded funds ("ETFs").
   b. The management of the derivatives instrument(s) must be outside the administrative control of the Party.
   c. Any counterparty in an "over-the-counter" derivative transaction with the Trust must have a credit rating no lower than A2/A/A from Moody's, S&P or Fitch, respectively. Should the credit rating of a counterparty be downgraded below the aforementioned ratings, the total effective exposure of a derivative position will be excluded from the Trust's liquidation value.
   d. The use of derivatives will not be used for speculation but with the intent to hedge risk in portfolios or to implement investment strategies more effectively and at a lower cost than would be possible in the cash markets.
   e. Derivative transactions, which result in the creation of economic leverage, are prohibited. Economic leverage is defined as a net dollar exposure to assets in excess of the dollar amount of invested capital as measured by current market value.

4. Private Real Estate Investments. Trusts may invest in real estate assets, either directly or through a fund-of-funds, limited partnership, joint venture or other pooled investment funds.

5. Commodities. Trusts are prohibited from investing directly in commodity assets. Trusts may invest in commodity assets through a common or collective fund, ETF, or with the use of derivatives.

6. Pooled Funds. Pooled Funds are funds that are invested in what are otherwise considered permitted investments and that are SEC-registered mutual funds, bank commingled funds, or pooled funds of registered investment advisors whose portfolio is designed to track an equity or fixed income market index and which may include the use of derivatives.

C. Exclusions from Permitted Investments. Investments in the following securities are not permitted by either Opt-out Participants or Opt-in Participants:

1. Securities of any nature issued by any Party or any parent or affiliated company of any Party;

2. Securities of any nature issued by any governmental agency or public or private corporation which is in default on the payment of the principal or interest of any outstanding debt or has discontinued the payment of dividends on any of its outstanding equity securities; and

3. Securities of any nature issued by any governmental agency or public or private corporation which has been declared bankrupt or which is the subject of a petition for bankruptcy pending in any court.

D. Restrictions and Prohibitions. Subject to the foregoing, Parties will adhere to the following restrictions and prohibitions in their Trust investments:

1. Transactions with current or prospective related parties ("self dealing"), including individuals employed by a Party, and a parent or affiliated company of a Party, are prohibited. Securities lending will not be considered a "self dealing" transaction.

2. The average credit quality of a Trust's fixed income securities will be rated an equivalent "A2/A/A" or higher by Moody's, S&P, or Fitch respectively. If all three rating agencies rate a security, the middle rating will be used. When two agencies rate a security, the lower rating will be used. If the security is not rated by one of the three rating agencies listed above, the investment manager's internal rating will be used. The market value of unrated securities cannot exceed 5% of the aggregate market value of a Trust's fixed income allocation. Cash and cash equivalent securities will be rated an equivalent "Aaa/AAA/AAA" or "P-1, A-1, F1" by Moody's, S&P, or Fitch respectively.

3. Securities lending is permitted, provided that the program's collateral investment vehicle complies with the standards for Permitted Investments contained herein.

EXHIBIT 3

MANDATORY PROVISIONS

Trust provisions substantially as shown below are considered to be the "Mandatory Provisions" for the individual Party Reclamation Trust Agreements (each a "Trust Agreement"), as required by Section 4.1 of the Amended and Restated Mine Reclamation Agreement among the San Juan Project Participants and PNMR Development and Management Corporation (for purposes of this Exhibit 3, the "Mine Reclamation Agreement"). This language (and the utilized defined terms and section numbers and references) is excerpted from a generic form of Trust Agreement approved by the Parties. For purposes of this Exhibit 3, "Party A" refers to the Party that is a party to a Trust Agreement entered into pursuant to the terms of the Mine Reclamation Agreement.

1.2 Purpose. The purpose of this Agreement is to provide funding for the payment to SJCC of certain coal mine reclamation costs, in accordance with Party A's obligations as set out in the Mine Reclamation Agreement.

2.1 Identification of Beneficiary. The beneficiary of this Trust ("Beneficiary") is SJCC.

2.2 Settlor's Relinquishment of Beneficial Interest. Party A, as settlor of the Trust, retains no beneficial interest in the funds held in trust, except: (i) the right to a return of any funds that may remain in the Principal Trust Fund after the purposes of the Trust have been accomplished; and (ii) the right to a return of any funds remaining in a Make-up Reclamation Trust Fund after the purposes of the Make-up Reclamation Trust Fund have been accomplished.

3.1 Principal Trust Fund. Party A hereby establishes and is funding herewith the Principal Trust Fund in accordance with the Mine Reclamation Agreement. Funds may be disbursed from the Principal Trust Fund for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Trust Account, including the fees and expenses of the Trustee; and (b) to pay Party A's Reclamation Share (as defined in Section 3.3 of the Mine Reclamation Agreement) of reclamation costs pursuant to invoices rendered to Party A by the Reclamation Trust Funds Operating Agent (as that term is defined in the Mine Reclamation Agreement) and approved for payment by Party A. The Trustee will pay funds out of the Principal Trust Fund in accordance with the following procedures. The Reclamation Trust Funds Operating Agent will bill Party A, in writing, for reclamation costs invoiced by SJCC at least ten (10) Business Days prior to the date that payment is due SJCC. Party A will promptly review such invoice and, upon Party A's review and approval of such invoice from the Reclamation Trust Funds Operating Agent, will direct the Trustee to pay such invoice by making payment out of the assets of the Principal Trust Fund, in immediately available funds, to SJCC. Upon the making of such payment, the Trustee will provide notice of such payment to Party A and to the Reclamation Trust Funds Operating Agent. Party A will provide the Trustee with appropriate wiring instructions for the making of payments in immediately available funds to SJCC. Party A will notify the Trustee of the identity of the Reclamation Trust Funds Operating

Agent and of any changes in the Trust Fund Operating Agent. Subject to and in accordance with the terms and conditions hereof, the Trustee agrees that it will receive, hold in trust, invest, reinvest, and release, disburse or distribute the funds in the Trust Account ("Trust Funds"). All interest and other earnings on the Trust Funds will become a part of the Trust Account and the Trust Funds for all purposes, and all losses resulting from the investment or reinvestment thereof from time to time, and all amounts charged thereto to compensate or reimburse the Trustee for amounts owing to it hereunder from time to time, will be set off against the Trust Funds, from the time of such loss or charge, and thereafter no longer will constitute part of the Trust Funds.

3.2 Make-up Reclamation Trust Fund(s). In the event of certain defaults by another Party under the Mine Reclamation Agreement, Party A is required by the Mine Reclamation Agreement to establish a separate segregated portion of the Trust Account (which will be unique for each defaulting Party) under the Mine Reclamation Agreement, to be denominated the "Make-up Reclamation Trust Fund", to provide funding for Party A's Reclamation Share of the shortfall created by such default in the defaulting Party's trust account. Except as herein otherwise provided, the funds in the Make-up Reclamation Trust Fund will be treated identically with funds in the Principal Trust Fund and will be available for payment of reclamation costs by the Trustee to the extent insufficient funds are available in Party A's Principal Trust Fund; provided, however, if the defaulting Party cures its default, and notice thereof is provided to the Trustee and Party A by the Reclamation Trust Funds Operating Agent, then the funds in Party A's Make-up Reclamation Trust Fund will be returned by the Trustee to Party A upon written request to the Trustee from Party A.

3.3 Funding Provisions. Party A will fund the Trust Account (including the Principal Trust Fund and any Make-up Reclamation Trust Fund(s)) according to the terms set forth in the Mine Reclamation Agreement. The Trustee will have no obligation to take any action whatsoever in connection with Participant A's funding of the Trust, or to enforce any obligations that Participant A has, or may have, under the Mine Reclamation Agreement with respect to the funding of the Trust.

4.1 Modifications. A Trust created pursuant to this Agreement is irrevocable and will not be modified by Party A in a manner that (i) is inconsistent with the Mine Reclamation Agreement; or (ii) will adversely affect the interests of the Beneficiary. It will be a condition to any modification of this Agreement that Party A will have certified to the Trustee that such modification is not inconsistent with the Mine Reclamation Agreement and will not adversely affect the interests of the Beneficiary. In no circumstance will this Agreement be modified in a way that impacts the Trustee's rights or duties, without the Trustee's prior written consent.

5.1 Good Faith Duties of Administration. The Trustee will exercise reasonable care, skill and caution in the administration of the Trust and will administer the Trust in good faith, in accordance with the terms of this Agreement. The Trustee will take reasonable steps to protect the Trust Property.

5.2 No Conflicts of Interest. The Trust will be administered solely in the interests of the Beneficiary. The Trustee will not permit to exist a conflict of interest between its duties

under this Agreement and its personal interests and will keep the Trust property separate from the Trustee's own property.

6.1(k) Trustee Records and Reports. The Trustee will keep or cause to be kept and maintained accurate books and records reflecting all income, principal and expense transactions, which books and records will be open at all reasonable times for inspection by Party A or its duly authorized representatives, upon at least two (2) Business Days' prior written notice to the Trustee. The Trustee will furnish statements to Party A and PNM at least as often as annually, as directed by Party A. The Trustee will promptly respond to requests for information related to the administration of the Trust from Party A. When applicable and required by applicable regulations, the Trustee will issue annual IRS Form 1099.

6.1(l) Scope of Undertaking. The Trustee [, as a fiduciary] [Party A and the Trustee may insert this language or omit it] will be subject to and will perform all duties in accordance with [this Agreement] [all rules of law relating to fiduciaries and trustees] [Party A and the Trustee may insert either of the bracketed phrases.]. The Trustee will perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants, agreements or duties will be read into this Agreement against the Trustee. The Trustee will have no duty to perform, cause the performance of, manage, monitor, evaluate or approve the reclamation work. The Trustee is not a principal, participant, or beneficiary in any transaction underlying this Agreement and will have no duty to inquire beyond the terms and provisions of this Agreement except as specifically provided herein. The Trustee will not be required to deliver the Trust Funds or any part thereof, or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold in trust, invest, reinvest, and release, disburse or distribute the Trust Funds as herein provided. The Trustee will not be required to notify or obtain the consent, approval, authorization or order of any court or governmental body to perform its obligations under this Agreement, except as expressly provided herein. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the Parties that, unless otherwise provided herein, the Trustee will not be required to exercise any discretion hereunder and will have no investment or management responsibility and, accordingly, will have no duty to, or liability for its failure to, provide investment recommendations or investment advice to Party A. The Trustee will not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, subject, however, to Section 6.1(m) (if applicable), and its own willful misconduct or [negligence] [gross negligence] [Party A and the Trustee may agree upon either standard]. It is the intention of the Parties that the Trustee will not be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

7.1 Termination of Trust and of this Agreement. The Trust and this Agreement will terminate upon satisfaction of Party A's obligations under the Mine Reclamation Agreement; provided, however, that in the event all fees, expenses, costs and other amounts required to be paid to the Trustee hereunder are not fully and finally paid prior to termination, the provisions of Section 9.1 will survive the termination hereof, and provided further, that the provisions of Section 6.1(n) and Section 6.1(p) if applicable) will, in any event, survive the termination hereof. Notice of termination of the Trust and of this Agreement will be provided to the Trustee in the following manner: The Trust Funds Operating Agent will give written notice to Party A, to each

of the other Parties, and to the Trustee that Party A's obligations under the Mine Reclamation Agreement have been satisfied.

7.2 Distribution of Assets. Until satisfaction of Party A's obligations under the Mine Reclamation Agreement, Party A will have no right of return of any of the Trust Assets; provided, however, that consistent with the provisions and requirements of Section 3.2, the Trustee will, after payment of the fees and expenses of the Trustee, return funds in Party A's Make-up Reclamation Trust Account upon written request of Party A if the default by a Party to the Mine Reclamation Agreement that led to the creation of the Make-up Reclamation Trust Account has been cured. Upon the termination of this Agreement, the Trustee will distribute any remaining assets in the Trust Account to Party A.

11.2 Spendthrift Clause. The interest of the Beneficiary is held subject to a spendthrift trust. No interest in the Trust Funds established pursuant to this Agreement will be transferable or assignable, voluntarily or involuntarily, or be subject to the claims of Party A or its creditors, PNM or its creditors or SJCC or its creditors other than as provided in the Mine Reclamation Agreement.

11.3 Tax Matters. Party A will provide the Trustee with its taxpayer identification number documented by an appropriate Form W8 or W9 (or other appropriate identification information for tax purposes) upon execution of this Agreement. Failure to provide such form may prevent or delay disbursements from the Trust Funds and may also result in the assessment of a penalty and the requirement that the Trustee withhold tax on any interest or other income earned on the Trust Funds. The Parties agree that, for all tax purposes, all interest or other income, gain, or loss from investment of the Trust Funds, as of the end of each calendar year and to the extent required by the Internal Revenue Service or other taxing authority, will be reported as having been earned or lost, as the case may be, by Party A. Any payments of income will be subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable.

11.15 Third Party Beneficiaries. Nothing in this Agreement will entitle any person other than the Parties and SJCC to any claim, cause of action, remedy, or right of any kind, except the rights expressly provided to the persons described in Section 6.1(p) (if applicable).

EXHIBIT 4

ASSUMPTIONS, PROCEDURES AND PRINCIPLES FOR REVISIONS TO EXHIBITS 1A, 1B, 1C, 1D, 1E AND 1F

1. General Principles and Assumptions for Reclamation Funding Curve Revision Calculations:

    a. Contributions of principal and all expenses due to Reclamation Costs are assumed to occur annually at mid-year.
    b. Compounding of Reclamation Trust investment earnings is modeled to occur on a semi-annual basis using the beginning balance for each semi-annual period.
    c. The starting balance for revised Reclamation Funding Curves will be the Reclamation Funding Target Amount of the respective Reclamation Funding Curves being replaced for the calendar year immediately preceding the year in which the Reclamation Costs Review to which the curve is being revised is approved by the Reclamation Oversight Committee.
    d. Revised Reclamation Funding Curves will become effective during the calendar year of their approval.
    e. Any taxes due on Reclamation Trust income were assumed to be paid with funds originating outside of the Trust.
    f. Exhibits 1A, 1B & 1C will be based on the Pre-2017YE Reclamation Liability Costs
    g. Exhibits 1D, 1E & 1F will be based on the Post-2017YE Reclamation Liability Costs
    h. The Reclamation Funding Floor Curves for all Reclamation Funding Curves will be calculated as per §5 of this Exhibit 4.

2. Assumptions Pertaining Only for Purposes of Calculating Opt-in Reclamation Funding Curves:

    a. Investment returns for Opt-in Reclamation Funding Curves will be modeled using an appropriate return rate for a 70%/30% equity/fixed income portfolio return as evidenced in third party return rate studies as exemplified in Exhibit 5.
    b. Full Principal Funding Date:
        i. Revisions to Opt-in Reclamation Funding Curves (Exhibit 1A and Exhibit 1D) for a Reclamation Costs Review that is approved prior to the expiration of the CSA, its successor or replacement agreement, will be calculated with a Full Principal Funding Date equal to the expiration date of the CSA, its successor or replacement agreement, except that, for PNM, prior to January 1, 2018, the Full Principal Funding Date will remain as year-end 2022.
        ii. Revisions to Opt-in Reclamation Funding Curves (Exhibit 1A and Exhibit 1D) for a Reclamation Costs Review that is approved after the expiration of the CSA, its successor or replacement agreement, will be calculated

with a Full Principal Funding Date of December 31 of the calendar year in which the Reclamation Costs Review was approved by the Reclamation Oversight Committee.

c. All expenses due to Reclamation Costs that are due prior to the expiration of the CSA, its successor or replacement agreement, are assumed to be paid for by funds originating outside the Reclamation Trust.

3. Assumptions Pertaining Only for Purposes of Calculating Opt-out Reclamation Funding Curves

   a. Investment returns for Opt-out Reclamation Funding Curves will be modeled using an appropriate return rate for long term fixed income investments as evidenced in third party return rate studies as exemplified in Exhibit 5.
   b. Full Principal Funding Date: Revisions to Opt-out Reclamation Funding Curves made before December 31, 2017 will have a Full Principal Funding Date of December 31, 2017. Revisions to Opt-out Reclamation Funding Curves that are made after December 31, 2017 will have a Full Principal Funding Date of December 31 of the calendar year in which the Reclamation Costs Review upon which the revisions are based was approved.
   c. For calculating Opt-out Funding Curves, all expenses due to Reclamation Costs that are due prior to December 31, 2017 are assumed to be paid for by funds external to the Reclamation Trust.
   d. All expenses due to Reclamation Costs that are due after December 31, 2017 are assumed to be paid for by funds originating from the Reclamation Trust.
   e. A risk adjustment factor of 3% will be added to the Reclamation Funding Target Amounts of the revised Exhibits 1B and 1E for each year after 2016 in order to create revisions to Exhibits 1C and 1F respectively.

4. Calculation of Reclamation Funding Curves:

   a. The revision of Reclamation Funding Curves begins when an updated Reclamation Costs Review has been approved by the Reclamation Oversight Committee. The constant dollar, annual reclamation expenditures that were identified through the Reclamation Costs Review are converted to nominal dollars using escalation/inflation assumptions provided by the Reclamation Investment Committee resulting in a stream of costs for Reclamation Costs through Reclamation Bond Release. This stream of costs forms the basis for calculation of the revised Opt-in or Opt-out Reclamation Funding Target Curves.

   b. For purposes of calculating revised Reclamation Funding Target Curves, the starting balance will be the respective (Opt-in vs. Opt-out) precedent funding curve's Reclamation Funding Target Amount for the calendar year immediately preceding that in which the Reclamation Costs Review was approved. Note that, for revisions of the Opt-out Reclamation Funding Target Curves (Exhibit 1C and Exhibit 1F) the appropriate value for Exhibit 1B and Exhibit 1E must be used for this calculation. This is because the 3% risk adjustment factor is added to the

resulting Exhibit 1B or 1E Reclamation Funding Target Amounts that occur on or after the Full Principal Funding Date in order to create Exhibits 1C and 1F respectively.

c. By definition, the respective Reclamation Funding Target Amounts at the Full Principal Funding Date, for Exhibits 1A, 1B, 1D and 1E, is equal to the net present value (NPV) of all future cash flows associated with the Reclamation Trust when discounted at the appropriate return rate and assuming no additional contributions of principal capital. Once the Reclamation Funding Target Amount of the Full Principal Funding Date has been determined for a given Reclamation Funding Target Curve, a solution for the capital contribution(s) can be determined by assuming one equal capital contribution for each calendar year between the year of the starting balance of the revised Reclamation Funding Target Curve and the Full Principal Funding Date. To calculate a revised Reclamation Funding Target Curve, the beginning balance of each year in the revised Reclamation Funding Target Curve is netted with all cash flows associated with the Reclamation Trust in each respective year, including principal capital contributions; the stream of Reclamation Costs; and Reclamation Trust investment income to determine an ending balance for each year. The resulting respective (Opt-in or Opt-out) schedule of year-end balances for the period in question is the Reclamation Funding Target Curve for Fxhibit 1A and 1B (for Pre-2017YE Reclamation Liability Costs) or, Exhibit 1D and 1E (for Post 2017YE Liability Costs). Exhibit 1C is computed by adding 3% to the Reclamation Funding Target Amount of each year of Exhibit 1B after 2016. Exhibit 1F is computed by adding 3% to the Reclamation Funding Target Amount of each year of Exhibit 1E after 2016.

5. Calculation of Reclamation Funding Floor Curves:

The Reclamation Funding Floor Curve is calculated by multiplying each Reclamation Funding Target Amount by the applicable Funding Floor Percentage shown in Table 1 of this Exhibit 4 for each respective year. In general the Reclamation Funding Floor Curve rises to 100% of the Reclamation Funding Target Curve over the five years immediately prior to the Full Principal Funding Date. Prior to the five year period during which the Funding Floor Percentage increases to 100%, the Funding Floor Percentage is equal to 80% of the Reclamation Funding Target Curve. For purposes of clarity, the Funding Floor Percentages are shown in Table 1 of this Exhibit 4:

Years Before Full Principal Funding	Funding Floor Percentage
>4	80%
4<3	84%
3<2	88%
2<1	92%
1<0	96%
0	100%

Exhibit 4: Table 1

EXHIBIT 5

EXAMPLE OF RETURN RATE STUDY

Assumptions – Asset Classes

- Asset classes are described by their returns, volatility, and correlation with other asset classes
- Expectations for individual asset classes were developed by the Watson Wyatt Investment Consulting Global Asset Model as of January 2010
- Return assumptions are net of fees assuming passive management (or minimum risk)
- Return distributions incorporate fat tails
- Correlations between return-seeking asset classes increase when fat-tail events occur
- Simulated government yield curves and simulated corporate spreads are used in developing liability discount rates and returns on fixed income

Summary assumptions for January 1, 2010 Watson Wyatt Investment Consulting Asset Model						
	1st Year Returns		10th Year Returns		10 Year Returns	
	Arithmetic Mean	Standard Deviation	Arithmetic Mean	Standard Deviation	Geometric Mean	Standard Deviation
Equity Investments						
Global (unhedged)	9.6%	23.6%	8.9%	16.3%	7.6%	5.8%
Global (hedged)	9.2%	23.0%	8.7%	15.3%	7.5%	5.5%
US Equity	9.2%	24.6%	8.6%	16.3%	7.3%	5.9%
US Large Cap	**9.0%**	**24.8%**	**8.5%**	**16.2%**	**7.1%**	**6.0%**
US Small Cap	**10.1%**	**30.0%**	**9.2%**	**21.2%**	**7.0%**	**7.5%**
International (unhedged)	9.9%	27.6%	9.2%	15.3%	7.4%	6.9%
International (hedged)	9.2%	24.6%	8.7%	16.4%	7.3%	6.0%
International Developed	**9.7%**	**27.4%**	**9.0%**	**18.7%**	**7.2%**	**6.7%**
International Developed (hedged)	8.8%	24.2%	8.4%	15.8%	7.1%	5.8%
Emerging Market Equity	12.3%	40.3%	11.0%	31.4%	6.6%	10.6%
Private Equity	**10.8%**	**37.0%**	**9.6%**	**28.0%**	**6.0%**	**9.6%**
REITs	8.0%	23.0%	7.7%	14.0%	6.7%	4.9%
Fixed Income						
US Investment Grade	2.7%	5.6%	5.3%	4.6%	4.3%	0.7%
International Developed	4.0%	11.0%	5.0%	11.0%	4.3%	3.4%
International Developed (hedged)	3.5%	6.5%	4.5%	6.5%	4.1%	2.1%
High Yield	5.4%	12.1%	7.2%	10.1%	6.4%	3.3%
Inflation-Indexed	3.2%	5.9%	4.7%	5.9%	4.0%	2.0%
Long Government	5.6%	11.0%	5.0%	9.0%	4.6%	1.2%
Long Credit	7.8%	17.3%	6.5%	13.4%	5.7%	1.4%
Long Government/Credit	**6.7%**	**13.4%**	**5.8%**	**10.2%**	**5.3%**	**1.3%**
Bank Loans	4.0%	7.8%	6.2%	6.2%	5.5%	1.6%
Emerging Market Debt	4.8%	12.0%	6.0%	10.0%	5.3%	3.3%
Cash	1.6%	1.3%	4.0%	2.3%	3.6%	1.4%
Alternatives						
Real Estate	**6.3%**	**11.5%**	**7.2%**	**10.0%**	**6.8%**	**3.2%**
Hedge Fund-of-Funds	**6.1%**	**8.4%**	**6.5%**	**7.2%**	**6.3%**	**2.7%**
Inflation	1.5%	1.5%	2.5%	2.5%	2.3%	1.6%

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12

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Investment Beliefs and Capital Market Assumptions

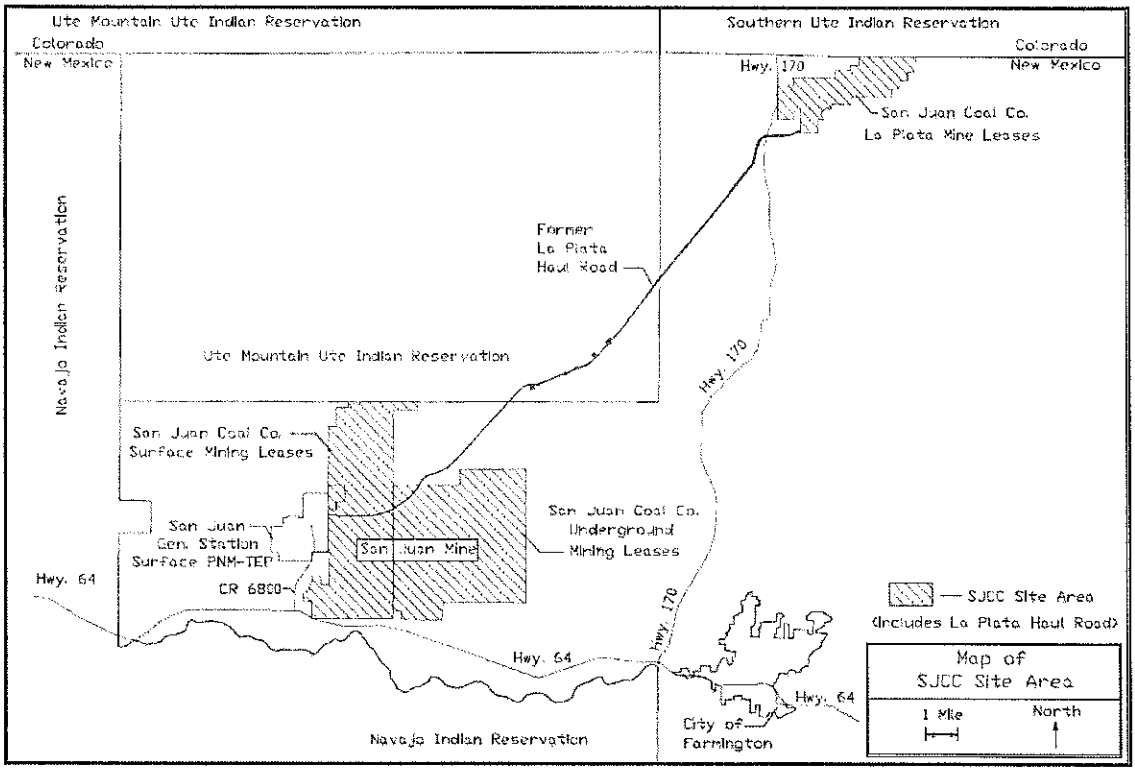
- Economic conditions are highly uncertain over the near-term and do not in our view reflect equilibrium conditions
  - Our capital market assumptions reflect this instability and as a result are highly time-sensitive
  - Advice that is dependent on this set of investment beliefs is thus also time-sensitive
  - Alternative beliefs might well lead to different conclusions; thus it is important that PNM Resources, Inc. consider whether their beliefs and ours are aligned
- Highlight of key changes in our capital market assumptions:
  - Our inflation assumption is 1.5% for the 12 months following January 1, 2010, trending up over 3 years to a 2.5% ultimate rate
  - Our bond assumptions reflect rising short term nominal yields
  - Our short-term equity volatility assumption is 25% for US equities and the short-term volatility period is three years. Our long-term volatility assumption is also maintained at 16%
- The result of these assumptions is to make certain strategies more or less attractive over the short- to mid-term
  - Dollar-duration matching strategies based on a LIBOR underpin will look less attractive than usual
- A natural outcome of our assumptions is to increase the time-dependency of our advice; we suggest that more frequent revisiting of the investment strategy will be necessary

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EXHIBIT 6

SJCC SITE AREA

Detailed descriptions are attached[1]



[1] PNM is continuing to validate SJCC Site Area description.

Site Area Description

SAN JUAN MINE

NMSF 071448 – Federal Coal Lease

Township 29 North, Range 15 West, NMPM, approx. 40.00 acres
Section 4: SW¼NW¼

NM 045196 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 2,409.14acres
Section 2: N½NW¼, NW¼NE¼
Section 3: NE¼NE¼
Section 9: W½NW¼
Section 10: W½
Section 21: All
Section 28: All
Section 33: Lots 1 (38.90), 2 (37.51),
3 (36.11), 4 (34.72), N½, N½S½;
Township 29 North, Range 15 West, NMPM, approx. 154.10acres
Section 3: Lots 7 (37.84), 8 (38.15), and 9 (38.11)
Section 4: SE¼NE¼

Except a tract of land in the NW¼NW¼
Section 21, T30N-R15W identified as the
'PNM Pond' and more particularly described
as follows:

Commencing at the Point of Beginning
from which the northwest corner of said Section 21,
bears N06°07'47"W, 590.47 feet;
thence S85°50'42"E, a distance of 397.22 feet;
thence N52°45'07"E, a distance of 51.53 feet;
thence S60°41'12"E, a distance of 937.42 feet;
thence S00°25'43"E, a distance of 315.45 feet;
thence N87°44'41"W, a distance of 670.35 feet;
thence N49°57'34"W, a distance of 71.49 feet;
thence N01°32'04"W, a distance of 381.28 feet;
thence N83°15'01"W, a distance of 554.64 feet;
thence N06°26'49"E, a distance of 254.89 feet to
the Point of Beginning, and

NM 045196 – Federal Coal Lease (Con't)

Except a tract of land in the NW¼ Section 33, T30N-R15W, identified as the **'Red Clinker Area'** and more particularly described as follows:
Tract 1: Beginning at the East 1/4 corner of Section 32;
thence N, 1,160 feet to the Point of Beginning:
thence S90°00'00"E, a distance of 2,200.00 feet;
thence N00°00'00"E, a distance of 770.00 feet;
thence N90°00'00"W, a distance of 2,196.92 feet;
thence S00°13'45"W, a distance of 770.01 feet
to the Point of Beginning and containing 38.86 acres, m/l.
Tract 2: Beginning at the Southeast corner of Tract 1 above;
thence N00°00'00"E, a distance of 770.00 feet;
thence S49°26'01"E, a distance of 134.57 feet;
thence S31°34'17"E, a distance of 287.40 feet;
thence S25°57'11"E, a distance of 157.99 feet;
thence S15°16'44"W, a distance of 260.60 feet;
thence S20°43'35"W, a distance of 370.06 feet;
thence S48°32'59"W, a distance of 162.71 feet;
thence S83°09'58"W, a distance of 141.30 feet;
thence N46°12'10"W, a distance of 106.54 feet;
thence N05°33'34"W, a distance of 232.04 feet;
thence N27°18'24"E, a distance of 89.70 feet;
thence N60°33'23"W, a distance of 85.58 feet;
thence S90°00'00"E, a distance of 272.80 feet
to the Point of Beginning and containing 7.45 acres, m/l.

NM 045197 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 2,565.60 acres
Section 15: All
Section 22: All
Section 27: All
Section 34: Lots 1 (42.75), 2 (41.85), 3 (40.95), 4 (40.05), N½, N½S½
Township 29 North, Range 15 West, NMPM, approx. 77.52acres
Section 3: Lot 6 (37.52), SE¼NE¼
{Note: There is no surface agreement on the SW¼NE¼ Sec. 15, T30N-R15W with surface owner}

NM 045217 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 1,800.00 acres
Section 3: NW¼NE¼, S½NE¼, NW¼, S½
Section 4: SE¼NE¼, SW¼SW¼, E½SW¼, SE¼
Section 9: E½NW¼, E½, SW¼
Section 10: E½

NM 28093 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 3,855.60 acres
Section 13: S½
Section 14: S½
Section 23: All
Section 24: All
Section 25: All
Section 26: All
Section 35: Lots 1 (44.33), 2 (44.07),
3 (43.73), 4 (43.37), N½, N½S½
{Note: There is no surface agreement on the N½SW¼ Sec. 13, T30N-R15W with surface owner}

NM 99144 – Federal Coal Lease

Township 30 North, Range 14 West, NMPM, approx. 4,483.88 acres
Section 17: All
Section 18: All
Section 19: All
Section 20: All
Section 29: All
Section 30: All
Section 31: Lots 1 (41.70), 2 (41.21),
3 (40.73), 4 (40.24), N½, N½S½

MC 0037 – State of New Mexico Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 309.04 acres.
Section 32: Lots 1 (34.82), 2 (36.31), 3 (37.91),
N½SE¼, NE¼SW¼, NW¼NW¼,
SW¼NE¼
{Note: The State Land Office is in the process of terminating MC 0037 and replacing it by issuing a Surface Use Lease due to the tract being mined out and now in the reclamation phase.}

MC 0083 – State of New Mexico Coal Lease
Township 30 North, Range 15 West, NMPM, approx. 520.00 acres
Section 16: E½NE¼, SW¼NE¼, W½NW¼,
S½

MC 0084 – State of New Mexico Coal Lease
Township 30 North, Range 15 West, NMPM, approx. 120.00 acres
Section 16: E½NW¼, NW¼NE¼

MC 0087 – State of New Mexico Coal Lease
Township 30 North, Range 14 West, NMPM, approx. 650.80 acres
Section 32: Lots 1 (43.27), 2 (42.89),
3 (42.51), 4 (42.13), N½,
N½S½

MC 0088 – State of New Mexico Coal Lease
Township 30 North, Range 15 West, NMPM, approx. 649.20 acres
Section 36: Lots 1 (40.57, 2 (41.73),
3 (42.87), 4 (44.03), N½,
N½S½

Crook, Bonnie V. Kennedy, et al – 8 Fee Coal Leases
Township 29 North, Range 15 West, NMPM, approx. 237.16 acres
Section 4: Tract A: Lots 3 (40.01), 4 (40.21),
SE¼NW¼, SW¼NE¼
Tract B: Lots 1 (39.61), 2 (39.81)
except the easterly 1/32 of Lot 1
The coal rights under the easterly
1/32 of Lot 1 are owned by San
Juan Coal Company, approx. 2.5 acres

Bannowsky, Mary Irene, et al – 5 Fee Coal Leases
Township 29 North, Range 15 West, NMPM, approx. 159.97 acres
Section 5: Lots 1 (40.15), 2 (39.82), S½NE¼

Brimhall, Ralph L., et al – Fee Coal Lease
Township 29 North, Range 15 West, NMPM, approx. 80.00 acres
Section 3: SW¼NE¼, SE¼NW¼

Palmer, Barton L., et al – 5 Fee Coal Leases
Township 29 North, Range 15 West, NMPM, approx. 40.00 acres
Section 3: SW¼NW¼

Walker, Vietor H. et al – 6 Fee Coal Leases

Township 29 North, Range 15 West, NMPM, approx. 15.82 acres

Section 3: All of the E½NW¼SE¼ lying North of U. S. Highway 64

Brimhall, Karen, Trustee, et al – 11 Fee Coal Leases

Township 29 North, Range 15 West, NMPM, approx. 45.36 acres

Section 3: That part of the W½NW¼SE¼ and NE¼SW¼ lying North of Highway 64, excepting a parcel in the W½NE¼SW¼ desc. in Book 314, Page 361;

That parcel in the W½NE¼SW¼ desc. In Book 314, Page 361, approx. 1.84 acres

{Note: 50% of the coal rights under B314, P361 (1.84 acres) are owned by San Juan Coal Company}

Smouse, Samuel T. and Mollie Frances – Fee Coal Lease

Township 29 North, Range 15 West, NMPM, approx. 15.40 acres

Section 3: That part of the NW¼SW¼ lying North of Highway 64 desc. as follows:

Beginning at the West ¼ corner of said Section 3, thence N89°44'E 1305.70' along the North line of said NW¼SW¼; thence S00°37'06"E 502 feet; thence S89°44'W 1,306 feet, m/l, to the West side of said NW¼SW¼; thence N00°33'01"W 502' to the Point of Beginning.

NM 80733 (Water Impoundment and Haulroad Right-of-Way)

Township 30 North, Range 15 West, NMPM, approx. 113.75 acres

Section 4: S½S½N½NE¼NE¼, S½NE¼NE¼, S½S½NE¼NW¼NE¼, S½SW¼NW¼NE¼, SE¼NW¼NE¼, E½SE¼SW¼NE¼NW¼, E½SE¼NW¼, S½SE¼NE¼NW¼, E½E½W½SE¼NW¼, SW¼NE¼

NM 26441 (69 kv Powerline Easement)

Township 29 North, Range 15 West, NMPM, approx. .86 acres

Section 2: Pt. of Lot 4 described more particularly as follows:

Beginning at the southwest corner of Section 35, T30N, R15W, NMPM, being a BLM brass cap marked T30N, R15W 35 2 3 34 T29N, R15W 1966; thence along the northerly section line of said Section 2 S89°10'54"E 345.24 feet to a point on the centerline of a 30 foot electrical easement and being the "True Point of Beginning":
thence continuing along the centerline S20°27'05"E 39.30 feet;
thence continuing along the centerline S20°54'52"E 516.11 feet;
thence continuing along the centerline S51°46'42"W 325.55 feet;
thence continuing along the centerline S55°38'08"W 363.77 feet.

Plant and Maintenance Facilities Area

(formerly Ground Lease Agreement - PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. 95.93 acres

Sections 20 and 29:

A tract described as commencing at the Point of Beginning from which the West ¼ corner of Section 28, T30N, R15W, NMPM, bears S00°13'17"W, 1974.83 feet;
thence N89°41'50"W, a distance of 653.95 feet;
thence N00°13'44"E, a distance of 632.31 feet;
thence N86°54'45"W, a distance of 656.83 feet;
thence N00°06'28"W, a distance of 956.78 feet;
thence N50°38'05"W, a distance of 266.86 feet;
thence N63°31'14"W, a distance of 154.86 feet;
thence N67°51'36"W, a distance of 372.42 feet;
thence N76°04'25"W, a distance of 527.90 feet;
thence S61°06'21"W, a distance of 100.19 feet;

Plant and Maintenance Facilities Area (Con't)

thence N10°28'32"W, a distance of 166.18 feet;
thence S69°25'46"E, a distance of 93.01 feet;
thence S81°03'35"E, a distance of 894.85 feet to
a chain link fence corner;
thence N00°08'08"E, a distance of 242.07 feet
along the fence to another fence corner;
thence N81°46'30"E, a distance of 754.68 feet to
another chain link fence;
thence S72°57'52"E, 657.05 feet along a fence line;
thence N01°40'04"E, 90.06 feet along a fence line;
thence N07°14'12"W, 336.64 feet along a fence line;
thence N09°34'59"W, 186.57 feet along a fence line;
thence N89°06'56"E, 120.41 feet along a fence line;
thence N11°34'22"W, 663.23 feet along a fence line;
thence N89°39'56"W, 41.21 feet along a fence line;
thence N10°31'33"W, 70.30 feet along a fence line;
thence N17°19'55"W, 89.42 feet along a fence line;
thence N20°23'16"W, 60.02 feet along a fence line;
thence N23°34'29"W, 522.44 feet along a fence line;
thence N09°18'43"W, 28.92 feet along a fence line;
thence N02°15'30"E, 82.24 feet along a fence line;
thence N48°50'18"E, 179.70 feet along a fence line;
thence N31°46'05"E, 177.25 feet along a fence line;
thence N14°04'54"E, 420.06 feet along a fence line;
thence N56°09'23"E, 130.00 feet along a fence line;
thence N64°24'31"E, 100.08 feet along a fence line;
thence S89°52'45"E, 119.13 feet along a fence line;
thence N06°47'31"E, 355.76 feet along a fence line;
thence N00°14'57"E, 477.00 feet along a fence line;
thence N50°13'45"E, 15.25 feet to the northwest
corner of Section 22, T30N, R15W, NMPM;
thence S00°15'17"W, 5265.48 feet to the
southwest corner of said Section 22;
thence S00°13'17"W, 660.88 feet to the
Point of Beginning.

Gypsum Haulage Easement (PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. 1.70 acres

Sections 17 and 20: A tract described as

Commencing at the Point of Beginning from
which the northwest corner of Section 21
bears S00°15'31"W, 170.63 feet;
thence S77°04'32"W, 325.26 feet;
thence S76°27'03"W, 427.17 feet;
thence S66°38'30"W, 254.62 feet;
thence N02°22'16"W, 129.69 feet;
thence N81°24'59"E, 219.70 feet;
thence N76°09'13"E, 440.11 feet;
thence N76°12'46"E, 336.91 feet to the
west line of Section 16;
thence S00°15'30"W, 74.19 feet along said
west line to the Point of Beginning.

Water Pipeline Easement (Raw Water Pipeline – PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. 1.974 acres

Section 29: Pt. of NE¼ described as follows:

An easement 35 feet wide being 17.5 feet on
each side of the following described centerline:
Beginning at raw waterline tapping point,
coordinates N 2,106,588.74, E 322,801.08,
whence the one-quarter (¼) corner common to
Sections 28 and 29, T30N-R15W, NMPM,
coordinates N 2,105,578.62, E 325,065.37 bears
S65°57'29"E 2,479.39 feet distant; running thence
as an easement S73°27'11"E 207.51 feet to an
angle point, coordinates N 2,106,529.64, E 323,000.00;
thence S57°48'13"E 984.76 feet to an angle
point, coordinates N 2,106,004.94, E 323,833.33;
thence S89°17'22"E 1,230.94 feet to a point in
the east boundary line of said Section 29,
coordinates N 2,105,989.68, E325,064.18.

Easement for Waterline (Underground Waterline – PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. .775 acres

Section 29: Pt. of NE¼ described as follows:

Beginning at a point on PNM's water pipeline
from which the East ¼ corner of Section 29,
T30N-R15W, NMPM bears S50°52'55"E
2,923.13 ft. Thence, N79°25'46"E
1,644.52 ft. to the west edge of the PNM
Ground Lease. Said easement being 20 ft.
either side of this line.

LA PLATA MINE

NM 0315559 – Federal Coal Lease

Township 32 North, Range 12 West, NMPM, approx. 1,964.15 acres
Section 7: Lots 1 (44.18), 2 (44.12),
3 (44.08), SE¼SW¼
Section 8: Lots 5 (34.60), 6 (36.22), 7 (33.60),
8 (33.52)
Section 17: Lots 3 (38.31), 4 (39.18), 5 (38.70)
Section 18: Lots 1 (39.68), 3 (39.18), SE¼NE¼,
NE¼SW¼, N½SE¼

Township 32 North, Range 13 West, NMPM
Section 13: Lots 3 (41.86), 4 (42.21),
5 (42.34), 6 (41.98), 7 (41.57),
8 (41.19), 9 (41.34), 10 (41.72),
11 (42.11), 12 (42.46), S½NW¼
Section 14: S½NE¼, SE¼NW¼, S½
Section 15: That portion of the SE¼ lying
East of State Highway 170
Section 22: E½NE¼
Section 23: N½N½, SW¼NW¼

Chamberlain, Lenore T. Trust, et al Fee Coal Lease

Township 32 North, Range 12 West, NMPM, approx. 490.90 acres
Section 7: S½SE¼
Section 8: Lots 2 (43.58), 3 (43.82), 4 (44.06),
SW¼SW¼
Section 18: E½NW¼, Lot 2 (39.42), SW¼NE¼,
N½NE¼

NM 95280 Right-of-Way (Pits to Stockpile Spoil Area)

Township 32 North, Range 12 West, NMPM, approx. 234.93 acres
Section 7: Lot 5 (39.82)
Section 17: Lots 2 (35.17), 6 (37.83), 12 (38.31)

Township 32 North, Range 13 West, NMPM
Section 13: Lots 1 (42.08), 2 (41.72)

{Note: Right-of-Way document describes 230 acres
whereas, GLO lot acreages calculates to 234.93 acres.
NM 95280 is outside the leased area but within the permitted area.}

LA PLATA TRANSPORTATION CORRIDOR

NM 55331 Right-of-Way Parcel #1 (Facilities Site)

Township 32 North, Range 13 West, NMPM, approx. 309.19 acres
Sections 23 and 24: A tract of land more specifically described as follows:

Beginning
at a point which is the southeast corner of
Section 23, thence N00°37'03"W, 573.34 feet
which is the true point of beginning;

thence N89°04'50"W 2868.91 feet;
thence N00°18'26"W 605.88 feet;
thence N00°18'26"W 2776.13 feet;
thence N89°50'32"W 1103.93 feet;
thence N00°01'46"W 500.00 feet;
thence S89°50'32"E 1320.30 feet;
thence S89°29'38"E 2627.89 feet;
thence N01°11'54"W 1329.93 feet;
thence S86°08'05"E 2555.17 feet;
thence S71°13'08"W 619.48 feet;
thence S32°25'20"E 407.64 feet;
thence S34°28'08"E 95.13 feet;
thence S57°51'16"W 495.49 feet;
thence N32°21'19"W 500.44 feet;
thence S44°17'46"W 1525.10 feet;
thence S27°25'53"E 934.13 feet;
thence S54°16'49"W 235.52 feet;
thence N86°39'05"W 669.49 feet;
thence S00°23'38"E 2079.72 feet to
the true Point of Beginning.

{Note: Right-of-Way document describes Parcel #1 as having 309.19 acres, whereas the plat and description describes 306.6 acres.}

NM 55331 Right-of-Way Parcel #2

Township 32 North, Range 13 West, NMPM, approx. 24.78 acres
Sections 23 and 26: A tract of land in the SW¼ of Section 23 and the NW¼ Section 26 more specifically described as follows:

Beginning
at a point which is the SW corner of said
Section 23;
thence N00°19'53"E, a distance of 8.31 feet
which is the true Point of Beginning:
thence N00°19'53"E, a distance of 340.26 feet;
thence N73°10'58"E, a distance of 106.41 feet;

NM 55331 Right-of-Way Parcel #2 (con't.)

thence S60°42'49"E, a distance of 187.74 feet;
thence N73°19'36"E, a distance of 1,239.90 feet;
thence N63°59'44"E, a distance of 328.36 feet;
thence N66°19'35"E, a distance of 354.39 feet;
thence N58°17'56"E, a distance of 262.08 feet;
thence N54°26'57"E, a distance of 103.78 feet;
thence N51°54'04"E, a distance of 96.96 feet;
thence S00°18'26"E, a distance of 605.88 feet;
thence N89°04'52"W, a distance of 522.47 feet;
thence S69°01'24"W, a distance of 154.53 feet;
thence S77°06'06"W, a distance of 308.34 feet;
thence S72°04'10"W, a distance of 573.03 feet;
thence S40°52'01"W, a distance of 119.77 feet;
thence S73°06'14"W, a distance of 811.96 feet;
thence N46°58'26"W, a distance of 82.00 feet;
thence S73°05'57"W, a distance of 35.85 feet to
the true Point of Beginning.

{Note: Right-of-Way document describes Parcel #1 as having 24.78 acres, whereas the plat and description describes 16.43 acres.}

NM 55331 Right-of-Way Parcel #3

Township 32 North, Range 13 West, NMPM, approx. 23.13 acres
Section 33: A tract of land in the NE¼SW¼
and the W½NE¼ which is more specifically
described as follows:

Beginning at a point
whence the NW corner of said Section 33
bears N81°22'47"W a distance of 3,941.63 feet;
thence S00°47'13"E, a distance of 351.70 feet;
thence S38°59'10"W, a distance of 1,059.06 feet;
thence S51°00'50"E, a distance of 160.00 feet;
thence S38°59'10"W, a distance of 600.00 feet;
thence N51°00'50"W, a distance of 160.00 feet;
thence S38°59'10"W, a distance of 596.51 feet to
a point of tangency with a curve to the left,
thence 1,328.35 feet along the arc of said curve which
has a radius of 8,457.18 feet, a central angle of
08°59'58" and a long chord which bears S34°29'11"W
a distance of 1,326.98 feet;
thence S29°59'12"W, a distance of 252.01 feet;
thence N88°56'54"W, a distance of 257.09 feet;

NM 55331 Right-of-Way Parcel #3 (Con't.)

thence N29°59'12"E, a distance of 376.39 feet to
a point of tangency with a curve to the right,

thence 1,363.69 feet along the arc of said curve which has a radius of 8,682.18 feet, a central angle of 08°59'58" and a long chord which bears N34°29'11"E a distance of 1,362.29 feet;
thence N38°59'10"E, a distance of 2,525.88 feet to the Point of Beginning.

NM 55331 Right-of-Way Parcel #4

Township 31 North, Range 13 West, NMPM, approx. 100.68 acres
Section 7: Pt. SW¼ and N½SE¼
Section 8: Pt. NW¼NE¼, SE¼NW¼, and NW¼SW¼
Section 18: Pt. NW¼NW¼ (Lots 5, 6, and 7)
which is more specifically described as follows:

Beginning at a point on the West boundary of said Section 18 whence the Northwest corner of said Section 18 bears N00°55'17"E a distance of 794.74 feet;
thence 460.45 feet along the arc of a curve which has a radius of 6,893.89 fee, a central angle of 03°49'37" and a long chord which bears N49°41'02"E a distance of 460.37 feet to a point of tangency with a curve to the left;
thence 1,527.76 feet along the arc of a curve which has a radius of 4,466.65 feet, a central angle of 19°35'50" and a long chord which bears N41°47'55"E a distance of 1,520.32 feet;
thence N32°00'00"E a distance of 1,022.45 feet to a point of tangency with a curve to the right;
thence 1,109.66 feet along the arc of said curve which has a radius of 2,346.90 feet, a central angle of 27°05'26" and a long chord which bears N45°32'43" a distance of 1,099.35 feet;
thence N30°54'34"W a distance of 50.00 feet to a non-tangent point of intersection with a curve concave to the southeast;
thence 977.91 feet along the arc of said curve

NM 55331 Right-of-Way Parcel #4 (Con't.)

which has a radius of 2,396.90 feet, a central angle of 23°22'34"E and a long chord which bears N70°46'43"E and a distance of 971.14 feet;
thence S07°32'00"E, a distance of 50.00 feet;
thence N82°28'00"E, a distance of 292.16 feet to a point of tangency with a curve to the left;
thence 1,703.31 feet along the arc of said curve which has a radius of 2,082.99 feet, a central angle of 46°51'07" and a long chord which bears N59°02'27"E a distance of 1,656.25 feet;
thence N35°36'53"E, a distance of 2,143.56 feet;
thence S89°29'19"E, a distance of 550.04 feet;
thence S35°36'53"W, a distance of 2,459.87 feet to a point of tangency with a curve to the right;
thence 2,071.28 feet along the arc of said curve which has a radius of 2,532.99 feet, a central angle of 46°51'07" and a long chord which bears S59°02'27"W a distance of 2,014.05 feet;
thence S82°28'00"W a distance of 292.16 feet to a point of tangency with a curve to the left;
thence 1,670.81 feet along the arc of said curve which has a radius of 1,896.90 feet, a central angle of 50°28'00" and a long chord which bears S57°14'00"W a distance of 1,617.32 feet;
thence S32°00'00"W a distance of 1,022.45 feet to a point of tangency with a curve to the right;
thence 1,681.67 feet along the arc of said curve which has a radius of 4,916.65 feet, a central angle of 19°35'50" and a long chord which bears S41°47'55"W a distance of 1,673.49 feet to a point of tangency with a curve to the left;
thence 866.41 feet along the arc of said curve which has a radius of 6,443.89 feet, a central angle of 07°42'13" and a long chord which bears S47°44'43"W a distance of 865.75 feet;
thence N00°55'17"E, a distance of 637.03 feet to the Point of Beginning.

NM 55331 Right-of-Way, there is not a Parcel #5

NM 55331 Right-of-Way Parcel #6

Township 30 North, Range 14 West, NMPM, approx. 69.58 acres
Section 7: A tract of land in the NW¼SW¼
Township 30 North, Range 15 West, NMPM
Section 12: A tract of land in the SE¼ which

tracts are more specifically described as follows:

Beginning at a point whence the West ¼
Corner of said Section 7, T30N, R14W bears
N89°40'49"W a distance of 75.79 feet;
thence S89°40'49"E, a distance of 1,396.85 feet;
thence S43°51'50"W, a distance of 3,629.37 feet;
thence N89°38'48"W, a distance of 287.20 feet;
thence North a distance of 1,160.56 feet;
thence N43°51'50"E a distance of 2,028.05
feet to the Point of Beginning.

NM 55331 Right-of-Way Pareel #7

Township 30 North, Range 15 West, NMPM, approx. 16.37 acres
Section 13: A tract of land in the N½NW¼,
and the NW¼NE¼ which is more specifically
described as follows:

Beginning at a point whence the Northwest
Corner of said Section 13 bears N00°25'29"E
A distance of 994.58 feet;
thence 772.26 feet along the arc of a curve which
has a radius of 2,404.33 feet, a central angle of
18°24'12" and a long chord which bears
N69°03'46"E a distance of 768.95 feet;
thence N78°15'52"E a distance of 1,064.12 feet
to a point of tangency with a curve to the left;
thence 1,103.42 feet along the arc of said curve
which has a radius of 2,752.29 feet, a central
angle of 22°58'13" and a long chord which bears
N66°46'46"E a distance of 1.096.04 feet;
thence S89°38'49"E a distance of 365.47 feet
to a non-tangent point intersection with a curve
which is concave to the northwest;
thence 1,493.28 feet along the arc of said curve
which has a radius of 2,977.29 feet, a central angle
of 28°44'14" and a long chord which bears
S63°53'45"W a distance of 1,477.68 feet;
thence S78°15'52"W a distance of 1,064.12 feet

NM 55331 Right-of-Way Parcel #7(Con't.)

to a point of tangency with a curve to the left;
thence 835.44 feet along the arch of said curve which has a radius of 2,179.33 feet, a central angle of 21°57'51" and a long chord which bears S67°16'57"W a distance of 830.33 feet;
thence N00°25'30"E a distance of 266.19 feet to the Point of Beginning.

NM 55331 Right-of-Way Parcel #8

Township 30 North, Range 15 West, NMPM, approx. 27.30 acres
Section 14: Pt. SE¼SW¼ and W½SE¼
Section 23: Pt. NW¼NW¼ which is more specifically described as follows:

Beginning at a point whence the Northwest corner of said Section 23 bears N00°20'11"E a distance of 948.01 feet;
thence 613.40 feet along the arc of a curve which has a radius of 5,199.51 feet, a central angle of 06°45'33" and a long chord which bears N59°44'19"E a distance of 613.04 feet;
thence N56°21'32"E a distance of 1,032.68 feet to a point of tangency with a curve to the left;
thence 1,969.96 feet along the arc of said curve which has a radius of 9,618.05 feet, a central angle of 11°44'07" and a long chord which bears N50°29'29"E a distance of 1,966.52 feet;
thence N44°37'25"E a distance of 196.98 feet to a point of tangency with a curve to the left;
thence 1,545.89 feet along the arc of said curve which has a radius of 5,617.08 feet, a central angle of 15°46'07" and a long chord which bears N36°44'22"E a distance of 1,541.02 feet;
thence S00°24'38" a distance of 444.86 feet to a non-tangent point of intersection with a curve which is concave to the northwest;
thence 1,216.37 feet along the arc of said curve which has a radius of 5,842.08 feet, a central angle of 11°55'46" and a long chord which bears S38°39'32"W a distance of 1,214.17 feet;
thence S44°37'25"W a distance of 196.98 feet to a point of tangency with a curve to the right;

NM 55331 Right-of-Way Parcel #8 (Con't.)
thence 2,016.05 feet along the arc of said curve which has a radius of 9,843.05 feet, a central angle of 11°44'07" and a long chord which bears S50°29'29"W a distance of 2,012.52 feet;
thence S56°21'32"W a distance of 1,032.68 feet to a point of tangency with a curve to the right;
thence 755.04 feet along the arc of said curve which has a radius of 5,424.51 feet, a central angle of 07°58'30" and a long chord which bears S60°20'48"W a distance of 754.44 feet;
thence N00°20'11"E a distance of 252.30 feet to the Point of Beginning.

NM 55331 Right-of-Way there is not a Parcel #9

NM 55331 Right-of-Way Parcel #10
Township 30 North, Range 15 West, NMPM, approx. 49.99 acres
Section 22: Pt. N½ which is more specifically described as follows:
Beginning at a point whence the Northwest corner of said Section 22 bears N00°09'05"E a distance of 1,002.94 feet;
thence N87°23'54"E a distance of 349.28 feet to a point of tangency with a curve to the right;
thence 685.78 feet along the arc of said curve which has a radius of 1,402.66 feet, a central angle of 28°00'46" and a long chord which bears S78°35'43"E a distance of 678.97 feet;
thence S64°35'20"E a distance of 767.42 feet to a point of tangency with a curve to the left;
thence 693.64 feet along the arc of said curve which has a radius of 1,505.37 feet, a central angle of 26°24'02" and a long chord which bears S77°47'21"E a distance of 687.52 feet;
thence N89°00'38"E a distance of 524.24 feet to a point of tangency with a curve to the left;
thence 533.69 feet along the arc of said curve which has a radius of 1,733.70 feet, a central angle of 17°38'15" and a long chord which bears N80°11'31"E a distance of 531.58 feet;
thence N71°22'23"E a distance of 1,152.22 feet to a point of tangency with a curve to the left;

NM 55331 Right-of-Way Parcel #10 (Con't.)

thence 781.60 feet along the arc of said curve
which has a radius of 5,112.01 feet, a central
angle of 08°45'37" and a long chord which bears
N66°59'34"E a distance of 780.84 feet;
thence S00°20'11"W a distance of 447.43 feet to
a non-tangent point of intersection with a curve
which is concave to the southwest;
thence 634.56 feet along the arc of said curve
which has a radius of 5,512.01 feet, a central angle
of 06°35'46" and a long chord which bears S68°04'30"W
a distance of 634.21 feet; thence S71°22'23"W a distance
of 1,152.22 feet to a point of tangency with a curve to the right;
thence 656.82 feet along the arc of said curve
which has a radius of 2,133.70 feet, a central angle
of 17°38'15" and a long chord which bears
S80°11'31"W a distance of 654.23 feet;
thence S89°00'38"W a distance of 524.24 feet
to a point of tangency with a curve to the right;
thence 877.95 feet along the arc of said curve
which has a radius of 1,905.37 feet, a central angle
of 26°24'02" and a long chord which bears
N77°47'21"W a distance of 870.20 feet;
thence N64°35'20"W a distance of 767.42 feet to
a point of tangency with a curve to the left;
thence 490.22 feet along the arc of said curve which
has a radius of 1,002.66 feet, a central angle of
28° 00'46" and a long chord which bears
N78°35'43"W a distance of 485.35 feet;
thence S87°23'54"W a distance of 368.52 feet;
thence N00°09'05"E a distance of 400.45 feet to the
Point of Beginning.

NM 55331 Right-of-Way Parcel #11

Township 30 North, Range 15 West, NMPM, approx. 30.02 acres
Section 21: Pt. NW¼ which is more specifically
described as follows:

Beginning at a point whence the North ¼
corner of said Section 21 bears N00°10'14"E
a distance of 1,179.71 feet;
thence S82°18'16"W a distance of 319.81 feet
to a point of tangency with a curve to the right;
thence 502.06 feet along the arc of said curve
which has a radius of 624.60 feet, a central angle
of 46°03'18" and a long chord which bears
N74°40'07"W a distance of 488.65 feet;

NM 55331 Right-of-Way Parcel #11 (Con't.)

thence N51°38'24"W, a distance of 666.92 feet;
thence S00°13'07"W, a distance of 508.59 feet;
thence S51°38'30"E, a distance of 536.01 feet;
thence S51°55'57"W, a distance of 1,779.10 feet;
thence S89°36'20"E, a distance of 643.11 feet;
thence N51°55'57"E, a distance of 1,398.79 feet to a point of tangency with a curve to the right;
thence 390.59 feet along the arc of said curve which has a radius of 736.84 feet, a central angle of 30°22'19" and a long chord which bears N67°07'07"E a distance of 386.03 feet;
thence N82°18'16"E a distance of 194.00 feet;
thence N00°10'14"E a distance of 403.80 feet to the Point of Beginning.

NM 55331 Right-of-Way Parcel #12

Township 30 North, Range 15 West, NMPM, approx. 2.74 acres
Section 21: Pt. SW¼NW¼ which is more specifically described as follows:

Beginning at a point whence the Northwest corner of said Section 21 bears N00°16'00"E a distance of 1,318.35 feet;
thence S89°34'10"E a distance of 147.02 feet;
thence S05°38'47"W a distance of 927.76 feet;
thence S00°18'47"W a distance of 394.39 feet;
thence N89°36'20"W a distance of 59.71 feet;
thence N00°16'00"E a distance of 1,318.35 feet to the Point of Beginning.

FEE SURFACE LANDS OWNED BY SAN JUAN COAL COMPANY

(Transportation 'Haulroad' Corridor)

Township 32 North, Range 13 West, NMPM, approx. 240.00 acres
Section 22: Pt. S½SE¼SE¼
Section 27: Pt. N½NE¼NE¼, NW¼NE¼ NE¼NW¼, W½NW¼, NW¼SW¼

Steward, Chester E., et ux
(Transportation 'Haulroad' Corridor)

Township 32 North, Range 13 West, NMPM, approx. 13.13 acres
Section 27: Pt. SW¼SW¼
Section 28: Pt. SE¼SE¼
Section 33: Pt. NE¼NE¼ which is more
specifically described as follows:

Beginning at a point on the west line of NE¼NE¼
Section 33 from which the NW corner of
said Section 33 bears N81°22'47"W a distance
of 3,941.63 feet;
thence N38°59'10"E a distance of 1,956.98 feet
to a point of tangency with a curve to the left;
thence 308.66 feet along the arc of said curve
which has a radius of 456.86 feet, a central angle
of 38°42'36" and a long chord which bears
N19°37'52"E a distance of 302.82 feet;
thence S89°43'26"E a distance of 360.98 feet
along the North line of SW¼SW¼ Section 27
to a point of intersection with the north right-of-way
of County Road 1191;
thence S38°39'26"W a distance of 275.58 feet along
the north right-of-way of County Road 1191 to a non-
tangent point of intersection with a curve which is
concave to the southwest;
thence 240.86 feet along the arc of said curve which has
a radius of 681.86 feet, a central angle of 20°14'21"
and a long chord which bears S28°52'02"W a distance
of 239.61 feet;
thence S38°59'10"W a distance of 2,227.29 feet to a
point on the west line of the NE¼NE¼ Section 33;
thence N00°47'13"W a distance of 351.70 feet to the
Point of Beginning.

Harris, John E., Trustee, et al
(Transportation 'Haulroad' Corridor)

Township 32 North, Range 13 West, NMPM, approx. 81.00 acres
Section 33: Pt. SW¼
Township 31 North, Range 13 West, NMPM
Section 4: Pt. NW¼NW¼
Section 5: Pt. NE¼, S½ which is more specifically described as follows:

Beginning at a point on the south line of said Section 5, from which the SW corner of said Section 5 bears N88°04'38"W a distance of 2,397.63 feet;
thence N35°36'53"E a distance of 2,884.97 feet to a point of tangency with a curve to the left;
thence 1,176.93 feet along the arc of said curve which has a radius of 11,981.46 feet, a central angle of 5°37'41" and a long chord which bears N32°48'03"E a distance of 1,176.46 feet;
thence N29°59'12"E a distance of 3,972.34 feet to the east line of the W½SW¼ of the aforesaid Section 33;
thence S00°22'48"E along said east line a distance of 176.54 feet to the north line of the S½SW¼ of said Section 33;
thence S88°56'54"E along said North line a distance of 412.21 feet;
thence S29°59'12"W a distance of 4,019.46 feet to a point of tangency with a curve to the right;
thence 1,221.14 feet along the arc of said curve which has a radius of 12,431.76 feet, a central angle of 5°37'41" and a long chord which bears S32°48'03"W a distance of 1,220.65 feet;
thence S35°36'53"W a distance of 2,568.66 feet to the South line of the aforesaid Section 5;
thence N89°29'19"W along said South line a distance of 550.04 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Transportation 'Haulroad' Corridor

Township 31 North, Range 14 West, NMPM, approx. 116.95 acres

A tract of land which is more specifically described as follows:

Beginning at a point on the East boundary of said Range 14 West whence the Northwest Corner of Section 18, T31N, R13W, NMPM bears N00°55'17"E a distance of 853 feet;
thence S00°55'17"W a distance of 412.00 feet along said range line;
thence S40°09'02"W a distance of 2,370.92 feet;
thence S37°44'32"W a distance of 185.50 feet;
thence S52°15'28"E a distance of 165.00 feet;
thence S37°44'32"W a distance of 500.00 feet;
thence N52°15'28"W a distance of 165.00 feet
thence S37°44'32"W a distance of 200.00 feet;
thence S52°15'28"E a distance of 75.00 feet;
thence S37°44'32"W a distance of 700 feet;
thence N52°15'28"W a distance of 75.00 feet;
thence S37°44'32"W a distance of 1,564.50 feet to a point of tangency with a curve to the left;
thence 1,002.04 feet along the arc of said curve which has radius of 40,798.56 feet, a central angle of 01°24'26" and a long chord which bears S37°02'19"W a distance of 1,002.01 feet;
thence S36°20'06"W a distance of 2,806.94 feet to a point of tangency with a curve to the right;
thence 1,005.56 feet along the arc of said curve which has a radius of 9,736.73 feet, a central angle of 05°55'02" and a long chord which bears S39°17'37"W a distance of 1,005.11 feet;
thence S42°15'08"W a distance of 1,425.81 feet;
thence S47°44'52"E a distance of 25.00 feet;
thence S42°15'08"W a distance of 500.00 feet;
thence N47°44'52"W a distance of 25.00 feet;
thence S42°15'08"W a distance of 924.19 feet;
thence S47°44'52"E a distance of 165.00 feet;
thence S42°15'08"W a distance of 650.00 feet;
thence N47°44'52"W a distance of 165.00 feet;
thence S42°15'08"W a distance of 2,655.18 feet to a point of tangency with a curve to the right;
thence 2,192.00 feet along the arc of said curve

Ute Mountain Ute Tribe (Con't.)

which has a radius of 5,206.62 feet, a central angle of 24°07'18" and a long chord which bears S54°18'47"W a distance of 2,175.85 feet;
thence S23°37'47"E a distance of 25.00 feet to a non-tangent point of intersection with a curve which is concave to the Northwest;
thence 291.66 feet along the arc of said curve which has a radius of 5,231.62, a central angle of 3°11'39" and a long chord which bears S67°58'16"W a distance of 291.62 feet;
thence S69°34'05"W a distance of 218.11 feet;
thence N20°25'55"W a distance of 25.00 feet;
thence S69°34'05"W a distance of 1,168.74 feet;
thence S68°07'53"W a distance of 1,579.63 feet;
thence S21°52'07"E a distance of 25.00 feet;
thence S68°07'53"W a distance of 250.00 feet;
thence N21°52'07"W a distance of 25.00 feet;
thence S68°07'53"W a distance of 3,738.70 feet to a point of tangency with a curve to the right;
thence 855.55 feet along the arc of said curve which has a radius of 4,973.25 feet, a central angle of 09°51'24" and a long chord which bears S73°03'35"W a distance of 854.50 feet;
thence S12°00'43"E a distance of 165.00 feet to a non-tangent point of intersection with a curve which is concave to the Northwest;
thence 672.27 feet along the arc of said curve which has a radius of 5,138.25 feet; a central angle 07°29'47" and a long chord which bears S81°44'10"W a distance of 671.79 feet;
thence N04°30'56"W a distance of 165.00 feet a non-tangent point of intersection with a curve which is concave to the northwest;
thence 100.01 feet along the arc of said curve which has a radius of 4,973.25 feet, a central angle of 01°09'08" and a long chord which bears S86°03'39"W a distance of 100.01 feet;

Ute Mountain Ute Tribe (Con't.)

thence S86°38'12"W a distance of 318.57 feet
to a point of tangency with a curve to the left;
thence 1,859.59 feet along the arc of said curve
which has a radius of 2,491.00 feet, a central
angle of 42°46'21" and a long chord which
bears S65°15'01"W a distance of 1,816.70 feet;
thence S43°51'50"W a distance of 1,800.42 feet;
thence S46°08'10"E a distance of 25.00 feet;
thence S43°51'50"W a distance of 500.00 feet;
thence N46°08'10"W a distance of 25.00 feet;
thence S43°51'50"W a distance of 111.93 feet
to a point of intersection with the south
boundary of said Township 31 North;
thence N89°45'09"W a distance of 172.66 feet
along said South boundary;
thence N43°51'50"E a distance of 231.04 feet;
thence N46°08'10"W a distance of 25.00 feet;
thence N43°51'50"E a distance of 500.00 feet;
thence S46°08'10"E a distance of 25.00 feet;
thence N43°51'50"E a distance of 1,800.42 feet
to a tangency with a curve to the right;
thence 1,952.90 feet along the arc of said curve
which has a radius of 2,616.00 feet, a central
angle of 42°46'21" and a long chord which
bears N65°15'01"E a distance of 1,907.87 feet;
thence N86°38'12"E a distance of 318.57 feet
to a point of tangency with a curve to the left;
thence 1,565.88 feet along the arc of said curve
which has a radius of 4,848.25 feet, a central
angle of 18°30'19" and a long chord which
bears N77°23'02"E a distance of 1,559.08 feet;
thence N68°07'53"E a distance of 3,708.70 feet;
thence N21°52'07"W a distance of 100.00 feet;
thence N68°07'53"E a distance of 250.00 feet;
thence S21°52'07"E a distance of 100.00 feet;
thence N68°07'53"E a distance of 1,611.10 feet;
thence N20°25'55"W a distance of 165.00 feet;

Ute Mountain Ute Tribe (Con't.)

thence N69°34'05"E a distance of 500.00 feet;
thence S20°25'55"E a distance of 165.00 feet;
thence N69°34'05"E a distance of 670.47 feet;
thence N20°25'55"W a distance of 25.00 feet;
thence N69°34'05"E a distance of 218.11 feet
to a point of tangency with a curve to the left;
thence 281.90 feet along the arc of said curve
which has a radius of 5,056.62 feet, a central
angle of 3°11'39" and a long chord which bears
N67°58'16"E a distance of 281.86 feet;
thence S23°37'47"E a distance of 25.00 feet;
thence 2,139.38 feet along the arc of said curve
which has a radius of 5,081.62 feet, a central
angle of 24°07'18" and a long chord which
bears N54°18'47"E a distance of 2,123.61 feet;
thence N42°15'08"E a distance of 4,229.37 feet;
thence N47°44'52"W a distance of 25.00 feet;
thence N42°15'08"E a distance of 500.00 feet;
thence S47°44'52"E a distance of 25.00 feet;
thence N42°15'08"E a distance of 1,425.81 feet
to a point of tangency with a curve to the left;
thence 992.66 feet along the arc of said curve
which has a radius of 9,611.78 feet, a central
angle of 05°55'02" and a long chord which
bears N39°17'37"E a distance of 992.22 feet;
thence N36°20'06"E a distance of 575.02 feet;
thence N53°39'54"W a distance of 165.00 feet;
thence N36°20'06"E a distance of 650.00 feet;
thence S53°39'54"E a distance of 165.00 feet;
thence N36°20'06"E a distance of 1,581.92 feet
to a point of tangency with a curve to the right;
thence 252.56 feet along the arc of said curve
which has a radius of 40,923.56 feet, a central
angle of 00°21'13" and a long chord which
bears N36°30'43"E a distance of 252.57 feet;
thence N53°18'41"W a distance of 25.00 feet
to a non-tangent point of intersection with a

Ute Mountain Ute Tribe (Con't.)

curve which is concave to the southeast;
thence 500.28 feet along the arc of said curve
which has a radius of 40,948.56 feet, a central
angle of 00°42'00" and a long chord which
bears N37°02'19"E a distance of 500.28 feet;
thence S52°36'41"E a distance of 25.00 feet
to a non-tangent point of intersection with a
curve which is concave to the southeast;
thence 252.56 feet along the arc of said curve
which has a radius of 40,923.56 feet, a central
angle of 00°21'13" and a long chord which
bears N37°33'56"E a distance of 252.57 feet;
thence N37°44'32"E a distance of 1,464.50 feet;
thence N52°15'28"W a distance of 50.00 feet;
thence N37°44'32"E a distance of 650.00 feet;
thence S52°15'28"E a distance of 50.00 feet;
thence N37°44'32"E a distance of 450.00 feet;
thence N52°15'28"W a distance of 80.00 feet;
thence N37°44'32"E a distance of 400.00 feet;
thence S52°15'28"E a distance of 80.00 feet;
thence N37°44'32"E a distance of 185.50 feet;
thence N33°05'30"E a distance of 1,541.72 feet;
thence N42°47'37"E a distance of 1,166.53 feet
to the Point of Beginning.

Ute Mountain Ute Tribe, Borrow Area No. 6

Township 31 North, Range 14 West, NMPM, approx. 8.02 acres

Section 33: Pt. SW¼, which is more particularly described as follows:

Beginning S75°25'58"E 522.87 feet from t he West Quarter Corner of said Section 33, said point of beginning being a point on the Southerly right-of-way line of the proposed San Juan Coal Company Haul Road;
thence N85°44'05"E 78.12 feet (chord distance) along said right-of-way;
thence N86°38'12"E 318.57 feet along said right-of-way;
thence N86°03'39"E 100.01 feet (chord distance) along said right-of-way;
thence S04°30'56"E 165.00 feet;
thence S03°21'48"E, 535.00 feet;
thence S86°38'12"W 500.00 feet;
thence N03°21'48"W 697.74 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Borrow Area No. 7

Township 31 North, Range 14 West, NMPM, approx. 9.64 acres

Section 26: Pt. SW¼
Section 27: Pt. SE¼, said tracts being more particularly described as follows:

Beginning S15°28'16"W 208.17 feet from the East Quarter Corner of said Section 27;
thence S47°44'52"E 700.00 feet to a point on the Westerly right-of-way line of proposed San Juan Coal Company Haul Road;
thence S42°15'08"W 400.01 feet along said right-of-way;
thence S43°21'33"W 200.04 feet along said right-of-way;
thence N47°44'52"W 696.14 feet;
thence N42°15'08"E 600.00 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Borrow Area No. 8

Township 31 North, Range 14 West, NMPM, approx. 10.33 acres

Section 26: N½, more particularly described as follows:

Beginning S08°01'26"E 257.69 feet from the North Quarter Corner of said Section 26;
thence S47°44'52"E 450.00 feet to a point on the Westerly right-of-way line of the proposed San Juan Coal Company Haul Road;
thence S42°15'08"W 1,000.00 feet along said right-of-way;
thence N47°44'52"W 450.00 feet;
thence N42°15'08"E 1,000.00 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Drainage Control Right-of-Way

Township 31 North, Range 14 West, NMPM, approx. 31.27 acres

A tract of land which is more specifically described as follows:

Using the bearing North between the West Quarter Corner and the NW corner of Section 33, T31N, R14W, NMPM, as the basis of bearing and beginning at a point from which the West Quarter Corner of said Section 33 bears S53°01'21"E a distance of 1,318.25 feet;
thence S86°38'12"W a distance of 500.00 feet;
thence N03°21'48"W a distance of 697.74 feet tangency with a curve to the left;
thence 100.14 feet along the arc of said curve which has a radius of 2,490.98 feet, an angle of 2-18-12 and a long chord which bears S83°41'27"W a distance of 100.13 feet;
thence S03°21'48"E a distance of 789.84 feet;
thence N86°38'12"E a distance of 708.14 feet;
thence N03°21'48"W a distance of 535.00 feet to a non-tangent point of intersection with a curve which is concave to the northwest;

Ute Mountain Ute Tribe, Drainage Control Right-of-Way (Con't.)

thence 685.36 feet along the arc of said curve
which has a radius of 5,238.25 feet, an angle
of 07°29'47" and a long chord which bears
N80°34'24"E a distance of 684.86 feet;
thence N13°09'50"W a distance of 165.40 feet
to a non-tangent point of intersection with a
curve which is concave to the northwest;
thence 769.76 feet along the arc of said curve
which has a radius of 5,073.25 feet, a central
angle of 08°41'37" and a long chord which
bears N72°28'42"E a distance of 769.04 feet;
thence N68°07'53"E a distance of 3,638.70 feet;
thence S21°52'07"E a distance of 175.00 feet;
thence N68°07'53"E a distance of 450.00 feet;
thence N21°52'07"W a distance of 175.00 feet;
thence N68°07'53"E a distance of 1,484.96 feet;
thence N69°34'30"E a distance of 1,053.97 feet;
thence S20°25'30"E a distance of 25.00 feet;
thence N69°34'30"E a distance of 325.00 feet to
a non-tangent point of intersection with a curve
which is concave to the northeast;
thence 399.15 feet along the arc of said curve
which has a radius of 5,331.62 feet, a central
angle of 04°17'22" and a long chord which bears
N67°25'24"E a distance of 399.06 feet;
thence N24°43'17"W a distance of 25.00 feet to
a non-tangent point of intersection with a curve
which is concave to the northeast;
thence 1,080.36 feet along the arc of said curve
which has a radius of 5,306.62 feet, a central
angle of 11°39'53" and a long chord which
bears N59°26'47"E a distance of 1,078.88 feet;
thence N36°23'10"W a distance of 100.36 feet
to a non-tangent point of intersection with a
curve which is concave to the northwest;
thence 1,159.54 feet along the arc of said curve
which has a radius of 5,206.62 feet, a central
angle of 12°45'36" and a long chord which
bears S59°59'38"W a distance of 1,157.14 feet;

Ute Mountain Ute Tribe, Drainage Control Right-of-Way (Con't.)

thence S23°37'47"E a distance of 25.00 feet to
a non-tangent point of intersection with a curve
which is concave to the northwest;
thence 291.66 feet along the arc of said curve
which has a radius of 5,231.62 feet, a central
angle of 03°11'39" and a long chord which
bears S67°58'16"W a distance of 291.62 feet;
thence S69°34'05"W a distance of 218.11 feet;
thence N20°25'55"W a distance of 25.00 feet;
thence S69°34'05"W a distance of 1,168.74 feet;
thence S68°07'53"W a distance of 1,579.63 feet;
thence S21°52'07"E a distance of 25.00 feet;
thence S68°07'53"W a distance of 250.00 feet;
thence N21°52'07"W a distance of 25.00 feet;
thence S68°07'53"W a distance of 3,738.70 feet
to a point of tangency with a curve to the right;
thence 855.55 feet along the arc of said curve
which has a radius of 4,973.25 feet, a central
angle of 09°51'24" and a long chord which
bears S73°03'35"W a distance of 854.50 feet;
thence S12°00'43"E a distance of 165.00 feet
to a non-tangent point of intersection with a
curve which is concave to the northwest;
thence 672.27 feet along the arc of said curve
which has a radius of 5,138.25 feet, a central
angle of 07°29'47" and a long chord which
bears S81°44'10"W a distance of 671.79 feet;
thence S03°22'21"E a distance of 535.00 feet.

Foutz, Joel W., et al (now Wagon Rod Ranch)
(Transportation 'Haulroad' Corridor)

Township 30 North, Range 14 West, NMPM, approx. 56.34 acres
Section 5: Pt. of the NW¼SW¼, NW¼
Section 6: Pt. of the SE¼, SE¼NE¼
Section 7: Pt. of the N½. Said easement shall be 225 feet wide, lying 112.5 feet on each side of a center line more particularly described as follows:

Beginning at a point from which the southwest corner of Section 7 bears S05°18'19"W 2,641.32 ft;
thence from said Point of Beginning N43°51'58"E 10,908.22 ft, more or less, to the North line of Section 5.

Mangis, Robert A., et al
(Transportation 'Haulroad' Corridor)

Township 30 North, Range 15 West, NMPM, approx. 7.27 acres
Section 12: Pt. SW¼SE¼ more particularly described as follows:

Beginning at a point on the West line of the E½SE¼ of said Section 12 whence the Southeast Corner of said Section 12 bears S57°20'00"E a distance of 1,563.64 feet;
thence S43°51'51"W a distance of 872.48 feet to a point of tangency with a curve to the right;
thence 294.29 ft, more or less, along the arc of said curve which has a radius of 2977.29 feet, a central angle of 05°39'48" and a long chord which bears S46°41'44"W a distance of 294.17 feet to the South line of said Section 12;
thence N89°38'49"W along said South line of Section 12, a distance of 365.47 feet to a non-tangent point of intersection with a curve which is concave to the Northwest;
thence 549.07 feet along the arc of said curve which has a radius of 2,752.29 feet, a central angle of 11°25'49" and a long chord which bears N49°34'45"E a distance of 548.16 feet;
thence N43°51'50"E a distance of 1,106.59 feet, more or less, to the West line of the E½SE¼ of said Section 12;
thence S00°00'00"E along said West line of the E½SE¼ of said Section 12, a distance of 324.70 feet, more or less, to the Point of Beginning.

Wagon Rod Ranch Limited Liability Co.
(Transportation 'Haulroad' Corridor)

Township 30 North, Range 15 West, NMPM, approx. 11.74acres
Section 14: Pt. E½NE¼, NE¼SE¼
more particularly described as follows:

Beginning at a point on the East line of said Section 14 from which the Northeast corner of said Section 14 bears N00°25'30"E a distance of 994.58 feet;
thence S00°25'30"W a distance of 266.19 feet to a non-tangent point of intersection with a curve which is concave to the southeast;
thence 1,060.43 feet along the arc of said curve which has a radius of 2,179.33 feet, a central angle of 27°52'46" and a long chord which bears S42°21'39"W a distance of 1,050.00 feet;
thence S28°25'16"W a distance of 839.51 feet to a point of tangency with a curve to the right;
thence 435.70 feet, more or less, along the arc of said curve which has a radius of 5,842.08 feet, a central angle of 04°16'23" and a long chord which bears S30°33'28"W a distance of 435.60 feet, to the West line of the E½SE¼ of said Section 14;
thence N00°24'38"E along the West line of the E½SE¼ of said Section 14, a distance of 444.86 feet to a non-tangent point of intersection with a curve which is concave to the northwest;
thence 42.55 feet along the arc of said curve which has a radius of 5,617.08 feet, a central angle of 00°26'02" and a long chord which bears N28°38'18"E a distance of 42.54 feet;
thence N28°25'17"E a distance of 839.51 feet to a point of tangency with a curve to the right;
thence 1,319.34 feet, more or less, along the arc of said curve which has a radius of 2,404.33 feet, a central angle of 31°26'25" and a long chord which bears N44°08'29"E a distance of 1,302.85 ft, to the Point of Beginning.

EXHIBIT 7

DISTURBANCE/RECLAMATION SURVEYS OF THE SJCC SITE AREA

Capitalized terms not otherwise defined herein shall have the meanings assigned in this Mine Reclamation Agreement.

Surveys 1, 2 and 3 will be conducted of the SJCC Site Area at specific points in time as hereinafter set forth to identify and catalog Disturbances (see description below) and to categorize and to establish baselines for each Disturbance Area. Additional Surveys may be performed as directed by the Reclamation Oversight Committee. Surveys 1, 2 and 3 will include all Disturbances.

Surveys 1, 2 and 3 will be conducted as close to the following dates as practicable: Survey 1, which is intended to be high-level, will be conducted as of the Effective Date; Survey 2 will be conducted as of December 31, 2017 and will define each Disturbance Area; Survey 3 will be conducted as of the date CCR disposal ceases in the SJCC Site Area. The reports for Surveys 2 and 3 will identify each Disturbance Area and propose a classification as a Pre-2017YE Reclamation Liability or a Post-2017YE Reclamation Liability. For example, the Juniper Pit in the SJCC Site Area is considered a Disturbance Area, as it is a discrete area, the nature of the Disturbance throughout the area is similar, and the Disturbance Area can be classified a Pre-2017YE Reclamation Liability as of Survey 1. The scope and timing of other Surveys will be as directed by the Reclamation Oversight Committee.

The Surveys will be conducted by an independent contractor (the "Surveyor") in coordination with the Reclamation Trust Funds Operating Agent and SJCC under the RSA. The Surveyor will be independent of the Parties and will have appropriate expertise in coal mining operations and mined land reclamation in arid climates, and be knowledgeable in legal, regulatory and permitting requirements for coal mining operations in New Mexico. The Reclamation Trust Funds Operating Agent will propose a Surveyor, and scope of work for each Survey, which will be voted on by the Reclamation Oversight Committee. Upon completion of each Survey, the Reclamation Trust Funds Operating Agent will present each Survey report to the Reclamation Oversight Committee for its approval. If a Survey report is not approved, the Survey and classifications may be subject to dispute resolution under the terms of this Mine Reclamation Agreement.

Survey 1

The Surveyor will identify and document with aerial photography or other means all of the Disturbances within the SJCC Site Area. Each significant instance of Disturbance will be catalogued and given a Catalogue ID along with its location, and the nature of the Disturbance, including current status of reclamation, and the area (acreage) affected.

Surveys 2 and 3

The Surveyor will identify all significant instances of Disturbance within the SJCC Site Area. Each significant instance of Disturbance will be catalogued with a Catalogue ID and (i) its location; (ii) the nature of the disturbance and the area (acreage) affected; (iii) the status of any reclamation activities previously conducted or being conducted at each Disturbance Area; (iv) the bond release status of each Disturbance Area; and (v) whether such Disturbance Area results in a Pre-2017YE Reclamation Liability or a Post-2017YE Reclamation Liability.

The Surveyor will develop a listing of all Disturbance Areas. The Surveyor will be advised by the Reclamation Trust Funds Operating Agent that certain Disturbance Areas may have to be reclassified or subdivided based on activities that have taken place between Surveys. Certain Disturbance Areas may require allocation between Pre-2017YE Reclamation Liability and Post-2017YE Reclamation Liability. In such event, the Surveyor will recommend a percentage allocation, including a description of the rationale and basis regarding methodologies or processes for making such allocations. For example, if a particular Disturbance Area is modified in some way between Surveys to facilitate post-2017 coal supply activities in a manner that increases its reclamation cost, the increase will be allocated as a Post-2017YE Reclamation Liability.

Final Reports

In addition to providing the detail described above, the Surveyor will provide maps showing the location and areal extent of each Disturbance Area, and such other information as may be useful or informative.

Copies of the written survey report will be provided to the Parties and SJCC in electronic and hard copy formats.

EXHIBIT 8

COMPOSITE RECLAMATION SHARES

For purposes of committee voting as set forth in Sections 6.5 and 7.4 and for the Review Cost allocation set forth in Section 5.4 of the Mine Reclamation Agreement, the Composite Reclamation Shares of the Parties will be determined as set out below.

Upon the approval of any new Reclamation Costs Review, the Parties' Composite Reclamation Shares will be determined by prorating a Party's Reclamation Shares (both Pre-2017YE Reclamation Share and Post-2017YE Reclamation Share) by the weighting of the total unescalated cost estimates for the Pre-2017 YE Reclamation Liability Costs and the Post-2017 YE Reclamation Liability Costs. An example follows:

> Assume a new Reclamation Costs Review results in constant year dollar estimates of $90 of Pre-2017YE Reclamation Liability Costs (or 90% of the total estimate) and $10 of Post-2017YE Reclamation Liability Costs (or 10% of the total estimate). The Composite Reclamation Shares will be determined per the methodology set out in the following table:

Column	A	B	C = A x B	D	E	F = D x E	G = C + F
Owner	Pre-2017YE Reclamation Shares	Pre-2017YE Cost Estimate Percentage	Pre-2017YE Weighting	Post-2017YE Reclamation Shares	Post-2017YE Cost Estimate Percentage	Post-2017YE Weighting	Total Weighting
PNM	46.297	0.90	41.6673	58.671	0.10	5.8671	47.5344
PNMR-D	0.000	0.90	0.0000	7.673	0.10	0.7673	0.7673
TEP	19.800	0.90	17.8200	20.068	0.10	2.0068	19.8268
M-S-R	8.700	0.90	7.8300	0.000	0.10	0.0000	7.8300
Farmington	2.559	0.90	2.3031	5.076	0.10	0.5076	2.8107
Tri-State	2.490	0.90	2.2410	0.000	0.10	0.0000	2.2410
Los Alamos	2.175	0.90	1.9575	4.309	0.10	0.4309	2.3884
SCPPA	12.710	0.90	11.4390	0.000	0.10	0.0000	11.4390
Anaheim	3.100	0.90	2.7900	0.000	0.10	0.0000	2.7900
UAMPS	2.169	0.90	1.9521	4.203	0.10	0.4203	2.3724
	100.000		90.0000	100.000		10.0000	100.0000

Column G would show the Composite Reclamation Shares of each Party in the example. From the time of the Effective Date of the Mine Reclamation Agreement until the next Reclamation Costs Review is approved, each Party's Composite Reclamation Share will be taken from column A above.

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FINAL VERSION 06/18/2015
(SUBJECT TO CONFORMING CHANGES)

SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT

AMONG

PUBLIC SERVICE COMPANY OF NEW MEXICO

TUCSON ELECTRIC POWER COMPANY

THE CITY OF FARMINGTON, NEW MEXICO

M-S-R PUBLIC POWER AGENCY

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

CITY OF ANAHEIM

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

July ____, 2015

SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT

TABLE OF CONTENTS

RECITALS 1
1.0 Term and Termination 2
1.1 Effective Date 2
1.2 Termination 2
2.0 Definitions and Rules of Interpretation 2
2.1 Definitions 2
2.2 Rules of Interpretation 8
3.0 Decommissioning Committee and Decommissioning Agent 9
3.1 Decommissioning Committee 9
3.2 Decommissioning Agent 11
4.0 Activities During Interim Period 15
4.1 Initial Decommissioning Work 16
4.2 Interim Decommissioning Work 16
4.3 Items not Part of Decommissioning 17
4.4 Use of Equipment Located at Units 2 and 3; Salvage Revenue 18
5.0 Decommissioning Plan 18
5.1 Decommissioning Study 18
5.2 Selection of Decommissioning Plan 19
5.3 Payment for Decommissioning 19
5.4 Payment Procedures 19
6.0 Decommissioning Trust Funds 19
6.1 Establishment of Decommissioning Trusts 19
6.2 Decommissioning Trust Funding Obligations. 20
6.3 Projected Decommissioning Costs Reviews and Adjustment of Decommissioning Trust Funding Obligations. 20
6.4 Investment of Decommissioning Trust Funds 21
6.5 Mandatory Provisions for Decommissioning Trust Agreements 21
6.6 Only Purposes 22
6.7 Decommissioning Correcting Deposits. 22
6.8 Return of Funds in Decommissioning Trust 23

6.9 Status Reports 23
6.10 Compliance 23
7.0 Decommissioning Investment Committee 23
7.1 Establishment of Decommissioning Investment Committee 23
7.2 Decommissioning Investment Committee Membership 23
7.3 Functions and Responsibilities of the Decommissioning Investment Committee 24
7.4 Decisions of the Decommissioning Investment Committee 25
7.5 Meetings of the Decommissioning Investment Committee 25
8.0 Default 25
8.1 Definition of Default 25
8.2 Default Notice 25
8.3 Cure of Default 26
8.4 Protest of Default 26
8.5 Declaration of Default 26
8.6 Consequences of Default 26
8.7 No Stay for Arbitration 27
8.8 Termination of Default 27
8.9 Other Rights 27
8.10 No Waiver 27
9.0 Dispute Resolution 27
9.1 Amicable Resolution 27
9.2 Call for Arbitration 28
9.3 Selection of Arbitrators 28
9.4 Arbitration Procedures 29
9.5 Decision of Arbitrators 29
9.6 Enforcement of Arbitration Award 29
9.7 Fees and Expenses 30
9.8 Prompt Resolution 30
9.9 Legal Remedies 30
10.0 Power and Authority 30
10.1 Requisite Power and Authority 30
10.2 No Violation 30
11.0 Relationship of Parties 30
11.1 Several Obligations 31

11.2 No Joint Venture or Partnership 31
12.0 Assignments 31
12.1 Successors and Assigns 31
12.2 No Right to Mortgage 31
12.3 Prior Written Consent 31
12.4 Assignee's Obligation to Establish and Fund Decommissioning Trust 31
12.5 Parties not Relieved of Obligations 32
12.6 Assigning Party's Right of Refund 32
13.0 Audit Rights; Related Disputes 32
13.1 Right of Audit 32
13.2 Audit Dispute Resolution 32
13.3 Adjusted Billing Procedures 33
13.4 Audit of Decommissioning A&G Expenses 33
14.0 Uncontrollable Forces 33
15.0 Invalid Provisions 33
16.0 Applicable Law and Venue 33
16.1 Compliance with Law 34
16.2 Governing Law 34
16.3 Venue 34
17.0 Entire Agreement 34
17.1 Entire Agreement 34
17.2 Amendment and Modification 34
17.3 Prior Obligations Unaffected 34
18.0 No Interpretation Against Drafter 34
19.0 Independent Covenants 34
20.0 Other Documents 35
21.0 Notices 35
21.1 Manner of Giving of Notice 35
21.2 Changes in Designation 37
22.0 Captions and Headings 37
23.0 Effect of Municipal Law 37
23.1 Anaheim and M-S-R 37
23.2 Southern California Public Power Authority 38
23.3 Farmington and Los Alamos 38

23.4 Utah Associated Municipal Power Systems 38
24.0 Parties' Cost Responsibilities 38
25.0 No Third Party Beneficiaries 38
26.0 No Admission of Liability 38
27.0 Confidentiality 39
27.1 Confidentiality of Negotiations 39
27.2 Non-confidentiality of Decommissioning Agreement 39
28.0 Damages 39
29.0 Execution in Counterparts 39

List of Exhibits

Exhibit A	Decommissioning Shares
Exhibit B	Decommissioning Trust Agreement Mandatory Provisions
Exhibit C	SJGS Plant Site
Exhibit D	Initial Decommissioning Work
Exhibit E	Retirement in Place
Exhibit F	Equipment Required for On-going Operation of Units 1 and 4

SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT

This SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT ("Decommissioning Agreement"), dated as of July __, 2015, is entered into by PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Los Alamos"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"); and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"). The parties to this Decommissioning Agreement are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

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

A. The San Juan Project is a four-unit, coal-fired electric generation plant located in San Juan County, near Farmington, New Mexico, also known as the San Juan Generating Station ("SJGS", "San Juan Project" or "Project"). On the execution date, the owners of the Project are: PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS and Tri-State.

B. Concurrently herewith, the Parties are executing: (i) the San Juan Project Restructuring Agreement ("Restructuring Agreement"); (ii) the Amended and Restated Mine Reclamation and Trust Funds Agreement ("Mine Reclamation Agreement"); (iii) the SJPPA Restructuring Amendment; and (iv) the SJPPA Exit Date Amendment, all of which were agreed upon pursuant to a mediation among the Parties. The Restructuring Agreement, among other things, provides for the amendment of certain provisions of the Amended and Restated San Juan Project Participation Agreement dated March 23, 2006 (the "SJPPA") regarding rights and obligations in respect of the ownership and operation of the San Juan Project.

C. One disagreement subject to negotiation and mediation concerned obligations under Section 40.0 of the SJPPA, which provides:

> The Participants acknowledge the appropriateness of incorporating in a future amendment to this Agreement, or in another appropriate contractual

instrument, provisions which address the decommissioning of the San Juan Project and/or of one or more Units. It is recognized, however, that the resolution of issues associated with San Juan Project decommissioning will require protracted study. The Participants therefore agree to establish a task force or other forum for the careful and deliberate consideration of decommissioning issues so that these issues may be addressed and resolved in a timely manner. The Operating Agent shall propose to the Participants a methodology and a schedule for addressing decommissioning issues.

The Parties desire by this Decommissioning Agreement to settle and resolve such disagreements and to establish a methodology for planning and approving Decommissioning Work and funding and allocating the cost of Decommissioning Work.

D. The Parties desire, by this Decommissioning Agreement, the Mine Reclamation Agreement, the Restructuring Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment to establish a comprehensive set of agreements with respect to the restructuring of San Juan Project ownership interests, rights and cost responsibilities.

E. The foregoing Recitals are included to provide background regarding this Decommissioning Agreement, and while certain Recitals may be referenced in this Decommissioning Agreement, they are neither part of nor incorporated into the terms, covenants and conditions of this Decommissioning Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises and obligations reflected in the covenants, terms and conditions in this Decommissioning Agreement, all of which together provide the consideration for this Decommissioning Agreement, the Parties agree as follows:

1.0 Term and Termination

1.1 Effective Date. As provided for in the Restructuring Agreement, this Decommissioning Agreement will become effective on the Exit Date.

1.2 Termination. This Decommissioning Agreement will continue in full force and effect until twenty-four (24) months after completion of Decommissioning Work.

2.0 Definitions and Rules of Interpretation

2.1 Definitions. The following terms, when used herein with initial capitalization, have the meanings specified below:

2.1.1 Affiliate means, with respect to any person: (i) each person that, directly or indirectly, controls or is controlled by or is under common control with such designated person; (ii) any person that beneficially owns or holds 50% or more of any class of voting securities of such designated person or 50% or more of the equity interest in such designated person; and (iii) any person of which such designated person beneficially owns or holds

50% or more of any class of voting securities or in which such designated person beneficially owns or holds 50% or more of the equity interest; provided, however, that members of a Party will not be deemed to be Affiliates of each such Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise; PNM and PNMR-D are Affiliates.

2.1.2 Arbitration Award means an award of the arbitrators as provided for in Section 9.5.4

2.1.3 Arbitration Organization has the meaning provided for in Section 9.3.2.

2.1.4 Assigning Party means a Party making a transfer or assignment as described in Section 12.

2.1.5 Board means the governing body of a Party.

2.1.6 Business Day means any day other than a Saturday, Sunday or federal holiday.

2.1.7 Charter Documents means with respect to any Party, the certificate or articles of incorporation or organization and by-laws, the limited partnership agreement, the partnership agreement, the limited liability company agreement or trust agreement, or other organizational documents of such Party.

2.1.8 Credit Rating means the rating publicly assigned to a Party's senior, unsecured long-term debt obligations (not supported by a third party credit enhancement), by a Rating Agency or, if a Party does not have a public rating for its senior, unsecured long-term debt, the rating publicly assigned to the Party by a Rating Agency as its corporate credit rating, or long-term issuer rating, as applicable.

2.1.9 Decommissioning Correcting Deposits means deposits to a Party's Decommissioning Trust as required by Section 6.7.

2.1.10 Decommissioning Correction Period means the time in which Decommissioning Correcting Deposits must be completed as provided for in Section 6.7.2.1.

2.1.11 Decommission, Decommissioned or Decommissioning means, subject to the provisions set forth in Section 4.3, removal of the San Juan Project facilities from service in conjunction with retirement of facilities or closure of the Project in accordance with either the requirements of applicable Law, if any, or Prudent Cost Avoidance. Possible Decommissioning activities include the dismantlement, demolition, removal, retirement in place, salvage, remediation and/or reclamation of the San Juan Project or a portion thereof

(but not of the San Juan Mine), including any planning and administrative activities incident thereto and related reporting and monitoring requirements.

2.1.12 Decommissioning A&G Expenses means administrative and general expenses of the Decommissioning Agent incurred for Decommissioning as provided for in Section 3.2.4.

2.1.13 Decommissioning Agent means the agent of the Parties, selected in accordance with Section 3.2.1, who will perform the Decommissioning Work and other tasks assigned to the Decommissioning Agent under this Decommissioning Agreement under the oversight of the Decommissioning Committee.

2.1.14 Decommissioning Agreement means this San Juan Decommissioning and Trust Funds Agreement.

2.1.15 Decommissioning Committee means the committee established in Section 3.1.1.

2.1.16 Decommissioning Contractor means a non-Party who is hired to perform Decommissioning Work.

2.1.17 Decommissioning Costs means the costs for San Juan Project Decommissioning, including Decommissioning A&G Expenses.

2.1.18 Decommissioning Funding Target Amount means, the initial Decommissioning Funding Target Amount established in Sections 6.2 and 6.3, and thereafter, the respective dollar amounts as determined by the Decommissioning Investment Committee pursuant to Section 6.2.1.

2.1.19 Decommissioning Investment Committee means the committee established in Section 7.1.

2.1.20 Decommissioning Plan means the decommissioning plan as described in Section 5.

2.1.21 Decommissioning Share means a Party's share of Decommissioning funding and cost responsibility, as specified for a given year in Section 5.3 and **Exhibit A**, as calculated by the Decommissioning Committee.

2.1.22 Decommissioning Study means an analysis of processes and associated costs for Decommissioning performed pursuant to Section 5.1.

2.1.23 Decommissioning Trust means a trust maintained by a Party with a Trustee pursuant to Section 6.1.

2.1.24 Decommissioning Trust Agreement means a trust agreement entered into between a Party and its Trustee for the purpose of satisfying the Party's responsibilities under this Decommissioning Agreement to fund and pay for Decommissioning Costs.

2.1.25 Decommissioning Work means all activities for planning and conducting Decommissioning.

2.1.26 Default means a default in performance of a Party's obligations under this Decommissioning Agreement, as defined more particularly in Section 8.1.

2.1.27 Default Declaration means a declaration of default as defined in Section 8.5.

2.1.28 Default Notice means a notice of default as defined in Section 8.2.

2.1.29 Dispute Protest has the meaning provided for in Section 9.1.2.

2.1.30 Effective Date means the date established in Section 1.1 for the effectiveness of this Decommissioning Agreement.

2.1.31 Exit Date means the date upon which the Exiting Participants transfer all of their respective rights, titles and interests in and to their ownership interests in SJGS to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of the SJGS, except as expressly provided for in the Restructuring Agreement, the Mine Reclamation Agreement and this Decommissioning Agreement; the Exit Date is anticipated to be on or about December 31, 2017.

2.1.32 Exiting Participants means those Parties that will transfer all of their respective rights, titles and interests in and to their ownership interests in SJGS to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in the Restructuring Agreement, the Mine Reclamation Agreement and this Decommissioning Agreement; the Exiting Participants are M-S-R, Anaheim, SCPPA and Tri-State.

2.1.33 Final Decommissioning Report means a report prepared by the Decommissioning Contractor describing how Decommissioning was completed in accordance with requirements of Law and the Decommissioning Plan and provided by the Decommissioning Agent to the Decommissioning Committee pursuant to Section 3.2.2.8.

2.1.34 Governmental Authority means any federal, state, tribal, local, municipal or foreign governmental or regulatory authority, department, agency, commission, body, court or other governmental authority other than a Party.

2.1.35 Initiating Party means the Party initiating an audit as provided for in Section 13.1.

2.1.36 Interim Period has the meaning described in Section 4.2.

2.1.37 Law means statutes, rules, regulations, ordinances, orders and codes of federal, state and local Governmental Authorities.

2.1.38 Mandatory Provisions means those provisions which must be included in each Party's Decommissioning Trust Agreement, as described in **Exhibit B**.

2.1.39 Mine Reclamation Agreement means the Amended and Restated Mine Reclamation and Trust Funds Agreement, executed concurrently herewith.

2.1.40 Notice of Dispute has the meaning provided for in Section 9.1.1.

2.1.41 Notice means a notification given in accordance with Section 21.1.

2.1.42 Noticing Party has the meaning provided for in Section 9.1.1.

2.1.43 Notification of Intent means a notification of intent to declare a Party in default, as defined in Section 8.5.

2.1.44 Party means any one of the signatories to this Decommissioning Agreement.

2.1.45 Prime Rate means the interest rate per annum (sometimes referred to as the base rate) for large commercial loans to creditworthy entities announced from time-to-time by Wells Fargo Bank, N.A. (New York) or its successor bank or, if such rate is not announced, the rate published in The Wall Street Journal as the "prime rate" from time-to-time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay arises.

2.1.46 Project has the meaning provided for in Recital A.

2.1.47 Project Assets means equipment or facilities of any kind at the San Juan Project that are not being used for current operations, including all components, spare equipment and inventory of any Unit which has ceased operations.

2.1.48 Projected Decommissioning Costs Review means a review of the projected costs of completing Decommissioning Work, as adjusted from time-to-time pursuant to Section 6.3.

2.1.49 Protest means a protest made under Section 8.4.

2.1.50 Protesting Party has the meaning provided for in Section 9.1.2.

2.1.51 Prudent Cost Avoidance means a discretionary action approved by the Decommissioning Committee in accordance with Section 4.2.3, even though not required by then-current Law.

2.1.52 Rating Agency means Moody's Investors, Inc. or Standard & Poor's Financial Services, LLC (a subsidiary of McGraw-Hill Companies).

2.1.53 Remaining Participants means those Parties that will continue participation, or acquire an ownership interest, in the Project on or after the Exit Date; the Remaining Participants are PNM, TEP, Farmington, Los Alamos, UAMPS and PNMR-D.

2.1.54 Required Plan has the meaning provided for in Section 5.1.1.

2.1.55 Restructuring Agreement means the San Juan Project Restructuring Agreement among the Parties, executed concurrently herewith.

2.1.56 Retirement Order means a proposal for the expenditure of certain funds as described in Section 4.2.3.

2.1.57 Salvage Revenue means proceeds, net of cost of removal, received from the sale or disposition of any Project Assets, as provided for in this Decommissioning Agreement.

2.1.58 SJGS has the meaning provided for in Recital A.

2.1.59 SJGS Plant Site means the parcels identified as Parcels A, B, D, E and F in **Exhibit C.**

2.1.60 SJPPA means the Amended and Restated San Juan Project Participation Agreement among the Participants dated March 23, 2006.

2.1.61 SJPPA Exit Date Amendment has the meaning provided for in Section 1.2.2 of the Restructuring Agreement.

2.1.62 SJPPA Restructuring Amendment has the meaning provided for in Section 1.2.1 of the Restructuring Agreement.

2.1.63 Status Report means a status report prepared and provided to Parties in accordance with Section 6.9.

2.1.64 Threshold Amount means five hundred thousand dollars ($500,000).

2.1.65 Trustee means a financial institution selected by a Party at which the Party's Decommissioning Trust is or will be held.

2.1.66 Uncontrollable Forces has the meaning provided for in Section 14.

2.1.67 Unit means Unit 1, Unit 2, Unit 3 or Unit 4 of the San Juan Project.

2.1.68 Willful Action means (i) action taken or not taken by a Party (or the Decommissioning Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance under this Decommissioning Agreement, which 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 (ii) action taken or not taken by a Party (or the Decommissioning Agent) at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default hereunder and which action occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default, or if no time to cure is specified therein, occurs or continues beyond

a reasonable time to cure such default; or (iii) action taken or not taken by a Party (or the Decommissioning Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default hereunder. The phrase "employees having management or administrative responsibility," as used in this Section 2.1.68, means employees of a Party who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Decommissioning Agreement; provided, however, that, with respect to employees of the Decommissioning Agent acting in its capacity as such and not in its capacity as a Party, but only during such time as any one of Unit 1, 2, 3 or 4 is commercially producing electrical power, such phrase refers only to: (x) the senior employee of the Decommissioning Agent on duty at the Project who is responsible for the operation of the Units, and (y) anyone in the organizational structure of the Decommissioning Agent between such senior employee and an officer. After such time as none of Unit 1, 2, 3 or 4 is commercially producing electrical power, the phrase "employees having management or administrative responsibility" as used in this Section 2.1.68 will mean employees of any Party (including the Decommissioning Agent), who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Decommissioning Agreement. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

2.2 Rules of Interpretation. Unless a clear contrary intention appears, this Decommissioning Agreement will be construed and interpreted as follows:

2.2.1 Any reference to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization, governmental entity or other entity;

2.2.2 Any reference to a day, week, month or year is to a calendar day, week, month or year, unless otherwise specified as a Business Day;

2.2.3 Any act required to occur by or on a certain day is required to occur before or on that day unless the day falls on a Saturday, Sunday or federal holiday, in which case the act must occur before or on the next Business Day;

2.2.4 The singular includes the plural and *vice versa*;

2.2.5 Reference to the feminine, masculine or neutral gender includes reference to all other genders;

2.2.6 Reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Decommissioning Agreement;

2.2.7 Unless expressly stated otherwise, reference to any agreement (including this Decommissioning Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended, supplemented, replaced or modified and in effect from time-to-time;

2.2.8 Reference to any Law means such Law as amended, modified, codified, supplemented or reenacted, in whole or in part, and in effect from time-to-time, including, if applicable, rules and regulations promulgated thereunder;

2.2.9 Unless expressly stated otherwise, reference to any article, section, exhibit or appendix means such article, section, exhibit or appendix of this Decommissioning Agreement, as the case may be;

2.2.10 "Hereunder," "hereof," "herein," "hereto" and words of similar import are deemed references to this Decommissioning Agreement as a whole and not to any particular provision hereof;

2.2.11 "Including," "include" and "includes" are deemed to be followed by the phrase "without limitation" and will not be construed to mean the examples given constitute an exclusive list of the matters covered;

2.2.12 Relating to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; and

2.2.13 Whenever an act is required to be performed by a particular time of day, prevailing Mountain Time will be the standard by which performance is measured.

3.0 Decommissioning Committee and Decommissioning Agent

3.1 Decommissioning Committee.

3.1.1 Establishment of the Decommissioning Committee. The Parties hereby establish a Decommissioning Committee. The Decommissioning Committee will remain in existence during the term of this Decommissioning Agreement. The Decommissioning Committee will have no authority to modify any of the provisions of this Decommissioning Agreement.

3.1.2 Decommissioning Committee Membership. The Decommissioning Committee will consist of one representative from each Party who must be an officer or other designated representative of a Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Decommissioning Committee in the absence of the regular representative on the Decommissioning Committee or to act on specified occasions or with respect to specified matters. Each Party must notify the other Parties promptly, in writing, of the designation of its representative and alternate representative on the Decommissioning Committee and of any subsequent changes in such designations. The chairperson of the Decommissioning Committee will be the representative of the

Decommissioning Agent if the Decommissioning Agent is a Party. If the Decommissioning Agent is not a Party, the chairperson will be elected by a majority of the individual representatives on the Decommissioning Committee. Each Party will be responsible for the costs of its Decommissioning Committee representative, including fees and travel reimbursement.

3.1.3 Functions and Responsibilities of the Decommissioning Committee. The responsibilities of the Decommissioning Committee include the following:

3.1.3.1 Oversee the performance of the Decommissioning Agent, including the Decommissioning Work;

3.1.3.2 Review and oversee ongoing Decommissioning A&G Expenses including Decommissioning A&G loadings and the methodology for determining Decommissioning A&G as described in Section 3.2.4;

3.1.3.3 Vote as to matters assigned to the Decommissioning Committee;

3.1.3.4 Establish goals, timelines and procedures with respect to Projected Decommissioning Costs Reviews and perform related functions, as provided for in Section 6.3;

3.1.3.5 Identify activities that constitute Decommissioning Work;

3.1.3.6 Determine when the Decommissioning Work and Decommissioning have been completed;

3.1.3.7 Establish budgets and schedules for Decommissioning Work and approve all proposed changes to the budgets or schedules for Decommissioning Work;

3.1.3.8 Determine contracting procedures for entry into third party agreements for Decommissioning Work;

3.1.3.9 Recalculate the Decommissioning Shares as set forth in footnote 1 of **Exhibit A;** and

3.1.3.10 Perform other tasks delegated to the Decommissioning Committee by this Decommissioning Agreement.

3.1.4 Decisions of the Decommissioning Committee. Except as provided for in the third sentence of this Section 3.1.4, any actions or determinations brought before the Decommissioning Committee require the following vote: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Decommissioning Shares of the Parties then in effect as set out in Section 5.3 and as defined in **Exhibit A**; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties. Matters approved by the requisite majority of the Decommissioning Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default, such Party

will not have a right to vote under either subsection (i) or subsection (ii) of this Section 3.1.4, and the requisite majorities for actions or determinations of the Decommissioning Committee will be sixty-six and two thirds percent (66 2/3%) of the members eligible to vote under either subsection (i) or (ii) of this Section 3.1.4. The outcome of any vote of the Decommissioning Committee properly conducted in accordance with this Decommissioning Agreement will not be subject to the dispute resolution provisions of Section 9.

3.1.5 Meetings of the Decommissioning Committee. The Decommissioning Committee must meet no less frequently than annually. Special meetings will be held promptly at the written request of any Party, such request to be delivered in writing to the chairperson of the Decommissioning Committee. The Decommissioning Committee must keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Decommissioning Committee must be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Decommissioning Committee as specified in Section 3.1.4(i) and (ii). Decommissioning Committee representatives will be permitted, by prior notification to the chairperson of the Decommissioning Committee, to attend a meeting of the Decommissioning Committee by conference call or video conferencing. A Decommissioning Committee representative who is unable to attend a meeting of the Decommissioning Committee will be permitted to vote in absentia by delivering to the chairperson of the Decommissioning Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

3.2 Decommissioning Agent.

3.2.1 Selection of the Decommissioning Agent.

3.2.1.1 Subject to Sections 3.2.7 and 3.2.8, the Parties will appoint a Decommissioning Agent to carry out the responsibilities assigned to the Decommissioning Agent hereunder. The Decommissioning Agent will be the agent of the Parties and may exercise only such authority as is conferred upon it by this Decommissioning Agreement.

3.2.1.2 The Parties hereby appoint PNM as the initial Decommissioning Agent, and PNM agrees to undertake, as the agent of the Parties, and as principal on its own behalf, the performance of the responsibilities assigned herein to the Decommissioning Agent.

3.2.2 Responsibilities of the Decommissioning Agent. The Decommissioning Agent will have the following responsibilities:

3.2.2.1 Serve as liaison and focal point for the coordination of interchanges and discussions among the Parties in connection with matters arising under this Decommissioning Agreement;

3.2.2.2 Propose to the Decommissioning Committee plans, budgets and schedules for Decommissioning Work;

3.2.2.3 As and when it considers necessary, propose modifications to plans, budgets or schedules for Decommissioning Work to the Decommissioning Committee;

3.2.2.4 Pursuant to Section 6.3, perform (or cause to be performed) a Projected Decommissioning Costs Review and prepare a report on such review for submission to the Decommissioning Committee;

3.2.2.5 Furnish from its own resources or contract for the procurement of goods or services necessary for the implementation of this Decommissioning Agreement, pursuant to the procedures established by the Decommissioning Committee;

3.2.2.6 Issue requests for proposals from qualified vendors for performance of Decommissioning Work;

3.2.2.7 Monitor and supervise the performance of Decommissioning Work;

3.2.2.8 Prepare, or provide for preparation of, reports for the Decommissioning Committee at such intervals as the Decommissioning Committee may direct on the progress of the Decommissioning Work, including a Final Decommissioning Report;

3.2.2.9 Review the form and content of all invoices received from vendors for performance of Decommissioning Work, approve invoices for payment as appropriate and issue payments to vendors for approved invoices;

3.2.2.10 Issue invoices to the Parties for their Decommissioning Shares of expenses incurred by the Decommissioning Agent in the performance of any Decommissioning Work and for Decommissioning A&G Expenses;

3.2.2.11 Upon commencement of Decommissioning Work, issue periodic invoices to each Party, at such intervals as directed by the Decommissioning Committee, for payment of such Party's Decommissioning Share of Decommissioning Work;

3.2.2.12 Prepare recommendations for the Decommissioning Committee for the procurement of goods or services necessary for the performance of Decommissioning Work;

3.2.2.13 Administer, perform and enforce all contracts entered into by the Decommissioning Agent subject to the direction of the Decommissioning Committee;

3.2.2.14 Comply with all Laws applicable to its performance, monitoring and supervision of the Decommissioning Work;

3.2.2.15 Maintain in the name of the Parties and for the purposes of this Decommissioning Agreement an operating account for monies collected in connection with the implementation of this Decommissioning Agreement; such operating account must be maintained separately from any and all other accounts related to the San Juan Project;

3.2.2.16 Keep and maintain records of monies expended and received, obligations incurred, credits accrued, Project Assets disposed of, and contracts entered into in the implementation of this Decommissioning Agreement and provide reports of such records to the Parties at such intervals as the Decommissioning Committee directs, but no less frequently than thirty (30) calendar days before each annual meeting of the Decommissioning Committee;

3.2.2.17 Cooperate with the Decommissioning Investment Committee in the conduct of any review or audit of a Party's compliance with its funding of its Decommissioning Share of Decommissioning Costs and to otherwise carry into effect policies established by the Decommissioning Investment Committee;

3.2.2.18 Prepare recommendations covering the matters that may be reviewed and acted upon by the Parties and the Decommissioning Committee and the Decommissioning Investment Committee;

3.2.2.19 Keep the Parties fully and promptly advised of material changes in conditions or other material developments affecting the implementation of this Decommissioning Agreement and of any Defaults under this Decommissioning Agreement;

3.2.2.20 Provide the Decommissioning Committee and the Decommissioning Investment Committee with all records, information and reports that may be relevant to such committees in the performance of their responsibilities under this Decommissioning Agreement;

3.2.2.21 As provided in Section 8, provide copies of any Default Notice, Notification of Intent, or Default Declaration to the representatives on the Decommissioning Committee, the Decommissioning Investment Committee, the persons identified in Section 21.1, and the Trustee of a defaulting Party's Decommissioning Trust;

3.2.2.22 Enforce the obligations of each Party to fund its Decommissioning Share of the Decommissioning Costs and to pay invoices submitted hereunder to the Parties or to their Trustees;

3.2.2.23 Procure appropriate insurance covering Decommissioning Work to provide coverage for risks for which the Parties have or may have responsibility under this Decommissioning Agreement;

3.2.2.24 Perform all other obligations and duties that the Parties, the Decommissioning Committee, or the Decommissioning Investment Committee may from time-to-time delegate to the Decommissioning Agent; and

3.2.2.25 Perform all other obligations and duties that are assigned herein to the Decommissioning Agent or that are reasonably necessary in connection with the performance of its obligations and duties hereunder.

3.2.3 Reimbursement of Costs and Expenses. Subject to Section 11.1, each Party will reimburse the Decommissioning Agent, based on the Party's Decommissioning Share then in effect, for all of the reasonable costs and expenses incurred by the Decommissioning Agent in its performance of its responsibilities pursuant to this Decommissioning Agreement.

3.2.4 Decommissioning Administrative and General Expenses. Beginning January 1, 2018, Decommissioning A&G Expenses will include administrative and general expenses directly chargeable to FERC Accounts 920, 921, 923, 926, 930.2, 931 and 935, will include payroll loads for administrative and general expenses, payroll taxes, injuries and damages and pension and benefits, and will be added to the periodic billings in proportion to the dollars of direct labor billed. The Decommissioning Agent will prepare, for the approval of the Decommissioning Committee, operating procedures for the accounting of Decommissioning A&G Expenses in its performance of the Decommissioning Work and will recommend updates thereof no fewer than every three (3) years. An annual true-up of Decommissioning A&G Expenses will be made each year once such expenses have been recorded.

3.2.5 No Fee. The Decommissioning Agent will receive no fee or profit hereunder, unless otherwise agreed unanimously by the Parties.

3.2.6 Liability of the Decommissioning Agent.

3.2.6.1 The provisions of this Section 3.2.6 are intended to address limitations on the liability of the Decommissioning Agent acting solely in the capacity of Decommissioning Agent; to the extent the actions of the Decommissioning Agent are carried out in its capacity as a Party or in any other capacity, the limitation of liability provisions in this Section 3.2.6 are not applicable.

3.2.6.2 Except for any judgment debt for damage resulting from Willful Action or as necessary to enforce an Arbitration Award, each Party hereby extends to the Decommissioning Agent, its employees, officers, directors and agents, its covenant not to execute, levy or otherwise enforce a judgment obtained against the Decommissioning Agent, including recording or effecting a judgment lien, for any direct, indirect or consequential, damage, claim, cost, charge or expense, whether or

not resulting from the negligence of the Decommissioning Agent, its employees, officers, directors or agents, or any person or entity whose negligence would be imputed to the Decommissioning Agent arising out of its performance or non-performance hereunder. With respect to the Decommissioning Agent's liability for Willful Action, such liability will in no event exceed a total of fourteen million dollars ($14,000,000) per occurrence. The Parties extend to the Decommissioning Agent, its employees, officers, directors and agents, their covenant not to execute, levy or otherwise enforce a judgment against any of them for any such liability for Willful Action in excess of the amounts set forth in the previous sentence. In the event that Parties' claims made or judgments obtained against the Decommissioning Agent or its employees, officers, directors and agents exceed fourteen million dollars ($14,000,000) per occurrence, such claims or judgments will be prorated among the successful Parties consistent with the limitation on Willful Action liability established herein.

3.2.7 Resignation of the Decommissioning Agent. Subject to Section 3.2.8, the Decommissioning Agent will serve during the term of this Decommissioning Agreement unless it resigns as Decommissioning Agent by giving notice to the Parties at least one (1) year in advance of the effective date of the resignation. Following such a notice, the Decommissioning Committee must convene promptly to address the selection of a replacement Decommissioning Agent which may, but need not, be a Party.

3.2.8 Removal of the Decommissioning Agent. The Decommissioning Agent may be removed by the Parties, if, in the judgment of the Parties, their best interests require such removal. Any Party seeking the removal of the Decommissioning Agent must serve a notice on the Decommissioning Agent and on each of the Parties, detailing the reasons why, in the judgment of the initiating Party, the Decommissioning Agent should be removed. Within thirty (30) days after receipt by the Decommissioning Agent of this written statement, the Decommissioning Agent will prepare and serve upon the Parties its response, which will contain a detailed rebuttal of the allegations made in the initiating statement. Within the same thirty (30) day period, any other Party may also serve upon the Decommissioning Agent and the Parties a statement responding to the allegations in the initiating statement. Within twenty (20) days after service of all such response statements, the Parties must meet to consider what actions, if any, to take in regard to the removal of the Decommissioning Agent. The Decommissioning Agent may be removed by the vote of more than a sixty-six and two thirds percent (66 2/3%) majority of the Decommissioning Shares of the Parties and more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties; provided, however, that a Party that is the Decommissioning Agent will not be entitled to vote on the issue of its own removal and the requisite voting percentages will be based upon the number of eligible voting Parties, other than the Party that is the Decommissioning Agent, and their respective Decommissioning Shares. If the Decommissioning Agent is removed by vote of the Parties, the Decommissioning Committee must convene promptly to address the selection of a replacement Decommissioning Agent which may, but need not, be a Party.

4.0 Activities During Interim Period

4.1 Initial Decommissioning Work.

4.1.1 Three specific one-time tasks constituting initial Decommissioning Work for Units 2 and 3, and the estimated costs of such tasks, are set forth in **Exhibit D** hereto. The cost of the initial Decommissioning Work set forth in **Exhibit D** will be paid by all Parties based on the following percentages:

4.1.1.1	PNM:	46.297%
4.1.1.2	TEP:	19.8%
4.1.1.3	M-S-R:	8.7%
4.1.1.4	Farmington:	2.559%
4.1.1.5	Tri-State:	2.49%
4.1.1.6	Los Alamos:	2.175%
4.1.1.7	SCPPA:	12.71%
4.1.1.8	Anaheim:	3.10%
4.1.1.9	UAMPS:	2.169%
4.1.1.10	PNMR-D:	0.000 %

4.1.2 Other tasks related to requirements for the retirement-in-place of Units 2 and 3, and their estimated cost, are set forth in **Exhibit E** hereto. The costs of such tasks will be paid for as operating and maintenance costs by the Remaining Participants based on the following percentages:

4.1.2.1	PNM:	58.671%
4.1.2.2	TEP:	20.068%
4.1.2.3	Farmington:	5.076%
4.1.2.4	Los Alamos:	4.309%
4.1.2.5	UAMPS:	4.203%
4.1.2.6	PNMR-D:	7.673%
4.1.2.7	Exiting Participants:	0.000%

4.2 Interim Decommissioning Work. Other Decommissioning Work undertaken during the period between the Exit Date and the complete cessation of commercial production of electrical power at all four Units ("Interim Period") will be addressed as set forth in this Section 4.2.

4.2.1 The Decommissioning Agent will report each year during the Interim Period addressing Decommissioning Work, if any, to take place in the following calendar year and provide that report to the Decommissioning Committee no later than ninety (90) days prior to the beginning of the next calendar year. The Decommissioning Committee will review the Decommissioning Agent's report as to whether a particular project exceeds or is less than the Threshold Amount.

4.2.2 The Decommissioning Committee will refer projects for Decommissioning Work which it determines will have a cost below the Threshold Amount to the Engineering

and Operating Committee established in the SJPPA. Such projects will be paid for as if they were operations and maintenance activities in accordance with the SJPPA, not Decommissioning Work. The Parties having an ownership interest in the Project at the time such Decommissioning Work below the Threshold Amount is performed will be responsible for the costs of such projects in accordance with the SJPPA.

4.2.3 If the report identifies any project for Decommissioning Work with an estimated cost above the Threshold Amount, the Decommissioning Agent will prepare a Retirement Order that will include a description of the project, a determination as to whether the project is required by Law or is being proposed for purposes of Prudent Cost Avoidance, a schedule of the estimated timing for performance of the project and a budget based on the estimated cost of the project, including the Decommissioning Agent's reasonable Decommissioning A&G Expenses. The Decommissioning Agent will not aggregate unrelated projects or separate related projects for the purpose of avoiding or exceeding the Threshold Amount. If a project for Decommissioning Work is proposed for the purposes of Prudent Cost Avoidance, the Retirement Order will also include a cost-benefit analysis which explains why the Decommissioning Agent recommends performance of the project.

4.2.3.1 For projects for Decommissioning Work above the Threshold Amount determined by the Decommissioning Agent to be required by Law to be commenced within the next year, the Decommissioning Committee will vote pursuant to the provisions of Section 3.1.4 whether to adopt the Retirement Order and proceed with the project. If such a project required by Law is not approved, the Decommissioning Agent will perform or procure performance of the Decommissioning Work for such project in an efficient and economical manner until a budget has been approved by the Decommissioning Committee and the cost for such project will be paid pursuant to Sections 5.3 and 5.4.

4.2.3.2 For projects for Decommissioning Work above the Threshold Amount recommended by the Decommissioning Agent on the basis of Prudent Cost Avoidance, the Decommissioning Committee will vote pursuant to the provisions of Section 3.1.4 whether to adopt the Retirement Order and proceed with the project. Such a project not approved by the Decommissioning Committee will not be performed.

4.2.4 Each Party will be responsible to pay for the costs of approved projects above the Threshold Amount performed under this Section 4.2 based on its then-current Decommissioning Share for the year in which the majority of project expenditures are expected to be spent.

4.3 Items not Part of Decommissioning. During the Interim Period, expenditures related to use, operation or maintenance of any Unit or common facility of the SJGS are not part of Decommissioning. Attached as **Exhibit F** is an illustrative list of equipment, facilities and systems potentially required or that may be used for the ongoing operation of Units 1 and/or 4 during the Interim Period, and expenditures on such equipment, facilities and systems are not part of Decommissioning. Decommissioning does not include (i) any activities primarily to protect the health and welfare of the SJGS plant workers during continued operation of Unit 1 and/or 4 until

all Units cease operations; (ii) any activities required because equipment and/or facilities from Unit 2 or 3 or common facilities, such as equipment identified in **Exhibit F**, are being used for ongoing operations; or (iii) any activities resulting from equipment and/or facilities from Unit 2 or 3 or common facilities being removed for reuse by Unit 1 and/or 4. In case of doubt, the Decommissioning Committee will determine expenditures above the Threshold Amount that are for the ongoing operation of Units 1 and 4 and are not Decommissioning. The following facilities owned by either or both of PNM or TEP located at or adjacent to the SJGS Plant Site are not facilities or equipment that will be Decommissioned pursuant to this Section 4.3:

4.3.1 The San Juan switchyard;

4.3.2 Any gas plant or any other generating or fuel facility added to the SJGS Plant Site that is not part of the San Juan Project, or any new facility constructed on the SJGS Plant Site; and

4.3.3 Any other property or facilities that PNM and/or TEP notifies the other Parties, within fifteen (15) days after the decision is made to retire the last Unit, either or both wish to retain and not Decommission under this Decommissioning Agreement.

4.4 Use of Equipment Located at Units 2 and 3; Salvage Revenue. During the Interim Period, the Remaining Participants will be entitled to use equipment from Units 2 and 3 in the operation of either or both of Units 1 and 4 without compensation to the Exiting Participants. However, any Salvage Revenue obtained during the Interim Period will be distributed to all Parties based on each Party's Decommissioning Share in effect in the year in which the right to obtain the Salvage Revenue arises.

5.0 Decommissioning Plan

5.1 Decommissioning Study. Within thirty (30) days after the decision is made to retire the last Unit, the Decommissioning Agent will commence a Decommissioning Study which will compare altemative Decommissioning Plan scenarios.

5.1.1 The Decommissioning Study will: (i) determine the current federal and state requirements under Law, if any, for Decommissioning a coal-fired electric generation plant in the state of New Mexico; (ii) estimate the cost of Decommissioning Work to the level required by Law, which may include ongoing monitoring of the SJGS Plant Site ("Required Plan"); and (iii) estimate the cost of other approaches proposed by either the Decommissioning Committee or the Decommissioning Agent.

5.1.2 All Decommissioning Plans included in the Decommissioning Study will: (i) include provisions to dispose of any remaining fly ash; (ii) subject to the provisions of Section 19 of the Restructuring Agreement, provide for the identification and remediation of any environmental concerns existing at the time Decommissioning begins; (iii) include provisions addressing security, risk management and insurance; and (iv) describe the Decommissioning Work proposed to be performed.

5.1.3 The facilities identified in Section 4.3.1, 4.3.2 and 4.3.3 are not facilities or equipment that will be Decommissioned pursuant to this Section 5 and will not be considered in the Decommissioning Study or Decommissioning Plans. The costs of Decommissioning any new facility constructed, or equipment installed, on the SJGS Plant Site or on the Project after the Exit Date, unless such facility or equipment is a replacement or betterment of existing facilities or equipment, will be the sole responsibility of the Parties that own such new facility or equipment.

5.1.4 The Decommissioning Study will be completed within six (6) months unless the Decommissioning Committee has extended the completion date.

5.2 Selection of Decommissioning Plan. The Decommissioning Committee will review the Decommissioning Study and vote to select a Decommissioning Plan. Unless the Decommissioning Committee unanimously votes to select any plan other than the Required Plan, the Required Plan will become the selected Decommissioning Plan. The selected Decommissioning Plan will be implemented, and the Decommissioning Costs paid pursuant to Sections 5.3 and 5.4 based on the Decommissioning Shares in effect during the year in which commercial production of electrical power has ceased at all four Units.

5.3 Payment for Decommissioning. The Parties will pay for Decommissioning Costs based on the Decommissioning Shares set forth in **Exhibit A**. All Parties will start with eighteen (18) years of ownership at their current capacity as of December 31, 2017, and then their percentages will increase or decrease in the years after 2017, based on the total of each individual Party's megawatt-years in SJGS divided by the total of all Parties' megawatt-years, as shown in **Exhibit A.**

5.4 Payment Procedures. Prior to paying an invoice for Decommissioning Work, including costs for Projected Decommissioning Costs Reviews, the Decommissioning Agent will invoice the Parties for such costs, and the Parties will pay the invoice within ten (10) Business Days of receipt. Payments of an invoice issued to a Party will be paid as determined by each Party from such Party's Decommissioning Trust or by payment made directly by such Party. Appropriate supporting information must accompany each invoice, and the Decommissioning Agent will provide any additional supporting information that a Party may reasonably request.

6.0 Decommissioning Trust Funds

6.1 Establishment of Decommissioning Trusts. Within ninety (90) days after the Effective Date of this Decommissioning Agreement, each Party must execute a separate trust fund agreement ("Decommissioning Trust Agreement") between that Party and a financial institution in good standing selected by that Party ("Trustee") for the establishment of an irrevocable trust ("Decommissioning Trust") to carry out the purposes of this Decommissioning Agreement. The Trustee may not be an Affiliate of a Party. A copy of each Decommissioning Trust Agreement must upon execution be provided to each other Party. Each Decommissioning Trust must be funded as provided for in this Section 6. Each Party will notify each other Party of the name and contact information of its Trustee.

6.2 Decommissioning Trust Funding Obligations.

6.2.1 Each Party must maintain a balance in its Decommissioning Trust sufficient to fund its Decommissioning Share, as established pursuant to Section 5, of the Decommissioning Funding Target Amount as specified by the Decommissioning Investment Committee during the term hereof. The initial Decommissioning Funding Target Amount is thirty million dollars ($30 million), and each Party must fund its Decommissioning Share of the initial Decommissioning Funding Target Amount by December 31, 2022. Any adjustment to a Decommissioning Funding Target Amount pursuant to Section 6.3 or the dates by which Parties must fund their respective Decommissioning Shares of the Decommissioning Funding Target Amount will not be deemed an amendment to this Decommissioning Agreement but rather will be considered an element of the administration and implementation of this Decommissioning Agreement; upon approval of a Decommissioning Funding Target Amount adjustment, as provided for herein, such adjusted Decommissioning Funding Target Amount will replace the Decommissioning Funding Target Amount previously in effect. Except as provided in Section 6.2.2, no additional funding of a Decommissioning Trust will be required of a Party if the funds in its Decommissioning Trust are sufficient, by December 31, 2022 and by December 31 of each subsequent year during the term hereof, to satisfy the Party's Decommissioning Share of the Decommissioning Funding Target Amount for that year.

6.2.2 If a Party's Credit Rating drops below investment grade, the Decommissioning Investment Committee may increase the funding obligation for that Party up to one hundred ten percent (110%) of the otherwise applicable funding obligation of that Party. The percentage increase in that Party's funding obligation will remain in effect until that Party's Credit Rating is restored to investment grade. If a Party whose Credit Rating is determined to be below investment grade has its Credit Rating restored to investment grade, the additional amounts paid into the Decommissioning Trust will be a credit toward future funding obligations to the Decommissioning Trust. This Section 6.2.2 will not apply to a Party that does not have a current Credit Rating if the Party's most recent Credit Rating was investment grade.

6.3 Projected Decommissioning Costs Reviews and Adjustment of Decommissioning Trust Funding Obligations.

6.3.1 The Parties acknowledge the appropriateness of adjusting, from time-to-time, the Decommissioning Funding Target Amounts for all Parties based on updated estimates for Decommissioning Work pursuant to a Projected Decommissioning Costs Review as provided for in this Section 6.3.

6.3.2 The Decommissioning Agent will perform (or cause to be performed) a technical reassessment of estimated costs for Decommissioning Work at a level of Decommissioning determined by the Decommissioning Committee to be appropriate (a "Projected Decommissioning Costs Review") during the year 2022 and every five (5) years thereafter. A Party desiring to request a Projected Decommissioning Costs Review more frequently than every five (5) years must do so by serving a written request upon the

Decommissioning Agent and the members of the Decommissioning Committee. A request for a Projected Decommissioning Costs Review must set out in detail the facts relied on by the Party making the request. The Decommissioning Committee may approve such a request, and may vote to conduct a Projected Decommissioning Costs Review at any time.

6.3.3 The Decommissioning Committee will establish reasonable goals, timelines and procedures with respect to the manner in which the required Projected Decommissioning Costs Review is to be conducted. The costs of a Projected Decommissioning Costs Review will be Decommissioning Costs and will be invoiced and paid pursuant to Section 5, whether or not the cost of a Projected Decommissioning Costs Review is below the Threshold Amount.

6.3.4 The Decommissioning Agent will present a report resulting from a Projected Decommissioning Costs Review to the Decommissioning Committee.

6.3.5 The Decommissioning Committee will promptly either approve the report of the Projected Decommissioning Costs Review provided by the Decommissioning Agent or direct that further study or revisions be made to the Projected Decommissioning Costs Review report. In the event the Decommissioning Committee directs further study or revisions, the Decommissioning Agent must submit a new Projected Decommissioning Costs Review report to the Decommissioning Committee upon completion of such further study or revisions.

6.3.6 Except for funding of the initial Decommissioning Funding Target Amount of thirty million dollars ($30 million) by the end of 2022, the Decommissioning Investment Committee will thereafter adjust the Decommissioning Funding Target Amounts for the Decommissioning Trusts based on the approved Projected Decommissioning Costs Review report.

6.4 Investment of Decommissioning Trust Funds. Each Party may implement its own policies in relation to the investment of funds in its Decommissioning Trust. Each Party may, at its discretion, appoint one or more investment managers to direct the investment of all or parts of funds held in its Decommissioning Trust.

6.5 Mandatory Provisions for Decommissioning Trust Agreements.

6.5.1 Each Decommissioning Trust Agreement must contain and maintain certain mandatory provisions ("Mandatory Provisions"). The Mandatory Provisions are contained in **Exhibit B**. The Decommissioning Investment Committee will review the initial Decommissioning Trust Agreement for each Party for compliance with **Exhibit B**.

6.5.2 Proposed amendments to any Mandatory Provision in a Party's Decommissioning Trust Agreement are subject to review and approval by the Decommissioning Investment Committee. A Party desiring to amend a Mandatory Provision must submit such proposed amendment to the Decommissioning Investment Committee for prior review in accordance with procedures established by the Decommissioning Investment Committee.

6.5.3 If the Decommissioning Investment Committee representatives (other than the representative representing any Party whose compliance is under review) conclude that a Party's initial Decommissioning Trust Agreement is inconsistent with **Exhibit B**, or that a proposed amendment to a Mandatory Provision is inconsistent with the purposes of this Decommissioning Agreement, the Decommissioning Investment Committee must inform the Party of the reasons why, in the judgment of the Decommissioning Investment Committee, the Mandatory Provisions of its initial Decommissioning Trust Agreement are inconsistent with **Exhibit B** or why the proposed amendment to the Mandatory Provision is inconsistent with this Decommissioning Agreement. No Party may amend a Mandatory Provision in its Decommissioning Trust Agreement in a manner contrary to a determination of the Decommissioning Investment Committee.

6.6 Only Purposes. Prior to termination, funds held in a Decommissioning Trust may be utilized for the following and no other purposes: (i) to pay the costs and fees associated with the maintenance of the Decommissioning Trust, including the fees and expenses of the Trustee; and (ii) to pay the Party's Decommissioning Share (as defined in Section 5 and **Exhibit A**) of Decommissioning Costs, as provided for in this Decommissioning Agreement. During the term hereof, no Party will be permitted to withdraw funds from its Decommissioning Trust, including net earnings on accumulations in the Trust, except as provided in this Decommissioning Agreement.

6.7 Decommissioning Correcting Deposits.

6.7.1 In the event that, as of December 31 of any year after 2022 during the term hereof, the value of funds in a Party's Decommissioning Trust is less than its Decommissioning Share of the Decommissioning Funding Target Amount for such year, then the Party must make one or more Decommissioning Correcting Deposits. The amount and timing of such Decommissioning Correcting Deposits must comply with policies established by the Decommissioning Investment Committee consistent with Section 6.7.2.

6.7.2 Decommissioning Correcting Deposits in the aggregate must be sufficient to ensure that the value of funds in a Party's Decommissioning Trust is equal to or greater than such Party's Decommissioning Share of the Decommissioning Funding Target Amount at the end of the applicable Decommissioning Correction Period determined as provided in Section 6.7.2.1.

6.7.2.1 The applicable Decommissioning Correction Period during which one or more Decommissioning Correcting Deposits must be made pursuant to Section 6.7.1 is two (2) years.

Example:

If the value of funds in Party A's Decommissioning Trust is less than the Decommissioning Funding Target Amount for Party A at the end of 2025, the Decommissioning Correction Period expires December 31, 2027.

6.7.3 If any Party fails to make any Decommissioning Correcting Deposit when due, then, within ten (10) days after the applicable due date, the chairperson of the Decommissioning Investment Committee will report such failure by the Party to each representative on the Decommissioning Investment Committee.

6.8 Return of Funds in Decommissioning Trust. Any funds remaining in a Party's Decommissioning Trust after the completion of the Decommissioning Work as determined by the Decommissioning Committee and full payment of the Party's Decommissioning Share of the Decommissioning Work will be returned to the Party pursuant to the Party's Decommissioning Trust Agreement.

6.9 Status Reports. Each Party will prepare on an annual basis a funding Status Report regarding the funds in its Decommissioning Trust as of December 31 of each year during the term hereof and provide such annual funding Status Report to each of the other Parties. The funding Status Report will include a detailed summary of the investments made by the Party in its Decommissioning Trust during the period covered by the Status Report. The funding Status Report will be prepared and provided to the other Parties no later than thirty (30) days following the end of a calendar year unless otherwise directed by the Decommissioning Investment Committee. In addition to such annual funding Status Reports, on the written request of any other Party for reasonable cause *(e.g.,* changes in market conditions that could significantly affect the value of funds in a Decommissioning Trust), each Party will provide special funding Status Reports, in the same format and content as annual funding Status Reports, to the other Parties; provided, that such special reports will not be required of any Party more frequently than once in any calendar quarter.

6.10 Compliance. A Party whose funding of its Decommissioning Trust has been determined by the Decommissioning Investment Committee not to be in compliance with the requirements of this Decommissioning Agreement must act promptly to bring itself into compliance therewith. A Party, the Mandatory Provisions of whose Decommissioning Trust Agreement have been determined by the Decommissioning Investment Committee not to be in compliance with the requirements of this Decommissioning Agreement, must act promptly to bring itself into compliance therewith and must promptly inform the Decommissioning Investment Committee of actions taken to bring itself into compliance.

7.0 Decommissioning Investment Committee

7.1 Establishment of Decommissioning Investment Committee. The Parties hereby establish a Decommissioning Investment Committee. The Decommissioning Investment Committee will remain in existence during the term of this Decommissioning Agreement. The Decommissioning Investment Committee will have no authority to modify any of the provisions of this Decommissioning Agreement.

7.2 Decommissioning Investment Committee Membership. The Decommissioning Investment Committee will consist of one representative from each Party who must be an officer or other authorized representative of the Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Decommissioning Investment Committee in the absence of the regular representative on the Decommissioning Investment Committee or to act on specified

occasions or with respect to specified matters. Each Party must notify the other Parties promptly, in writing, of the designation of its representative and altemate representative on the Decommissioning Investment Committee and of any subsequent changes in such designations. The chairperson of the Decommissioning Investment Committee will be a representative of the Decommissioning Agent if the Decommissioning Agent is a Party. If the Decommissioning Agent is not a Party, the chairperson will be elected by a majority of the individual representatives on the Decommissioning Investment Committee. Each Party will be responsible for the costs of its Decommissioning Investment Committee representative, including fees and travel reimbursement.

7.3 Functions and Responsibilities of the Decommissioning Investment Committee. The Decommissioning Investment Committee will have the following functions and responsibilities:

7.3.1 Within six (6) months of the Effective Date, establish the format and content to be used for each Party's annual funding Status Report;

7.3.2 Review each Party's annual and special funding Status Report(s) and determine and, as to each Party, report to the Decommissioning Committee and the Decommissioning Agent whether the amount of funds in a Party's Decommissioning Trust is in compliance with Sections 5, 6 and **Exhibit A;**

7.3.3 Upon receipt from the Decommissioning Committee of a copy of a Projected Decommissioning Costs Review, as provided for in Section 6.3, establish and provide to each of the Parties new Decommissioning Funding Target Amounts for the Decommissioning Trusts;

7.3.4 Establish, consistent with Section 6.7, policies regarding the number and timing of Decommissioning Correcting Deposits;

7.3.5 Audit, or cause to be audited, compliance of Parties in meeting their obligations under Section 6;

7.3.6 Under procedures to be established in a timely fashion by the Decommissioning Investment Committee, (i) promptly upon execution of each Party's Decommissioning Trust Agreement, review the Mandatory Provisions of each such Decommissioning Trust Agreement to assure that the Mandatory Provisions of each such Decommissioning Trust Agreement conform to the requirements of Section 6.5 and of **Exhibit B**; and (ii) review any proposed amendment to a Mandatory Provision in a Party's Decommissioning Trust Agreement;

7.3.7 Perform such other tasks as the Decommissioning Committee from time-to-time assigns to the Decommissioning Investment Committee; and

7.3.8 Perform such other tasks as may be delegated under this Decommissioning Agreement to the Decommissioning Investment Committee.

7.4 Decisions of the Decommissioning Investment Committee. Except as provided for in the third sentence of this Section 7.4, any actions or determinations brought before the Decommissioning Investment Committee will require the following vote: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Decommissioning Shares of the Parties as set out in Section 5.3 and as defined in **Exhibit A**; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties. Matters approved by the requisite majority of the Decommissioning Investment Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default, such Party will not have a right to vote under either subsection (i) or subsection (ii) of this Section 7.4, and the requisite majorities for actions or determinations of the Decommissioning Investment Committee will be sixty-six and two thirds percent (66 2/3%) of the members eligible to vote under either subsection (i) or (ii) of this Section 7.4. The outcome of any vote of the Decommissioning Investment Committee properly conducted in accordance with this Decommissioning Agreement will not be subject to the dispute resolution provisions of Section 9.

7.5 Meetings of the Decommissioning Investment Committee. The Decommissioning Investment Committee will meet no less frequently than annually. Special meetings will be held promptly at the written request of any Party, such request to be delivered to the chairperson of the Decommissioning Investment Committee. The Decommissioning Investment Committee will keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Decommissioning Investment Committee will be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Decommissioning Investment Committee. Decommissioning Investment Committee representatives will be permitted, by prior notification to the chairperson of the Decommissioning Investment Committee, to attend a meeting of the Decommissioning Investment Committee by conference call or video conferencing. A Decommissioning Investment Committee representative who is unable to attend a meeting of the Decommissioning Investment Committee will be permitted to vote in absentia by delivering to the chairperson of the Decommissioning Investment Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

8.0 Default

8.1 Definition of Default. Each Party must: (i) fund its Decommissioning Trust under the terms of this Decommissioning Agreement and consistent with its Decommissioning Trust Agreement; (ii) make any required Decommissioning Correcting Deposits; (iii) cause the timely payment of its Decommissioning Share of Decommissioning Work pursuant to invoices for Decommissioning Costs rendered to the Party; and (iv) carry out all other performances, duties and obligations agreed to be paid or performed by it pursuant to this Decommissioning Agreement. A failure to perform any of items (i) through (iv) above is a Default under this Decommissioning Agreement.

8.2 Default Notice. If the Decommissioning Agent (either on its own motion or at the suggestion of a Party) deems a Party to be in Default, the Decommissioning Agent must serve upon the defaulting Party a written notice of default (the "Default Notice"). The Decommissioning Agent

must also serve a copy of the Default Notice on: (i) the representatives on the Decommissioning Committee; (ii) the representatives on the Decommissioning Investment Committee; (iii) all persons entitled to receive notices under Section 21.1; and (iv) the Trustee of the defaulting Party's Decommissioning Trust. The Default Notice must specify the existence, nature and extent of the Default.

8.3 Cure of Default. Upon receipt of the Default Notice, the defaulting Party must: (i) pay any monies due under this Decommissioning Agreement (including funding of its Decommissioning Trust and making any required Decommissioning Correcting Deposits) within fifteen (15) days; or (ii) commence within fifteen (15) days the performance of any non-monetary obligation and continue thereafter the diligent completion of such non-monetary obligation.

8.4 Protest of Default. If the defaulting Party disputes a Default Notice, such Party must nonetheless pay the disputed payment or commence performance of the disputed obligation, but may do so under protest (the "Protest"). The Protest must be in writing, must accompany the disputed payment or precede the commencement of performance of the disputed obligation, and must specify the reason upon which the Protest is based. Copies of the Protest must be served by the defaulting Party on the Decommissioning Agent and also on: (i) the representatives on the Decommissioning Committee; (ii) the representatives on the Decommissioning Investment Committee; (iii) all persons entitled to receive notices under Section 21.1; and (iv) the Trustee of the defaulting Party's Decommissioning Trust. Within seven (7) days after the service of the Protest, authorized representatives of the Parties must meet, in person or by conference call or video conference, to address the Protest and to determine what actions, if any, to take as a result of the Protest.

8.5 Declaration of Default. If the defaulting Party fails to cure the Default pursuant to Section 8.3, or protests the Default Notice pursuant to Section 8.4 but fails to timely pay the disputed payment or commence performance of the disputed obligation, the Decommissioning Agent must notify the defaulting Party in writing of the Decommissioning Agent's intent to declare the defaulting Party in Default unless there is a prompt cure of the Default ("Notification of Intent"). The Notification of Intent must afford the defaulting Party a minimum of fifteen (15) additional days after the giving of the Notification of Intent to cure the Default. The pendency of a Protest will not prevent the Decommissioning Agent from issuing a Notification of Intent. If the Default has not been cured within the period of time identified in the Notification of Intent, the Decommissioning Agent may give written notice to the defaulting Party declaring that the defaulting Party is in Default (the "Default Declaration"). The Decommissioning Agent must serve a copy of the Notification of Intent and of the Default Declaration on: (i) the representatives on the Decommissioning Committee; (ii) the representatives on the Decommissioning Investment Committee; (iii) all persons entitled to receive notices under Section 21.1; and (iv) the Trustee of the defaulting Party's Decommissioning Trust. The pendency of a Protest will not prevent the Decommissioning Agent from making a Default Declaration.

8.6 Consequences of Default. Upon delivery of the Default Declaration, the Party in Default under this Decommissioning Agreement will lose all its rights but retain its obligations under this Decommissioning Agreement, the Mine Reclamation Agreement and the Restructuring Agreement so long as the Default is in effect. This consequence of Default is in addition to and

cumulative of any other remedy to which the Party in Default may be subject, including the loss of the right to vote on the Decommissioning Investment Committee and the Decommissioning Committee. If and when the Party in Default remedies the Default, its rights under such agreements will be restored.

8.7 No Stay for Arbitration. A demand for arbitration or other dispute resolution procedure will not stay: (i) the right of the Decommissioning Agent to issue a Default Notice, a Notification of Intent or a Default Declaration; or (ii) the suspension of the rights of a defaulting Party.

8.8 Termination of Default. The Default will be terminated, and the full rights of the defaulting Party restored when: (i) the Default has been cured and all costs incurred by the non-defaulting Parties resulting from the Default of the defaulting Party have been reimbursed in full by the defaulting Party, with interest thereon at the Prime Rate plus two percent (2%) per annum or the maximum legal rate of interest, whichever is less, from the date of payment to the date of reimbursement; (ii) other arrangements acceptable to the non-defaulting Parties have been made; or (iii) the defaulting Party prevails in an arbitration or other legal proceeding in which the default status of the defaulting Party is at issue.

8.9 Other Rights. Subject to the limitations set forth in Section 28, the rights and remedies provided in this Decommissioning Agreement will be in addition to any other rights and remedies the Decommissioning Agent and the non-defaulting Parties have in law or equity.

8.10 No Waiver. No waiver by the Decommissioning Agent or by a non-defaulting Party of its rights with respect to a Default under this Decommissioning Agreement or with respect to any other matter arising in connection with this Decommissioning Agreement, will be effective unless the Decommissioning Agent or the non-defaulting Party waives in writing its rights and no such waiver will be deemed a waiver with respect to any subsequent Default or matter. No delay short of the statutory period of limitations in asserting or enforcing any right hereunder will be deemed a waiver of such right. The Decommissioning Agent will not waive any of its rights with respect to a Default under this Decommissioning Agreement without the approval of the Decommissioning Committee.

9.0 Dispute Resolution

9.1 Amicable Resolution. If a dispute between or among any of the Parties should arise under this Decommissioning Agreement, or in relation to the rights or obligations of the Parties under this Decommissioning Agreement, executive representatives of the Parties with authority to resolve the dispute will first seek to resolve the dispute as set forth in this Section 9.1.

9.1.1 The dispute process will be initiated by the delivery of a written notice by a Party ("Noticing Party") of the dispute ("Notice of Dispute") to the Party with which a dispute is claimed. The Notice of Dispute will specify the existence, nature and extent of the dispute. Copies of the Notice of Dispute will be served on all other Parties. The Notice of Dispute will specifically state the sums allegedly due, any non-monetary obligation allegedly not performed, or both if applicable.

9.1.2 Within fifteen (15) Business Days of receipt of the Notice of Dispute, the Party alleged not to be performing may protest in writing any or all of the matters set forth in the Notice of Dispute ("Dispute Protest"), specifying the basis of the Dispute Protest. Copies of the Dispute Protest will be served by the protesting Party ("Protesting Party") on all other Parties.

9.1.3 Within fifteen (15) Business Days of the giving of a Notice of Dispute under Section 9.1.1 or within ten (10) Business Days after the service of a Dispute Protest under Section 9.1.2, the executive representatives of the Parties involved in the dispute will meet at a mutually agreeable time and place to attempt to negotiate a timely and amicable resolution of the dispute. If an executive of a Party intends to be accompanied by counsel, the other Parties will be given at least five (5) Business Days' written notice of such intent and may also be accompanied by counsel. All negotiations will be confidential and will be treated as compromise and settlement negotiations under New Mexico Law. If the executive representatives of the Parties are unable to resolve the dispute within sixty (60) days of the Notice of Dispute (or such other period as they may agree to), any Party involved in the dispute may call for submission of the dispute to arbitration, which call will be binding upon all of the other affected Parties except as provided in Section 9.9.

9.2 Call for Arbitration. The Party calling for arbitration must give written notice to all other Parties ("Arbitration Notice"), setting forth in the Arbitration Notice in adequate detail the entity against whom relief is sought, the nature of the dispute, the amount, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, which may include monetary, equitable and declaratory relief. Within twenty (20) Business Days after receipt of the Arbitration Notice, any other Party may submit its own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated, with copies of such notice provided to all other Parties. Thereafter, the Party calling for arbitration will have ten (10) Business Days in which to submit a written rebuttal statement, copies of which must be provided to all other Parties.

9.3 Selection of Arbitrators.

9.3.1 The Parties involved in the arbitration will seek to agree upon a panel of three (3) neutral arbitrators as follows. Within ten (10) days after service of the written rebuttal statement, the Parties representing each side of the dispute will provide to the Parties representing the other side of the dispute a list of up to five (5) suggested arbitrators having the qualifications required by Section 9.3.2 and a summary of each such suggested arbitrator's experience and qualifications. Within five (5) Business Days thereafter, the Parties involved in the arbitration will meet and confer by telephone or in person to seek to agree upon a panel of three (3) neutral arbitrators from the lists that have been exchanged. If such agreement is not reached as the result of such meeting, the Parties representing each side of the dispute will provide a second list of suggested arbitrators to one another and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon a panel of three (3) neutral arbitrators. If such agreement on arbitrators is reached, the Parties will proceed to arbitration as further set forth in this Section 9.

9.3.2 If the Parties involved in the arbitration are not able to agree upon a complete panel of three (3) neutral arbitrators, such Parties will select the arbitrators upon which agreement has not been reached as follows. The Parties will request from the American Arbitration Association (or similar organization as the arbitrating Parties agree upon) ("Arbitration Organization") a list of seven (7) arbitrators with names and biographical sketches and specific qualifications relating to the case to be heard. The proposed arbitrators will be persons skilled and experienced in the field that gives rise to the dispute, and no person will be eligible for appointment as an arbitrator who is an officer or employee of any of the Parties to the dispute or is otherwise interested in the matter to be arbitrated. The Parties involved in the arbitration will each advise the Arbitration Organization of its order of preference of such arbitrators by numbering from one (1) to seven (7) each name on the list (with one (1) being the most preferred arbitrator) and submitting the numbered lists in writing to the Arbitration Organization. Depending upon the number of arbitrators to be selected, the name or names with the lowest combined numbers will be appointed as the remaining neutral arbitrator(s). In the event more than one name on the list has the same lowest combined score, the tie will be broken by lot. Should the Parties agree that one list of seven (7) is insufficient to obtain a total of three (3) neutral arbitrators with the required qualifications, an additional list of arbitrators may be requested from the Arbitration Organization.

9.4 Arbitration Procedures. Except as otherwise provided in this Section 9 or otherwise agreed by the Parties to the dispute, the Parties will utilize in the arbitration the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Commercial Disputes) or similar rules and practices of another Arbitration Organization from time-to-time in force, except that if such rules and practices, as modified herein, conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico law then in force that are specifically applicable to arbitration proceedings, such New Mexico laws will govern. The arbitration will be conducted at a location in Albuquerque, New Mexico, unless otherwise agreed by the affected Parties.

9.5 Decision of Arbitrators. The arbitrators will hear evidence submitted by the respective Parties or group or groups of Parties and may call for additional information, which additional information must be furnished by the Party having such information. The decision of a majority of the arbitrators ("Arbitration Award") must be rendered no later than twenty (20) days after the conclusion of the arbitration hearing and will be binding upon all the Parties and must be based on the provisions of this Decommissioning Agreement and applicable New Mexico or federal Law. The Arbitration Award must be in writing and must explain in reasonable detail the basis of the award.

9.6 Enforcement of Arbitration Award. This agreement to arbitrate is specifically enforceable, and the Arbitration Award will be final and binding upon the Parties to the extent provided by the laws of the State of New Mexico. Any Arbitration Award may be filed with a court of competent jurisdiction in New Mexico and upon motion of a Party the court shall enter a judgment in conformity therewith as provided by the New Mexico Uniform Arbitration Act. Said judgment is enforceable in other States and Territories of the United States under the Full Faith and Credit provisions of the United States Constitution and other Laws.

9.7 Fees and Expenses. Fees and expenses of the arbitrators will be paid by the non-prevailing Party, unless the Arbitration Award specifies some other apportionment of such fees and expenses. All other expenses and costs of the arbitration, including attorney fees and expert witness fees, will be borne by the Party incurring the same.

9.8 Prompt Resolution. The Parties acknowledge the importance of prompt dispute resolution. Accordingly, it is agreed that any arbitration proceeding hereunder must be scheduled and conducted in such a manner that the Arbitration Award is rendered no later than two hundred and seventy (270) days after the Arbitration Notice is served.

9.9 Legal Remedies. Nothing in this Section 9 will be deemed to prevent a Party from commencing judicial action: (i) to obtain a provisional remedy to protect the effectiveness of the arbitration proceeding; (ii) to confirm, enforce, modify, correct or vacate or challenge an Arbitration Award on grounds provided for in the New Mexico Uniform Arbitration Act; (iii) to obtain relief in instances where the arbitrators are unable or unwilling to act within the time provided for in Section 9.8; (iv) where, as the result of the unreasonable or dilatory conduct of another Party, a Party is not able to obtain a timely valid and enforceable Arbitration Award; or (v) if a Party is prohibited by Law from participating in binding arbitration.

10.0 Power and Anthority

10.1 Requisite Power and Authority. Each Party represents and warrants to the other Parties that it has the requisite power and authority to execute this Decommissioning Agreement and to perform its obligations set out in this Decommissioning Agreement. The execution and delivery of this Decommissioning Agreement and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party. The obligations set out herein will, upon execution hereof by each Party, be valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions hereof, except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at Law.

10.2 No Violation. Each Party, to the best of its knowledge and upon reasonable inquiry, represents and warrants to the other Parties that the execution and delivery of this Decommissioning Agreement by such Party, and the performance by such Party of all of its obligations hereunder, will not violate any term, condition or provision of its Charter Documents; any applicable Law by which the Party is bound; any applicable court or administrative order or decree; or any agreement or contract to which it is a party. Further, each Party represents and warrants to the other Parties that, to the best of its knowledge and upon reasonable inquiry, there is no claim pending or threatened against it which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Decommissioning Agreement or which could result in the filing of any mechanic's or materialman's lien against the SJGS Plant Site.

11.0 Relationship of Parties

11.1 Several Obligations. All covenants, obligations and liabilities of the Parties are, except as otherwise specifically provided herein, intended to be several and not joint or collective. At no time will a non-defaulting Party be responsible for making payments required under this Decommissioning Agreement on behalf of any other Party. Each Party will be individually responsible for its own covenants, obligations and liabilities as provided for herein.

11.2 No Joint Venture or Partnership. Nothing in this Decommissioning Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties. No Party or group of Parties will be under the control of or will be deemed to control any other Party or the Parties as a group. Except as provided in this Decommissioning Agreement, the Restructuring Agreement or the Mine Reclamation Agreement, no Party will be the agent of or have a right or power to bind any other Party without its express written consent.

12.0 Assignments

12.1 Successors and Assigns. This Decommissioning Agreement is binding upon and inures to the benefit of the Parties and their respective authorized successors and assigns.

12.2 No Right to Mortgage. No Party will have the right to mortgage, create or provide for a security interest in or convey in trust its rights, titles and interests in a Decommissioning Trust created pursuant to this Decommissioning Agreement, or in funds held in a Decommissioning Trust created pursuant to this Decommissioning Agreement, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for their present or future bonds or other obligations or securities, and to any successors or assigns thereof.

12.3 Prior Written Consent. No Party may assign its rights, or delegate its obligations, under this Decommissioning Agreement without the prior written consent of all of the other Parties, which consent will not be unreasonably delayed or denied; provided, however, that consent will not be granted unless (i) the assignee has first agreed in writing with the non-assigning Parties to fully perform and discharge all of the obligations hereunder of the Assigning Party; and (ii) the assignee demonstrates to the Decommissioning Committee it has creditworthiness equal to or higher than that of the assigning Party. Such prior consent of the other Parties will not be required in the event of the transfer or assignment by a Party of its interest in the Project to a duly authorized successor; provided, however, that such successor has agreed in writing with the remaining Parties to fully perform and discharge all of the obligations hereunder of the Assigning Party and the remaining Parties have agreed in writing to the substitution of the successor, in place of the Assigning Party, which consent will not be unreasonably delayed or denied.

12.4 Assignee's Obligation to Establish and Fund Decommissioning Trust. Among the contracts that the assignee must have executed in connection with any assignment is a Decommissioning Trust Agreement with a financial institution, consistent with the requirements of this Decommissioning Agreement. Pursuant to such Decommissioning Trust Agreement, the assignee must establish and fully fund its Decommissioning Trust to its then-required share of the Decommissioning Funding Target Amount in accordance with Section 6.2. Such Decommissioning

Trust Fund Agreement must be provided to the Decommissioning Agent for review and approval by the Decommissioning Committee before the assignment becomes effective.

12.5 Parties not Relieved of Obligations. No Party will be relieved of any of its obligations and duties to the other Parties by a transfer or assignment under this Section I2 without the express prior written consent of the remaining Parties, which consent will not be unreasonably withheld, conditioned or delayed.

12.6 Assigning Party's Right of Refund. Upon receipt of the written consents provided for in Sections 12.3 and 12.5, and the assignee having fully funded its Decommissioning Trust as required in Section I2.4, the Assigning Party will be: (i) released from further obligations under this Decommissioning Agreement; and (ii) entitled to a return of all monies remaining in its Decommissioning Trust.

13.0 Audit Rights; Related Disputes

I3.1 Right of Audit. The Decommissioning Agent will maintain complete and accurate records of all expenses and transactions for which a Party may have cost responsibility under this Decommissioning Agreement. Such records will be maintained from the date an expense is billed to a Party hereunder for a period of the longer of: (i) the expiration of the statute of limitations for actions based on contract; or (ii) the date the records may be destroyed under the Decommissioning Agent's document retention policy. Any Party (an "Initiating Party") may, upon reasonable advance written notice to the Decommissioning Agent, conduct an audit of all records, invoices, costs, expenses or liabilities charged to the Initiating Party or for which the Initiating Party has or may have cost responsibility. Parties desiring to perform an audit will cooperate with one another so as to minimize the number of audits and any undue burden upon the Decommissioning Agent. Each such audit will be carried out by an auditor of the Initiating Party's choosing and at the expense of the Initiating Party, except as provided in Section 13.3. The Decommissioning Agent will cooperate with the Initiating Party and the Initiating Party's auditor and will make available its relevant business records at reasonable times and places, upon reasonable advance notice. A copy of the audit report will be provided to all Parties by the Initiating Party within fifteen (15) days of receipt of the audit report.

13.2 Audit Dispute Resolution. If any Party disagrees with an audit finding from an audit conducted under Section I3.1, the Party may within fifteen (15) Business Days of the receipt of the audit report request in writing that the audit be reviewed by providing such request to all of the Parties. After any such request, the affected Parties will review the expenditure and will endeavor to agree upon whether an over- or under-billing occurred. If, after the review, the affected Parties determine that the expenditure was over- or under-billed, an adjustment to the billing that is the subject of the audit finding will be made to eliminate the over- or under-billing and an adjusted bill will be sent as provided for in Section 13.3. Each Party that receives a payment as a result of under- or over-billing will reimburse the Initiating Party as provided for in Section 13.3. If within thirty (30) Business Days of the date of the mailing of the written request for review the affected Parties are unable to agree in writing on a modification of the expenditure to eliminate the over- or under-billing, the matter will be submitted to dispute resolution pursuant to Section 9.

13.3 Adjusted Billing Procedures. If as the result of an audit and any related dispute resolution procedures under Section 13.1 or Section 13.2 it is determined that there was an under- or over-billing, the Decommissioning Agent will issue invoices to correct the under- or over-billing with interest at the Prime Rate. Interest will be calculated from the due date for payments on the prior invoices that included the under-or over-billed amounts to the date of the revised billings. The owing Party will pay any amounts owed on the corrected invoices within twenty (20) Business Days after receipt of the revised billing reflecting the result of the audit report. Each Party (other than an Initiating Party) that receives a payment or credit as a result of an audit report will reimburse the Initiating Party for the cost of the audit based on the amount received by such Party as a percentage of the total amount of payments and credits received by Parties; provided that if the amount received by a Party is less than the lower of (i) $5,000 or (ii) ten percent (10%) of the amount of the disputed billing, no reimbursement for the audit costs will be required.

13.4 Audit of Decommissioning A&G Expenses. To the extent practicable, any audit of Decommissioning A&G Expenses will be coordinated with audits of A&G expenses under any other San Juan Project-related agreements.

14.0 Uncontrollable Forces. No Party will be considered to be in default in the performance of any of its obligations hereunder (other than obligations of a Party to pay costs and expenses and to fully fund its Decommissioning Trust) if failure of performance is due to Uncontrollable Forces. The term "Uncontrollable Forces" means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, fire, lightning, epidemic or pandemic, war, riot, civil disturbance, labor dispute, sabotage or terrorism, restraint by court order or public authority, or failure to obtain approval from a necessary Governmental Authority which by exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it is unable to overcome. Nothing contained herein requires a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces will promptly provide notice to the other Parties and exercise due diligence to remove such inability with all reasonable dispatch.

15.0 Invalid Provisions. If any provision of this Decommissioning Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Decommissioning Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Decommissioning Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Decommissioning Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and the Parties will negotiate in good faith to attempt to agree upon a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

16.0 Applicable Law and Venue

16.1 Compliance with Law. The Parties will comply with all applicable Law in the performance of their respective obligations under this Decommissioning Agreement.

16.2 Governing Law. This Decommissioning Agreement is made under and will be governed by New Mexico law, without regard to conflicts of Law or choice of Law principles that would require the application of the Laws of a different jurisdiction.

16.3 Venue. Venue with respect to any judicial proceeding arising out of or relating to this Decommissioning Agreement will lie exclusively in the state or federal courts in Albuquerque, New Mexico, and the Parties irrevocably consent and submit to the exclusive jurisdiction of such courts for such purpose and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner recognized by such courts. A final judgment of the state or federal court will be enforceable in other states under applicable Law.

17.0 Entire Agreement

17.1 Entire Agreement. This Decommissioning Agreement, together with the schedules and exhibits hereto and the Decommissioning Trust Agreements, supersede all prior negotiations, agreements and understandings between the Parties with respect to the covenants and obligations agreed upon in this Decommissioning Agreement.

17.2 Amendment and Modification. Except as otherwise provided herein, this Decommissioning Agreement may be amended, modified or supplemented only by written instrument executed by all of the Parties with the same formality as this Decommissioning Agreement.

17.3 Prior Obligations Unaffected. Except as otherwise provided herein, nothing in this Decommissioning Agreement will be deemed to relieve the Parties of their obligations in effect prior to the Effective Date and such obligations will continue in full force and effect until satisfied or as otherwise mutually agreed.

18.0 No Interpretation Against Drafter. This Decommissioning Agreement has been drafted with the full participation by all of the Parties and their counsel of choice, and no provision of this Decommissioning Agreement will be construed against any Party on the ground that such Party or its counsel was the author of such provision. All of the provisions of this Decommissioning Agreement will be construed in a reasonable manner to give effect to the intentions of the Parties in executing this Decommissioning Agreement.

19.0 Independent Covenants. The covenants and obligations set forth in this Decommissioning Agreement are independent covenants, not dependent covenants, and the obligation of a Party to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by another Party of all the covenants and obligations to be kept and performed by it. Nothing in this Section

19 affects the rights of the Parties under the dispute resolution and default provisions of Sections 8 and 9.

20.0 Other Documents. Each Party agrees, upon request of another Party, to make, execute and deliver any and all documents and instruments reasonably required to carry into effect the terms of this Decommissioning Agreement; provided, that such documents and instruments will not increase or expand the obligations of a Party hereunder.

21.0 Notices

21.1 Manner of Giving of Notice. Any notice, demand or request provided for in this Decommissioning Agreement, or served, given or made in connection with it, will be deemed properly served, given or made (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day after mailing if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next Business Day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

21.1.1 Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

With a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

21.1.2 Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

21.1.3 City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

with a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

21.1.4 M-S-R Public Power Agency
c/o General Manager
1231 11th Street
Modesto, CA 95354

21.1.5 Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

21.1.6 City of Anaheim
c/o City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

21.1.7 Incorporated County of
Los Alamos, New Mexico
c/o County Clerk
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of
Los Alamos, New Mexico
c/o Utilities Manager
P.O. Drawer 1030
Suite 130
170 Central Park Square
Los Alamos, NM 87544

21.1.8 Utah Associated Municipal Power Systems

c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

21.1.9 Tri-State Generation and Transmission
Association, Inc.
c/o Chief Executive Officer
1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

21.1.10 PNMR Development and Management Corporation
c/o Corporate Secretary
PNM Resources
Corporate Headquarters
414 Silver Ave. S.W.
Albuquerque, NM 87102

21.2 Changes in Designation. A Party may, at any time or from time-to-time, by written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Decommissioning Agreement.

22.0 Captions and Headings. The captions and headings appearing in this Decommissioning Agreement are inserted merely to facilitate reference and will have no bearing upon the interpretation of the provisions hereof.

23.0 Effect of Municipal Law

23.1 Anaheim and M-S-R. Anaheim (which includes its Public Utilities Department) and M-S-R are governmental entities whose liability is limited by the California Government Claims Act (Government Code §§ 810 – 998.3) and any liability or indemnity assumed by Anaheim or M-S-R in this Decommissioning Agreement will be limited by the provisions of the California Government Claims Act. Nothing in this Decommissioning Agreement is intended to create or will be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend which is against public policy, void and unenforceable. Notwithstanding any other provision of this Decommissioning Agreement, the payment for all purchases, fees or charges made by Anaheim or M-S-R under this Decommissioning Agreement will be made from the legally

available revenues of M-S-R or the legally available revenues of the Anaheim Electric System. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or general taxing power of Anaheim or of M-S-R or any of the members of M-S-R.

23.2 Southern California Public Power Authority. SCPPA is a joint exercise of powers agency organized under the laws of the State of California, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or taxing power of any member of SCPPA.

23.3 Farmington and Los Alamos. Farmington (and the Farmington Electric Utility System) and Los Alamos are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington and the Farmington Electric Utility System or Los Alamos in this Decommissioning Agreement will be limited by the provisions of the New Mexico Tort Claims Act. Notwithstanding any other provisions of this Decommissioning Agreement, the payment for all purchases, fees or charges made by Farmington and Los Alamos under this Decommissioning Agreement will be made from the legally available revenues of Farmington's and/or Los Alamos's Electric Utility System. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or Los Alamos.

23.4 Utah Associated Municipal Power Systems. UAMPS is a joint action agency organized under the laws of the State of Utah, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or taxing power of any member of UAMPS.

24.0 Parties' Cost Responsibilities. Except for costs incurred by the Decommissioning Agent in its capacity as Decommissioning Agent, each Party will be solely responsible for its own costs and expenses, including fees and costs of counsel, incurred in connection with the negotiation of this Decommissioning Agreement and with any actions associated with the implementation of this Decommissioning Agreement.

25.0 No Third Party Beneficiaries. The terms and provisions of this Decommissioning Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

26.0 No Admission of Liability. The terms of this Decommissioning Agreement are the product of compromise between and among the Parties. Neither any conduct nor statements made in its negotiation, nor entry by the Parties into it, will constitute evidence of, or an admission of, liability; provided, however, nothing in this Section 26 will be construed or interpreted to excuse any Party from, or be used by any Party

to argue against, that Party's performance of any of its obligations under this Decommissioning Agreement.

27.0 Confidentiality

27.1 Confidentiality of Negotiations. The Parties' discussions and negotiations that led to the development of this Decommissioning Agreement, the Restructuring Agreement, the Mine Reclamation Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment, including discussions taking place in the context of mediation, were conducted in confidence and will remain confidential; provided, that nothing herein will prevent a Party from making disclosures pursuant to a requirement of Law (including laws related to the inspection of public records and securities), including a subpoena or discovery request. If any Party determines that it is legally obligated to make a disclosure, the Party obligated to make such disclosure will make reasonable efforts to notify the other Parties prior to such disclosure and will reasonably cooperate with any other Party in seeking an order of a Governmental Authority preventing or limiting such disclosure; provided further, however, that the Party seeking any such order to prevent or limit disclosure will be responsible for all costs for seeking such an order. Prior to making disclosure, a Party will, as available or appropriate, attempt to utilize a confidentiality agreement to protect the confidentiality of the information disclosed.

27.2 Non-confidentiality of Decommissioning Agreement. While negotiations were and remain confidential as addressed in Section 27.1, neither this Decommissioning Agreement nor any version of it publicly disclosed pursuant to applicable Law is confidential.

28.0 Damages. In no event will any Party be liable under any provision of this Decommissioning Agreement for any indirect, punitive or incidental damages or costs of any other Party (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including negligence or strict liability), or otherwise, and the Parties hereby waive, release and discharge one another from all such indirect, punitive and incidental damages and costs.

29.0 Execution in Counterparts. This Decommissioning Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the Parties to the aggregated counterparts had signed the same instrument. Any signature page of this Decommissioning Agreement may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon and may be attached to any other counterpart of this Decommissioning Agreement identical in form thereto but having attached to it one or more additional pages. Electronic or pdf signatures will have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties have caused this Decommissioning Agreement to be executed on their behalf and the signatories hereto represent that they have been duly authorized to enter into this Decommissioning Agreement on behalf of the Party for whom they sign.

[Signatures on succeeding pages]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Its: _____
Date: _____

TUCSON ELECTRIC POWER COMPANY

By: _____
Its: _____
Date: _____

THE CITY OF FARMINGTON, NEW MEXICO

By: _____
Its: _____
Date: _____

M-S-R PUBLIC POWER AGENCY

By: _____
Its: _____
Date: _____

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Its: _____
Date: _____

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Its: _____
Date: _____

CITY OF ANAHEIM

By: _____
Its: _____
Date: _____

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: _____
Its: _____
Date: _____

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

By: _____
Its: _____
Date: _____

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

By: _____
Its: _____
Date: _____

EXHIBIT A

DECOMMISSIONING SHARES[1]

	Pre 2018	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
PNM	46.6%	46.9%	47.2%	47.5%	47.8%	48.0%	48.3%	48.5%	48.8%	49.0%	49.2%	49.4%
PNMR	-	0.2%	0.4%	0.6%	0.8%	0.9%	1.1%	1.3%	1.4%	1.5%	1.7%	1.8%
TEP	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%
MSR	8.7%	8.4%	8.2%	8.0%	7.8%	7.6%	7.4%	7.3%	7.1%	6.9%	6.8%	6.6%
COF	2.6%	2.6%	2.7%	2.7%	2.8%	2.9%	2.9%	3.0%	3.0%	3.1%	3.1%	3.1%
Tri State	2.4%	2.4%	2.3%	2.2%	2.2%	2.1%	2.1%	2.0%	2.0%	1.9%	1.9%	1.8%
LAC	2.2%	2.2%	2.3%	2.3%	2.4%	2.4%	2.5%	2.5%	2.6%	2.6%	2.6%	2.7%
5CPPA	12.3%	12.0%	11.7%	11.4%	11.1%	10.8%	10.5%	10.3%	10.1%	9.8%	9.6%	9.4%
COA	3.0%	2.9%	2.9%	2.8%	2.7%	2.7%	2.6%	2.5%	2.5%	2.4%	2.4%	2.3%
UAMPS	2.1%	2.2%	2.2%	2.3%	2.3%	2.4%	2.4%	2.5%	2.5%	2.5%	2.6%	2.6%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
PNM	49.6%	49.8%	50.0%	50.1%	50.3%	50.5%	50.6%	50.8%	50.9%	51.0%	51.2%	51.3%
PNMR	1.9%	2.0%	2.2%	2.3%	2.4%	2.5%	2.6%	2.7%	2.8%	2.8%	2.9%	3.0%
TEP	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.1%	20.1%	20.1%	20.1%	20.1%
MSR	6.5%	6.4%	6.2%	6.1%	6.0%	5.9%	5.8%	5.7%	5.6%	5.5%	5.4%	5.3%
COF	3.2%	3.2%	3.3%	3.3%	3.3%	3.4%	3.4%	3.4%	3.5%	3.5%	3.5%	3.5%
Tri State	1.8%	1.8%	1.7%	1.7%	1.7%	1.6%	1.6%	1.6%	1.6%	1.5%	1.5%	1.5%
LAC	2.7%	2.7%	2.8%	2.8%	2.8%	2.9%	2.9%	2.9%	2.9%	3.0%	3.0%	3.0%
SCPPA	9.2%	9.0%	8.8%	8.7%	8.5%	8.3%	8.2%	8.0%	7.9%	7.8%	7.6%	7.5%
COA	2.3%	2.2%	2.2%	2.1%	2.1%	2.0%	2.0%	2.0%	1.9%	1.9%	1.9%	1.8%
UAMPS	2.6%	2.7%	2.7%	2.7%	2.8%	2.8%	2.8%	2.8%	2.9%	2.9%	2.9%	2.9%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	20S1	20S2	20S3
PNM	51.4%	51.5%	51.7%	51.8%	51.9%	52.0%	52.1%	52.2%	52.3%	52.4%	52.5%	52.5%	52.6%
PNMR	3.1%	3.2%	3.2%	3.3%	3.4%	3.4%	3.5%	3.6%	3.6%	3.7%	3.7%	3.8%	3.8%
TEP	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%
MSR	5.2%	5.1%	5.0%	4.9%	4.9%	4.8%	4.7%	4.6%	4.6%	4.5%	4.4%	4.4%	4.3%
COF	3.6%	3.6%	3.6%	3.6%	3.7%	3.7%	3.7%	3.7%	3.7%	3.8%	3.8%	3.8%	3.8%
Tri State	1.4%	1.4%	1.4%	1.4%	1.4%	1.3%	1.3%	1.3%	1.3%	1.3%	1.2%	1.2%	1.2%
LAC	3.0%	3.0%	3.1%	3.1%	3.1%	3.1%	3.1%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
SCPPA	7.4%	7.2%	7.1%	7.0%	6.9%	6.8%	6.7%	6.6%	6.5%	6.4%	6.3%	6.2%	6.1%
COA	1.8%	1.8%	1.8%	1.7%	1.7%	1.7%	1.6%	1.6%	1.6%	1.6%	1.5%	1.5%	1.5%
UAMP5	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

[1] Assumes Units 1 and 4 retire at the same time and there is no change in ownership or Unit rating. Should any of the assumptions change, the Decommissioning Committee will recalculate the Decommissioning Shares.

EXHIBIT B

MANDATORY PROVISIONS

Trust provisions substantially as shown below are considered to be the "Mandatory Provisions" for the individual Party Decommissioning Trust Agreements as required by Section 6.1 of the San Juan Decommissioning and Trust Funds Agreement (for purposes of this Exhibit B, the "Decommissioning Agreement"). For purposes of this Exhibit B, "Party A" refers to the Party that is a party to a Decommissioning Trust Agreement entered into pursuant to the terms of the Decommissioning Agreement. The numbering provisions in this form are for purposes of convenience and need not correspond to the actual section numbers in the actual Decommissioning Trust Agreement.

1. Purpose. The purpose of this Decommissioning Trust Agreement is to provide funding for the payment of Decommissioning Costs for the San Juan Project in accordance with Party A's obligations as set out in the Decommissioning Agreement.

2. Identification of Beneficiaries. The beneficiaries of this Decommissioning Trust ("Beneficiaries") are: (i) Party A, as the settlor; (ii) each of the other Parties to the San Juan Decommissioning and Trust Funds Agreement ("Decommissioning Agreement"); and (iii) the Decommissioning Agent as provided for in the Decommissioning Agreement. At the time of the establishment of Party A's Trust, Party A will notify the Trustee of the names and contact information of all of the Parties to the Decommissioning Agreement and the Decommissioning Agent.

3. Settlor's Relinquishment of Beneficial Interest. Party A, as settlor of the Trust, retains no beneficial interest in the funds held in trust except to utilize funds in the Trust as set forth in Section 4 and to receive a return of any funds that may remain in the Trust after the purposes of the Trust have been accomplished and the Trust has been terminated.

4. Decommissioning Trust Fund. Party A hereby establishes and is funding herewith the Decommissioning Trust Fund in accordance with the Decommissioning Agreement. Prior to termination, funds may be disbursed from the Decommissioning Trust Fund for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Decommissioning Trust Account, including the fees and expenses of the Trustee; and (b) to pay Party A's Decommissioning Share (as defined in Section 5.3 and Exhibit A of the Decommissioning Agreement) of Decommissioning Costs pursuant to invoices rendered to Party A by the Decommissioning Agent (as that term is defined in the Decommissioning Agreement) and approved for payment by Party A. The Trustee will pay funds out of the Decommissioning Trust Fund in accordance with the following procedures. The Decommissioning Agent must bill Party A, in writing, for Decommissioning Costs at least ten (10) Business Days prior to the date that payment is due. Party A must promptly review such invoice and, upon Party A's review and approval of such invoice from the Decommissioning Agent, must direct the Trustee to pay such invoice by making payment out of the assets of the Decommissioning Trust, in immediately available funds, to the Decommissioning Agent. Upon the making of such payment, the Trustee must provide notice of such payment to Party A. Party A must provide the Trustee with appropriate

wiring instructions for the making of payments in immediately available funds to the Decommissioning Agent. Party A must notify the Trustee of the identity of the Decommissioning Agent and of any changes in the Decommissioning Agent. Subject to and in accordance with the terms and conditions hereof, the Trustee agrees that it will receive, hold in trust, invest, reinvest, and release, disburse or distribute the funds in the Decommissioning Trust Account ("Decommissioning Trust Funds"). All interest and other earnings on the Decommissioning Trust Funds will become a part of the Decommissioning Trust Account and the Decommissioning Trust Funds for all purposes, and all losses resulting from the investment or reinvestment thereof from time to time, and all amounts charged thereto to compensate or reimburse the Trustee for amounts owing to it hereunder from time to time, will be set off against the Decommissioning Trust Funds, from the time of such loss or charge, and thereafter no longer will constitute part of the Decommissioning Trust Funds.

5. Funding Provisions. Party A must fund the Decommissioning Trust Account according to the terms set forth in the Decommissioning Agreement. The Trustee will have no obligation to take any action whatsoever in connection with Party A's funding of the Decommissioning Trust, or to enforce any obligations that Party A has, or may have, under the Decommissioning Agreement with respect to the funding of the Decommissioning Trust.

6. Modifications. A Decommissioning Trust created pursuant to this Agreement is irrevocable and may not be modified by Party A in a manner that (i) is inconsistent with the Decommissioning Agreement; or (ii) will adversely affect the ability of any Beneficiary to perform its obligations under the Decommissioning Agreement. It will be a condition to any modification of this Agreement that Party A has certified to the Trustee that such modification is not inconsistent with the Decommissioning Agreement and will not adversely affect the ability of any Beneficiary to perform its obligations under the Decommissioning Agreement. In no circumstance will this Agreement be modified in a way that impacts the Trustee's rights or duties, without the Trustee's prior written consent.

7. Good Faith Duties of Administration. The Trustee must exercise reasonable care, skill and caution in the administration of the Decommissioning Trust and must administer the Decommissioning Trust in good faith, in accordance with the terms of this Agreement. The Trustee must take reasonable steps to protect the Decommissioning Trust property.

8. No Conflicts of Interest. The Decommissioning Trust will be administered solely in the interests of the Beneficiaries. The Trustee may not permit to exist a conflict of interest between its duties under this Agreement and its personal interests and must keep the Decommissioning Trust property separate from the Trustee's own property.

9. Trustee Records and Reports. The Trustee must keep or cause to be kept and maintained accurate books and records reflecting all income, principal and expense transactions, which books and records will be open at all reasonable times for inspection by Party A or its duly authorized representatives, upon at least two (2) Business Days prior written notice to the Trustee. The Trustee must furnish statements to Party A and the Decommissioning Agent at least as often as annually, as directed by Party A. The Trustee must promptly respond to requests for information related to the administration of the Decommissioning Trust from Party A. When applicable and required by applicable regulations, the Trustee will issue annual IRS Form 1099.

10. Scope of Undertaking. The Trustee [, as a fiduciary] [Party A and the Trustee may insert this language or omit it] will be subject to and must perform all duties in accordance with [this Agreement] [all rules of law relating to fiduciaries and trustees] [Party A and the Trustee may insert either of the bracketed phrases.]. The Trustee will perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants, agreements or duties will be read into this Agreement against the Trustee. The Trustee will have no duty to perform, cause the performance of, manage, monitor, evaluate or approve the Decommissioning Work. The Trustee is not a principal, participant, or beneficiary in any transaction underlying this Agreement and will have no duty to inquire beyond the terms and provisions of this Agreement except as specifically provided herein. The Trustee will not be required to deliver the Decommissioning Trust Funds or any part thereof, or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold in trust, invest, reinvest, and release, disburse or distribute the Decommissioning Trust Funds as herein provided. The Trustee will not be required to notify or obtain the consent, approval, authorization or order of any court or governmental body to perform its obligations under this Agreement, except as expressly provided herein. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the Parties that, unless otherwise provided herein, the Trustee will not be required to exercise any discretion hereunder and will have no investment or management responsibility and, accordingly, will have no duty to, or liability for its failure to, provide investment recommendations or investment advice to Party A. The Trustee will not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, subject, however, to its own willful misconduct or [negligence] [gross negligence] [Party A and the Trustee may agree upon either standard]. It is the intention of the Parties that the Trustee will not be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

11. Termination of Decommissioning Trust and of this Agreement. The Decommissioning Trust and this Agreement will terminate no earlier than twenty-four (24) months after the Decommissioning Committee determines that the Decommissioning Work is complete; provided, however, that in the event all fees, expenses, costs and other amounts required to be paid to the Trustee hereunder are not fully and finally paid prior to termination, the provisions of Section ___ [concerning payment of Trustee] will survive the termination hereof, and provided further, that the provisions of Section ___ [concerning interpleader] and Section ___ [concerning indemnity] if applicable) will, in any event, survive the termination hereof. Notice of termination of the Decommissioning Trust and of this Agreement must be provided to the Trustee in the following manner: the Decommissioning Agent, at the direction of the Decommissioning Committee, must give written notice to Party A and to each of the other Parties that the Decommissioning Work was completed , and Party A must, in turn, give written notice to the Trustee of the satisfaction of Party A's obligations under the Decommissioning Agreement.

12. Distribution of Assets. Until satisfaction of Party A's obligations under the Decommissioning Agreement, Party A will have no right of return of any of the Decommissioning Trust Funds. Upon the termination of this Agreement, the Trustee must distribute any remaining assets in the Decommissioning Trust Account to Party A.

13. Spendthrift Clause. The interests of the Beneficiaries are held subject to a spendthrift trust. No interest in the Decommissioning Trust Funds established pursuant to this Agreement will be transferable or assignable, voluntarily or involuntarily, or be subject to the claims of Party A or its creditors other than as provided in the Decommissioning Agreement.

14. Tax Matters. Party A must provide the Trustee with its taxpayer identification number documented by an appropriate Form W8 or W9 (or other appropriate identification information for tax purposes) upon execution of this Agreement. Failure to provide such form may prevent or delay disbursements from the Decommissioning Trust Funds and may also result in the assessment of a penalty and the requirement that the Trustee withhold tax on any interest or other income earned on the Trust Funds. The Parties agree that, for all tax purposes, all interest or other income, gain, or loss from investment of the Trust Funds, as of the end of each calendar year and to the extent required by the Internal Revenue Service or other taxing authority, will be reported as having been earned or lost, as the case may be, by Party A. Any payments of income will be subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable.

15. Third Party Beneficiaries. Nothing in this Agreement will entitle any person other than the Parties to any claim, cause of action, remedy, or right of any kind, except the rights expressly provided to the persons described in Section ___ (if applicable).

EXHIBIT C

SJGS PLANT SITE

The SJGS Plant Site consists of Parcels A, B, D, E and F in the property descriptions below.

PARCEL A

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 16: SW 1/4
Section 20: NE 1/4, N 1/2 SE 1/4, SW 1/4SE 1/4
Section 21: NW 1/4 NW 1/4
Section 29: NE 1/4

PARCEL B

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SW 1/4, SW 1/4 SE 1/4
Section 20: E 1/2 NW 1/4, NE 1/4 SW 1/4
Section 29: NW 1/4, N 1/2 SW 1/4
Section 30: NE 1/4, E 1/2 NW 1/4, N 1/2 SE 1/4

PARCEL D

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 17: SE 1/4 SW 1/4, S1/2 SE 1/4

PARCEL E

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SE 1/4
NE 1/4 SE 1/4

E 1/2 NW 1/4 SE 1/4
S 1/2 S 1/2 SE 1/4 NE 1/4

Section 20: SE 1/4 SW 1/4
SW 1/4 SW 1/4
NW 1/4 SW 1/4
S 1/2 SW 1/4 SW 1/4 NW 1/4

Containing 235 acres, more or less.

PARCEL F

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 20: SE 1/4 SE 1/4

EXHIBIT D

INITIAL DECOMMISSIONING WORK

Equipment	Scope	Decommissioning Cost Estimates	
		Unit 2	Unit 3
Cleanup ash/coal residual	Remove ash and coal from external and internal areas following unit shutdown.	$400,000	$400,000
Unit 2 Cooling Tower	Unit 2 Cooling Tower is a wood structure that would be demolished for safety and to eliminate the need for periodic inspections.	$400,000	NA

EXHIBIT E

RETIREMENT IN PLACE

Equipment	Scope	Costs	
		Unit 2	Unit 3
Mercury switches	Identify, remove, and dispose of instrumentation containing Mercury, Estimated 132 Instruments on U3 and 120 Instruments on U2.	$25,000	$25,000
Freon refrigerant	Included in other costs estimates	Included	Included
Lighting Fixture PCB's	Several lighting fixtures contain PCB's. Would isolate and remove those and dispose of PCB's.	$100,000	$195,000
Nuclear sources	Remove and dispose of all nuclear source instrumentation. Highest cost is disposal requirements. 51 sources associated with Unit 3, 20 sources associated with Unit 2 - potential for early disposal prior to 2017.	$112,200	$44,000
Purge Generator of Hydrogen	Normal shutdown activity	$0	$0
Other chemicals (Acid/ Caustic/etc.)	Plans would be to decrease and suspend feed rates in last few weeks and flush in last few days to clean out tanks and equipment.	$0	$0
Oil filled equipment	Drain and dispose of oil/fuel from Fans, BFP, AH, CT gearboxes, Mills, Turbine LO, Diesel Generators, EHC fluid, MOVs, LC transformers, motors, HVAC units, sootblowers, hoists, fuel oil, etc.	$60,000	$60,000
Resins (Stator Cooling, etc.)	Removal and disposal of resins	$2,000	$2,000
Baghouse bags	Remove excess ash from bags	$5,000	$5,000

Batteries	Unit 2 - Battery Charger 2C and Batteries 2C, Unit 3 Battery Charger 2B and Batteries 2B (Systems power EBOP & ESOP motors)	$15,000	$15,000
DC & UPS System	Disconnect DC circuits and UPS circuits no longer in use	$15,000	$15,000
Precipitator T/R sets	Remove oil in Precipitator T/R sets	$5,000	$5,000
Safety Surveys	Setup periodic safety survey. Perform walkdown of remaining structures and equipment to identify potential hazards. Make minor remedies.	$25,000	$25,000
Ductwork and Misc. Equipment Stabilization	Follow-up from safety survey and other identified items to ensure equipment remains in safe condition	$75,000	$75,000
Review of Major Stand Alone Structures			
Stacks	Maintain minimum maintenance to defer tear down costs	$25,000	$25,000
Stacks - install stack caps	Install cap on top of stack to protect stack liner and pooling of water internal to the stack.	$25,000	$25,000
Stacks	Maintain minimum maintenance to defer tear down costs	* Aircraft light maint - $5k per year *Elevator PM until obsolete - $5k per year * Period stack structural inspection $10k every 2 years-- Light maintenance for caulking up to $50k over stack life	* Aircraft light maint - $5k per year *Elevator PM until obsolete - $5k per year * Period stack structural inspection $10k every 2years Light maintenance for caulking up to $50k over stack life.

Unit 3 Cooling Tower	Unit 3 Cooling Tower is a metal structure. Philosophy would be same as baghouse to leave in place until structural issues, if any, are identified. Plan would be to drain all equipment and leave in place.	$0	$5,000
Other Plant Structures	Typically steel structures that are anticipated to be able to stand until final decommissioning with little maintenance and periodic inspections.	$5,000	$5,000
Common Building Dismantle (Southside waste water building, ...)	A number of common unit buildings are no longer necessary. Dismantlement is preference for several of these - undetermined at this time.	$50,000	$50,000
Blank off chemical feeds	Blank off feeds to Unit 2 & 3 equipment to ensure no inadvertent filling of equipment or tanks from common chemical systems.	$20,000	$20,000
Physical Barriers	Setup physical barriers to prevent access to unmaintained areas.	$25,000	$25,000
Boiler	Secure/Close bottom of boiler to prevent draft through system - potentially fill seal tough	$10,000	$10,000
Misc. Structural and Environmental Issues	Address any emergent structural integrity or environmental conditions, if any, with equipment and facilities.	TBD	TBD
DCS Logic Changes	Changes to align DCS to two unit operation - logic changes	$50,000	$50,000
Medium Voltage Motors	Disconnect 4160V/6900V motors at the switchgear. Label cubicles as spare.	$20,000	$20,000
480V Motors	Disconnect 480V motor at the LC/MCC. Label cubicles as spare.	$30,000	$30,000
De-energize/disconnect Cooling Tower	De-energize electrical equipment. Potential physical disconnect to remove potential for inadvertently re-energizing.	$10,000	$10,000

LC/MCC's etc.			
Electrical disconnect from substation	Physical removal high voltage wire between the Generator MOD and the GSU Xfmrs. Physical removal of the potential backfeeds from medium voltage switchgear bus to the Aux Xfmrs and Generator, also included the Aux feeds to the SO2 Switchgear.	$50,000	$50,000
Coal Connection	Physically separate coal system so no inadvertent coal added back into Units 2 & 3 silos, etc.	$15,000	$15,000
Fire Protection	Insurance provider recommends maintaining fire detection in areas with oil storage or energized electrical equipment. May cap and drain non-operational areas.	$50,000	$50,000
Building elevators	Board up unit elevators - will need to transfer ownership on some to remaining owners to allow access to common piping runs, etc. - need better assessment	$0	$0
Property Taxes	Review/address continuing obligations, if any, on property taxes.		
Insurance Requirements	Review/address continuing obligations on required insurance.		
Aux Power Requirements	Aux power requirements for freeze protection, FAA warning lights, and other lighting equipment for the retired units.		
Building winter enclosures	Cover and repair vents, louvers, etc. in areas for heat loss and freeze protection in winter and air ventilation in the summer.	$10,000	$10,000

EXHIBIT F

EQUIPMENT REQUIRED FOR ON-GOING OPERATION OF UNITS 1 AND 4

Unit Needing Support	Unit Providing Support	Common System	Power Source Feeding	Notes
1	2	Sootblowing Air Compressors #1,2, and 3	2C 480 breakers	
1	2	Unit Plant Air compressor #1	2A 4160	
1	2	Unit Plant Air compressor #2 and 3	2B 4160	
4	3	Sootblowing Air Compressors A and B	U3 6900	
4	3	Bearing Cooling Water Pumps A and B	3A and 3B load centers	
1 and 4	2	Lake Station	U2 4160 A Bus	
1 and 4	2	U1 and U2 Ash Water	U2 4160	
1 and 4		Coal System		
1	2	Baghouse Air Compressor	U2	
4	3	Baghouse Air Compressor	U3 6900	
1		Demineralizer System		
4		Demineralizer System		
1	2	Bearing Cooling Water Pumps	U2	
1	2	Boiler Blowdown		Manual Valves
1 and 4	4	Oxidation Air Blowers	U3 and U4 01 MCC	
Common		Limestone Slurry System C Huff Tank		
4	3 and 4	Aux Cooling System	Switchyard	Blank off U3 Piping
1	1 and 2	Raw Water Supply	U2	
4	3 and 4	Raw Water Supply	U3	Heat Trace and Structure
4	3 and 4	HVAC	U3	
1	1 and 2	Control Room	U2	
4	3 and 4	Control Room	U3	
Common	2	Potable Water	U2	
1	1 and 2	Relay Room	U2	
4	3 and 4	Relay Room	U3	
Common	2	Lab and 1 and 2 Maintenance Shop	U2	
Common		Building Steam		Isolation

Unit Needing Support	Unit Providing Support	Common System	Power Source Feeding	Notes
1	1 and 2	ME Wash 01 Area		Common Tank and Pumping System
4	3 and 4	ME Wash 01 Area		Common Tank and Pumping System
1	1 and 2	Fuel Oil Pumping	U2	
4	3 and 4	Start-Up Boiler Feedpump	U3	
Common	2 and 3	Cranes and Elevators	U2 and U3	
4	3 and 4	CT Chemical Injection	U3	
1	1 and 2	Stack Relay, DCS, and LOTO Area	U3	
1	1 and 2	U1 and U2 FP Booster Pump	U2	
4	3 and 4	U3 and U4 FP Booster Pump	U3	
1	1 and 2	CO2 System	U2	
4	3 and 4	CO2 System	U3	
Common		Control System AC Power		Backup Sources from Sister Unit
1	1 and 2	Sample Panel	U2	
4	3 and 4	Sample Panel	U3	
1	1 and 2	Hydrogen Panels		Valving or Capping
4	3 and 4	Hydrogen Panels		Valving or Capping
Common		DBA Tank and Piping	U3	
1	1 and 2	Cathodic Protection	U2	
4	3 and 4	Cathodic Protection	U3	
Common		Aux Steam		
1	1 and 2	Tripper Deck Exhaust Fans	U2	
4	3 and 4	Tripper Deck Exhaust Fans	U3	
1	1 and 2	Lighting	U2	
4	3 and 4	Lighting	U3	
1	2	Stack Lighting	U2	Needed if Stack not Demolished
4	3	Stack Lighting	U3	Needed if Stack not Demolished
Common	2 and 3	Radio repeater System	U2 and U3	
Common		Contractor Support Shop	U2 and U3	

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AGENDA

REPORT OF OFFICERS

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Dean Martin, Interim City Manager**

SUBJECT: **Adopt Resolutions 2015-72, 2015-01PA, 2015-05SA, and 2015-73**

RECOMMENDATION: That the City Council;

1) Adopt Resolution No. 2015-72, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DECLARING THAT THERE IS A NEED FOR A PARKING AUTHORITY TO FUNCTION IN THE CITY, DECLARING THAT THE CITY COUNCIL SHALL BE THE PARKING AUTHORITY, AND DESIGNATING AN INTERIM CHAIRMAN OF THE PARKING AUTHORITY

2) Adopt Resolution No. 2015-01PA A RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

3) Adopt Resolution No. 2015-05SA, RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITHand

4) Adopt Resolution No. 2015-73, RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

BACKGROUND: On November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of Califomia (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law.

On July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority" and, together with the Financing Authority, the "Authorities"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system

On February 1, 2012, the City became the successor agency to the Agency (the "Successor Agency") by operation of State legislation.

Recently in California, certain parties have challenged the legal autbority of a joint powers authority that has a former redevelopment agency as a member to exercise certain powers authorized under the Act, including the issuance of bonds. These challenges have resulted in delayed or abandoned financings by public entities, and, in certain cases, legal action against the joint power authorities and its constituent public entity members.

The City has identified certain outstanding debt obligations (the "Prior Obligations") that it currently desires to refund to achieve financial benefits for the City and its residents. To this end, the City intends to seek the assistance of the Authorities in connection with the refunding of the Prior Obligations through the issuance of lease revenue refunding bonds (the "Bonds").

In light of the recent challenges to joint powers authorities discussed above and to avoid unnecessary costs to the City stemming from the defense of any legal action with regards to the issuance of the Bonds, each of the City and the Successor Agency desire to remove the Successor Agency as a member of the Authority and add as a member a parking authority formed by the City (the "Parking Authority").

The California Parking law of 1949, Streets and Highways Code Section 32500, et seq. (the "Law") authorizes tbe formation and activation of a parking authority in every city and county. The Law empowers a parking authority to carry out a broad range of activities, such as transferring, leasing, managing or improving property, issuing bonds and receiving and expending revenues.

Under the Law, the formation of a parking authority involves the City Council consideration and adoption of a resolution stating there is a need for a parking authority in the City. Once formed, the Parking Authority would be a distinct legal entity from the City (similar to a redevelopment agency prior to dissolution) witb a separate governing board. The City Council would serve as the governing board for the Parking Authority. The Mayor would serve as Chair and the Mayor Pro Tem would serve as Vice Chair.

To meet the objectives of the City with regards to the refunding of the Prior Obligations and to facilitate the issuance of the Bonds by the Authorities, the Agreement will be amended to (i) add the Parking Authority as a member and (ii) remove the Successor Agency as a member.

JUSTIFICATION: The formation of the Parking Authority would provide a public entity that is a distinct legal entity from the City that can replace the Successor Agency as the member of the Authorities. The replacement of the Successor Agency with the Parking Authority should avoid any litigation challenging the legal authority of the Authorities to issue the Bonds on the basis previously discussed, which in turn would avoid the costs of legal fees associated with the defense of such ligation by the City, as well allowing the City to realize the fiscal benefits of issuing the Bonds within its contemplated timeframe without delay due to litigation.

RECOMMENDATION: That the City Council approves the recommended Resolutions and authorizes the amendment to the Agreements attached to this item and proposed for adoption.

RECOMMENDED BY:



Dean Martin
Interim City Manager

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RESOLUTION NO. 2015-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DECLARING THAT THERE IS A NEED FOR A PARKING AUTHORITY TO FUNCTION IN THE CITY, DECLARING THAT THE CITY COUNCIL SHALL BE THE PARKING AUTHORITY, AND DESIGNATING AN INTERIM CHAIRMAN OF THE PARKING AUTHORITY

WHEREAS, the Parking Law of 1949 is codified in California Streets & Highways Code Sections 32500, *et seq.* ("Law"); and

WHEREAS, Section 32651 of the Law provides that in every city, including the City of Banning ("City"), there is a public body corporate and politic known as the parking authority of the city ("Parking Authority"); and

WHEREAS, Section 32651 of the Law additionally provides that the Parking Authority shall not transact business or exercise its power unless the City Council, as the governing body of the City, declares by Resolution that there is a need for a Parking Authority to function in the City; and

WHEREAS, Section 32661.1 of the Law provides that the City Council may declare by Resolution that the members of the City Council shall be the members of the Parking Authority; and

WHEREAS, Section 32658 of the Law provides that the Mayor of the City shall designate an interim chairman of the Parking Authority from among the members of the Parking Authority, and thereafter the Parking Authority shall select the successor chairman from among its members.

NOW, THEREFORE, the City Council of the City of Banning, California does hereby resolve as follows:

SECTION 1. Findings. The City Council finds and declares that there is a need for a Parking Authority to function in the City, and the Parking Authority hereby is established and permitted to transact any business and exercise any power inferred thereon by the provisions of the Law.

SECTION 2. City Councilmembers to Serve as Members of the Parking Authority. Pursuant to Section 32661.1 of the Law, the City Council finds that the appointment of the members of the City Council as the members of the Parking Authority will serve the public interest and promote the public safety and welfare in an effective manner and, therefore, the members of the City Council are hereby declared to be members of the Parking Authority and all the rights, powers, duties, privileges and immunities that are vested by the Law in such a Parking Authority shall be vested in such members, except as otherwise provided by the Law.

SECTION 3. Designation of Interim Chair and Vice-Chair. The Mayor of the City shall serve as the interim Chair of the Parking Authority, until a permanent Chair is selected. The Mayor Pro-Tem shall serve as the interim Vice-Chair.

PASSED AND ADOPTED by the City Council of the City of Banning, California, at a regular meeting held on the __ day of _____ 2015.

CITY OF BANNING, CALIFORNIA

_____
Debbie Franklin, Mayor

ATTEST

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM

_____
[_____]
City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Marie A. Calderon, City Clerk of the City of Banning, DO HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council held on the ___ day of _____ 2015, by the following vote to wit:

AYES:

NOES:

ABSENT:

_____
Marie A. Calderon
CITY CLERK

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RESOLUTION NO. 2015-01 PA

A RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, on November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, on July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the Agency was dissolved effective February 1, 2012, pursuant to Assembly Bill x1 26 (as subsequently amended from time to time, the "Dissolution Act"); and

WHEREAS, the City elected to serve as the "successor agency" to the Agency ("Successor Agency") by operation of the Dissolution Act, and the Successor Agency is a separate and independent legal entity from the City charged with expeditiously "winding down" the affairs of the Agency; and

WHEREAS, the City and the Successor Agency desire to amend the Financing Agreement pursuant to Section 8.05 thereof to add the Parking Authority of the City of Banning (the "Parking Authority") as a Member thereunder; and

WHEREAS, the City and the Successor Agency desire to amend the Utility Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member thereunder; and

WHEREAS, the Parking Authority desires to become a Member of the Financing Authority and the Utility Authority.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Parking Authority of the City of Banning, as follows:

SECTION 1. Amendment to City of Banning Financing Authority Joint Exercise of Powers Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Financing Authority, the Parking Authority and the Successor Agency (the "Financing Amendment"), in substantially the form attached hereto as Exhibit A, is hereby approved by the Board. The Chair of the Parking Authority or the Executive Director and their respective

designees (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the Parking Authority to execute and deliver the Financing Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Financing Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Financing Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 2. Amendment to Banning Utility Authority Joint Exercise of Powers Agreement The Amendment to Joint Exercise of Powers Agreement, by and among the Utility Authority, the Parking Authority and the Successor Agency (the "Utility Amendment"), in substantially the form attached hereto as Exhibit B, is hereby approved by the Board. The Chair of the Parking Authority or the Executive Director (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the Parking Authority to execute and deliver the Utility Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Utility Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Utility Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 3. Other Actions. The Authorized Representatives hereby authorized, individually and collectively, to take all actions and execute any and all documents, certificates and other instruments which they may deem necessary or advisable to consummate the execution and delivery of the Financing Amendment and the Utility Amendment and to carry out, give effect to and comply with the terms and intent of this Resolution. All actions heretofore taken by the Authorized Representatives, the Parking Authority's other officers, or their respective designees, and the employees and agents of the Parking Authority, in connection with the matters described in this Resolution, the Financing Amendment and the Utility Amendment is hereby ratified, approved and confirmed.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the governing body of the Parking Authority of the City of Banning on the __ day of _____ 2015.

_____
Debbie Franklin,
Chairman of the Parking Authority of
the City of Banning

ATTEST:

_____
Secretary of the Parking Authority of the
City of Banning

APPROVED AS TO FORM:

_____
Counsel to the Parking Authority of the City of
Banning

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RESOLUTION NO. 2015-05 SA

RESOLUTION OF THE GOVERNING BOARD OF THE SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, on November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, on July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the Agency was dissolved effective February 1, 2012, pursuant to Assembly Bill x1 26 (as subsequently amended from time to time, the "Dissolution Act"); and

WHEREAS, the City elected to serve as the "successor agency" to the Agency ("Successor Agency") by operation of the Dissolution Act, and the Successor Agency is a separate and independent legal entity from the City charged with expeditiously "winding down" the affairs of the Agency; and

WHEREAS, the City and the Successor Agency desire to amend the Financing Agreement pursuant to Section 8.05 thereof to add the Parking Authority of the City of Banning (the "Parking Authority") as a Member thereunder; and

WHEREAS, the City and the Successor Agency desire to amend the Utility Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member thereunder; and

WHEREAS, following amendments of the Financing Agreement and the Utility Agreement, to add the Parking Authority as a Member, respectively, the Successor Agency desires to be removed as a member of the Financing Authority and the Utility Authority.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, FOUND AND ORDERED by the Governing Board of the Successor Agency (the "Board"), as follows:

SECTION 1. **Recitals**. All of the above recitals are true and correct and the Board so finds.

SECTION 2. Amendment to Joint Exercise of Powers Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Financing Authority, the Parking Authority and the Successor Agency (the "Financing Amendment"), in substantially the form attached hereto as Exhibit A, is hereby approved by the Board. The Chair or Executive Director and their respective designees (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the Successor Agency to execute and deliver the Financing Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Financing Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Financing Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 3. The Amendment to Joint Exercise of Powers Agreement, by and among the Utility Authority, the Parking Authority and the Successor Agency (the "Utility Amendment"), in substantially the form attached hereto as Exhibit B, is hereby approved by the Board. The Authorized Representative is hereby authorized and directed, for and in the name of the Successor Agency to execute and deliver the Utility Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Utility Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Utility Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 4. Other Aetions. The Authorized Representatives are hereby authorized, individually and collectively, to take all actions and execute any and all documents, certificates and other instruments which they may deem necessary or advisable to consummate the execution and delivery of the Financing Amendment and the Utility Amendment and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution. All actions heretofore taken by the Authorized Representatives, the Successor Agency's other officers, or their respective designees, and the employees and agents of the Successor Agency, in connection with the matters described in this Resolution, the Financing Amendment and the Utility Amendment are hereby ratified, approved and confirmed.

SECTION 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of the Successor Agency for the Community Redevelopment Agency of the City of Banning on the __ day of _____ 2015.

_____
Debbie Franklin, Chairman

ATTEST:

_____
Marie A. Calderon, Secretary of the Board

APPROVED AS TO FORM:

_____
[_____]
Counsel to the Successor Agency

EXHIBIT A

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

BANNING UTILITY AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated July 12, 2005 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the Banning Utility Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

"Members" means the City, the Parking Authority and any other Member under the Agreement.

ARTICLE II

ADDITION OF PARKING AUTHORITY OF THE CITY OF BANNING AS A MEMBER

Section 2.01. Addition of Member. The Parking Authority of the City is hereby made a Member under the Agreement for all purposes thereof.

ARTICLE III

REMOVAL OF SUCCESSOR AGENCY AS A MEMBER

Section 3.01. Removal of Member. Upon execution by the Parking Authority of this Amendment, the Successor Agency shall be and is hereby removed as a Member of the Agreement for all purposes thereof. All references to "Agency" in the Agreement are hereby removed and replaced with "Parking Authority."

ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

BANNING UTILITY AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT B

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

CITY OF BANNING FINANCING AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated November 12, 2003 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the City of Banning Financing Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

"Members" means the City, the Parking Authority and any other Member under the Agreement.

ARTICLE II

ADDITION OF PARKING AUTHORITY OF THE CITY OF BANNING AS A MEMBER

Section 2.01. Addition of Member. The Parking Authority of the City is hereby made a Member under the Agreement for all purposes thereof.

ARTICLE III

REMOVAL OF SUCCESSOR AGENCY AS A MEMBER

Section 3.01. Removal of Member. Upon execution by the Parking Authority of this Amendment, the Successor Agency shall be and is hereby removed as a Member of the Agreement for all purposes thereof. All references to "Agency" in the Agreement are hereby removed and replaced with "Parking Authority."

ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

CITY OF BANNING FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

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RESOLUTION NO. 2015-73

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, on November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, on July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the Agency was dissolved effective February 1, 2012, pursuant to Assembly Bill x1 26 (as subsequently amended from time to time, the "Dissolution Act"); and

WHEREAS, the City elected to serve as the "successor agency" to the Agency ("Successor Agency") by operation of the Dissolution Act, and the Successor Agency is a separate and independent legal entity from the City charged with expeditiously "winding down" the affairs of the Agency; and

WHEREAS, the City and the Successor Agency desire to amend the Financing Agreement pursuant to Section 8.05 thereof to add the Parking Authority of the City of Banning (the "Parking Authority") as a Member thereunder; and

WHEREAS, the City and the Successor Agency desire to amend the Utility Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member thereunder; and

WHEREAS, following amendments of the Financing Agreement and the Utility Agreement, to add the Parking Authority as a Member, respectively, the Successor Agency desires to be removed as a member of the Financing Authority and the Utility Authority.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, FOUND AND ORDERED by City Council of the City of Banning (the "City Council"), as follows:

SECTION 1. Recitals. All of the above recitals are true and correct and the City Council so finds.

SECTION 2. Amendment to Financing Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Financing Authority, the Parking Authority and the Successor Agency (the "Financing Amendment"), in substantially the form attached hereto as Exhibit A, is hereby approved by the City Council. The Mayor, the Administrative Servies Director, or the Interim Administrative Services Director and their respective designees (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the City to execute and deliver the Financing Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Financing Amendment, such execution to be conclusive evidence of such approval. The City Council hereby authorizes the delivery and performance of the Financing Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 3. Amendment to Utility Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Utility Authority, the Parking Authority and the Successor Agency (the "Utility Amendment"), in substantially the form attached hereto as Exhibit B, is hereby approved by the City Council. The Authorized Representative is hereby authorized and directed, for and in the name of the City to execute and deliver the Utility Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Utility Amendment, such execution to be conclusive evidence of such approval. The City Council hereby authorizes the delivery and performance of the Utility Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 4. Other Actions. The Authorized Representatives are hereby authorized, individually and collectively, to take all actions and execute any and all documents, certificates and other instruments which they may deem necessary or advisable to consummate the execution and delivery of the Financing Amendment and the Utility Amendment and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution. All actions heretofore taken by the Authorized Representatives, the City's other officers, or their respective designees, and the employees and agents of the City, in connection with the matters described in this Resolution, the Financing Amendment and the Utility Amendment are hereby ratified, approved and confirmed.

SECTION 5. Costs and Expenses of the City. The Parking Authority shall be responsible for all costs and expenses incurred by the City in connection with the Financing Amendment and the Utility Amendment.

SECTION 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Banning, California, at a regular meeting held on the __ day of _____ 2015.

CITY OF BANNING, CALIFORNIA

_____
Debbie Franklin, Mayor

ATTEST

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM

_____
[_____]
City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF)

I, Marie A. Calderon, City Clerk of the City of Banning, DO HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council held on the ___ day of _____ 2015, by the following vote to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

_____
CITY CLERK

EXHIBIT A

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

BANNING UTILITY AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated July 12, 2005 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the Banning Utility Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

"Members" means the City, the Parking Authority and any other Member under the Agreement.

ARTICLE II

ADDITION OF PARKING AUTHORITY OF THE CITY OF BANNING AS A MEMBER

Section 2.01. Addition of Member. The Parking Authority of the City is hereby made a Member under the Agreement for all purposes thereof.

ARTICLE III

REMOVAL OF SUCCESSOR AGENCY AS A MEMBER

Section 3.01. Removal of Member. Upon execution by the Parking Authority of this Amendment, the Successor Agency shall be and is hereby removed as a Member of the Agreement for all purposes thereof. All references to "Agency" in the Agreement are hereby removed and replaced with "Parking Authority."

ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

BANNING UTILITY AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT B

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

CITY OF BANNING FINANCING AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated November 12, 2003 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the City of Banning Financing Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

"Members" means the City, the Parking Authority and any other Member under the Agreement.

ARTICLE II

ADDITION OF PARKING AUTHORITY OF THE CITY OF BANNING AS A MEMBER

Section 2.01. Addition of Member. The Parking Authority of the City is hereby made a Member under the Agreement for all purposes thereof.

ARTICLE III

REMOVAL OF SUCCESSOR AGENCY AS A MEMBER

Section 3.01. Removal of Member. Upon execution by the Parking Authority of this Amendment, the Successor Agency shall be and is hereby removed as a Member of the Agreement for all purposes thereof. All references to "Agency" in the Agreement are hereby removed and replaced with "Parking Authority."

ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

CITY OF BANNING FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

CITY COUNCIL / BANNING UTILITY AUTHORITY AGENDA
CONSENT ITEM

Date: **July 14, 2015**

TO: **Banning Utility Authority**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Banning Utility Authority Resolution No. 2015-10 UA, "Approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and Annual Membership Dues"**

RECOMMENDATION: Banning Utility Authority adopt Resolution No. 2015-10 UA:

I. Approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and the City's membership.

II. Authorizing the disbursement of membership fees in the amount of $500.00 annually.

JUSTIFICATION: The purpose of the Memorandum of Understanding ("MOU") is to establish the mutual understandings of San Gorgonio Pass Regional Water Alliance ("SGPRWA") with respect to certain voluntary joint efforts towards regional coordination, collaboration and communication of water resource programs.

BACKGROUND: The San Gorgonio Pass Area local governments and water districts understand that regular coordination, collaboration, and communication can result in improved management of water resources at local and regional levels. Water is a limited resource, and in May 2013, County Supervisor Marion Ashley appointed, with the approval of the entire County Board of Supervisors, a Pass Water Policy Panel ("Panel"). The Panel is made up of representatives in the San Gorgonio Pass Area. The Panel, known as SGPRWA, is responsible for identifying challenges in water supply and water quality for the region and to develop mutually beneficial solutions that include coordinating plans and infrastructure development that ultimately delivers clean, reliable, and affordable water supplies for the citizens of the San Gorgonio Pass area for the foreseeable future.

FISCAL DATA: Membership fees will be funded by Account No. 600-6300-471.23-03 (Dues/Subscriptions) on an annual basis under the approval of this resolution.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim City Manager/
Administrative Services Director

Attachments: Memorandum of Understanding San Gorgonio Pass Regional Water Alliance

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BANNING UTILITY AUTHORITY RESOLUTION NO. 2015-10 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE SAN GORGONIO PASS REGIONAL WATER ALLIANCE MEMORANDUM OF UNDERSTANDING AND ANNUAL MEMBERSHIP DUES

WHEREAS, the purpose of the Memorandum of Understanding ("MOU") is to establish the mutual understandings of San Gorgonio Regional Water Alliance ("SGPRWA") with respect to certain voluntary joint efforts towards regional coordination, collaboration, and communication of water resource programs; and

WHEREAS, the San Gorgonio Pass Area local governments and water districts understand that regular coordination, collaboration, and communication can result in improved management of water resources at local and regional levels; and

WHEREAS, water is a limited resource, and in May 2013, County Supervisor Marion Ashley appointed, with the approval of the entire County Board of Supervisors, a Pass Water Policy Panel and the Panel is made up of representatives in the San Gorgonio Pass Area; and

WHEREAS, the SGPRWA is responsible for identifying challenges in water supply and water quality for the region and to develop mutually beneficial solutions that include coordinating plans and infrastructure development that ultimately delivers clean, reliable, and affordable water supplies for the citizens of the San Gorgonio Pass area for the foreseeable future; and

WHEREAS, membership fees will be funded by Account No. 600-6300-471.23-03 (Dues/Subscriptions) on an annual basis under the approval of this resolution.

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. 2015-10 UA approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and Annual Membership Dues.

PASSED, ADOPTED AND APPROVED this 14th day of July, 2015.

_____
Deborah Franklin, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary

APPROVED AS TO FORM AND LEGAL CONTENT:

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

CERTIFICATION:

I, Marie Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-10 UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at a Regular Meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

Memorandum of Understanding
San Gorgonio Pass Regional Water Alliance

Memorandum of Understanding

San Gorgonio Pass Regional Water Alliance

A Coordination of Regional Water Providers

1. Background

The San Gorgonio Pass Area local governments and water districts understand that regular coordination, collaboration, and communication can result in improved management of water resources at local and regional levels. Water is a limited resource, and in May 2013, County Supervisor Marion Ashley appointed, with the approval of the entire County Board of Supervisors, a Pass Water Policy Panel. The Panel is made up of representatives in the San Gorgonio Pass Area. The Panel, known as the San Gorgonio Pass Regional Water Alliance ("SGPRWA") is to identify challenges in water supply and water quality for the region, to develop mutually beneficial solutions that include coordinating plans and infrastructure development that ultimately delivers clean, reliable, and affordable water supplies for the citizens of the San Gorgonio Pass area for the foreseeable future.

2. Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish the mutual understandings of SGPRWA with respect to certain voluntary joint efforts towards regional coordination, collaboration, and communication of water resource programs.

3. Goals

The goals of the SGPRWA are:

3.1 To improve coordination, collaboration, and communication among local government water agencies in the San Gorgonio regional area, to achieve greater efficiency and effectiveness in delivering water supplies. Services are local control.

3.2 To develop and promote common water strategies that will, when implemented, fulfill the water demands of the regional area for the foreseeable future.

4. Definitions

4.1 San Gorgonio Pass Regional Water Alliance. Participating county, local governments, and water agencies in the San Gorgonio Regional area.

4.2 Signatories. The parties signing this MOU (Signatories) constitute the current participants.

5. Mutual Understandings

5.1 Alliance Agreements. Principal idea of non-binding collaborative is so that we do not overstate supplies in area. The collaborative is to share resources and opportunities that can benefit our area that we might not qualify for individually. Agreements of the Alliance members:

1) Water supply is a regional need

2) Affordable quality water is a regional need
3) We, the Alliance, are interested in obtaining affordable quality water supply for our individual districts
4) Regional collaboration allows for an opportunity for us to obtain #3 above

As we agree on these four points, we also agree to explore opportunity of an integrated water management plan for the area.

5.2 Participation. Participation is strictly voluntary and may be terminated at any time without recourse. San Gorgonio local governments and water agencies will be invited to become Signatories.

5.3 Activities. Efforts pursued under this agreement will remain consistent with and will not exceed the current authority for any individual participating local government and water agency. Efforts will include information dissemination and sharing between local governments, water agencies, public outreach, and education and other activities as mutually agreed upon from time to time among the Signatories.

5.3.1 It is anticipated that the Signatories will meet at least monthly with subcommittee meeting happening in between full Alliance meetings.

5.4 Funding. Individual Signatories are not required to commit funding to any other Signatory of the Alliance. Recognizing this is a voluntary, non- binding agreement, Signatories agree to commit such resources as are required to implement actions agreed upon per Section 5.4 herein within their individual service areas, subject to approval and direction of the governing bodies of each Signatory.

5.5 Decision Making. Consensus will be sought when the need for decisions arises. Decisions lacking consensus may be implemented by such individual Signatories that choose to do so, but said decisions may not be considered activities of the Alliance.

5.6 Non-binding Nature. This document and participation under this MOU are non-binding, and in no way suggest that a local municipal government or water agency may not continue its own activities as each government and water agency is expected to continue its own policies and procedures , and undertake efforts to secure project funding from any source . A local government or water agency may withdraw from participation at any time.

5.7 Termination. Signatories may terminate their involvement at any time with no recourse.

6. Signatories to the Memorandum of Understanding

We, the undersigned representatives of our respective governing bodies, acknowledge the above as our understanding of how the SGPRWA Coordination, Collaboration, and Communication MOU will be implemented.

This MOU will be revisited annually.

Signatures on the following page

CITY COUNCIL MEETING
CONSENT

DATE: **July 14, 2015**

TO: **Banning Utility Authority**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Banning Utility Authority Resolution No. 2015-12UA, "Approving an Amendment to the Professional Services Agreement with Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study"**

RECOMMENDATION: Adopt Banning Utility Authority Resolution No. 2015-12UA:

I. Approving an Amendment to the Professional Services Agreement with Willdan Financial Services in the amount of $9,975.00 for additional services required to complete the Water, Wastewater and Reclaimed Water Rate Study contract from 2013.

II. Authorizing the Interim Administrative Services Director to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with Willdan Financial Services, for a total contract amount not to exceed $68,938.00.

III. Authorizing the Interim City Manager to execute contract documents.

JUSTIFICATION: The approval of these services is necessary in order to complete the Water, Wastewater and Reclaimed Water Rate Study that was started in 2013.

BACKGROUND: The City Council last approved Water and Wastewater Rates in 2010, which increased the Water and Wastewater Rates each year over four years from October 2010 to September 2013. October 2010 was the first time rates had been approved since 2003. Although operating expenditures were reduced to address the decline in revenues due to the economic downturn, it became critical to increase the rates to meet bond covenant requirements. The rate increases provided stabilization to the operating funds while major capital projects were put on hold. The slowdown in development activity in the city removed some urgency to implement the capital projects. However, with the economy showing signs of improving and with the regulatory challenges facing the utilities, there is a need to strategically address these demands on the utilities

In order to understand whether rate increases were needed, the City determined a study should be completed on the existing rate structure, service levels, consumption, regulatory demands and capital requirements.

On June 20, 2013, Requests for Proposals (RFPs) were sent to several consulting firms with known experience in performing rate studies. In addition, the RFP was posted to the City website and other sites. On July 26, 2013, seven proposals were received by the Public Works Department. The proposals were evaluated by an Evaluation/Selection Committee.

On October 8, 2013, The City Council adopted Banning Utility Authority Resolution No. 2013-18UA awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed $58,963.00.

In January 2014, Willdan provided staff with a status report of their progress on the Water Rate Study. They explained there are three phases to the analysis that Willdan was contracted to complete; Revenue Sufficiency Analysis, Cost of Service Analysis and Rate Design. At that time they required the following additional information to integrate into their process and complete the study:

Revenue Sufficiency Analysis
Draft or Final FY 13 Annual Report

Cost of Service Analysis
Balance Sheet (Breakout of Costs associated with Treatment or Transmission)

Rate Design
Detailed Billing Data File

Unfortunately, the requested items were not provided in 2014 and the study ultimately came to a halt. Therefore, in order to resume work, bring the study current and complete the work, an amendment to the original agreement is required.

FISCAL DATA: Additional professional services required to be provided Willdan Financial Services in order to resume work on the previously approved Water Rate Study is proposed to result in an additional $9,975.00 and would be paid from the Waste Water Fund, Account 680-800-454.33-11

RECOMMENDED BY:

Art Vela,
Acting Public Works Director

REVIEWED/APPROVED BY:

Dean Martin
Interim Administrative Services
Director/Interim City Manager

Attachments:
1.) Resolution 2015-12UA
2.) Attachment 1: Exhibit "A"-Professional Services Agreement approved under Resolution No. 2013-18UA
3.) Attachment 2: Exhibit "B"- Proposal dated October 8, 2013 for professional services related to the Water, Wastewater and Reclaimed Water Rate Study

RESOLUTION NO. 2015-12UA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENT WITH WILLDAN FINANCIAL SERVICES RELATED TO THE WATER, WASTEWATER AND RECLAIMED WATER RATE STUDY

WHEREAS, on October 8, 2013, City Council approved Resolution No. 2013-18UA awarding an agreement to Willdan Financial Services for the Water, Wastewater, and Reclaimed Water Rate Study in the amount of $58,963.00 attached as Exhibit "A"; and

WHEREAS, in order to complete services related to the Water Rate Study, additional work and funding is required in the amount of $9,975.00; and

WHEREAS, as part of this resolution staff is requesting the approval of an amendment, which will increase the total contract amount by $9,975.00 for a total contract amount of $68,938.00; and

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

SECTION 1. The City Council adopts Resolution No. 2015-12UA, "Approving Amendments to the Professional Services Agreement with Willdan Financial Services for services related to the Water, Wastewater, and Reclaimed Water Rate Study."

SECTION 2. The City Council approves an amendment to the Professional Services Agreement with Willdan Financial Services in amount of $9,975.00 for services required to bring the Water Rate Study current in order to complete the study.

SECTION 3. The Interim Administrative Services Director is authorized to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with Willdan Financial Services for a total contract amount not to exceed $68,938.00.

SECTION 4. The Interim City Manager is authorized to execute contract documents referred to herein.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, Chairman
Banning Utility Authority

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, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-12UA was duly adopted by the Banning Utility Authority of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 1

EXHIBIT "A"
PROFESSIONAL SERVICES AGREEEMENT APPROVED UNDER RESOLUTION NO. 2013-18UA

ORIGINAL

(375)

CONTRACT SERVICES AGREEMENT

By and Between

THE CITY OF BANNING,
A MUNICIPAL CORPORATION

and

WILLDAN Financial Services

AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
WILLDAN Financial Services

THIS AGREEMENT FOR CONTRACT SERVICES (herein" Agreement") is made and entered into this 11th day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and WILLDAN Financial Services , ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." "). (The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services

contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents,

plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty. (NOT APPLICABLE)

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewbere in tbe Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any otber warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the rigbt to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 **Prevailing Wages. (NOT APPLICABLE)**

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide

Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and barmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No sucb extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Contractor that tbe provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. Tbe total compensation, including reimbursement for

actual expenses, shall not exceed $58,963 (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COMPENSATION AND METHOD OF PAYMENT

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Chris Fisher	Group Manager
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any

loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and, except for professional liability insurance and workers compensation insurance, shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by first class mail , postage prepaid, to the City, ten (10) days notice if cancellation is due to nonpayment of premium. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates except for professional liability insurance and workers compensation insurance shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN, TEN (10) DAYS NOTICE IF CANCELLATION IS DUE TO NONPAYMENT OF PREMIUM.

[to be initialed] _____

Agent Initials

With the exception of professional liability insurance and workers compensation insurance, City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnitors' negligent performance of or

failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance Bond. (NOT APPLICABLE)

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best

Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim

for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other

appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds. (NOT APPLICABLE)

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

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. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions 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.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party

of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 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.

7.7 Liquidated Damages. (NOT APPLICABLE)

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of _____ ($_____) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may he such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate

such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take

affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 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 sball 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 hercunder unless the invalid provision is so material that its invalidity deprives either party of tbe basic benefit of their bargain or renders this Agreement meaningless.

9.6 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 Agrecment shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

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

CONTRACTOR:

Willdan Financial Services, a California Corporation

By:
Name: ~~Chris~~ Robert C Fisher
Title: Vice President

By:
Name: Roy Gill
Title: Corporate Secretary

Address: 27368 Via Industria, Suite 110
Temecula, CA 92590

Two signatures are required if a corporation.

NOTE: CONSULTANT'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 DEVELOPER'S BUSINESS ENTITY UNLESS PREVIOUSLY PROVIDED TO THE CITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On Oct 11, 13 before me, Cathaleen D Steele personally appeared Roy L Hall proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Cathaleen D Steele

CATHALEEN D. STEELE
Commission # 1972267
Notary Public - California
Orange County
My Comm. Expires Apr 13, 2016

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 — Secretary — TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
Weldon Financial Services

DESCRIPTION OF ATTACHED DOCUMENT

Contract Services Agreement
TITLE OR TYPE OF DOCUMENT

59
NUMBER OF PAGES

October 11, 2013
DATE OF DOCUMENT

Robert C. Fisher
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Riverside

On October 8, 2013 before me, Joan E Sater, Notary Public, personally appeared Robert C. Fisher, 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: J E Sater

JOANIE E. SATER
Commission # 1906691
Notary Public - California
Riverside County
My Comm Expires Oct 3, 2014

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
  Vice President and Group Manager
  TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
Walldan Financial Services

DESCRIPTION OF ATTACHED DOCUMENT

Contract Services Agreement
TITLE OR TYPE OF DOCUMENT

59 pages
NUMBER OF PAGES

To be Determined
DATE OF DOCUMENT

Ray Gill
SIGNER(S) OTHER THAN NAMED ABOVE

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EXHIBIT "A"
SCOPE OF SERVICES

See attached

ATTACHMENT 2

EXHIBIT "B"
WILLDAN FINANCIAL SERVICES PROPOSAL FOR SERVICES RELATED TO THE WATER, WASTEWATER AND RECLAIMED WATER RATE STUDY

BANNING, CA
STAGECOACH TOWN USA
ESTABLISHED 1913

City of Banning



Proposal for

Water, Wastewater and Reclaimed Water Rate Study

WILLDAN
Financial Services

27368 Via Industria, Suite 110, Temecula, California 92590-4856
T 951.587.3500 800.755.6864 | F 951.587.3510 888.326.6864
www.willdan.coma



Table of Contents

Table of Contents i

Qualifications of Firm / Project Team 1

- Willdan 1
- Project Team 3
- Sub Consultants 3
  - Chris Fisher 4
  - Jonathan Varnes 5
  - Tony Thrasher 6
  - Jeffrey McGarvey 7

References 8

Strategy and Implementation Plan 12

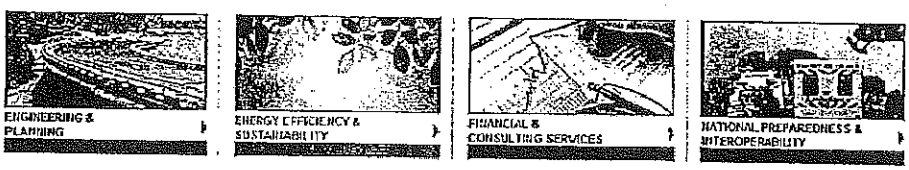
- Executive Summary 12
- Approach to the Project 13
- Willdan Models GUIDE You to Your Optimal Solutions 14
- Willdan's GUIDE Suite of Financial Models – Description of Product Features 15
- Work Plan 16
- City Staff Responsibilities 24
- Schedule 25

Proposed Quality Assurance Program (QA/QC) 27

Qualifications of Firm / Project Team

Willdan

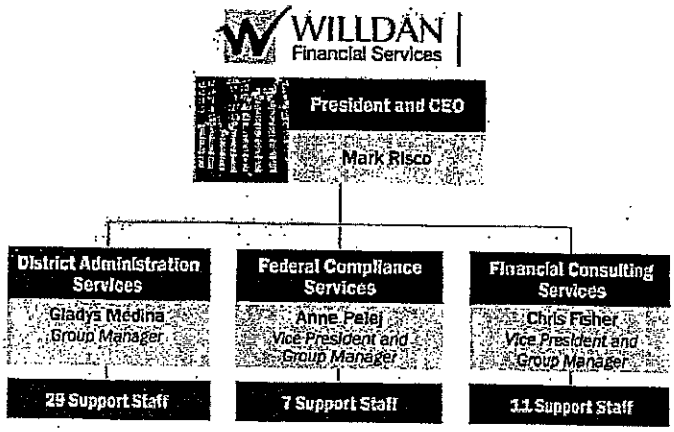
Willdan Financial Services is one of four operating divisions within Willdan Group, Inc. ("WGI"). WGI provides technical and consulting services that ensure the quality, value and security of our nation's infrastructure, systems, facilities, and environment. The firm has been a consistent industry leader in providing all aspects of municipal and infrastructure engineering, public works contracting, public financing, planning, building and safety, construction management, homeland security, and energy efficiency and sustainability services. Today, WGI has hundreds of employees operating from offices located throughout California, as well as in Arizona, District of Columbia, Florida, Illinois, New Jersey, New York, Ohio, and Texas.



Willdan Financial Services is one of the largest public sector financial consulting firms in the United States. The firm was established on June 24, 1988. Since that time, we have helped over 800 public agencies successfully address a broad range of financial challenges, such as financing the costs of growth and generating revenues to fund desired services. Willdan assists local public agencies by providing the following services:

- Real estate economic analysis;
- Economic development plans and strategies;
- Tax increment finance district formation and amendment;
- Housing development and implementation strategies;
- Financial consulting;
- Real estate acquisition;
- Classification/compensation surveys and analysis;
- Development impact fee establishment and analysis;
- Utility rate and cost of service studies;
- Feasibility studies;
- Debt issuance support;
- Long-term financial plans and cash flow modeling;
- Cost allocation studies; and
- Property tax audits.

Our staff of over 50 full-time employees supports our clients by conducting year-round workshops and on-site training to assist them in keeping current with the latest developments in our areas of expertise. The organizational chart below outlines Willdan's basic structure.



Utility Rate Experience



Willdan's professional staff has provided professional consulting services, including financial planning; rate and cost-of-service studies; alternative and feasibility analyses; and operational and management studies for water, reclaimed water, sewer, solid waste, and stormwater utility clients across the United States. Additionally, Willdan staff possesses a thorough understanding of the rate-setting methodologies set forth in the American Water Works Association (AWWA) M-1 manual "Principles of Water Rates, Fees and Charges," and the AWWA M34 manual, "Water Rate Structures and Pricing." Willdan is nationally recognized for its expertise with its staff frequently being called upon to speak or instruct on utility financial matters, as subject matter experts, including the AWWA Utility Management conference.

Willdan staff is experienced in a broad range of utility planning services; and we understand the importance of an approach that integrates elements of utility planning, engineering, and finance. The Willdan Team members have considerable experience in utility rate and cost-of-service studies and have performed these services for hundreds of utilities throughout the country. Our team includes staff with public sector experience spanning 30 years, and staff on the forefront of utility rate-making and rate-modeling. Members of our team have been on your side as finance directors, deputy city managers, and auditors and understand the financial, operational and political realities faced by public sector staff and management and we craft solutions which are sensitive to this.

Our expertise spans across the following utility financial planning services:

- Retail and Wholesale Rate Studies;
- Revenue Sufficiency Analyses;
- Utility Management and Policy Assistance;
- Connection Fee / System Development Charge Studies;
- Miscellaneous Fee and Charge Studies;
- Bond Feasibility Reports;
- Renewal and Replacement Sufficiency Analyses;
- Comprehensive Alternatives Analyses;
- Interactive Rate Model Development with Dashboards Showing Key Performance Indicators;
- Capital Project Funding Studies;
- Capital Improvement Plan (CIP) Financial Scenario Planning;
- Rate Ordinance Drafting;
- Billing System Validation/Rate Testing;
- Valuation/Divestiture Studies; and
- Life Cycle Costs Analyses.

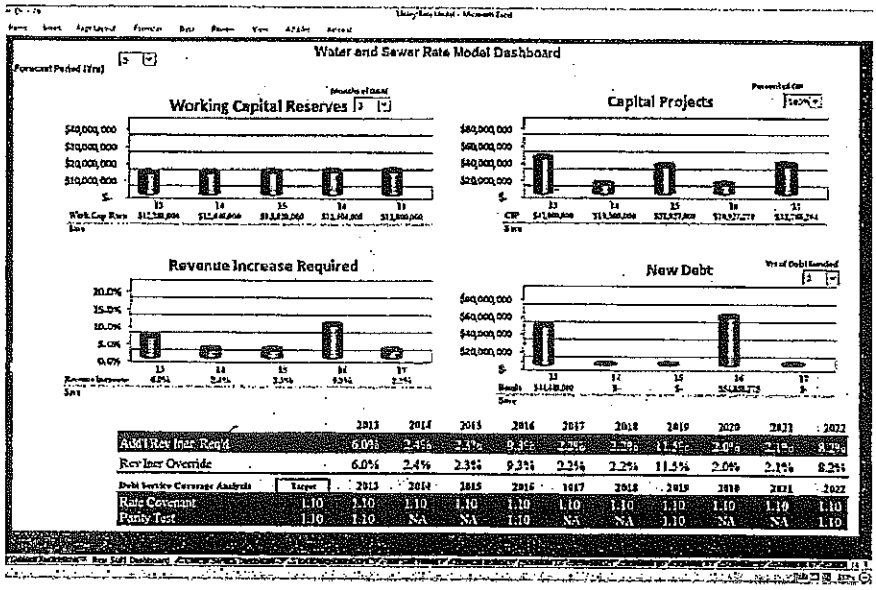
Willdan will work with the City of Banning ("City") to identify and prioritize operational and fiscal objectives and match these to specific rate attributes; and use this information throughout the engagement to develop a comprehensive financial plan and design utility rates that effectively meet these goals. The culmination of our analyses will be rate policies that guide the rate setting process, and a financial management plan that develops projected system operating results for the water, wastewater, and reclaimed water utilities for the forecasted period. Willdan will employ its proven interactive approach, coupled with advanced financial modeling techniques to design rates and a financial plan that meet established goals and performance criteria. These modeling techniques serve as a powerful decision-making tool and provide the City with genuine business solutions and recommendations as to the strategic direction of its utilities.

During rate and financial planning projects we employ tools and techniques which focus on consensus-building among stakeholders to ensure the team understands the future financial implications of current management decisions. Our extensive project expertise is bolstered by our unique interactive financial planning process and model.

Our utility rate Excel-based model is user friendly, comprehensive and well-designed, providing our experienced consultants with a powerful tool to develop ideas, scenarios and approaches collaboratively with staff, and effectively and immediately provide analysis and feedback to facilitate meaningful policy discussions and assist effective and informed decision making. Through a live projected-model, we review the data, assumptions and results with City staff, allowing us to cycle through various alternatives, test "what if" questions which typically arise during our interactive team meetings, and build consensus toward the rate and financial plan which best addresses your needs.

Features of our model include the ability to incorporate line-item data and assumptions which are then summarized in our dashboard, which presents key financial indicators for your utility. This allows us to demonstrate capital project funding (including system repair and replacement requirements). Therefore, the City understands where funds are generated to fund the capital plan -- new bond issues for instance.

A sample dashboard is presented in the right-hand column which shows how we summarize the data, assumptions and calculations into an easy-to-understand graphical interface which updates with each alternative scenario evaluated.



Project Team

Our management and supervision of the project team is very simple: staff every position with experienced, capable personnel in sufficient numbers to deliver a superior product to the City, on time and on budget. With that philosophy in mind, we have selected experienced professionals for this engagement. We are confident that our team possesses the depth of experience that will successfully fulfill the desired work performance.

With more than 14 years of professional consulting experience, Mr. **Chris Fisher** will serve as **project manager** and will work closely with the City and to ensure the satisfaction of the City. In this role, Mr. Fisher will attend meetings and presentations, produce the key elements of any analyses developed for the City, and will be responsible for the deliverables.

Mr. **Jonathan Varnes** will serve as **task manager**, working closely with Mr. Fisher to develop the analyses under the City's scope of services and lead the design of the financial model.

Mr. **Tony Thrasher** will serve as **financial analyst**, collecting, interpreting and analyzing the data necessary for the study, and working with the team to develop and tailor the financial model to the City's specific needs and objectives, and incorporate the City's data.

With more than 20 years of comprehensive utility financial and rate experience, Mr. **Jeffrey McGarvey** will serve as **quality assurance/quality control (QA/QC) and policy and technical advisor** and will work closely with Mr. Fisher and the City in developing policy objectives and utility *Best Management Practices* to lead to a strong and healthy financial outlook for the District.

Resumes for the above-noted key personnel are presented on the following pages, which highlight projects of similar nature in which they had hands-on experience, and also include each member's length of time with the firm, title and phone number.

Sub Consultants

For the commitments outlined in the City's Request for Proposal (RFP), Willdan staff will perform tasks described herein, and will not be utilizing the services of any Sub Consultants.

Chris Fisher

Project Manager

Education
Bachelor of Science, Finance, San Francisco State University

Areas of Expertise
Multi-disciplinary Team Management

Rate Studies

Cost of Service Studies

Special District Formations

Proposition 218

Client Presentations

Affiliations
California Society of Municipal Finance Officers

Municipal Management Association of Northern California

California Municipal Treasurers Association

14 Years Experience

Telephone #:
(800) 755-6864, Ext. 1528

Mr. Fisher has been selected to serve as project manager due to his extensive experience managing multi-disciplinary teams. He also possesses extensive knowledge regarding compliance with Proposition 218.

Presently, Mr. Fisher is a Vice President and the Financial Consulting Services Group Manager at Willdan Financial Services. With 14 years experience at Willdan, he has managed an array of financial consulting projects for public agencies throughout California, Arizona and Florida; coordinating the activities of resources within Willdan, as well as those from other firms working on these projects. Mr. Fisher joined Willdan in April 1999.

Related Experience

City of Flagstaff, AZ – Water, Wastewater and Reclaimed Water Rate Study: Mr. Fisher served as principal-in-charge of the City's utility rate analysis. In the wake of six water main breaks, the City was faced with decreasing revenues and increasing capital and operational costs. The proposed rates developed reverse the City's trajectory of a falling operating reserve and provide sufficient revenue to cover existing and future operations, maintenance, and debt service; all while being financially prudent and responsive to the concerns of the City's Water Commission. The proposed residential inclining block rate appropriately spreads the burden of increased costs based on a comprehensive analysis of customer demands.

Elk Grove Water District, CA – Water Rate Services: Mr. Fisher oversaw the preparation of a comprehensive financial plan and water rate study for the District. This engagement included the development of a comprehensive financial model, updated water rates and connection fees, as well as an analysis of multi-family accounts, a comparison of current and proposed rates, including rates of comparable jurisdictions, comparative rate and cost analysis. Mr. Fisher provided technical assistance throughout this project and partipated in stakeholder meetings. Willdan is currently wrapping up this five-year water rate analysis.

City of Delano, CA – Water, Sanitary Sewer, Solid Waste and Street Cleaning Utility Rate Study: Mr. Fisher provided led this multi-faceted study. Recently developed financial studies did not match current economic realities, and as such the utilities were not generating sufficient cash flows. Given the volatile economy, the City hired Willdan to lead the development of a comprehensive utility financial plan and appropriate water, wastewater and solid waste rates to meet the determined level of required revenue. Willdan modeled and analyzed numerous financial and rate scenarios through the course of the project.

City of Covina, CA – Tiered Water Rate Study: Mr. Fisher served in the role of principal-in-charge of the City's tiered water rate study. In this capacity his responsibilities included the scheduling of key meetings and deliverables, review of progress throughout the development of the project, and quality control. The City's existing rate structure, which was updated in 2007 by Willdan, demonstrated that current utility rate revenues were not sufficient to fund the current operating and maintenance costs and necessary capital improvements. The updated rate analysis incorporated additional customer classes with unique discharge characteristics, which distributed the full cost of the utility services to the City's customer base in proportion to the service demands they place on the utility systems.

City of Glendale Water and Power, CA – Water Rate Redesign: Given the nature of the rate redesign's significant departure from the existing methodology, Mr. Fisher assisted in the development and facilitation of public outreach and stakeholder discussions, oversaw the development of the model and analysis, guided policy-making discussions and oversaw quality review. Mr. Fisher was heavily involved throughout the process in the overall management and project direction and he confirmed that questions were addressed early on in the process rather that in the final stages; additionally, he ensured that consideration was given to how decisions would be presented to and received by stakeholders.

Jonathan Varnes

Task Manager

Education
Bachelor of Science, Finance, University of Florida

Areas of Expertise
Alternatives Analysis

Rate Studies

Cost of Service Studies

Revenue Bonds

Feasibility Analyses

Capital Funding

Affiliations
American Water Works Association

12 Years Experience

Mr. Varnes has served as a municipal utility rate consultant for over a decade; during which he has conducted over 150 retail and wholesale rate studies across the country. Furthermore, he is one of the foremost utility rate modeling experts in the rate consulting industry.

Mr. Varnes experience extends across a variety of utility rate and financial studies, including the following: retail and wholesale rate and cost of service studies; connection fee / impact fee studies; miscellaneous fee and charge studies; bond feasibility reports; interactive rate model development; CIP financial scenario planning; rate ordinance drafting; billing system validation / rate testing; and valuation / divestiture studies.

Rate and Cost of Service Studies

Mr. Varnes possesses nationwide experience with utility rate and cost of service studies for retail and wholesale use. His project experience includes water, sewer, reuse, and stormwater rate studies using state-of-the-art utility financial planning tools. He has developed both short and long-term financial plans for utilities of all sizes – including regional water authorities and regional sewer providers with as many as six municipal customers, each with individual wholesale service contracts.

Interactive Rate Model and Report Development

Mr. Varnes, a utility rate modeling expert, develops interactive rate models that contain dashboards showing key performance indicators. He is also proficient in the customization of models to each client's unique financial dynamics. Upon completion of the analysis, Mr. Varnes can conduct model training and provide a user's manual, which allows clients to perform in-house updates on an annual, or as needed, basis. Occasionally, he is called upon to redesign models developed by past consultants on his client's behalf.

In addition to the development and utilization of comprehensive forecasting tools, Mr. Varnes develops comprehensive reports which communicate the overall rate study results to both the layperson and subject-matter experts. This is done with the use of graphics and tables designed to summarize the results in a manner which is easily understood by the reader – regardless of their level of expertise. Also, for utility staff, the reports generated by Mr. Varnes include detailed, line-item data and calculations so that those who wish to better understand the results may "drill down" into the detailed calculations to research the data, results and conclusions more thoroughly.

Bond Feasibility Reports

Mr. Varnes possesses experience in preparing bond feasibility reports, which include comprehensive utility rate sufficiency analyses. He also provides presentation and rating agency support to clients during the approval process. Mr. Varnes has developed comprehensive bond feasibility reports for over a decade and most importantly, in light of the increased scrutiny placed on utilities by rating agencies in the current economic climate, he has developed bond feasibility reports resulting in the successful issuance of over $100 million of bonds for his clients in the last few years – widely recognized as one of the most difficult markets in which to issue bonds at favorable rates in recent memory.

Project Experience

The following is a list of Mr. Varnes' recent utility rate clients and projects.

- **City of Soledad, CA – Water Rate Study**
- **City of Crescent City, CA – Water and Wastewater Rate and Capacity Fee Analysis**
- **Nevada Irrigation Water District, CA – Water Rate and Cost of Services Studies**

Tony Thrasher

Financial Analyst

Education
Bachelors of Science in Economics (Primary Focus was Econometrics); California Polytechnic University of Pomona

Areas of Expertise
Utility Rate Studies

OMB A-87-compliant Cost Allocation Plans

Fiscal Analyses for User Fees and Rates

Proposition 218 Utility Rate Compliance

2 Years Experience

Telephone #:
(800) 755-6864, Ext. 1530

Mr. Thrasher has been selected to serve as financial analyst due to his water and wastewater rate analysis experience. Mr. Thrasher is an analyst within Willdan's Financial Consulting Services group. His responsibilities include supporting project managers and conducting fiscal analyses for numerous types of public finance studies.

Prior to joining Willdan in February 2012, Mr. Thrasher was as a financial analyst working in bond, equity, and mortgage-backed security markets for Wells Fargo Bank, Bank of New York Mellon, and Deutsche Bank. His experience includes portfolio accounting, differential analysis, and forecasting.

Related Experience

City of Lompoc, CA – Water and Wastewater Rate Study Update: Willdan was contracted to provide a comprehensive review and financial plan update for the City's water and wastewater rates. The project approach includes a thorough review of the CIP, each utility's operating budget, and other important policy and financial documents. The City is seeking to fund an increasing CIP and increasing operations and maintenance expenses; and the financial plan must ensure appropriate revenues are generated in light of the adoption of Senate Bill No. 7 (20 x 2020), coupled with decreasing consumption levels. Costs associated with water production and delivery has been analyzed and an appropriate fixed charge component of the rate structure has been suggested as well. Willdan is also considering the feasibility of creating an agriculture rate.

Phelan Piñon Hills Community Services District (CSD), CA – Water Rate and Fee Study: Willdan developed a comprehensive revenue requirement analysis and financial plan to provide targeted rate and fee structure recommendations that would be based on the CSD's objectives and aggressive timeline. As the CSD was undertaking a study of this type for the first time since becoming an independent local agency, Willdan's primary project objective was to develop a robust and custom-designed financial rate model that would clearly reveal results of the CSD's various particular scenarios.

Willdan collected and analyzed data related to water operations, planned capital improvement projects, existing debt obligations, the acquisition of water rights, and ongoing maintenance and repair operations. Willdan collaborated with staff to prepare and tailor a comprehensive pro forma financial analysis that focused on primary rate and financial objectives. Our analysis resulted in rate structures that provided adequate revenue to fund operations; and create a secure and reliable funding source for future capital improvements, while fully ensuring that rates are equitable and predictable, and reflect the true cost-of-service.

City of Pinole, CA – Wastewater Rate Analysis: The City retained Willdan to prepare a wastewater rate analysis that included a new wastewater rate schedule meeting current and near-term projected system revenue requirements. Mr. Thrasher provided analytical support for this engagement, gathered and verified necessary data, and assisted in the development of the model and the completion of the report.

City of Soledad, CA – Water Rate Study: Mr. Thrasher is serving in the role of lead financial analyst for the City's engagement. The City's water rates and connection fees had not been updated since 1996. The water utility is losing money with existing rates, and they need to invest significantly in capital repair and replacement projects, as well as system upgrades. Mr. Thrasher has worked with City staff through the process of gathering and verifying data, including an on-site meeting to go through the budget in detail. He also developed the model, including the basic revenue requirements, cost causation and basic scenarios. The project is still in process and Mr. Thrasher is working with the City to develop scenarios for presentation to the City Council.

Jeffrey McGarvey

Quality Assurance / Technical Advisor

Education
Bachelor of Science, Finance, University of Central Florida

Areas of Expertise
Alternatives Analysis

Strategic Planning

Rate Studies

Cost of Service Studies

Revenue Bonds

Feasibility Analyses

Capital Funding

Acquisitions

Valuation Analyses

Affiliations
American Water Works Association

The Water Environment Federation

The Utility Management Conference

The WateReuse Foundation

20 Years Experience

Telephone #:
(800) 755-6864, Ext. 1155

Mr. McGarvey is a **managing principal** in Willdan's Financial Consulting Services group and, for more than 20 years, has provided professional consulting services to municipal water, wastewater, solid waste, electric, and natural gas utilities throughout the country. He possesses a broad range of municipal utility systems' experience, including special expertise in complex alternatives analyses; utility rate analyses; utility valuations and acquisitions; regionalization and consolidation studies; debt issuance support, such as the preparation of financial feasibility analyses associated with revenue bond issuance; capital financing analyses; strategic planning; rate and regulatory assistance; and instituting financial mechanisms to provide the sufficient recovery of operating and capital costs. **Mr. McGarvey joined the firm in May 2012.**

Rate and Cost of Service Studies

Mr. McGarvey has extensive experience in utility rates and cost of service studies for water, wastewater, solid waste, electric and natural gas systems. This experience generally relates to performing budget analyses, customer and usage analyses, development of revenue requirements, cost of service allocations and sensitivity analyses related to the implementation of rate structures designed to promote desired usage characteristics.

Revenue Bonds, Feasibility Analyses and Capital Funding

Mr. McGarvey has been involved in the preparation of capital financing plans and feasibility studies associated with the issuance of several hundred million dollars in municipal revenue bonds and bond anticipation notes (BANs). The funding proceeds have been utilized for such purposes as utility acquisitions, expansion of facilities and various other capital improvement needs. In addition, Mr. McGarvey has developed capital funding strategies utilizing various combinations of bonds, bank loans, government assistance loans (i.e. State Revolving Funds) and grants.

As financial feasibility consultant, Mr. McGarvey has made numerous presentations on behalf of clients to various bond insurers and rating agencies (Moody's, Standard & Poor's, and Fitch).

Business and Strategic Planning

Mr. McGarvey has experience in developing complex financial and economic evaluation models for water, wastewater, solid waste, electric and natural gas systems throughout the country. Such experience generally relates to the development of business and strategic plans as well as performing structured alternatives analyses and sensitivity analyses related to the evaluation and implementation of system modifications such as service and operational changes, as well as planning for customer growth and capital expenditures.

Acquisitions and Valuation Analyses

Mr. McGarvey has been involved in numerous acquisitions and valuation analyses for utility systems. Acquisition projects generally involve financial due diligence, valuations, negotiations and financing activities associated with such transactions. Mr. McGarvey has performed valuation analyses utilizing various generally accepted methodologies including cost approach (value of the cash flows generated by the system), original cost less depreciation (book value), comparable sales (actual transactions for other systems), replacement cost new less depreciation and reproduction cost new less depreciation (value of system assets.)

References

Willdan has prepared utility rate and fee analyses for a variety of municipalities and special districts throughout the United States. The chart that follows provides an overview of the Willdan's utility rate analysis experience that is similar to the services requested by the City.

State	Entity	Water/Wastewater Utility		Long-term Financial Planning
		Rate Study	Connection Fee	
AZ	Town of Buckeye		✓	✓
AZ	City of Clarksdale		✓	
AZ	City of Flagstaff	✓	✓	✓
AZ	Town of Florence	✓	✓	
CA	City of Arvin	✓	✓	
CA	City of Avenal	✓		✓
CA	Beaumont Cherry Valley Water District	✓	✓	✓
CA	City of Calexico	✓	✓	
CA	City of Coachella	✓		
CA	City of Covina	✓	✓	✓
CA	City of Crescent City	✓	✓	
CA	City of Delano	✓	✓	✓
CA	East Valley Water District	✓	✓	
CA	City of El Monte	✓	✓	
CA	Elk Grove Water District	✓	✓	✓
CA	Elsinore Water District	✓		✓
CA	Encina Wastewater Authority			✓
CA	City of Fort Bragg	✓		
CA	City of Fountain Valley	✓		
CA	City of Gilroy		✓	
CA	City of Glendale	✓		✓
CA	City of Gustine		✓	
CA	Joshua Basin Water District			✓
CA	Leucadia Wastewater District			✓
CA	City of Lomita	✓		✓
CA	City of Lompoc	✓		✓
CA	McKinleyville Community Services District	✓	✓	✓
CA	City of Merced	✓	✓	
CA	Mesa Consolidated Water District		✓	
CA	City of Modesto	✓		✓
CA	City of Morro Bay		✓	
CA	Phelan Piñon Hills Community Services District	✓	✓	✓
CA	City of Pinole	✓	✓	✓
CA	City of Rio Vista	✓	✓	
CA	City of Sacramento		✓	
CA	San Diego County Water Authority			✓
CA	City of San Fernando	✓		✓
CA	Santa Margarita Water District	✓		
CA	City of Seal Beach	✓		✓
CA	City of Soledad	✓	✓	✓
CA	City of South Pasadena	✓		
CA	City of Stockton		✓	
CA	City of Tulare	✓		✓
CA	City of Westminster	✓		✓

State	Entity	Water/Wastewater Utility		Long-term Financial Planning
		Rate Study	Connection Fee	
DE	County of New Castle	✓	✓	✓
FL	County of Alachua			✓
FL	City of Atlantic Beach		✓	
FL	County of Bay	✓		✓
FL	City of Callaway	✓	✓	✓
FL	City of Carrabelle	✓		
FL	County of Citrus			✓
FL	City of Clearwater			✓
FL	City of Dade City	✓	✓	✓
FL	City of Dania Beach	✓	✓	✓
FL	County of DeSoto	✓		✓
FL	Emerald Coast Utilities Authority	✓		✓
FL	City of Hialeah			✓
FL	City of Hollywood	✓		
FL	City of Leesburg			✓
FL	Peace River Manasota Regional Water Supply Authority			✓
FL	County of Polk			✓
FL	City of Riviera Beach	✓		
FL	County of Sarasota			✓
FL	Toho Water Authority	✓		
IL	City of Jerseyville			✓
KS	City of Wichita			✓
MO	City of Branson	✓	✓	✓
MO	City of Excelsior Springs	✓	✓	✓
MO	City of Lee's Summit	✓	✓	✓
MO	Little Blue Valley Sewer District			✓
MO	City of Republic	✓	✓	✓
NC	City of Greensboro			✓
NC	City of High Point			✓
NC	Orange Water and Sewer Authority			✓
NC	City of Raleigh			✓
NC	County of Wake			✓
NC	City of Winston-Salem			✓
OH	Greene County Board of Commissioners			✓
OR	City of Brookings	✓		✓
VA	County of Arlington			✓
VA	County of Henrico	✓		
VA	County of Isle of Wight	✓		
VA	City of Norfolk	✓		✓
VA	County of Northumberland			✓
VA	City of Richmond			✓
VA	WateReuse Research Foundation	✓		✓
WA	City of Woodland	✓		✓



Representative project descriptions, including client contact information, are identified within this section. Each reference is similar in scope, size, and complexity to the services requested by the City, and was completed within the last five years. We are proud of our reputation for customer service and encourage you to contact our past clients in regard to our commitment to completing these assignments within the agreed upon project budget and timelines.

Water, Sewer, and Reclaimed Water Rate Study | City of Flagstaff, AZ

By using a cost-based approach on behalf of the City of Flagstaff, Willdan successfully completed the design of comprehensive financial and rate models for water, wastewater, and reclaimed water. As the prior consultant's model was not well-suited to account for changes in growth projections and absorption, particular attention was placed on growth assumptions. Furthermore, Willdan was responsible for developing recommendations, by customer class, for equitable and sustainable cost recovery. In the wake of six water main breaks, the City was faced with decreasing revenues and increasing capital and operational costs. The proposed rates developed by Willdan reversed the City's falling operating reserve trajectory; and provided sufficient revenue to cover existing and future operations, maintenance, and debt service — all while being financially prudent and responsive to the Water Commission's concerns. Based on a comprehensive analysis of customer demands, the proposed residential inclining block rate appropriately spread the burden of increased costs.

In addition to the rate analysis, Willdan also developed new capacity charges for the City. Although the City is currently approaching build out, a major expansion is possible with sufficient funding and growth. To accommodate this wide range of development scenarios, and given certain assumptions (funding and growth alternatives), Willdan created numerous capacity fee options to allow the Water Commission and Council to determine the most comfortable scenario, along with resulting facility funding.

Client Contact: Ryan Roberts, Engineering Manager
211 West Aspen, Flagstaff, AZ 86001
Tel #: (928) 779-7685, ext. 7248; Email: rroberts@flagstaffaz.gov

Project Team: Chris Fisher, Principal-in-Charge

Wastewater Rate Analysis | City of Pinole, CA

The City retained Willdan to prepare a wastewater rate analysis that included a new wastewater rate schedule meeting current and near-term projected system revenue requirements. Willdan reviewed various utility system planning documents and effectively integrated the data/information found in these studies into a comprehensive sewer rate and financial analysis. The analysis included:

- Determination of the total annual sewer system revenue requirements for a 10-year period, including the 5 year period for which rates are to be effective, including existing and projected capital financing;
- Allocation of the total annual revenue requirements to the basic sewer cost components;
- Distribution of the component costs to the various customer classes, in accordance with their requirements for service;
- The design of sewer rates that will recover from each class of customer, within practical limits, the cost to serve that class of customer; and
- The incorporation of the proposed new sewer rates into a 10-year financial and business plan.

Client Contact: Hector De La Rosa, Assistant City Manager
2131 Pear Street, Pinole, CA 94564
Tel #: (510) 741-3864; Email: hdelarosa@ci.pinole.ca.us

Project Team: Chris Fisher, Principal-in-Charge; Jeff McGarvey, Policy and Technical Lead; Tony Thrasher, Analyst

Water and Wastewater Rate and Capacity Fee Analysis | City of Crescent City, CA

Willdan completed a water and wastewater rate and capacity fee analysis for the City of Crescent City in 2010. In 2013 we were engaged to complete an updated and expanded financial plan, again for water and wastewater. Due to age conditions and state environmental requirements, the City's sewer plant was subject to extensive repair and upgrade. The utility rates and fees calculated by Willdan will provide sufficient revenue to cover the repayment of a State Revolving Fund loan secured by the City to finance the costs of construction, ensure adequate funding for repair and periodic maintenance of the new and existing facilities, and for ongoing operations and routine maintenance. We are also assisting the City in evaluating the feasibility of implementing various reserve policies.

The water and wastewater rates will be cost-of-service based and Proposition 218 compliant.

Client Contact:	Eric Wier, Assistant City Manager 377 J Street, Crescent City, CA 95531 Tel #: (707) 464-9506; Email: ewier@crescentycity.org
Project Team:	Chris Fisher, Project Manager; Jonathan Vames, Task Leader; Jeff McGarvey, Technical Advisor

Water, Sanitary Sewer, Solid Waste and Street Cleaning Utility Rate Study | City of Delano, CA

The City of Delano retained Willdan in August of 2011 to update their water, wastewater, solid waste and street sweeping utility rates. This project involved the development of a comprehensive financial model which included revenue requirements, capital facilities and debt planning, and cost of service analysis. As the City continues to grow it is critical for them to maintain a proper equilibrium of supply and demand. The City is currently facing two monumental forces that are impacting this balance. Beyond the current state of the economy and the impact to demand and corresponding political pressure to keep utility rates to a minimum, the City is in the midst of following new EPA requirements that removed nine of the City's 11 water wells. Thus, the City is facing decreased consumption and increased financial strain on its utilities. Furthermore, half of the City's water customers are not currently on meters. Willdan is assisting the City in managing the intricacy of their financial plan and rate design to ensure short and long-run financial health and stability.

Client Contact:	Roman Dowling, PE, Public Works Director 1015 11th Ave, Delano, CA 93215 Tel #: (661) 720-2219; Email: rdowling@cityofdelano.org
Project Team:	Chris Fisher, Project Manager; Tony Thrasher, Analyst

Water Utilities Department Comprehensive Rate and Tap Fee Study | City of Lee's Summit, MO

Willdan is currently working with the WUD to develop a comprehensive water and sewer rate study and tap fee analysis. The effort was the result of a strategic planning exercise described above, whereby the City identified the need to address utility system rate structures and levels, and develop rate/financial policies serving as a framework for the cultivation of these new rates. In addition to water and sewer utility user rates, the effort includes reviewing utility system tap fees, and revising them to reflect WUD's updated master plan. The results of this engagement will be a complete multi-year financial plan allowing WUD to meet the goals and objectives established during the strategic planning process, as well as effectively communicate recommendations and actions to stakeholder groups.

Client Contact:	Mark Schaufler, Director of Water Utilities 220 SE Green, Lee's Summit, MO 64063 Tel #: (816) 969-1900; Email: mark.schaufler@cityofls.net
Project Team:	Jeff McGarvey, Lead Consultant / Project Manager

Strategy and Implementation Plan

Executive Summary

The City of Banning, incorporated in 1913, has a population of 29,603 and covers approximately 23.2 square miles in the San Gorgonio Pass area of Riverside County. The City currently serves approximately 11,000 water accounts, and is projected to generate approximately $9 million in operating revenues for FY 2012/13, with water produced from a local aquifer, utilizing a combination of City owned wells, and wells owned jointly by the City and the Beaumont Cherry Valley Water District. The bulk of the accounts served are within the City, with some being outside City boundaries. The City also collects, conveys and treats wastewater for a like number of wastewater accounts, and is projected to generate just over $3 million in operating revenue for FY 2012/13. After a few years of negative fund balances, both utilities are projected to maintain positive balances. However, the sewer utility has not met bond covenants in the most recent years, and likely will not without an increase in rates.

The City last updated utility rates in 2010; consequently, the rates that were approved and implemented as a result of that study did not incorporate sufficient allowance for a large number of planed or contemplated capital projects. With an increasing backlog of capital projects, a continuing need to provide a stable and sufficient source of revenue to fund routine repair and replacement, and provide for operations and maintenance, the City wishes to undertake studies of the water and wastewater utilities, with the development and implementation of a comprehensive financial plan and updated rates, and a study of a proposed reclaimed water program, with the implementation of a new schedule of rates for the sale of reclaimed water, including a discussion of connection or impact fees.

In considering the backlog of capital projects, and developing new rates, it will be important to model different approaches to prioritizing and financing these projects, whether through debt or on a Pay-As-You-Go basis (PAYGO) from rate revenue. As part of this discussion we will discuss with the City the inclusion of depreciation as a cash item in the revenue requirements; a means of funding repair and maintenance of existing capital as it ages, and accumulating funds for periodic replacement.

There will be numerous important policy and technical factors to consider throughout the course of the study. In the previous study, the fixed component of rates was lowered. While this does provide for certain policy and political objectives, it has a corresponding negative effect on revenue stability. This component of the overall rate structure will be evaluated, along with the meter service fee, to better align revenue needs for operations and capital, with the rate structures. In addition, the water allotment for the first tier water rate was increased, effectively limiting aggregate water rate revenue by reducing water sales in the higher rate second tier. Various alternatives to tier allotments will be evaluated during this project. Other charges such as standby charges and system charges will also be considered in the overall context of the financial plan and rate structures.

As mentioned in the City's budget documents, the budget policies for the City and Banning Utility Authority (BUA) call for maintenance of 10 percent operating reserves, which have largely been maintained. The model and plan created during this project will facilitate discussion of existing and, perhaps, new reserve policies.

The City also wishes to implement rates for newly created reclaimed water service. During this process it will be critical to consider and model the impact of this new service on the existing water and wastewater utilities. An important point to consider with reuse water rates is the financial impact to the existing water and sewer revenue stream of existing potable water customers, switching from potable water usage to reuse water usage for their irrigation needs. To the extent that reuse rates are lower than potable rates, which is likely given that a utility would want to provide an economic incentive to customers to switch to reuse, a loss of water billings would occur (and in some instances wastewater billings, since the City wishes to look at the feasibility of billing wastewater on water usage). While the utility would recoup some of the loss in billings with reuse revenue it likely would not completely recover the lost revenue as the reuse rates would most likely be lower than the water rates.

Conversely, there can be a cost mitigation impact of relieving pressure on the potable water system and even relieving the pressure of wastewater disposal alternatives. As a reuse system rolls out, it relieves pressure on the potable water system through delayed plant expansion requirements. Also, for utilities with wastewater disposal pressure, a reuse program can offer a means of wastewater disposal which can generate revenue to offset some of the costs. Finally, there is some level of reduced operating costs on the water and sewer system – which will be transferred to the reuse system. In our experience, the lost revenue typically has a greater impact on near-term rates than the mitigation of certain water/sewer costs; however the financial dynamics of each utility are unique and should be evaluated independently. The model that we develop will incorporate the three utilities, and be fully capable of demonstrating collateral impacts.

Approach to the Project

As described herein, and detailed in our work plan, our approach to this study of the water, wastewater and reclaimed water utilities is ***built around a primary objective; working collaboratively with the City to develop a comprehensive financial plan and model for the utilities, using the model to develop and evaluate various rate, financial and capital funding scenarios, to arrive at a final plan and set of recommended rates that have a clear rationale and basis.*** We propose to conduct this process in a way in which staff and stakeholders gain understanding throughout the process of how the plan is developed, and how policy and financial decisions affect the overall plan, and so that we can clearly communicate the process and results to the City Council, rate subcommittee, and the community. This communication part of the process is critical in gaining acceptance and understanding of the broader community.

Willdan's utility finance experts combine national, state, regional experience. Our staff is experienced in a broad range of utility planning services; and we understand the importance of an approach that integrates elements of utility planning, engineering, and finance. Our team members have considerable experience in utility rate and cost-of-service studies and have performed these services for hundreds of utilities throughout the country.

Our rate study analysis will include comprehensive financial management plan alternatives for the next five fiscal years to support the proposed five-year rate plan, and the model can be set up to look forward 30 years, as requested by in the City's RFP. As part of this analysis, Willdan will develop a comprehensive financial analysis — which incorporates revenue requirements such as operating expenses, transfers, reserve requirements, minor capital expenses, cash-funded major capital expenditures and annual debt service expenses – and we will also provide a functional cost breakdown consistent with AWWA and Water Environment Federation (WEF) rate-making standards. The culmination of the revenue requirements analysis, which will include a capital project financing plan, and the cost of service allocations will be alternative rate plans which will provide sufficient revenue to meet the ongoing funding needs of the system while recovering costs from customers in a manner which is fair, equitable and within reasonable customer impact parameters, given the magnitude of revenue required to fund system costs.

As previously stated, we will develop a robust pro forma financial model that will be used to demonstrate the results of various analyses and aid detailed policy discussions and education sessions with City staff and Council. The model will serve as the basis for developing updated rate and fee structures that will provide for long-term financial stability, appropriately reflect levels of service demand attributable to different customer classes, and comply with the requirements of Proposition 218. Willdan will collect and analyze the necessary data related to water, wastewater and reclaimed water operations, planned capital improvement projects, existing and anticipated debt obligations, and ongoing maintenance and repair operations.

During this project we will be utilizing our Microsoft Excel-based model, with its interactive dashboard, as a comprehensive financial tool to allow planning and evaluation of variable inputs and assumptions, thereby achieving the goal of creating a thorough analysis of revenue requirements. These analyses are then seamlessly integrated with the rate development component of the model to demonstrate and project various rate design alternatives, and the effects they would have on the City's financial outlook.



The model is used in meetings, in order to efficiently cycle through rate scenarios and establish the most viable rate plans for the City. During these interactive meetings we invite City staff to participate in scenario planning/"what-if" sessions where we use the dashboard to demonstrate and evaluate the financial/rate impact of alternative data (CIP, operating costs, etc) and assumptions (interest rates, customer growth, cost escalation, etc.) in real-time to focus on the most critical drivers of the analysis. This ensures the resulting rate plan alternatives are viable from a financial, operational, managerial and political perspective, by demonstrating the future financial impacts of current management decisions to the rate study team, so that only viable rate plan alternatives are considered. These viable rate plan alternatives will then be incorporated into a comprehensive water, wastewater and reclaimed water rate study report which will provide the City every assumption, data item, and calculation used in the development of each rate plan alternative.

Two key initial steps are: 1) the development of a baseline scenario to provide a clear picture of the utilities' current financial condition; and 2) a revenue sufficiency analysis to test the current rate structure and confirm billing determinants and revenue generation; an important confirmation that we are beginning with reliable consumption and billing data, and key in developing the proposed new rates. Recommended changes in required revenue, or to the rate structure, can be evaluated independently during the course of these studies. This information will be integrated into our Excel model, to allow the graphical representation of revenue and rate scenarios, as well as of policy decisions effects to City staff and the City Council (if requested) in real-time, where variables can be changed and the impact of those changes viewed instantly. Willdan will arrange and conduct meetings as necessary, to utilize model results to refine and finalize the analysis, as well as rate and fee structure.

Willdan Models GUIDE You to Your Optimal Solutions

Real-Time Financial Modeling

The goal of financial forecasting is to provide clear vision regarding the potential financial outcomes of current management decisions. Our goal is to help you mold the existing knowledge base of the City into a viable financial management and rate plan. At Willdan, the development and use of real-time financial models in an interactive, collaborative process is an integral part of the model development.

Model Development as Part of the Consulting Process

Each model is designed with the following elements:

- Graphical dashboard to clearly show the results of various scenarios to the user;
- Assumptions;
- Data tables; and
- Calculation engine.

Each model is "baselined" after an initial meeting with staff to ensure that we have the correct data and a basic understanding of the financial dynamics of your system. We will then conduct interactive financial planning sessions with City staff. After validating our data, calculation approach, and baseline assumptions, we will explore alternative scenarios, varying a number of assumptions and financial planning techniques:

- Rate increase magnitude and timing;
- Alternative timing of capital projects;
- Alternative financing options (alternative combinations of pay-as-you-go, revenue bond debt and SRF debt, for example);
- Alternative growth/demand forecasts; and other "what-if" analyses, such as the impact of a loss of one or more service areas or customers;
- Effects on the water and wastewater financial operations of implementing a reclaimed water sales programs; and
- Effect of increases in other sources of funds, such as impact fees.

The model is self-solving through the use of controlled feedback loops, and therefore does not require significant manipulation by the user to solve correctly. Given any combination of cost requirements (both operating and capital), non-rate sources of funds, and forecast assumptions, rate increases are generated that:

- Meet specified reserve targets;
- Fully fund capital expenditures using specified financing techniques; and
- Meet legal and contractual requirements that are financially measurable, such as debt service coverage on the City's existing 2005 Water and Wastewater Revenue Bonds.

Alternatively, the user can specify rate increases and then examine the results to determine if the desired/required parameters are met.

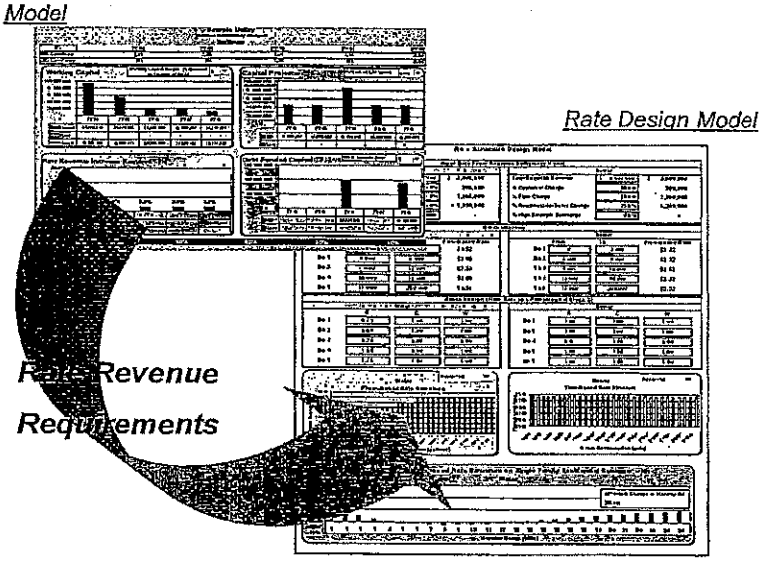
Subsequent to careful development and validation of the baseline forecast, a series of alternative forecasts will be prepared, illustrating various results in the following general categories:

- **What if things turn out differently?** These alternatives will demonstrate the sensitivity of the forecast to the significant assumptions used. This results in a sound understanding of areas where a conservative forecast approach is warranted.
- **What happens when we try this?** This series of alternatives focuses on different financial management approaches. For example, use of different financing techniques such as capitalized interest, interim short-term financing, and capital appreciation bonds may be explored.
- **What can we do to make it better?** This approach to forecasting identifies the factors that may be causing significant rate increases in a given year and explores alternatives. For example, if a large capital project in a single year is the culprit, we would work with staff and the consulting engineers to determine whether this project could be phased or delayed.

Moreover, the rate design model can be used to explore the impact of various rate structures on bills for each customer class over the relevant consumption range.

To summarize, rate model development is a natural part of the Willdan consulting process, and one in which staff and other stakeholders play a collaborative part. Consequently, at the completion of the analysis, the model will be completely customized to emulate the precise financial dynamics of the City, and staff will already have a high level of familiarity with the functionality and use. Interactive workshops will help develop an effective, efficient working relationship among the participating stakeholders that will carry forward into future rate-setting processes.

Financial Planning Model



Willdan's GUIDE Suite of Financial Models – Description of Product Features

The key to success is a robust, real-time financial forecasting model, customized to simulate the utility's financial dynamics. Our GUIDE suite of modeling products includes:

Suite of Models:

- Financial planning;
- Cost of service design; and
- Rate design.

The GUIDE suite of models includes financial planning tools for water, wastewater, reclaimed water, and virtually any utility or municipal government fund, and has the ability to analyze any rate structure and determine the levels of revenue generated by each customer class. In addition, the rate design model can use the City's detailed billing data to develop a bill impact analysis on individual customer bills which can be updated for each rate design scenario.



Features:

- Excel-based open architecture that allows easy integration of City financial data;
- Modular design that allows for maximum design flexibility;
- Easy to update - open architecture and modular design equate to easy annual data updates;
- Automated calculation engine that optimizes financial plan based on user-set constraints;
- Navigation features to quickly move around the model;
- Side-by-side scenario analysis comparison; and
- Healthy listing of user defined assumptions that can be customized to meet the City's needs.

Work Plan

Willdan's work plan will culminate in the successful development of the water, wastewater and reclaimed rates and a five-year cost-of-service based financial plan, the education of key stakeholders, and the completion of the Proposition 218 mandated process.

Within this subsection are the general tasks necessary to facilitate the City's engagement for the water, wastewater, and reclaimed water rate studies. The following activities are based on Willdan's current understanding of the services requested by the City and are subject to revision based on further discussions with the City.

Task 1: Project Kick-off Meeting, Data Gathering and Study Preparation

Willdan will conduct a kick-off meeting with City and stakeholder considerations and objectives outlined. We will review and identify the following:

1) Review of existing water and wastewater rate structure and areas where the existing rates have been successful and/or specific areas of concern;

2) Review of existing documents related to the utilities including (but now limited to) the following: the 2010 Urban Water Management Plan, the 1994 Water Master Plan and 2002 update, the 2010 Water and Wastewater Rate Study, the 2009 Sewer System Management Plan, and schedules of existing rates, meter service fees, system charges and customer fees. Each of these items will have information and background that is important to the development of the overall study;

3) Components to incorporate into the updated revenue requirements; such as, capital improvements, debt repayment, reserves, annual repair and replacement;

4) Strategy and level of effort for outreach and education;

5) Review and discussion on broader policy, political and/or community concerns; the objective being to factor, as necessary, into outreach and education strategies;

6) Conduct a detailed review of the data used in the baseline financial forecast; and

7) Review and resolve (or develop a plan for resolving) data issues and questions.

For further efficiency and collaboration, the kick-off meeting will include a financial policy discussion. This will serve to address and document the City's financial policies for the utilities to be studied. Topics of discussion may include:

- Rate design alternatives;
- Rate policy objectives;
- City financial policies;
- Reserve options and target levels (operating, rate stabilization, repair and replacement);
- Conservation objectives;
- CIP financing options;
- Customer characteristics and classifications;
- Cost of service factors; and
- Proposition 218.



In addition, we will request and begin acquiring data necessary to conduct the analyses. We will provide the City with a detailed list of data requirements pertaining to the subsequent financial and consumption analysis. As these studies are data intensive, and in order to remain on schedule, it is imperative that all data be provided in a timely manner and be delivered in an electronic format.

Task 1A: Data Evaluation and Validation

Based on our experience, it is most effective to obtain and review information prior to the first meeting. Typically questions can be resolved via telephone or e-mail. This approach respects your staff's time and ensures that we are completely prepared for a productive first meeting.

Activities

- Prepare and transmit data and information request;
- Follow-up by phone and/or e-mail to resolve questions;
- Document the nature, form and quality of the data and information received; and
- Based on documentary information, initialize Willdan's financial planning model and prepare a baseline scenario.

Deliverables

- Technical memorandum documenting the data and information received, with comments regarding quality and a list of outstanding issues and questions.

Task 2: Water and Reclaimed Water Rate Study

The following section outlines the work tasks exclusive to the water and reclaimed water rate study.

Task 2.A: Consumption Analysis

Willdan will review historical water consumption and billing data and assess water demands. As appropriate, we will review aggregate water demand characteristics, and incorporate necessary factors into our forecasted projections, future water demands, annual consumption trends and seasonal trends. We will also analyze the performance of the existing water rate structure to assess its appropriateness and adequacy in meeting system goals and recovering system revenue requirements. For this task we will (ideally) incorporate three to five years of City consumption and billing data in the model.

Task 2.B: Revenue Requirements Analysis

In developing reliable and accurate revenue and financial projections, it is necessary to project and analyze the impact and sensitivity of multiple and sometimes complicated variables. We will develop the revenue requirements component of the comprehensive financial plan to include operating (water supply, treatment, personnel, etc.) and non-operating (debt, depreciation, etc.) costs incurred by the water utilities.

The plan and model will be built to incorporate both water and reclaimed water, along with wastewater, so that the three utilities can be studied holistically. With reclaimed water being a new City service, this approach allows us to demonstrate its impact on the existing water and wastewater utilities.

In studying reclaimed water, a new undertaking for the City; we will discuss the operations in detail with the City to ensure we construct a comprehensive revenue requirements analysis, accounting for projected operating and maintenance expenses, costs for constructing necessary facilities, along with associated debt. We will assist the City in evaluating how the implementation of the reclaimed water system comports with or is impacted by the conservation and water use efficiency guidelines enacted in SB X7-7 in 2009.

Willdan's fundamental emphasis is providing long-term financial solutions through the development of financial models that account for current revenue requirements as well as future (short and long-term) needs and expenses, and provide insight on the effects of changes to certain parameters (also known as the elasticity).

Since a utilities revenue requirements (financial plan) and rate structure are directly dependent on one another, our goal during the development of the revenue requirements is to clearly identify each variable and describe the result of adjustments to the overall revenue requirements and rates. This will allow City staff and City Council to examine the effect of decisions made at the policy level on the City revenue requirements and rates.

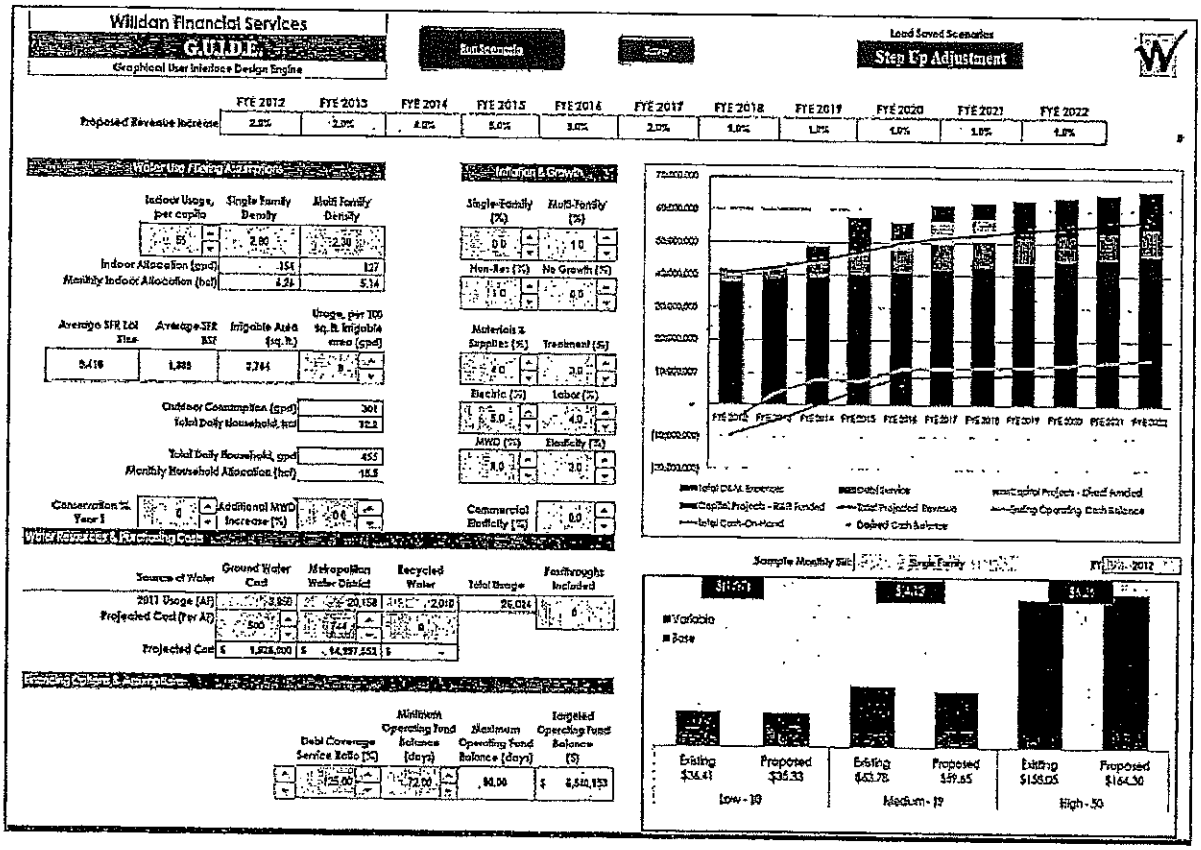
The unrivaled flexibility and customization of our GUIDE dashboard ensures that the City can easily define the financial impact of changes in variables and assumptions.

Willdan has developed GUIDE – an easy to use, graphical scenario and financial planning manager – the dashboard component of our financial model that clearly identifies parameters with toggles and sliders that City staff can adjust to create and test new scenarios, while instantly visualizing and balancing those outcomes with the impact to rates, operating revenues and reserve balances.

Changes to inputs and variables, via the intuitive interface, will directly affect other modules and outputs throughout the model without having to filter through multiple worksheets. The entire model is reflected in one, easy-to-understand page. This innovative approach allows Willdan to analyze the sensitivity dependence of each variable. We recognize that rate setting is an iterative process; therefore, GUIDE enables additional scenario building to reap comprehensive projections. In harmony with the City, Willdan will analyze and test scenarios to ensure stakeholders concerns are reviewed, considered and managed. **Scenarios can be saved and even compared side-by-side to clearly and quickly address questions and facilitate decision making.**

Some of the most common areas for adjustment are identified in Figure 1. Each variable may play a significant challenge to the ability to accurately project revenue. GUIDE is designed to illustrate and signify the impacts of specific City variables instantly, on expenditures, revenues, reserve requirements and rates — all at the slide of a bar.

Figure 1



Task 2.C: Baseline Analysis

Before variables are identified and projected into the revenue requirements and model, a baseline revenue sufficiency and rate analysis is performed. Willdan will utilize a "cash-needs" approach, where cash needs refer to the total revenue required by the utility to meet its cash expenditures.

Basic revenue requirement components of the cash-needs approach include current and future O&M expenses, debt-service payments, including the current outstanding 2005 Revenue Bonds, contributions to specified reserves, whether existing or proposed, and the cost of capital expenditures that are not debt-financed or contributed from other sources. The revenue requirements analysis will be developed based upon the utility's existing financial statements, to test for base year revenue sufficiency. If operating revenues are shown to be deficient, revenue adjustments will be implemented to adequately recover costs.

Another key component of the baseline analysis is a revenue sufficiency analysis where we take the City's existing rate structure, along with billing and customer data, and recalculate the amount of revenue, to ensure agreement with City data. This ensures the integrity of the data for use in the development of the new rate structure, and potentially the reclaimed rates. Furthermore, it may highlight other issues for consideration and discussion.

Task 2.D: Cost Analysis – Scenario Building

Building from the baseline scenario generated in the previous task, we will start generating expenditure scenarios by varying operation, deprecation, capital costs and reserve levels. We will review CIP information to determine: short-term, high-priority needs; annual depreciation of assets, replacement and repair schedules; and assumptions and methodologies used to assess the basis for the CIP projects.

As previously mentioned, we understand that the City has a fairly significant backlog of capital projects, as rate revenue over the past three years has not been sufficient to address all needs. We can model the implementation of various CIP and master plan scenarios by including capital financing in the model, the ability to cycle various scenarios through the model, and clearly show the impacts on the overall plan, and more importantly, rates.

To ensure adequate funding in later years, we will include a 10-year analysis of anticipated capital requirements, with the ability to extend to 30 years, as well as adequate reserve funding. In reviewing the CIPs, it is necessary to know current policy on available funding sources and the type of improvements and costs to fund through rates on a PAYGO or connection fees. As such, these funding options play a role in determining the total amount of revenue required in any given year. These options will be included within GUIDE to allow staff the ability to optimize PAYGO and CIP financing while minimizing shock on water rates.

Task 2.E: Cost of Service Analysis

The principal in establishing adequate rate schedules that are fair and equitable is that rates should reflect the costs of providing service. Our approach recognizes differences in the cost of providing services to different types of customers, areas and levels of service. The cost incurred by the users should be incurred by those whom benefit. Accordingly, cost allocation procedures should recognize the particular service requirements of the customer for not only total volume of water, but pumping/distribution costs and other factors.

This analysis will include gathering cost information associated with water and reclaimed water services and allocation to functions, classification and allocation of costs to each existing customer class. Since demand patterns of various customers differ, depending on their peak-day and peak-hour rates of demand relative to average demands, we will review the number and type of existing customer classes and make recommendations to add or consolidate customer classes, if necessary.

The allocation of water and reclaimed water costs to customer classes will be conducted to estimate the cost of serving each customer class and to enable rate restructuring, as necessary, based on the service requirements. Costs will be allocated in accordance with industry standards.



While varying slightly, both methods recognize that the cost of serving customers depends not only on the total volume of water used or discharged, but also on the rate of use and peaking requirements. Willdan will work with the District to ensure the most appropriate methodologies are pursued.

Task 2.F: Rate Design Analysis and Update

Utilizing the cost-of-service approach, the level of the City's rates is a function of the utility's costs and customer demands.

Willdan will fully modify and provide scenario planning to reflect the impact of different rates and/or revenue adjustments. Willdan will recommend updates to the current rates that are designed to address and uphold key objectives, notably short and long-run financial stability, minimal economic stress for customers, equity and defensibility. Our recommendations will comply with the cost-of-service guidelines of Proposition 218, AWWA, WEF, and existing bond covenants and current legislation.

The methodology utilized to determine how the water utility costs are allocated is expressed in the bullets below. While the methodology may be an "industry standard," our experience and understanding of key variables allow for a comprehensive and well-rounded rate design process:

- ***Existing Rate Compatibility to the City's Objectives:*** Rate structure is the area of the study that tends to generate the most attention and scrutiny. Prior to implementing new rates, Willdan will work collaboratively with staff to verify that key objectives for the City and stakeholders, such as understandability, avoidance of rate shock, public outreach (public buy-in), conservation, revenue stability, etc, have been addressed.
- ***Existing Water Rate Structure:*** When updating rates, there are numerous variables and considerations, ranging from access and quality of data, cost-causation, price elasticity, conservation, and weather conditions. Willdan will work with staff to provide recommended revisions to the City's existing water rate structure to ensure key issues are addressed.
- ***Consistency of New Reclaimed Water Rates and Policies with Water Rates:*** As previously mentioned in the scope and project understanding, we will work with staff to ensure that reclaimed water rates are consistent in structure, application and policy, with water rate structures. The analysis leading to their development will consider mutual impacts, and the rates will fit within the overall approach and work with the City's billing and financial systems.

The rate design task will involve modeling several alternative rate structures using the City's financial data and billing statistics to demonstrate the resulting customer impacts and to identify key issues associated with the new rates and charges.

Basic standards for rate design accepted by the industry are:

- **Revenue sufficiency** – rate revenue should provide sufficient income so that, when combined with other sources of funds, total system costs are covered;
- **Fairness and equity** – based on cost responsibility, as reflected in cost of service allocations, in accordance with industry standards;
- **Resource conservation** – Under conditions of scarcity, the pricing of water as a commodity should promote conservation and discourage unnecessary water use;
- **Administrative simplicity** – so that rates are understandable to customers and efficiently administered by staff;
- **Customer acceptance** – customers understand the rates, view them as fair, and consider them to be reasonable compared to other costs and other utilities; and
- **Public health and welfare** – rates are structured so that essential domestic water consumption is encouraged through affordability.

Task 3: Wastewater Rate Study

The wastewater financial and rate analysis closely mirrors the cost of service and rate setting approach for water and reclaimed water. The following section outlines the scope of work tasks unique to the wastewater rate study.

Task 3.A: Determine Discharge Characteristics and Loadings

Willdan will calculate the average and total sewer discharged by each user class. Additionally, we will determine the number of users by class, annual water use, projected growth, and appropriate discharge factors. Similar to water, flow is not the only factor to consider. Loading factors, based on the strength of the effluent (discharge), will be calculated and incorporated into the rate analysis. Based on the design of the sewer system and facilities, we will make recommendations regarding appropriate classification of customers.

Task 3.B: Cost Projection Analysis

To determine annual required revenue, we will analyze and project the utility Operations Fund and Capital Fund. Furthermore, we will discuss the best way to finance the essential and prioritized projects required to operate the sewer system. Willdan will analyze the City's planned CIP, and any necessary adjustments, based on staff discussions and reviews of the existing planning documents. As such, we will generate "what-if" funding scenarios (financing, phasing and costs) to illustrate the impact of different options on revenues and rates.

Task 3.C: Revenue Requirements Analysis

Similar to the water utility, we will prepare a comprehensive financial forecast for the sewer enterprise with the objective of funding the utility's cash needs. Numerous financial projections of cash-flows will be based on various scenarios that reflect adjustments to O&M, capital expenditures and funding sources, debt covenants, and reserve targets. We will make recommendations on reserve funds and rate of accrual to reach reserve targets.

Willdan will summarize total cash flows for a period of five years. To create a baseline, the project team will confirm the current rate-based revenues based on customer loads by comparing the calculated and actual revenues by customer class under the current rate structure.

Task 3.D: Scenario Planning (GUIDE Walk-through)

As previously mentioned, it is important to identify and avoid rate shock from excessive and compounding simultaneous changes. As such, the rate recommendations will include an evaluation of the effects of the combined utility bills on customers under several variations of inputs. In addition to the financial presentation of data, for each scenario our model also displays a sample customer bill to easily demonstrate the customer bottom line.

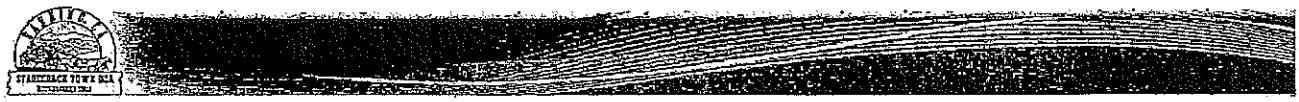
Task 3.E: Cost Distribution to Billable Parameters

A system of billable parameters is required to relate the costs of providing sewer service to the City's customers, as prescribed by the WEF rate setting recommendations, which include the following:

- Evaluating the City's cost of service for each customer class and billing parameter
- Determining appropriate sewer billable parameters
- Determining unit costs for each billable parameter

Task 3.F: Sewer Rate Design Analysis and Update

Based on the cost distribution developed in the prior subtask, we will update the current rates based on feedback received from City staff. We will review the rate structure and provide various recommendations for residential, multi-family and commercial rates based upon water use, discharge and strength characteristics, or other bases to achieve equity between customer classes. As identified in the RFP, we will evaluate alternative rate designs in discussion with the City, such as changing the basis of commercial rates from EDU to water consumption.



Each alternative derives the same required revenue and will be adaptable to work on the current billing system. Each revenue requirement scenario developed will demonstrate the impact of different assumptions on each of the developed rate structures. Willdan will list the advantages and disadvantages of each alternative, and prepare comparison bills for each scenario. For the recommended alternative, we will project the annual unit rates for each customer class, and the current versus proposed bills for typical customers in each class.

4. Reclaimed Water Impact Fees

The following outlines the work tasks and specific points of discussion related to the review and discussion of a reclaimed impact fee.

Task 4.A: Discuss Potential Fee Methodology and Policy Issues

Under AB 1600 (Government Code 66000 through 66024), connection fees must be developed based on an established incremental impact that new developments have on available capacity. Willdan will identify policy issues that may be raised as they relate to the proposed program; discuss how to approach the development of a defensible fee that fairly allocates the cost of the reclaimed water system between existing and expected future users; and highlight potential options and advantages/disadvantages and challenges of implementing a reclaimed water impact fee.

Task 4.B: Existing Development and Future Growth

To establish incremental impact that new development has on available capacity, costs of existing and proposed facilities must be segregated by their benefits to new or existing users. This cost to benefit nexus is the fundamental principle of AB 1600. For reclaimed water related capital projects, we will discuss approaches with the City, including techniques for estimating existing and future development and calculating facility standards, to determine if an approach is workable and makes sense.

Task 4.C: Facility Standards

Facility standards provide a critical link in documenting the nexus between growth, the facilities required to accommodate it, and a defensible fee. Facility standards are used to demonstrate a reasonable relationship between new development and the need for new facilities.

We will review and discuss the City's capital improvement plans relative to reclaimed water, and gather input from City staff to identify the facility standards that would be used to plan for new facilities. Typical utility standards for facility planning include average, monthly and peak demand factors, plus treatment and pumping requirements.

Task 4.D: Facilities Needs and Costs

Identifying the type, amount and cost of facilities required to accommodate growth and correct deficiencies, if any, is an important step in the development of an impact/connection fee. A critical component would be distinguishing between the following:

- Facilities needed to serve growth (that can be funded by impact fees); and
- Facilities needed to correct existing deficiencies for the existing service population (that cannot be funded by fees).

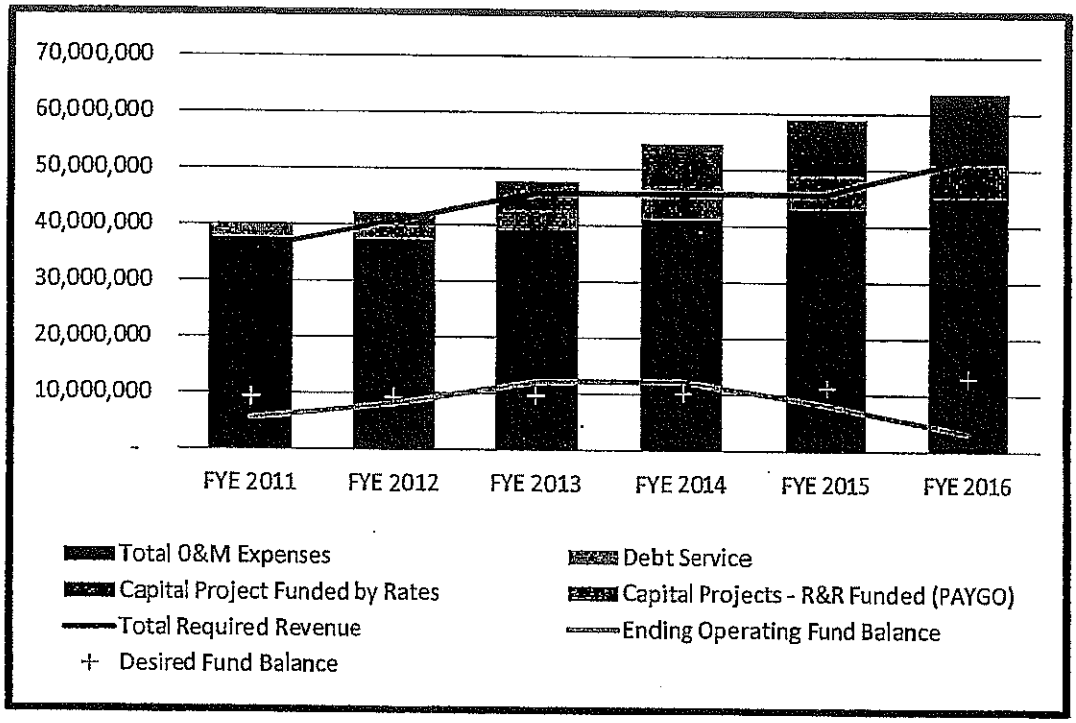
Willdan will provide guidance on how we could assist the City in developing a sound and defensible allocation of planned capital facilities costs between the existing service population and growth.

Task 5: Communicating the Results

Willdan believes in proactive stakeholder outreach, feedback and understanding during the entire process, not only at the time the results are proposed. Throughout the course of the study, in addition to the project kick-off, **Willdan will conduct discussions with key staff and the City Council** to walk-through the model, discuss the preliminary findings, and to discuss the draft results and study findings. We anticipate a total of five meetings (one kick-off meeting, three progress meetings, and one final presentation) with the City during the course of this project. Additionally, we have increasingly been utilizing the effective communication tools provided by GoToMeeting® to better facilitate discussion and feedback. This has proven to be far more beneficial than common conference calls and does not count as a formal meeting, which can add unnecessary additional costs to the project. In addition, we have included a per-meeting cost estimate in the event more meetings are needed. In our experience, the number of meetings actually needed often is not known until the project progresses.

The final presentation of the combined findings and reports to City Council will include easy-to-follow graphics (as shown in Figure 2) and color handouts of the study assumptions, methodologies, findings and conclusions, and will include a discussion period for questions and answers.

Figure 2



Task 6: Development of Utility Benchmark Comparisons

Willdan will provide an evaluation and comparison of the City's utilities against appropriate industry benchmarks. There are a variety of approaches to this type of comparison, and we will discuss with the City which benchmarks make the most sense, and focus on elements of their operations that warrant attention. Several rating agencies, including Fitch, Moody's and others, have published documents that detail the sewer and water benchmarking and best management practices (BMPs) guidelines that they follow when evaluating the credit-worthiness of municipal utilities. We use these to identify meaningful and appropriate benchmarks for measurement and comparison in this type of analysis, and the ability to produce benchmarking statistics is already incorporated in our model.

We will discuss benchmarks and BMPs with City staff to ensure those selected make sense for the City.

Task 7: Prepare and Document Rate Recommendations

Willdan will document the results of the study in a report consistent with the following layout: an executive summary; a methodology; background assumptions; findings; recommendations; and conclusions. The report will provide a detailed summary of the project approach and methodology, data sources, discuss the current rate structure and compliance of proposed rates with City policies, and how they address specific City objectives such as rate equity, revenue stability, conservation and others. We will provide City staff with a digital copy of the preliminary draft report for review and comment, and based on the comments received, prepare a final printed (10 copies) and digital copy of the report. The City will also have full access to Willdan's fully customized, non-proprietary, Excel-based model for its use in the future.

Task 8: Customized Rate Model – Preparation, Training and Delivery

As part of our scope, Willdan will deliver customized versions of its financial planning and rate design models for staff.

Activities:

- Complete customization of the model for the City's needs and circumstances;
- Provide overview of model operation, updating and scenario development;
- Respond to further questions by phone, at the City's option;
- Provide staff training on the operation and use of the model.

Deliverables:

- Financial planning and rate design model, customized for the City; and
- Continuing assistance to be determined by the City.

Task 9: Proposition 218 Procedural Requirements

Based on our 17 year history with Proposition 218 compliance, we will create notices that will explain: 1) the purpose of the rates; 2) how the rates are structured; 3) the time and place of the public hearing; and 4) provide details on what constitutes the existence of a majority protest, as it relates to the implementation of a new/increased utility rate structure. We will work with City staff to develop and distribute an easy-to-understand Proposition 218 notice that will describe the following major components: 1) rate structures; 2) reason for the increases; and 3) date, time, and place of the public hearing.

Should the City request, we can develop the materials, create a parcel database of properties subject to the new proposed rates, and coordinate the printing and mailing of the materials in conjunction with a mailing house that we typically work with on these types of projects. The additional cost for these services is $1.00 per parcel and includes direct costs associated with the mailing.

City Staff Responsibilities

Willdan recommends that the City assign a key individual as project manager. As our analysis is developed, it is expected that the City's appointed project manager will:

- Coordinate responses to informational requests;
- Coordinate review of work products; and
- Identify appropriate staff members for participation in meetings.

We will ask for responses to initial information, follow-up requests and comments on reports within five business days or otherwise agreed upon timetable. If there are delays, the project manager will follow up with the parties involved to establish an estimated date for the delivery of information and/or feedback. To ensure continued progression, the project manger will reconvene with the rest of the Willdan Team to identify tasks that can be started while waiting for requested data.

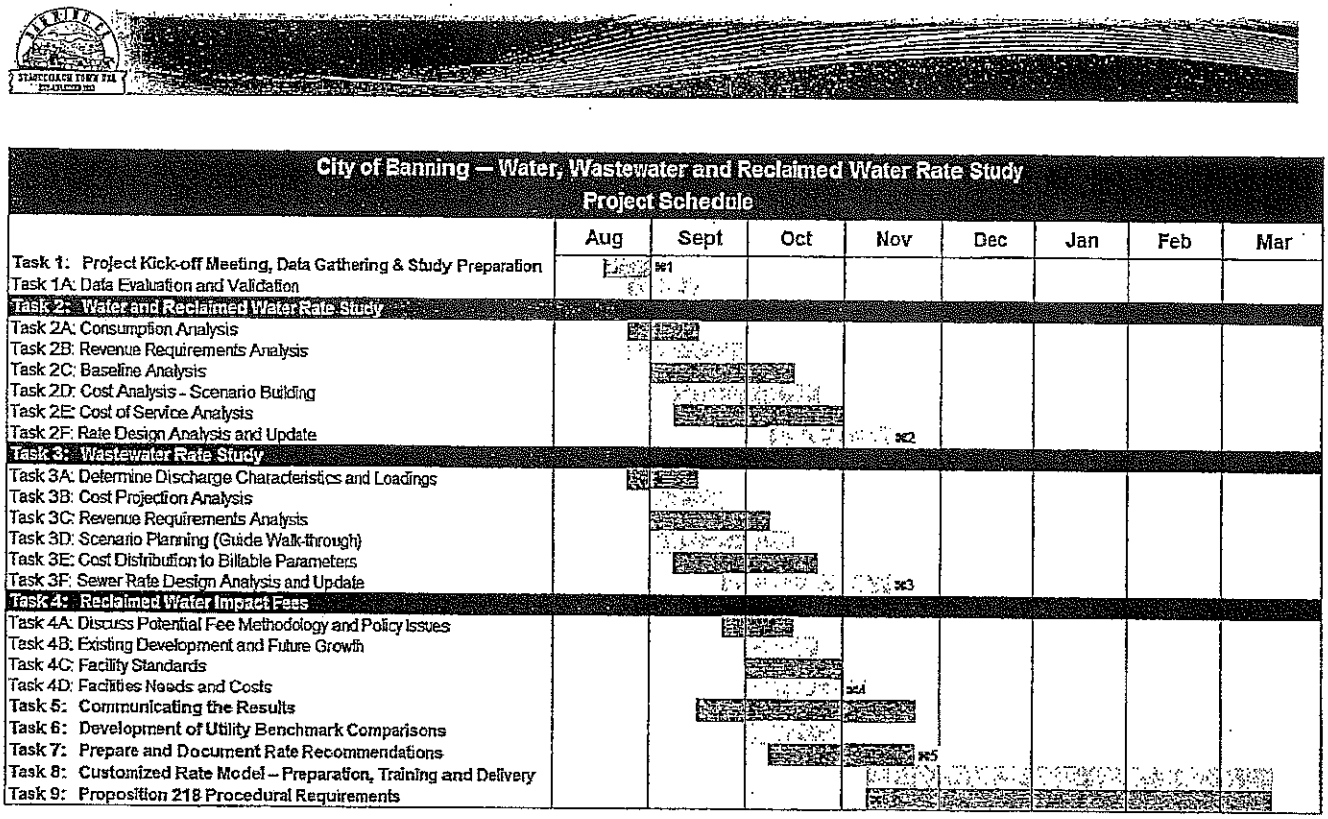
Schedule

Willdan prides itself on being responsive to customer needs. We have developed a general timeline that will begin August 20, 2013; a specific schedule of events and milestones will be developed in concert with City staff.

Depending upon a number of factors, a rate and financial planning effort of this complexity generally requires 16 to 20 weeks to complete. These factors include: 1) the amount of time required to collect necessary data; 2) ability to schedule meetings in a timely manner with City management and staff; and 3) manner by which policy direction is received for the study from the City's management.

Based on these factors and our current understanding of the solicitation, Willdan has developed the following preliminary project schedule:

City of Banning — Water, Wastewater and Reclaimed Water Rate Study
Project Schedule



Legend:

- #1: Informational Request
- #2: Water Rate Study Draft Report
- #3: Sewer Rate Study Draft Report
- #4: Impact Fee Draft Memo
- #5: Final Report
- #6: Proposition 218 Notice

Proposed Quality Assurance Program (QA/QC)

At Willdan, we utilize a project management process that ensures projects are completed on time, within budget and, most importantly, yield results that match our clients' expectations. Our complete project management process has four primary principles common to successful projects:

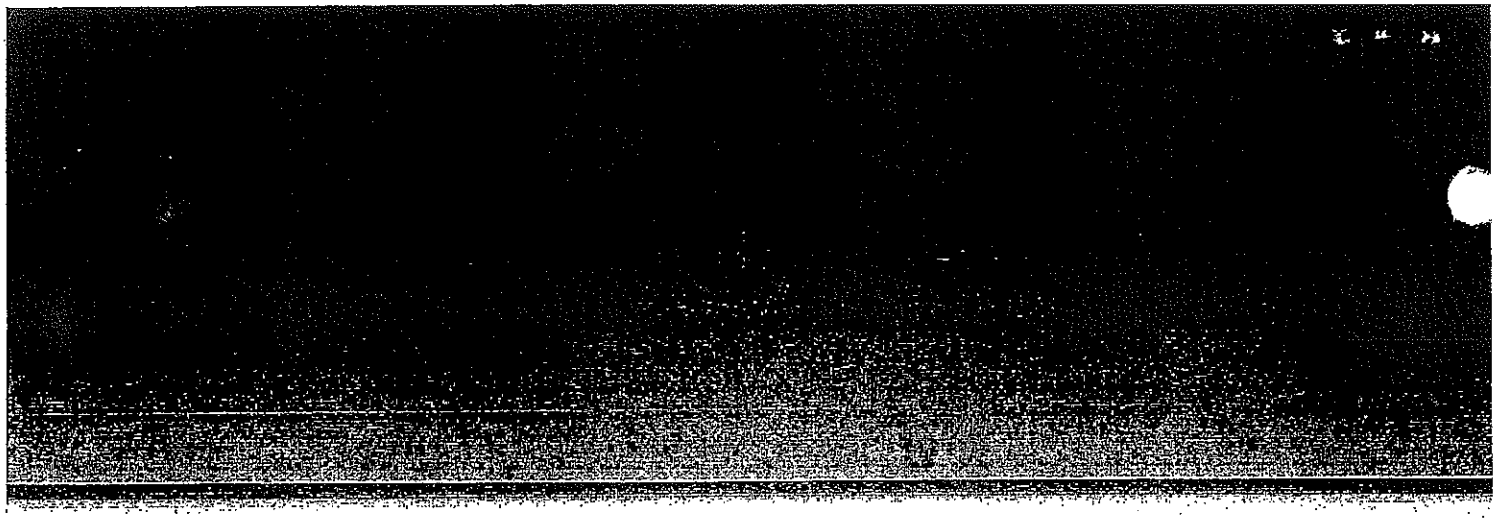
1. **Define** the project to be completed. Mr. Fisher will identify the project scope, set objectives, list potential constraints, document assumptions, choose a course of action and develop an effective communication plan.

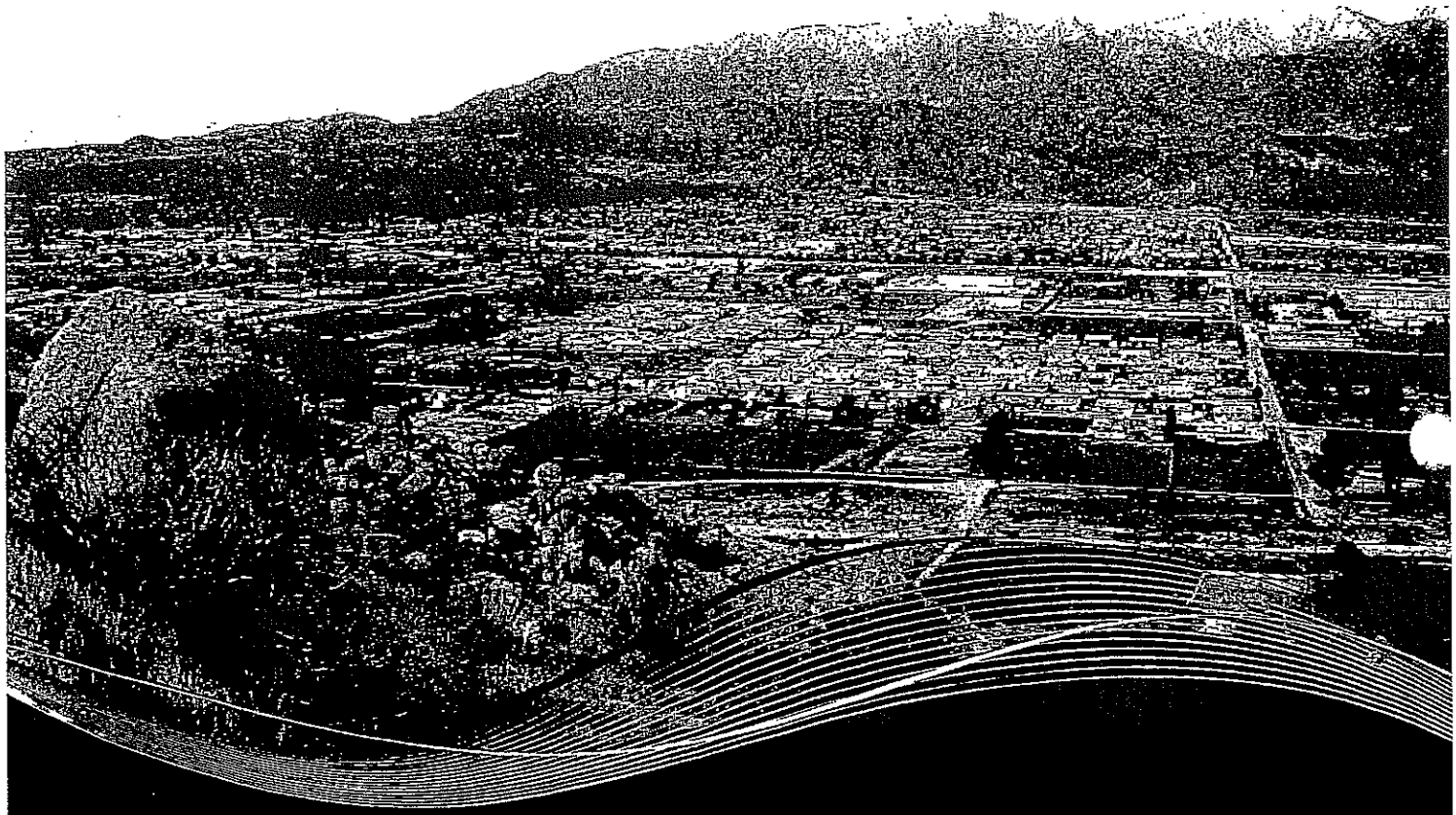
2. **Plan** the project schedule. Mr. Fisher, in collaboration with the project team and City staff, will create an agreed upon timeline to meet the estimated project timeline. He will assign workload functions to appropriately qualified staff to ensure milestones are met, on time. Furthermore, the project team will meet bi-weekly to assess the status of the project and Mr. Fisher will direct existing and upcoming project tasks. These meetings ensure that staffing resources are well-matched to provide the highest quality of work product, high responsiveness to the City, and to keep the project on schedule. These meetings also provide a forum for applying the team's collective expertise to solving difficult analytical issues that arise in complex projects.

3. **Manage** the execution of the project. Mr. Fisher has been selected to fulfill the role of project manager due to his strong project management skills. He will be responsible for controlling the work in progress, providing feedback to the Willdan Team and City staff, and will be accountable to the City for meeting the schedule, budget and technical requirements of the project. Most importantly, Mr. Fisher will ensure constant collaboration and communication between City staff and the Willdan Team through frequent progress memorandums, conference calls and in-person meetings.

4. **Review** work products and deliverables through a structured quality assurance process involving up to three levels of review at the peer level, project manager level, and if necessary executive officer level. We have designed a formal and structured quality assurance system that will be utilized throughout the course of the project.

We have utilized these guiding principles for all of our firm's projects. The City can be assured that through the utilization of these principles, Mr. Fisher will ensure the project deliverables for the Water, Wastewater and Reclaimed Water Rate Study will be of the highest quality and will be delivered on time and within the agreed upon budget.





WILLDAN
Financial Services

27368 Via Industria, Suite 110, Temecula, California 92590-4856
T 951.587.3500 800.755.6864 | F 951.587.3510 888.326.6864
www.willdan.coma

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

Section 1.10 – Additional Services – A contingency of 20% has been requested in the event additional meetings are requested and/or additional costs are incurred during the Proposition 218 process.

Section 1.7 Warranty – excluded – not applicable to professional services

Section 1.8 – Prevailing wages – excluded – not applicable to professional services

Section 2.4 – Invoices – Invoices will be submitted monthly based on percentage of project completed.

Section 5.4 – Performance Bond – excluded – not applicable to professional services

Section 5.5 – "Surety" and reference to Section 5.4 – not applicable

Section 7.3 – Retention – not applicable to professional services

Section 7.7 – liquidated damages – not applicable to professional services

EXHIBIT "C"
COMPENSATION

See attached

Fee Schedule

Based on the described work plan, we propose a ***not-to-exceed fixed price fee of $58,963.*** The table below provides a breakdown of this fee by task and project team member.

City of Banning - Water, Wastewater and Reclaimed Water Rate Study

	C. Fisher Project Manager	J. Vames Task Manager	T. Thrasher Financial Analyst	J. McGarvey Tech Advisor & QA/QC	Total	
	$210	$155	$110	$195	Hours	Cost
Scope of Services						
Task 1: Project Kick-off Meeting, Data Gathering and Study Preparation	5.0	6.0	6.0	5.0	22.0	$ 3,615
Task 1.A: Data Evaluation and Validation	1.0	2.0	4.0	1.0	8.0	$ 1,155
Task 2: Water and Reclaimed Water Rate Study						
Task 2.A: Consumption Analysis	1.0	8.0	16.0	2.0	27.0	$ 3,600
Task 2.B: Revenue Requirements Analysis	1.0	8.0	16.0	2.0	27.0	3,600
Task 2.C: Baseline Analysis	2.0	8.0	16.0	2.0	28.0	3,810
Task 2.D: Cost Analysis - Scenario Building (includes meeting w/ Task 3.D)	3.0	10.0	12.0	3.0	28.0	4,085
Task 2.E: Cost of Service Analysis	1.0	8.0	14.0	0.5	23.5	3,088
Task 2.F: Rate Design Analysis and Update (includes meeting w/ Task 3.F)	3.0	10.0	14.0	3.0	30.0	4,305
Task 3: Wastewater Rate Study						
Task 3.A: Determine Discharge Characteristics and Loadings	1.0	3.0	6.0	2.0	12.0	$ 1,725
Task 3.B: Cost Projection Analysis	1.0	3.0	6.0	1.0	11.0	1,530
Task 3.C: Revenue Requirements Analysis	1.0	4.0	8.0	2.0	15.0	2,100
Task 3.D: Scenario Planning (GUIDE Walk-through) (includes meeting w/ Task 2.D)	3.0	6.0	8.0	2.0	19.0	2,830
Task 3.E: Cost Distribution to Billable Parameters	1.0	4.0	8.0	1.0	14.0	1,905
Task 3.F: Sewer Rate Design Analysis and Update (includes meeting w/ Task 2.F)	3.0	6.0	8.0	3.0	20.0	3,025
Task 4: Reclaimed Water Impact Fees						
Task 4.A: Discuss Potential Fee Methodology and Policy Issues	1.0	2.0	1.0	1.0	5.0	$ 825
Task 4.B: Existing Development and Future Growth	1.0	2.0	-	1.0	4.0	715
Task 4.C: Facility Standards	1.0	2.0	-	1.0	4.0	715
Task 4.D: Facilities Needs and Costs	1.0	2.0	3.0	1.0	7.0	1,045
Task 5: Communicating the Results (includes presentation meeting)	4.0	8.0	8.0	5.0	25.0	3,935
Task 6: Development of Utility Benchmark Comparisons	1.0	6.0	2.0	4.0	13.0	2,140
Task 7: Prepare and Document Rate Recommendations	2.0	8.0	16.0	1.0	27.0	3,615
Task 8: Customized Rate Model – Preparation, Training and Delivery	4.0	8.0	2.0	1.0	15.0	2,495
Task 9: Proposition 218 Procedural Requirements	4.0	2.0	16.0	1.0	23.0	3,105
Subtotals:	46.0	126.0	190.0	45.5	407.5	58,963
Total Cost						**$ 58,963**

Notes:

- Our fee includes all direct expenses associated with the project.
- Additional meetings may be requested at a fixed fee of $1,950 per meeting.
- We will invoice the City monthly based on percentage of project completed.

Hourly Rates

Additional services may be authorized by the City and will be billed at ~~our then-current hourly overhead consulting rates. Our current hourly~~ the rates ~~are~~ listed below.

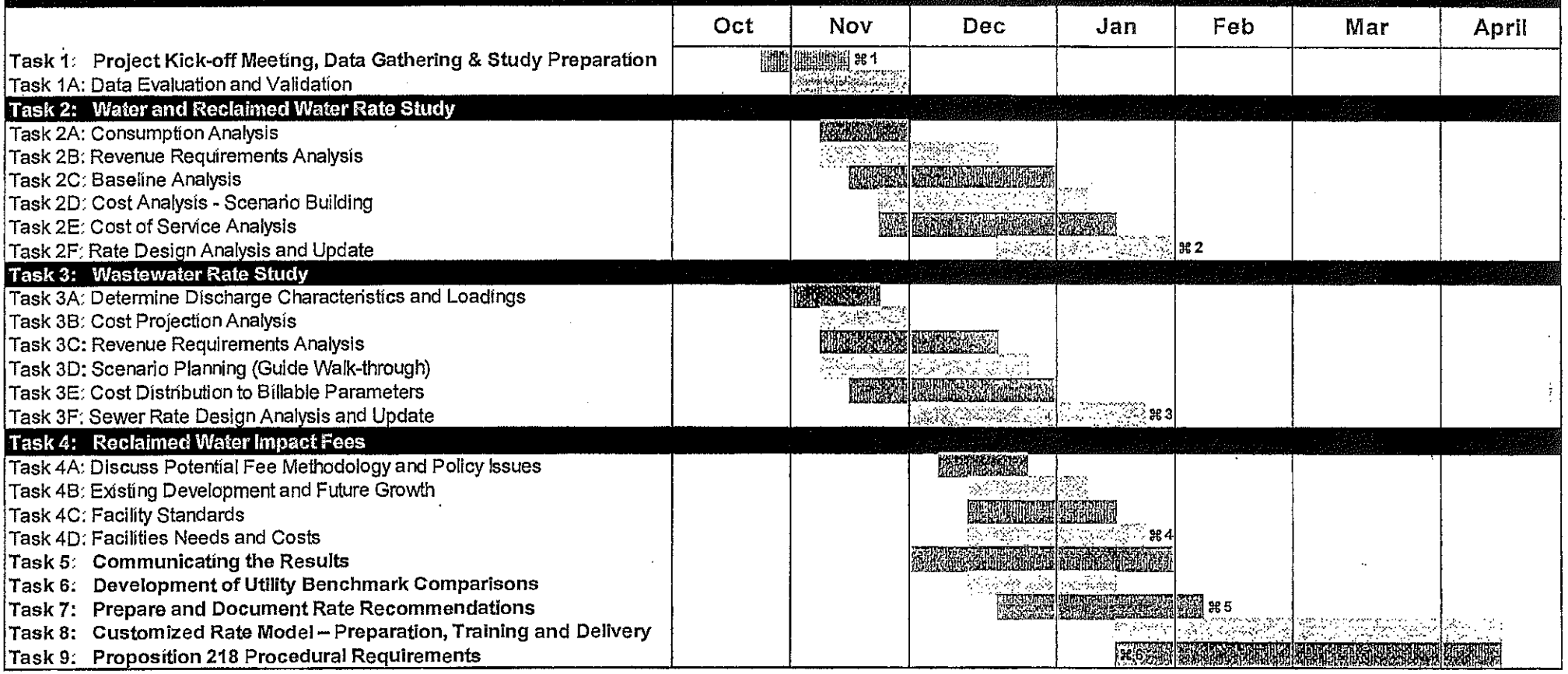
Hourly Rate Schedule	
Position	Hourly Rate
Group Manager	$210
Principal Consultant / Managing Principal	$200
Senior Project Manager	$165
Project Manager	$145
Senior Project Analyst	$130
Senior Analyst	$120
Analyst	$100
Assistant Analyst	$75

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

See attached Project Schedule

The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

City of Banning — Water, Wastewater and Reclaimed Water Rate Study
Project Schedule



Legend:

- ⌘1: Informational Request
- ⌘2: Water Rate Study Draft Report
- ⌘3: Sewer Rate Study Draft Report
- ⌘4: Impact Fee Draft Memo
- ⌘5: Final Report
- ⌘6: Proposition 218 Notice

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY): 11/1/2012

PRODUCER
Dealey, Renton & Associates
P. O. Box 10550
Santa Ana CA 92711-0550

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS ND RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFDRDED BY THE POLICIES BELOW.

INSURERS AFFDRDING COVERAGE

INSURED
Willdan Financial Services
27368 Via Industria, Suite 110
Temecula CA 92590

INSURER A: Travelers Property Casualty Co of Ameri
INSURER B: Catlin Insurance Company, Inc.
INSURER C: American Automobile Ins. Co.
INSURER D:
INSURER E:

CDVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	6301158P020	11/9/2012	11/9/2013	EACH OCCURRENCE	$1,000,000
	X COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$1,000,000
	CLAIMS MADE X OCCUR				MED EXP (Any one person)	$10,000
	X Contractual				PERSONAL & ADV INJURY	$1,000,000
	X BFPD, XCU				GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC				PRODUCTS - COMP/OP AGG	$2,000,000
A	AUTOMOBILE LIABILITY	8101158P020	11/9/2012	11/9/2013	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO				BODILY INJURY (Per person)	$
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
	X HIRED AUTOS					
	X NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	OCCUR CLAIMS MADE				AGGREGATE	$
	DEDUCTIBLE					$
	RETENTION $					$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WZP81007462	11/9/2012	11/9/2013	X WC STATU-TORY LIMITS OTH-ER	
					E.L. EACH ACCIDENT	$1,000,000
					E.L. DISEASE - EA EMPLOYEE	$1,000,000
					E.L. DISEASE - POLICY LIMIT	$1,000,000
B	OTHER Professional Liability Claims Made	AED977441113	11/9/2012	11/9/2013	Per Claim	$1,000,000
					Annual Aggregate	$1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

eneral Liability policy excludes claims arising out of the performance of professional services.
ndependent Contractors are included as respects to General Liability.
e: all work being performed by Willdan Financial Services (1915 districts per the 11/2008 contract; continuing isclosure services per 1997 contract and 3/2011 amendment; arbitrage services; FIA; plus any other service as equired by written contract. The City, and its officers, officials, employees, agents, representatives, and olunteers are additional insured as respects to General and Auto Liability as required by written contract. Primary ee Attached...

CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER LETTER:

City of Banning
June Overholt, Administrative Services Director
99 East Ramsey Street / PO Box 998
Banning CA 92220

CANCELLATION 10 Day notice for Non-Paymnt of Prem

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE: Pramme Emrul 766

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS / SPECIAL PROVISIONS

and Non-Contributing coverage, Waiver of Subrogation applies to GL as required by written contract. Waiver of subrogation for Work Comp is included as required by written contract. (TEMECULA)

Workers' Compensation and Employers' Liability Insurance Policy
Waiver of Our Right to Recover From Others Endorsement - California
WC 04 03 06

If the following information is not complete, refer to the appropriate Schedule attached to the policy.

Insured: Willdan Financial Services

Policy Number WZP81007462

Producer: Dealey, Renton & Associates

Effective Date 11/1/2012

Schedule

Person or Organization

City of Banning
June Overholt, Administrative Services Director
99 East Ramsey Street / PO Box 998
Banning CA 92220

Job Description

For which the insured has agreed by written contract executed prior to loss to furnish this waiver. The premium charge is 2% of policy standard premium at final audit.

Additional Premium %

We have the right to recover our payments from anyone liable for an injury- covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be the percentage, as shown in the Schedule applicable to this endorsement, of the California workers' compensation premium otherwise due on such remuneration.

Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BROAD FORM NAMED INSURED

B. BLANKET ADDITIONAL INSURED

C. EMPLOYEE HIRED AUTO

D. EMPLOYEES AS INSURED

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

G. WAIVER OF DEDUCTIBLE – GLASS

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

J. PERSONAL EFFECTS

K. AIRBAGS

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

M. BLANKET WAIVER OF SUBROGATION

N. UNINTENTIONAL ERRORS OR OMISSIONS

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c.** in **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

   An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

© 2010 The Travelers Indemnity Company.
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2. The following replaces Paragraph **b.** in **B.5., Other Insurance,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

   b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

   (1) Any covered "auto" you lease, hire, rent or borrow; and

   (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

   However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2),** of **SECTION II – LIABILITY COVERAGE:**

   (2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4),** of **SECTION II – LIABILITY COVERAGE:**

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph **(5)** in Paragraph **B.7., Policy Period, Coverage Territory,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

   (i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

   (ii) Neither you nor any other involved "insured" will make any settlement without our consent.

   (iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

   (iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C.**, Limit Of Insurance, of **SECTION II – LIABILITY COVERAGE.**

   (v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C.**, Limit Of Insurance, of SECTION II – LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available

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to the "insured" whether primary, excess contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

(d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D., Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph **A.4.b., Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

However, the most we will pay for any expenses for loss of use is $65 per day, to a maximum of $750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a., Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL EFFECTS

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

Personal Effects

We will pay up to $400 for "loss" to wearing apparel and other personal effects which are:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Effects coverage.

K. AIRBAGS

The following is added to Paragraph **B.3., Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS:**

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

(a) You (if you are an individual);

(b) A partner (if you are a partnership);

(c) A member (if you are a limited liability company);

(d) An executive officer, director or insurance manager (if you are a corporation or other organization); or

(e) Any "employee" authorized by you to give notice of the "accident" or "loss".

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M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED**:

   Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

   a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and

   b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

   The insurance provided to such additional insured is limited as follows:

   c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.

   d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.

   e. This Insurance does not apply to "bodily injury' or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

3. The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   Duties Of An Additional Insured

   As a condition of coverage provided to the additional insured:

   a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

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i. How, when and where the "occurrence" or offense took place;

ii. The names and addresses of any injured persons and witnesses; and

iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:

i. Immediately record the specifics of the claim or "suit" and the date received; and

ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

a. After the signing and execution of the contract or agreement by you;

b. While that part of the contract or agreement is in effect; and

c. Before the end of the policy period.

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CITY COUNCIL/BANNING UTILITY AUTHORITY
AGENDA

DATE: October 8, 2013

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works
June Overholt, Administrative Services Director/Deputy City Manager

SUBJECT: Banning Utility Authority Resolution No. 2013-18UA, "Awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study"

RECOMMENDATION: Adopt Banning Utility Authority Resolution No. 2013-18UA:

I. Awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed $58,963.

II. Authorize the Administrative Services Director to amend the budget and to make any necessary budget adjustments, transfers or appropriations in an amount of $20,000 in the Waste Water Fund.

III. Authorize the City Manager to execute the Professional Services Agreement with Willdan Financial Services.

IV. Consider establishing Ad Hoc committee to review recommendations and outcome of the study.

BACKGROUND: The City Council last approved Water and Wastewater Rates in 2010, which increased the Water and Wastewater Rates each year over four years from October 2010 to September 2013. October 2010 was the first time rates had been approved since 2003. Although operating expenditures were reduced to address the decline in revenues due to the economic downturn, it became critical to increase the rates to meet bond covenant requirements. The rate increases provided stabilization to the operating funds while major capital projects were put on hold. The slowdown in development activity in the city removed some urgency to implement the capital projects. However, with the economy showing signs of improving and with the regulatory challenges facing the utilities, there is a need to strategically address these demands on the utilities.

DISCUSSION: In order to understand whether rate increases are needed, the city needs to study the existing rate structure, service levels, consumption, regulatory demands and capital requirements.

On June 10, 2013, Request for Proposals (RFPs) were sent to several consulting firms with known experience in performing rate studies. In addition, the RFP was posted to the City website and other sites. On July 26, 2013, seven proposals were received by the Public Works Department. The proposals were evaluated by an Evaluation/Selection Committee for completeness, the proposed project team, project management, understanding, project approach, responsiveness to the RFPs, experience with

In the event that a rate increase is recommended, community meetings will be recommended as part of the Prop 218 process. It is likely that the consultants will be asked to attend community meetings to present the recommendations using the interactive dashboard. It is unknown at this time, how many meetings will be needed. Some meetings have been incorporated into the fees. However, additional meetings will add to the cost. Therefore, staff is recommending a contingency for the project.

FISCAL DATA: The study fees as proposed are $58,963. A contingency of $11,000 (approximately 20%) is recommended to allow for Prop 218 community meetings, if needed. Because most of the complexity of the study is for the water and reclaimed water rate study, the majority of the funding for the project is coming from the Water Operations budget. Budget of $50,000 was included in the approved Fiscal Year 2013/14 budget for the study, Account 660-6300-471.33-11. An appropriation of $20,000 is needed in the Waste Water Fund, Account 680-800-454.33-11.

RECOMMENDED BY:

Duane Burk
Director of Public Works

RECOMMENDED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:

Andrew J. Takata
City Manager

RESOLUTION NO. 2013-18UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AWARDING A PROFESSIONAL SERVICES AGREEMENT TO WILLDAN FINANCIAL SERVICES FOR WATER, WASTEWATER AND RECLAIMED WATER RATE STUDY

WHEREAS, on June 10, 2013, Request for Proposals (RFPs) were sent to several financial consulting firms and on July 22, 2013, seven proposals were received by the Public Works Department; and

WHEREAS, the proposals were evaluated by an Evaluation/Selection Committee for completeness, the proposed project team, project management, understanding, project approach, responsiveness to the RFPs, experience with water, wastewater and reclaimed water studies and proposed cost; and

WHEREAS, upon review of the proposals, it was determined that Willdan Financial Services of Temecula, California is the most qualified firm for the project, as per the guidelines set forth in the RFP; and

WHEREAS, the services to be provided by the consultant will result in a focused and tailored analysis which creates new rates that will provide a comprehensive financial management plan which develops projected system operating results for the next five fiscal years and has the ability to forecast out as far as 30 years.

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

SECTION 1. City Council adopts Resolution No. 2013 -18UA awarding the professional services agreement for the Water, Wastewater and Reclaimed Water Rate Study to Willdan Financial Services of Temecula, California, for an amount not to exceed $58,963.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments and appropriations from the Waste Water Fund to Account No. 680-8000-454.33-11 in an amount of $20,000 and is authorized to approve additional costs within the approved $11,000 contingency.

SECTION 3. The City Manager is authorized to execute the Professional Services Agreement with Willdan Financial Services of Temecula, California, in a form approve by the City Attorney. This authorization will be rescinded if the contract agreement is not executed by both parties within sixty (60) days of the date of this resolution.

PASSED, APPROVED AND ADOPTED this 8th day of October, 2013.

Deborah Franklin, Chairperson
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 to the Banning Utility Authority of the City of Banning, do hereby certify that the foregoing Resolution No. 2013-18UA was duly adopted by the Banning Utility Authority of the City of Banning at a Joint Meeting thereof held on the 8th day of October, 2013, by the following vote, to wit.

AYES:	Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin
NOES:	None
ABSTAIN:	None
ABSENT:	None

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

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CITY OF BANNING
AGENDA REPORT

MEETING OF: July 14, 2015

TO: Mayor and City Council

FROM: Dean Martin, Interim City Manager

SUBJECT: Approval of the attached Resolution Approving the Economic Refunding of the Banning Utility Authority Water Enterprise Revenue Bonds Refunding and Improvement Projects, 2005 Series

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RECOMMENDATION:

Adopt a resolution of the "City Council of Banning acting as the Legislative Body of Banning Utility Authority authorizing the issuance of its Water Enterprise Revenue Bonds Refunding and Improvement Projects, 2015 Series, approving a Bond Purchase Agreement, an Indenture, an Escrow Agreement, a Preliminary Official Statement, and taking certain other actions in connection therewith."

BACKGROUND:

During the winter of 2005, the Banning Utility Authority, through the City of Banning, issued two series of bonds – one for water and one for wastewater – to assist in the financing of water and wastewater infrastructure projects for the City's service areas.

The water series financed the construction of a reservoir, additional transmission lines, an irrigation water system, and several wells. Additionally, the water bonds refinanced two bond issues – Series 1986 and Series 1989. The wastewater series financed a 1.5 MGD (million gallons per day) tertiary wastewater treatment plant.

With interest rates near historic lows, the City's financing team analyzed the potential to refund (refinance) the existing bonds without extending the term of the original issuance and found that the water bonds presented significant savings to the City.

Based on today's rates (subject to market conditions), the bonds can now be refunded with an estimated net-present-value savings of approximately $3.2 million.

In keeping with the City's policy goals and objectives, the refunding supports the City's goal of providing sound fiscal stewardship for the City of Banning. In an effort to effect the most benefit from the low interest-rate environment, City staff and the financing team have moved with significant expediency.

Attached for your review are the various documents needed to effect the refunding of the Electric and Water Utility Bonds. Below is a brief description of the key documents attached.

Key Bond Documents

Preliminary Official Statements: Serves as the primary marketing and disclosure document for potential buyers of the bonds. It explains credit and legal provisions, gives an overview of operations, and provides key operating and financial data.

Trust Indentures: This agreement sets forth the rights and protections of bondholders and establishes the trust relationship between the bondholders and US Bank, the trustee. It provides for the authentication and delivery of the Bonds, establishes the terms and conditions upon which the Bonds are to be issued and secured, and secures the payment of the principal and interest.

Escrow Agreement: The refunding proceeds of the bond sale are invested in government securities which is then placed into an escrow account. Those funds are invested at a rate which will result in sufficient funds being available to call the bonds for redemption at the first opportunity.

Continuing Disclosure Agreement: Once the bonds are issued, regular and periodic operational and financial information must be made available for existing bondholders and potential investors in the secondary market. Events of Default must also be disclosed. This document memorializes what is required and when as well as where the information will be made available.

FISCAL IMPACT:

The recommended action does not, in itself, cause any new financial obligations. At today's interest rates (subject to the market at actual time of pricing the bonds and offering them to the market), the bonds can be refunded with an estimated net-present-value savings of approximately $3.2 million, or $225,000 annually.

RECOMMENDED BY:

Dean Martin
Interim City Manager

RESOLUTION NO. 2015-11UA

RESOLUTION OF THE BANNING UTILITY AUTHORITY AUTHORIZING THE ISSUANCE ITS WATER ENTERPRISE REVENUE BONDS, REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $35,000,000; APPROVING AN INDENTURE OF TRUST, AN ESCROW AGREEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND A PRELIMINARY OFFICIAL STATEMENT; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Banning Utility Authority (the "Authority") is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose of financing and refinancing capital improvements of member entities of the Authority; and

WHEREAS, under the Bond Law, the Authority is authorized to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities and to provide financing and refinancing for public capital improvements of public entities; and

WHEREAS, the Authority previously issued its $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), which are currently outstanding in the aggregate principal amount of $29,165,000; and

WHEREAS, the Authority desires to issue its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "2015 Bonds") to refund the 2005 Bonds currently outstanding[, and finance certain capital improvements to the Water Enterprise]; and

WHEREAS, the Authority has reviewed the documentation related to the issuance of the 2015 Bonds; and

NOW, THEREFORE, THE BANNING UTILITY AUTHORITY DOES FIND, DETERMINE AND RESOLVE AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and the Authority hereby so finds and determines.

Section 2. The Authority hereby authorizes the issuance of its 2015 Bonds in the aggregate principal amount not to exceed $[_____]. The 2015 Bonds may be issued in one or more series as determined by the Responsible Officer (as defined below).

Section 3. The Authority hereby approves the Indenture of Trust, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved

by the Chairperson, the Vice Chairperson, the Executive Director, the Treasurer, the Secretary, their designee, or any members of the Board of Directors (each, a "Responsible Officer"), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The Authority hereby approves the Escrow Agreement, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The Authority hereby approves the Continuing Disclosure Agreement, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The Authority hereby approves the Bond Purchase Agreement, substantially in the forms annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Bond Purchase Agreement shall provide an underwriter's discount of not greater than [____]%, exclusive of original issue discount, and a true interest cost of not greater than [_____]%.

Section 7. The Authority hereby approves the Preliminary Official Statement relating to the 2015 Bonds (the "Preliminary Official Statement"), substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer. Each of the Responsible Officers is hereby authorized to execute and deliver a certificate deeming the Preliminary Official Statement final for purposes of SEC Rule 15c2-12. Upon the pricing of the 2015 Bonds, each of the Responsible Officers is hereby authorized to prepare and execute a final Official Statement (the "Official Statement"), substantially the form of the Preliminary Official Statement, with such additions thereto and changes therein as approved by any Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority hereby authorizes the distribution of the Preliminary Official Statement and the Official Statement by the underwriter in connection with the offering and sale of the 2015 Bonds.

Section 8. Each Responsible Officer is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution including, but not limited to, the arrangement for the insuring of all or any portion of the Bonds with any municipal bond insurer.

Section 9. The Secretary shall certify to the adoption of this Resolution, which shall be in full force and effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, Chairperson

ATTEST:

Marie A. Calderon, Secretary

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PRELIMINARY OFFICIAL STATEMENT DATED JULY __, 2015

NEW ISSUE BOOK ENTRY ONLY

RATINGS
Insured: ***Standard & Poor's:*** **"____"**
Underlying: ***Standard & Poor's:*** **"____"**
(See "RATINGS" herein)

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, under existing statutes, regulations, rulings and court decisions, and assuming compliance with the tax covenants described herein, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. It is also the opinion of Bond Counsel that under existing law interest on the Bonds is exempt from personal income taxes of the State of California. See "TAX MATTERS."

BANNING UTILITY AUTHORITY

$_____*

Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series

Dated: Date of Delivery **Due: November 1, as shown on inside cover**

The Banning Utility Authority (the "Authority") is issuing its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"), as fully registered bonds, registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds will be available to ultimate purchasers of the Bonds in denominations of $5,000 or any integral multiple thereof under the book-entry system maintained by DTC. Ultimate purchasers of the Bonds will not receive physical certificates representing their interest in the Bonds. So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, references herein to the owners shall mean Cede & Co., and shall not mean the ultimate purchasers of the Bonds. Payment of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by U.S. Bank National Association, as trustee (the "Trustee"), so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursement of such payments to DTC's Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants, as more fully described herein. See "APPENDIX E – BOOK-ENTRY ONLY SYSTEM."

The Bonds will bear interest at the rates set forth on the inside cover, payable semi-annually on May 1 and November 1 of each year, commencing on November 1, 2015, as described herein. The Bonds will be issued under an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and the Trustee. Proceeds of the Bonds will be used to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the Authority's $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), currently outstanding in the aggregate principal amount of $29,165,000; and (iii) pay costs of issuance of the Bonds.

The Bonds are subject to optional and mandatory redemption as described herein. See "THE BONDS."

The Bonds are special obligations of the Authority. The Bonds are payable from, and are secured by a charge and lien on, Net Water Revenues. The Bonds are also payable from, and are secured by a charge and lien on, amounts held from time to time in certain funds and accounts established under the Indenture. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein.

[The scheduled payment of principal of and interest on the Bonds, when due, will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Bonds by [_____]. See "BOND INSURANCE" herein.]

Neither the faith and credit nor the taxing power of the City, the County of Riverside (the "County"), the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Agency"), the State of California (the "State"), or any political subdivision thereof is pledged to the payment of the principal of or interest on the Bonds. None of the City, the County, the Agency, the State or any political subdivision thereof, other than the Authority, is liable for the payment of the Bonds. In no event shall the Bonds or any interest or redemption premium thereon be payable out of any funds or properties other than those of the Authority as provided in the Indenture. The Authority has no taxing power. The Bonds do not constitute an indebtedness of the Agency, the City, the County, the State or any political subdivision thereof, other than the Authority, within the meaning of any constitutional or statutory debt limitation or restriction. [REFERENCE PARKING AUTHORITY, IF APPLICABLE]

This cover page contains certain information for quick and general reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Bonds are offered when, as and if issued by the Underwriters, subject to approval of legality by Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed on for the Authority by Norton Rose Fulbright US LLP as Disclosure Counsel, for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the Authority and the City by Aleshire & Wynder, LLP. It is anticipated that the Bonds will be available for delivery through the book-entry facilities of DTC on or about August __, 2015.

[STIFEL LOGO] [WILLIAMS CAPITAL LOGO]

Dated: _____, 2015

* Preliminary; subject to change.

MATURITY SCHEDULE

$_____*

Banning Utility Authority
Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series
(Base CUSIP† 066626)

Maturity (November 1)	Principal Amount	Interest Rate	Yield	CUSIP†

$_____ _____% Term Bonds due _____, Yield ____%; CUSIP†: _____

* Preliminary; subject to change.

† CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. CUSIP numbers have been assigned by an independent company not affiliated with the Authority and are included solely for the convenience of investors. None of the Authority, the City, the Underwriters, or the Financial Advisor, are responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Bond.

CITY OF BANNING
BANNING UTILITY AUTHORITY

$_____
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES

CITY/COUNCIL/AUTHORITY BOARD MEMBERS/ELECTED OFFICIALS

Debbie Franklin, *Mayor/Chairperson*
Art Welch, *Mayor Pro Tem/Vice Chairperson*
Edward Miller, *Council Member/Board Member*
George Moyer, *Council Member/Board Member*
Don M. Peterson, *Council Member/Board Member*
Marie A. Calderon, *City Clerk/Authority Secretary*

CITY/AUTHORITY STAFF

Dean Martin, *Interim City Manager/Executive Director*
Aleshire & Wynder, LLP, *City Attorney/Authority Counsel*
Fred Mason, *Public Utilities Director*
Art Vela, *Acting Public Works Director*

SPECIAL SERVICES

BOND COUNSEL/DISCLOSURE COUNSEL

Norton Rose Fulbright US LLP
Los Angeles, California

FINANCIAL ADVISOR

Urban Futures, Inc.
Orange, California

TRUSTEE

U.S. Bank National Association
Los Angeles, California

DISSEMINATION AGENT

Willdan Financial Services
Temecula, California

VERIFICATION AGENT
[TBD]

No dealer, broker, salesperson or other person has been authorized by the Authority, the City or the City's Public Works Department (the "Department") to give any information or to make any representations, other than as contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by the Authority, the City or the Department. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers of the Bonds. Statements contained in this Official Statement which involve estimates, forecasts, or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representation of facts.

All other information set forth herein has been furnished by the Authority, the City, and the Department, and includes information obtained from other sources which are believed to be reliable. The information and expressions of opinion contained herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority, the City, or the Department since the date hereof. This Official Statement is submitted with respect to the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose, unless authorized in writing by the Authority, the City, and the Department. All summaries of the documents and laws are made subject to the provisions thereof and do not purport to be complete statements of any or all such provisions.

The Underwriters have provided the following two paragraphs for inclusion in this Official Statement:

The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS, INSTITUTIONAL INVESTORS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ABOVE, AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access ("EMMA") web site. The City also maintains a web site. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Bonds.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, SEC Rule 15c2-12.

FORWARD-LOOKING STATEMENTS

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are generally identifiable by the terminology used such as "plan," "project," "expect," "anticipate," "intend," "believe," "estimate," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Except as specifically set forth herein, the City does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

TABLE OF CONTENTS

Page

INTRODUCTION 1

- The Bonds 1
- Use of Proceeds 1
- The Water Enterprise 1
- Further Information 2

THE AUTHORITY 2

THE BONDS 2

- General 2
- Optional Redemption 3
- Mandatory Sinking Fund Redemption* 3
- Special Mandatory Redemption From Insurance or Condemnation Proceeds 5
- Notice of Redemption 5
- Selection of Bonds for Redemption 5
- Effect of Redemption 6
- Book-Entry Only System 6

PLAN OF FINANCE 6

- General 6
- Financing of Capital Improvements 6
- Refunding of 2005 Bonds 6

ESTIMATED SOURCES AND USES OF FUNDS 7

BOND DEBT SERVICE 7

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS 8

- Rates and Charges 8
- Application of Revenues 9

PARITY OBLIGATIONS 9

- Issuance of Additional Parity Obligations 9

BOND INSURANCE 10

THE WATER ENTERPRISE 10

- General 10
- Management and Employees 11
- Water Sources and Supply 11
- Regulatory Compliance & Water Treatment 14
- Water Rates and Charges 15
- Water Shortage Contingency Plan [DISCUSS] 16
- Demand and Sales 18
- Capital Improvement Program 20
- Collection Procedures 20
- Historic Water Enterprise Operating Results 22
- Projected Operating Results and Coverage Ratio for the Water Enterprise 23
- Retirement Programs 24

CONSTITUTIONAL LIMITATIONS 25

TABLE OF CONTENTS
(continued)

Page

Constitutional Limitations on Governmental Spending 25
Proposition 218 26
Proposition 26 27
Future Initiatives 28

RISK FACTORS 28

Bonds are Limited Obligations 28
Limitations on Revenues 29
Enterprise Expenses And Collections 29
No Liability of the Authority to the Owners 29
Limitations on Remedies Available to Owners of the Bonds and the Trustee 29
Limited Recourse on Default 29
Loss of Tax Exemption 30
Secondary Market 30
Forecasts and Forward-Looking Statements 30
Regulatory Risk 30
Casualty Risk; Earthquakes 31

UNDERWRITING 31

CERTAIN LEGAL MATTERS 31

TAX MATTERS 32

Tax Exemption 32
Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds 33
Other Tax Consequences 34

VERIFICATION OF MATHEMATICAL COMPUTATIONS 34

LITIGATION 34

RATINGS 35

CONTINUING DISCLOSURE 35

MISCELLANEOUS 35

AUTHORIZATION OF OFFICIAL STATEMENT 35

APPENDIX A – GENERAL INFORMATION ABOUT THE CITY OF BANNING A-1
APPENDIX B – AUDITED FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR ENDED JUNE 30, 2014 ..... B-1
APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS C-1
APPENDIX D – FORM OF CONTINUING DISCLOSURE AGREEMENT D-1
APPENDIX E – BOOK-ENTRY ONLY SYSTEM E-1
APPENDIX F – PROPOSED FORM OF OPINION OF BOND COUNSEL F-1

OFFICIAL STATEMENT

BANNING UTILITY AUTHORITY

$_____*
Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series

INTRODUCTION

This Official Statement of the Banning Utility Authority (the "Authority") sets forth certain information in connection with the sale by the Authority of its $_____* Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"). This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of Bonds to potential investors is made only by means of the entire Official Statement. The capitalization of any word not conventionally capitalized or otherwise defined herein indicates that such word is defined in a particular agreement or other document and, as used herein, has the meaning given it in such agreement or document. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" for a summary of certain of such definitions.

The Bonds

The Bonds are being issued pursuant to the Constitution and the laws of the State of California (the "State"), including the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6584) of the California Government Code, as amended (the "Bond Law"), and pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee").

The Bonds are special obligations of the Authority, and are payable from, and are secured by a charge and lien on, Net Water Revenues and from amounts held from time to time in certain funds and accounts established under the Indenture. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "RISK FACTORS."

Use of Proceeds

Proceeds of the Bonds will be used to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the Authority's $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), currently outstanding in the aggregate principal amount of $29,165,000; and (iii) pay costs of issuance of the Bonds. See "PLAN OF FINANCE" and "ESTIMATED SOURCES AND USES OF FUNDS."

The Water Enterprise

The Authority leases from the City the water system and facilities appurtenant (the "Water Enterprise"), pursuant to that certain Water Enterprise Lease Agreement, dated as of December 1, 2005

* Preliminary; subject to change.

(the "Water Enterprise Lease Agreement"). Pursuant to the Water Enterprise Lease Agreement, the Authority agrees to lease the Water Enterprise from the City, and the City agrees to lease, and does lease, the Water Enterprise to the Authority. The term of the Water Enterprise Lease Agreement ends on June 30, 2060. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS"

Pursuant to the Water Enterprise Management Agreement, dated as of December 1, 2005 (the "Water Management Agreement"), the City operates and maintains the Water Enterprise on behalf of the Authority. Pursuant to the Water Management Agreement the Authority appoints and retains the City as the manager and operator of the Water Enterprise, until June 30, 2060, with the full power and authority to carry out all responsibilities of manager and operator upon the terms and subject to the conditions set forth in the Water Management Agreement. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS"

Further Information

Brief descriptions of the Bonds, the Indenture, the Lease, the Bond Law, the Authority, the City, and the Water Enterprise are included in this Official Statement. Such information does not purport to be comprehensive or definitive. All references herein to the Indenture, the Lease, the Bond Law, the Constitution and the laws of the State, and the proceedings of the Authority and the City, are qualified in their entirety by reference to each such document, statute, constitution or proceedings. References herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Indenture. Copies of the Indenture and the Lease are available for inspection at the office of the Authority.

THE AUTHORITY

The Authority is a joint powers agency organized and existing under and by virtue of Articles 1 through 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Califomia Government Code, as amended. The City and the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Agency") entered into a Joint Exercise of Powers Agreement dated as of July 12, 2005 to establish the Authority. The Authority is governed by a Board of five Members comprised of the same individuals wbo comprise the City Council of the City. The Authority was created for the purpose, among other things, of providing financing relating to any water utility system or service through the lease, acquisition or construction by the Authority of such public capital improvements. Under the Bond Law, the Autbority has the power to issue bonds to pay the costs of public capital improvements. [REFERENCE PARKING AUTHORITY, IF APPLICABLE]

THE BONDS

General

The Bonds will be issued in fully registered form without coupons in Authorized Denominations. The Bonds will initially be registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York, New York ("DTC"), and will be evidenced by one Bond for each of the maturities in the principal amounts shown on the inside cover page of this Official Statement. DTC is the depository for the Bonds, and registered ownership may not thereafter be transferred except as set forth in the Indenture. The Bonds will mature on November 1 in the years and in the amounts shown on the inside cover page of this Official Statement and will bear interest at the rates shown on the inside cover of this Official Statement.

Interest on the Bonds will be payable semi-annually on each May 1 and November 1, commencing on November 1, 2015, (each, an "Interest Payment Date"), calculated based on a 360-day year of twelve (12) thirty-day months, to the person whose name appears on the registration books of the Trustee as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed by first class mail to the Owner at the address of such Owner as it appears on the registration books; provided, however, that payment of interest or principal may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee prior to the applicable Record Date. Principal of any Bond will be paid by check or wire of the Trustee upon presentation and surrender thereof at the Trust Office. Principal of and interest on the Bonds will be payable in lawful money of the United States of America.

Each Bond will be dated as of the Delivery Date and will bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before October 15, 2015, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Optional Redemption*

The Bonds maturing on or after November 1, 2026 shall be subject to optional redemption, as a whole or in part on any date prior to the maturity thereof, at the option of the Authority, on or after November 1, 2025, from funds derived by the Authority from any source, at the redemption price equal to the principal amount of the Bonds to be redeemed together, witb accrued but unpaid interest to the redemption date, without premium.

Mandatory Sinking Fund Redemption*

The Bonds maturing on November 1, 20__, and November 1, 20__ (the "Term Bonds") are subject to mandatory redemption, in part by lot, from Sinking Account payments set forth in the following schedules on November 1, in each year, commencing November 1, 20__, and November 1, 20__, respectively, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to the Indenture, the total amount of Sinking Account payments to be made subsequent to such redemption shall be reduced in an amount equal to the principal amount of the Term Bonds so redeemed by reducing each such future Sinking Account payment on a pro rata basis (as nearly as practicable) in integral multiples of $5,000, as shall be designated pursuant to written notice filed by the Authority with the Trustee.

* Preliminary; subject to change.

Schedule of Mandatory Sinking Fund Payments
Term Bond Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

Schedule of Mandatory Sinking Fund Payments
Term Bond Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

In lieu of such redemption, the Trustee may apply amounts in the Sinking Account to the purchase of Term Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as may be directed by the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Term Bonds, as set forth in a written request of the Authority. The par amount of Term Bonds so purchased by the Authority in any twelve month period immediately preceding any mandatory Sinking Account payment date in the table above will be credited towards and will reduce the principal amount of Term Bonds required to be redeemed on the succeeding Principal Payment Date.

Special Mandatory Redemption From Insurance or Condemnation Proceeds

The Bonds shall also be subject to redemption as a whole or in part on any date, pro rata by maturity and by lot within a maturity (in a manner determined by the Trustee) from moneys deposited in the Redemption Fund to the extent insurance proceeds received with respect to the Water Enterprise are not used to repair, rebuild, or replace the Water Enterprise pursuant to the Indenture, or to the extent of condemnation proceeds received with respect to the Water Enterprise and elected by the Authority to be used for such purpose pursuant to Indenture, or to the extent excess funds remain upon abandonment or completion of improvements to the Water Enterprise pursuant to the Indenture, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption.

Notice of Redemption

When redemption is authorized or required, pursuant to the Indenture, the Trustee is required to give written notice of the redemption of Bonds to the Owners of Bonds designated for redemption at their addresses appearing on the bond registration books, to certain Securities Depositories, and to one or more Information Services, all as provided in the Indenture, by first class mail, postage prepaid, no less than twenty (20) nor more than sixty (60) days prior to the date fixed for redemption. Neither failure to receive such notice nor any defect in the notice so mailed will affect the sufficiency of the proceedings for redemption of such Bonds or the cessation of accrual of interest on the redemption date. Any notice given pursuant to this paragraph may be conditional and/or rescinded by written notice given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this paragraph.

Selection of Bonds for Redemption

Whenever provision is made in the Indenture for the redemption of less than all of the Bonds secured thereunder, the Trustee shall select the Bonds to be redeemed from all Bonds or such given portion thereof not previously called for redemption, pro rata by maturity or, at the election of the Authority set forth in a written request of the Authority, filed with the Trustee, from such maturities as the Authority shall determine, and by lot within a maturity in any manner which the Trustee in its sole discretion shall deem appropriate and fair. Any such determination shall be deemed conclusive. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate $5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

Effect of Redemption

Once notice of redemption has been duly given as described above, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption are held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed pursuant to the provisions of the Indenture shall be canceled by the Trustee upon surrender thereof and destroyed.

Book-Entry Only System

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered bonds registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. Ultimate purchasers of Bonds will not receive physical certificates representing their interest in the Bonds. Payment of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by the Trustee so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursement of such payments to DTC's Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants. See "APPENDIX E – BOOK-ENTRY ONLY SYSTEM."

PLAN OF FINANCE

General

The Bonds are being issued to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the 2005 Bonds; and (iii) pay costs of issuance of the Bonds.

Financing of Capital Improvements

Approximately $_____ of the net proceeds of the Bonds will be used to finance or refinance (as described below) various rehabilitation and replacement projects to improve the Water Enterprise's service reliability, as well as the construction of new facilities and upgrades to improve and augment the water supply and delivery capabilities of the Water Enterprise, including construction of _____.

Refunding of 2005 Bonds

A portion of the proceeds of the Bonds, together with other available funds, will be deposited into an escrow fund (the "Escrow Fund") held under an Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), and applied to pay the principal and interest with respect to the 2005 Bonds becoming due prior to November 1, 2016 (the "Redemption Date") and on the Redemption Date for the purpose of refunding all of the outstanding 2005 Bonds. The 2005 Bonds were issued pursuant to an Indenture of Trust, dated as of December 1, 2005 (the "2005 Indenture"), by and between the Authority and U.S. Bank National Association as Trustee thereunder.

The amounts deposited in the Escrow Fund will be held solely for the 2005 Bonds and will not be available to pay the principal of or interest on the Bonds or any obligations other than the 2005 Bonds. _____ (the "Verification Agent"), upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to it, relating to the sufficiency of moneys deposited into the Escrow Fund to pay the principal, interest and redemption premium of the 2005 Bonds. See "VERIFICATION OF MATHEMATICAL COMPUTATIONS."

ESTIMATED SOURCES AND USES OF FUNDS

The following table set forth the estimated sources and uses of funds related to the issuance of the Bonds.

Sources of Funds	
Principal Amount of Bonds	$
Amounts Held Under 2005 Indenture	
Less: Underwriters' Discount	
[Net] Original Issue Premium (Discount)	
Total Sources of Funds	$
Uses of Funds:	
Deposit to Costs of Issuance Fund[(1)]	$
Deposit to Escrow Fund	
Deposit to Water Project Fund	
Total Uses of Funds	$

(1) Costs of issuance include fees and expenses of the Financial Advisor, Bond Counsel, Disclosure Counsel, the Trustee, Trustee's counsel, verification agent, bond insurance and surety bond premium, if any, printing expenses and other costs of issuing the Bonds.

BOND DEBT SERVICE

The following table sets forth the annual debt service schedule for the Bonds.

Bond Year Ending	Principal	Interest	Total

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

Pursuant to the Indenture, the Bonds are payable from Net Water Revenues and other amounts held under the Indenture and investment earnings thereon, all as set forth in the Indenture. The Net Water Revenues pledged to the payment of the Bonds are calculated by deducting from the Gross Water Revenues (as defined below) in each Fiscal Year the amounts required for operation and maintenance of the Water Enterprise, as described below. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Application of Revenues" below.

The Bonds are not secured by, and the Owners of Bonds have no security interest in or mortgage on the property of the Water Enterprise or of the Authority. Default by the Authority will not result in loss of any property. Should the Authority default, the Trustee may declare all unpaid principal, together with accrued interest at the rate or rates specified on the outstanding Bonds from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall become due and payable, and take whatever action at law or in equity may appear necessary or desirable to accelerate the principal of the Outstanding Bonds, or enforce performance and observance of any obligation, agreement or covenant of the Authority under the Indenture. See "RISK FACTORS – Limited Recourse on Default."

Rates and Charges

Pursuant to the Indenture, the Authority covenants to fix, prescribe, revise and collect (or cause to be fixed, prescribed, revised and collected, as necessary and applicable) rates, fees and charges for the Water Enterprise, for the services and improvements furnished by said enterprise during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield revenues (the "Gross Water Revenues") from the Water Enterprise sufficient to pay the following amounts in the following order of priority:

(a) Water Operation and Maintenance Expenses estimated by the Authority to become due and payable in such Fiscal Year;

(b) Debt Service payments on the Bonds as they become due and payable during such Fiscal Year, without preference or priority, except to the extent such Debt Service payments are payable from the proceeds of the Bonds or from any other source of legally available funds of the Authority that have been deposited with the Trustee for such purpose prior to the commencement of such Fiscal Year; and

(c) other payments required to meet any other obligations of the Authority that are charges, liens, encumbrances upon, or which are otherwise payable, from Gross Water Revenues during such Fiscal Year.

The Authority also covenants under the Indenture to cause to be fixed, prescribed, revised and collected, rates, fees and charges for the services and improvements furnished by the Water Enterprise during each Fiscal Year that are sufficient to yield Net Water Revenues that are at least equal to one hundred fifteen percent (115%) of the Maximum Annual Debt Service payments coming due and payable in such Fiscal Year under the Indenture.

Pursuant to the Lease, the City has covenanted to the Authority that the City will, upon receipt of a request from the Authority documenting the need to fix, prescribe, revise, or collect certain rates, fees or charges, take the necessary actions to ensure that the Authority is able to meet its obligations as specified above.

Application of Revenues

There is established under the Indenture a Water Fund, such fund to be held separately and maintained in trust by the Authority, into which fund Gross Water Revenues will be deposited, to be applied as follows:

> after payment of all Water Operation and Maintenance Expenses (including amounts reasonably required to be set aside in contingency reserves for Water Operation and Maintenance Expenses the payment of which is not then immediately required) as they become due and payable, to the Trustee, on or before the tenth (10th) Business Day preceding each Interest Payment Date, provided no Event of Default has occurred and is continuing, for deposit into the Bond Fund for the Bonds the amount equal to (i) the aggregate amount of interest coming due and payable on the Bonds on the next succeeding Interest Payment Date, plus (ii) one-half of the aggregate amount of the principal coming due and payable on the next succeeding Principal Payment Date, which payments shall be made on a parity basis with any outstanding Parity Obligations.

Amounts remaining in the Water Fund immediately after making the transfers required to be made under the Indenture shall be released to the Authority free and clear of the lien of said Indenture, to be used by the Authority for any lawful purpose including but not limited to making lease payments pursuant to the Lease.

PARITY OBLIGATIONS

The Authority covenants that no bonds or other indebtedness shall be issued or incurred that are payable in whole or in part out of the Net Water Revenues on a basis senior to the Bonds. Additional obligations may be issued on a parity with the Bonds under the Indenture or on a basis subordinate to the Bonds to the extent required. "Parity Obligations," means any leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the Authority payable and secured by a pledge of and lien upon any of the Net Water Revenues on a parity with the Bonds, entered into or issued pursuant to and in accordance with the Indenture. Following the issuance of the Bonds and the refunding of the 2005 Bonds, no Parity Obligations, other than the Bonds, will be outstanding.

Issuance of Additional Parity Obligations

Except for obligations incurred to prepay or post a security deposit for the payment of the Bonds, the Authority may issue or incur Parity Obligations under the Indenture, during the term of the Bonds only if:

(a) no Event of Default has occurred and is continuing under the Indenture;

(b) the Net Water Revenues, calculated in accordance with generally accepted accounting principles, as shown by the books of the Authority for the most recent completed Fiscal Year for which audited financial statements are available, or for any more recent consecutive twelve (12) month period selected by the Authority, in either case verified by a certificate or opinion of an independent accountant or financial consultant, are at least equal to [120%] of the amount of Maximum Annual Debt Service, plus maximum annual debt service on all Parity Obligations then Outstanding (including the Parity Obligations then proposed to be issued); and **[DISCUSS]**

Either or both of the following items may be added to such Net Water Revenues for the purpose of applying the restriction contained in this paragraph (b):

1. An allowance for revenues from any additions to or improvements or extensions of the Water Enterprise to be constructed with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been from moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 70% of the estimated additional average annual Net Water Revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Obligation, all as shown by the certificate or opinion of a qualified independent consultant employed by the Authority, may be added to such Net Water Revenues for the purpose of applying the restriction contained in this paragraph (b).

2. An allowance for earnings arising from any increase in the charges made for service from the Water Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which the Net Water Revenues

would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a qualified independent engineer employed by the Authority.

(c) upon the issuance of such Parity Obligations a reserve fund shall be established for such Parity Obligations in an amount equal to the reserve requirement with respect to such Parity Obligations.

BOND INSURANCE

[TO COME, IF APPLICABLE]

THE WATER ENTERPRISE

General

Pursuant to the Water Lease, the Water Enterprise consists of all properties and assets, real or personal, tangible and intangible, of the water system of the City now or hereafter existing, used or pertaining to the production, transmission, distribution and sale of water, including all additions, extensions, expansions, improvements and betterments thereto, and equippings thereof; provided, however, that to the extent the City is not the sole owner of an asset or property, only the City's ownership interest in such asset or property shall be considered a part of the Water Enterprise.

Service Area. The City is the sole provider of water service for residential, commercial, industrial and agricultural users within most of the City. The only exception is a small portion on the northern part of the City that is serviced by the Banning Heights Mutual Water Company. Before the City started providing water service to its residents, the old Banning Water Company, incorporated in 1884, provided that service. The City acquired the assets of the Banning Water Company in 1967. The City also purchased the Mountain Water Company, which supplied water to its customers from groundwater wells within the City and in the unincorporated portion of the County, in 1997. The City has provided water service to all other residents for over 48 years.

Background. The City is underlain by the San Gorgonio Pass and Banning Canyon Groundwater Basins. Within the City boundary, the San Gorgonio Pass Basin is subdivided into a series of storage units: the Banning Bench, Banning, Beaumont, and Cabazon storage units. The Banning Canyon Groundwater Basin in turn consists of three storage units known as the Upper, Middle, and Lower Banning Canyon storage units.

The groundwater basins are naturally recharged through the percolation of runoff, direct precipitation, subsurface inflow, and artificial recharge. The Banning Canyon area receives water from the percolation of canyon flows through the gravelly soils of the canyon bottom. The San Gorgonio River running southerly through the Banning Canyon provides intake areas for distributing water to spreading ditches that interconnect with spreading ponds to enhance percolation. The San Gorgonio Basin is recharged naturally with runoff from the adjacent San Jacinto and San Bernardino Mountains.

Management and Employees

Below is a biographical summary of the Acting Public Works Director. **[Add others?]**

Art Vela – Mr. Vela has served as the City's Acting Public Works Director r since [_____]. In that capacity, Mr. Vela oversees the day-to-day planning and administration of all activities and programs of the Water Enterprise, as well as _____. Previously, Mr. Vela was the City's _____. Prior to joining the City, Mr. Vela was _____. Mr. Vela holds a Bachelor of Science degree from _____.

As of June 30, 2014, the Water Enterprise directly employed [___] employees. _____ of these employees are represented by [_____] in all matters pertaining to wages, benefits and working conditions, while the [___] remaining mid-manager level employees are represented by the [_____]. The current memorandum of understanding with the [_____] expires in [_____]. In addition, [__] employees provided customer service support such as meter reading, field services and billing, while also providing support for the City's Electric System. [_____] of these [___] employees report to the City's Finance Department and five report to the Electric Department. [___] of these employees are represented by the [_____], while the remaining mid-manager level employee is represented by [_____]. All employees are members of the California Public Employees Retirement System. See "THE WATER ENTERPRISE – Retirement Program."

Water Sources and Supply

The San Gorgonio Pass divides two major watersheds, the Santa Ana River Watershed to the west and the Salton Sea Watershed to the east. The majority of the City drains towards the Salton Sea Watershed. The San Gorgonio River cuts through the southern area of the City's water planning area forming Banning Canyon. A portion of the City overlies the adjudicated Beaumont Basin, which is the main source of water for the City.

The first recorded claims to the waters of the Banning Canyon date back to 1875. The Banning Water Company was incorporated in 1884 to provide for the delivery of domestic irrigation water to various customers of the City. In 1913 the Banning Water Company entered into an agreement with the Consolidated Reservoir and Power Company for the delivery of 13.26 cubic feet per second of water from the headwaters of the Whitewater River. The Banning Heights Mutual Water Company and the City now receive a portion of that water. In that same year, the Banning Water Company began to operate as a public utility under the rules of the Railroad Commission (now the Public Utilities Commission). In 1957, an order was issued establishing rates for both general metered services and measured irrigation services. The City acquired the Banning Water Company in 1967. In 1997, the City purchased the Mountain Water Company, which supplied water to its customers from groundwater wells located in the City and in the unincorporated portion of the County.

In 2003, the City and other major water suppliers in the area developed a stipulated agreement with the San Timoteo Watershed Management Authority adjudicating pumping and storage rights in the Beaumont Basin. Also in 2003, the City and the Beaumont Cherry Valley Water District, another local water producer, entered into a cooperative agreement to jointly own, operate and construct three new production wells, to build a water treatment facility and to interconnect their existing potable water distribution systems and recycled water systems. This agreement arose out of the need to implement the groundwater management plan for the shared use and interest in the Beaumont Basin.

In February of 2004 a stipulated judgment (the "Judgment") adjudicating the groundwater pumping and storage rights in the Beaumont Basin was approved by the Superior Court of Califomia. The

Judgment establishes pumping rights among the two classes of pumpers: overlying and appropriator. The City is classified as an appropriator. Under the Judgment, the overlying pumpers were assigned fixed rights to 8,650 acre feet per year ("AFY"), which is considered a safe yield, with some flexibility to vary their maximum use during any five-year period. As an appropriator, the City's rights are stated as 31.43 percent of the 8,650 AFY that is not used by the overlying pumpers. In addition, the Judgment provides that if the City provides water service to the land of an overlying pumper, said pumper must assign its water rights to the City. On April 1, 2015 the Beaumont Basin Watermaster approved the Redetermination of the Beaumont Basin Safe Yield. The redetermined safe yield of the Beaumont Basin is 6,700 AFY and will remain for 10 years.

The Judgement authorized appropriators to a controlled overdraft and supplemental recharge allocation of 160,000 AFY for the first 10 years of operation starting in 2004. At the end of Calendar Year 2014 the City's storage account balance is equal to 47,532.70 acre feet.

The amount of groundwater in storage within the City, including the portion of the Beaumont Storage Unit located within the City, is estimated to be between 1.4 and 2.6 million acre-feet. The recommended safe yield for the storage units, as calculated in the *Maximum Perennial Yield Estimates for the Banning and Cabazon Storage Units and Available Water Supply form the Beaumont Basin* (Geoscience, 2011), are presented in Table No. 1, below. In the Geoscience report, the maximum perennial yield was determined by storage unit.

The following table reflects the current groundwater sources for the City and the recommended range of yield.

TABLE NO. 1
SOURCES OF GROUNDWATER CITY WATER

Sources	Perennial Yield (AFY)
Banning Storage Unit	1,130
Banning Bench Storage Unit	1,960
Banning Canyon Storage Unit	4,070
Cabazon Storage Unit	5,265
Beaumont Storage Unit	2,514
Grand Total	14,939

Source: City of Banning.

The City's existing and planned water supply sources are reflected in the table below.

TABLE NO. 2
EXISTING AND PLANNED WATER SOURCES OF THE CITY

Water Supply Source	2015	2020	2025	2030	2035
Banning Storage Unit	1,218	1,130	1,130	1,130	1,130
Banning Bench Storage Unit	1,960	1,960	1,960	1,960	1,960
Banning Canyon Storage Unit	4,070	4,070	4,070	4,070	4,070
Beaumont Storage Unit	2,514	2,514	2,514	2,514	2,514
Cabazon Storage Unit	1,185	1,405	1,648	1,916	2,212
Recycled Water Use[1]	0	1,680	1,680	1,680	1,680
Return Flows from Recycled Water Irrigation [1]	0	420	420	420	420
Return Flows from Potable Water Irrigation	9	18	28	38	48
State Water Project	2,595	2,595	2,595	2,595	2,595
Total	**13,551**	**15,792**	**16,045**	**16,323**	**16,629**

Source: City of Banning 2010 Urban Water Management Plan (Geoscience, 2011)
[1] These values were revised to zero as compared to the 2010 Urban Water Management Plan due to the fact that the City of Banning has not constructed the facilities to provided recycled water as expected. It is anticipated that a treatment facility will be constructed by 2020.

Recycled water supplies are reflected in Table No. 2, above, as being equal to projected irrigation demand. Recycled water production is anticipated to exceed demand and to be applied in other beneficial ways. Water used for irrigation purposes and not utilized by the plants percolates to the groundwater and is available for future use. That volume of water is known as return flow. Return flows from irrigation were calculated from current and projected demands. The return flows are equal to twenty-five percent (25%) of the total amount of water used for irrigation plus the portion of residential water used for outdoor irrigation, which equals fifty percent (50%) in the City and surrounding areas. Any irrigation occurring in the industrial, commercial or public sector was not included in the return flow calculations.

Storage and Distribution Systems. The water system consists of groundwater wells, reservoirs and a distribution line covering approximately 23 square miles and servicing approximately 28,000 people via approximately 10,500 metered connections.

The City operates and maintains 21 potable groundwater production wells and 1 non-potable production well which is used to provide water to a local golf course. Half of the wells are located in Banning Canyon and the remaining ones are located in the Banning Bench, Banning and Beaumont storage units. The 22 wells have a total design capacity of approximately 28,450 gallons per minute ("gpm"). During dry years, the capacity of the Canyon and Banning Bench wells decrease in response to decreased precipitation and subsequent recharge. The following table shows a summary of the City's wells and their current capacities by storage unit.

TABLE NO. 3
WELL CAPACITIES BY STORAGE UNIT

Wells by Storage Unit	Well Design Capacity		Dry Year Capacity	
	gpm	AFY	gpm	AFY
Banning	3,500	5,646	2,850	4,597
Banning Bench	3,650	5,888	2,750	4,463
Banning Canyon	8,600	13,873	4,250	6,856
Cabazon	900	1,452	850	1,371
Beaumont	7,650	12,340	7,125	11,493

Source: City of Banning 2010 Urban Water Management Plan (Geoscience, 2011)

Regulatory Compliance & Water Treatment

Before September 2014, the State of California did not have a statewide program to manage groundwater or a mandatory groundwater management statute. Groundwater management was solely a local responsibility accomplished under the authority of the California Water Code and a number of court decisions. There were six possible methods for groundwater management under prior law. Groundwater management was mainly achieved by a combination of one or more of the following methods: (i) overlying rights; (ii) local agencies; (iii) adjudicated basins; (iv) formation of special act districts with groundwater management authority; (v) assembly bill 3030; or (vi) local groundwater ordinances.

On September 16, 2014, the California Governor signed Assembly Bill No. 1739 and Senate Bill Nos. 1168 and 1319 (collectively, the Sustainable Groundwater Management Act, or "SGMA") into law. The SGMA constitutes a legislative effort to regulate groundwater on a Statewide basis. Under the SGMA, the State of California Department of Water Resources ("DWR") was required to designate groundwater basins in the State as high, medium, low or very low priority for purposes of groundwater management by January 31, 2015. The San Gorgonio Pass and Banning Canyon Groundwater Basins have been initially designated as medium priority. By January 31, 2017, local groundwater producers must establish or designate an entity (referred to as a groundwater sustainability agency, or "GSA"), subject to DWR's approval, to manage each high and medium priority groundwater basin. At this point the GSA has not been designated for San Gorgonio Pass and Banning Canyon Basins. The City will work with public and private parties that have interests in these basins to agree to an appropriate approach and mechanisms for designating a GSA before the deadline. Each GSA is tasked with submitting a groundwater sustainability plan for DWR's approval by January 31, 2020. Groundwater sustainability plans must include sustainability goals and a plan to implement such goals within 20 years. Alternatively, groundwater producers can submit a groundwater management plan under Part 2.75 of the California Water Code or an analysis for DWR's review demonstrating that a groundwater basin has operated within its sustainable yield for at least 10 years. Such alternative plan must be submitted by January 31, 2017 and updated every five years thereafter.

GSAs must consider the interest of all groundwater users in the basin and may require registration of groundwater users, the installation of flow meters to measure groundwater extractions and annual reporting of extractions. In addition, GSAs are authorized to impose spacing requirements on new wells, monitor, regulate and limit or condition groundwater production and establish production allocations among groundwater producers, among other powers. GSAs are authorized to impose fees to fund such activities and to fine or issue cease and desist orders against producers that violate GSA's regulations. Groundwater sustainability plans must include sustainability goals and a plan to implement such goals within 20 years.

The City does not currently expect its groundwater extraction rights or costs in the San Gorgonio Pass and Banning Canyon Groundwater Basins to change significantly as a result of the enactment of the SGMA. The SGMA expresses the legislature's intention that it will not have an effect on water rights.

The City uses two simple methods for disinfection of the water circulated through the Water Enterprise. Chlorine tablets are pushed into the water stream by mechanical equipment and commercial grade chlorine bleach injected by pumps into the water stream at the various well sites. These methods of disinfection are in compliance with the water treatment requirements of the State of California Department of Health Services.

Currently, the Water Enterprise operates under Domestic Water Supply Permit No. 05-20-06P-004 issued on May 2, 2006 (the "Water Permit"). The Water Permit does not currently have an expiration date.

California's maximum contaminant level ("MCL") for total chromium was established in 1977, when the California Department of Public Health ("CDPH") adopted what was then a "National Interim Drinking Water Standard" for chromium. Chromium-6 has been regulated under the 50-µg/L primary drinking water standard MCL for total chromium. The total chromium MCL was established to address exposures to chromium-6, the more toxic form of chromium. The US Environmental Protection Agency ("EPA") adopted the same 50-µg/L standard tor total chromium, but in 1991 raised the federal MCL to 100 µg/L. California did not follow US EPA's change and stayed with its 50-µg/L standard.

In August 2013 CDPH proposed an MCL for chromium-6 of 10 µg/L. On April 15, 2014, CDPH submitted the hexavalent chromium MCL regulations package to the Office of Administrative Law ("OAL") for its review for compliance with the Administrative Procedure Act. On May 28, OAL approved the regulations, which then became effective on July 1, 2014.

The City of Banning currently operates 7 potable wells that are expected to exceed the new MCL of 10 µg/L. Combined, the 7 wells produce approximately 3,000 AFY. Chromium-6 in the wells range from 10.5µg/L to 22.5 µg/L. On June 17, 2015 the State Water Resource Control Board, Division of Drinking Water, issued to the City *Compliance Order No. 05-20-15R-003 for Violation of Health and Safety Code Section 116555(a)(1) and the Primary Drinking Water Standard for Hexavalent Chromium* ("Compliance Order"). Although the Compliance Order is for one of the seven wells (the one with the highest Chromium-6 levels), the City anticipates that similar compliance orders will be issued for the remaining 6 wells. The City plans to reclassify the well with the highest Chromium-6 levels to a non-potable well which will be used to irrigate a local golf course.

As part of the City's corrective action plan it will analyze each well to determine the most cost effective method for meeting the Chromium-6 MCL. Mitigation will include well modifications to reduce intrusion of Chromium-6. This option has the potential of reducing the overall production of the wells; therefore additional wells would be constructed to make up for the loss. Initial analyses of the wells will occur by the end 2015. The second option is well head treatment, which is the costlier of the two options. It is estimated that the capital cost for the development of treatment facilities at the 7 wells can range from $10 million to $30 million depending on the treatment method.

With the exception of the new Chromiu-6 requirements, the City is in compliance with regulations and requirements of the Water Permit.

Water Rates and Charges

Water Rates. Water rates have traditionally been set by the City Council and are not subject to review by any state or local government agency. Pursuant to the Water Lease, the City has agreed to take all steps necessary to validate the water rates determined by the Authority to be required in order to ensure collection of sufficient revenues to ensure that sufficient Net Water Revenues will be available for payment of the debt service on the Water Bonds when due. The most recent revision to the City's water rate structure was approved by the City Council on October 12, 2010 and includes water rates increases to become effective annually from 2010 to and including September 1, 2013. The most recent revised rates and charges pursuant to such rate structure became effective on October 13, 2010 and are summarized in the following table:

TABLE NO. 4
WATER RATES AND CHARGES

Meter Size (Inches)	Customer Charge	Commodity Charge (Rate Plan 0-12 CCF)[1]	Commodity Charge (Rate Plan 13-25 CCF)	Commodity Charge (Rate Plan 26+ CCF)
5/8	$ 20.94	$1.84 per CCF	$2.34 per CCF	$2.64 per CCF
3/4	20.94	1.84per CCF	2.34 per CCF	2.64 per CCF
1	31.75	1.84per CCF	2.34 per CCF	2.64 per CCF
1 1/2	58.74	1.84per CCF	2.34 per CCF	2.64 per CCF
2	91.14	1.84per CCF	2.34 per CCF	2.64 per CCF
3	166.77	1.84per CCF	2.34 per CCF	2.64 per CCF
4	274.83	1.84per CCF	2.34 per CCF	2.64 per CCF
6	544.79	1.84per CCF	2.34 per CCF	2.64 per CCF
8	868.83	1.84per CCF	2.34 per CCF	2.64 per CCF

[1] "CCF" means hundred cubic feet, a measure of water consumption.
Source: City of Banning.

The Autbority has also covenanted under the Indenture to have in effect rules and regulations requiring each consumer or customer connected with the Water Enterprise to pay the rates and charges applicable to the Water Enterprise and providing for the billing thereof and for a due date and a delinquency date for each bill. This covenant includes the obligation not to permit any entity or person (including governmental entities) to receive services from the Water Enterprise free of charge.

[The Authority believes that its current water rates comply with the requirements of Proposition 218 and expects that any future water rates will comply with Proposition 218's procedural and substantive requirements to the extent applicable thereto.] **[TO BE CONFIRMED]** For a discussion regarding a challenge to tiered rate structure in the City of San Juan Capistrano. See "CONSTITUTIONAL LIMITATIONS" herein.

Water Connection Fee. The City charges a one-time connection fee for each new connection to the water system. Commencing on January 2005, the approved water connection fee being collected is $7,232 per equivalent dwelling unit ("EDU"). Prior to January 2005, the approved water connection fee was $4,390 per EDU. The revised water connection fee takes into account the cost of acquiring rights to new water sources, constructing a treatment plant to treat said water and constructing other facilities to serve new users.

Water Frontage Fees. The City also collects a frontage fee equal to $25.00 per foot to new development that abuts a street or easement that contains an existing pipe. The frontage fee is paid only by those developments for which prior owners have not paid a share of the infrastructure.

Water Shortage Contingency Plan

Water conservation has been a key element in meeting the water demand within the City's service area during droughts. The recent drought, in particular, has severely affected the availability of water supplies and, therefore, has substantially increased the need for more water conservation. For the past three years, California has experienced extremely dry weather resulting in drought conditions affecting the State. Water Year 2014, which ended in September (a Water Year begins on October 1 and ends on the following September 30), was the third driest year in 119 years of State records, following 1924 and 1977. Water Storage in California's major surface reservoirs is currently significantly below historical averages, despite recent storms. Over three-fourths of the State ended 2014 in Extreme or Exceptional drought, according to the U.S. Drought Monitor.

Water conservation continues to be an important component of the City's overall water resources planning. The City's goal is to reduce its urban per capita water use to meet the requirements of Senate Bill X7-7, the Water Conservation Act of 2009 ("SBX7-7"). SBX7-7 established a goal of reducing statewide urban per capita water use by 20% by December 31, 2020. The City's per capita water demand for Fiscal Year 2013-14 was _____ gallons per day per capita ("gpcd"), which is [higher/lower] than the City's 2015 target of _____ gpcd. The City will need to reduce its per capita water use by ___% by 2020 in order to meet its per capita water use target of ____ gpcd.

On April 1, 2015, Governor Jerry Brown issued Executive Order B-29-15 (the "Executive Order") to address the ongoing drought conditions in California. The Executive Order, among other things, directed the State Water Resources Control Board (the "SWRCB") to impose restrictions to achieve a statewide 25% reduction in potable urban water usage from 2013 levels through February 28, 2016. The Executive Order further directs the SWRCB to impose restrictions to require that commercial, industrial and institutional properties, such as campuses, golf courses and cemeteries, immediately implement water efficiency measures to reduce potable water usage, and calls upon the SWRCB to direct urban water suppliers to develop rate structures and other pricing mechanisms, including but not limited to surcharges, fees and penalties, to maximize water conservation consistent with statewide water restrictions. The Executive Order includes several provisions to increase enforcement activity against water waste and to streamline the State and local response to drought-related initiatives.

On May 5, 2015, following a formal rulemaking process and public comment period, the SWRCB adopted an emergency regulation to implement the Executive Order. The regulation went into effect on May 18, 2015, and will remain in effect through February 28, 2016. Under the regulation, 411 urban water providers in the State are classified into nine tiers and assigned a required conservation standard which is imposed on each tier. The tier classifications are based upon a water supplier's per capita water usage in the three month period July to September 2014. The conservation standard applied to the tiers ranges from a 4% reduction in total potable water production (although no water providers were proposed to be classified in such tier absent the demonstration by a water provider of satisfaction of certain specified criteria) to a 36% reduction in total potable water production from 2013 levels. As adopted, the regulation requires areas with high per capita water usage to achieve proportionately greater reductions in water use than those with low use. The regulation provides that the 2,600 "small water suppliers" in the State that serve fewer than 3,000 customers or deliver less than 3,000 acre-feet of water annually are required to either achieve a 25% conservation standard or restrict outdoor irrigation to no more than two days per week. Commercial, industrial and institutional properties that are not served by a water supplier (or are self-supplied) are similarly required to either achieve a 25% conservation standard or restrict outdoor irrigation to no more than two days per week. Under the regulation, compliance by the 411 urban water suppliers will be assessed for the period of June 2015 through February 2016 as compared to water usage in the corresponding prior timespan of June 2013 through February 2014. In

addition to the total monthly water production and specific reporting on residential use and enforcement action previously adopted by the SWRCB, the regulation adopted May 5, 2015 also includes new reporting requirements for urban water suppliers to include information on water use in the commercial, industrial and institutional sectors. In order to enforce compliance by water suppliers, the regulation authorizes the SWRCB to issue informational orders, conservation orders or cease and desist orders requiring additional specific actions by a water supplier that is not meeting its conservation standard. Failure to provide information requested pursuant to an informational order within the required timeframe would be subject to civil liability of up to $500 per day for each day out of compliance. Water agencies that violate cease and desist orders may be subject to a civil liability of up to $10,000 a day.

Under the adopted regulation, the City is classified in Tier 8 (June 2014 - February 2015 residential per capita water use of 170 gallons or more per day) and is subject to the 32% conservation standard proposed for that tier. The SWRCB provides a calculation of amounts conserved by the Water System customers to be 7% already. Under the adopted regulation, the Water System customers will need to conserve an additional 25%.

In anticipation of the continuation of drought conditions and the possibility of water conservation measures and other restrictions on water use being imposed, the City has adopted it Ordinance No. 1489, "Drought Water Conservation." Ordinance No. 1489 identifies mandatory restrictions in addition to those mandatory restrictions identified by the SWRCB in their emergency regulation.

[The City and the Authority estimate that the current drought restrictions will decrease gross water revenues by approximately $2,600,000.00 during fiscal year 2015-16. Nevertheless, the City and the Authority believe, although they cannot give any assurances, that Net Water Revenues will still generate sufficient Net Water Revenues to pay Debt Service payments on the Bonds as they become due and payable. In any event, the City has covenanted in the Water Enterprise Lease Agreement to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water Enterprise during each Fiscal Year so that there are at least sufficient Net Water Revenues to pay Debt Service payments on the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rates and Charges.] **[TO BE CONFIRM]**

On April 28, 2015, concurrent with the SWRCB's release of the Notice of Proposed Emergency Regulations for the subsequently adopted regulation, Governor Jerry Brown also announced that he would propose new legislation to provide expanded enforcement powers to local agencies, including the ability to deputize staff to issue water conservation-related warnings and citations and to impose fines up to $10,000 per day for infractions of locally imposed water restrictions.

Given the flexibility in the amount of water that the City can produce from the San Gorgonio Pass and Banning Canyon Groundwater Basins and the City's water use efficiency programs currently in place, the City believes that there is an adequate water supply for the residents and businesses of the City for the next 20 years.

Demand and Sales

The following tables set forth past, current and projected water demand within the City by major categories, in acre-feet per year ("AFY") at five year intervals from 2011 to 2015, but including last year's usage. In 2011 water demand was 7,373 acre-feet. In the Fiscal Year ending ("FYE") June 30, 2015, water demand is projected to be 7,908 acre-feet. According to this table, for the last full year of operations, residential uses comprised approximately fifty-six percent (56%) of total consumption. However, as indicated on Table No. 6, below, the largest residential user of the Water Enterprise accounts only for sixty-two tenths of one percent (0.62%) of the percent of consumption and only approximately fifty-seven tenths of one percent (0.57%) of the revenues during the same year.

TABLE NO. 5
HISTORIC AND PROJECTED WATER CONSUMPTION SALES
For Fiscal Year Ended June 30,

Category	2011 (AFY)	2012 (AFY)	2013 (AFY)	2014 (AFY)	2015 [1] (AFY)
Residential	4,332	4,530	4,473	4,471	4,475
Commercial	1,941	2,008	2,105	2,134	2,176
Industrial	115	123	114	111	111
Public	98	108	106	106	106
Irrigation	887	1,072	963	1,045	1,040
Total	7,373	7,841	7,761	7,867	7,908

Source: City of Banning.
[1] Projected values.

The ten largest water users, which are listed in the table below, account for approximately 28 percent of the annual water consumption. During the last Fiscal Year, the largest private user, Sun Lakes, accounted for approximately 13.6% of the total usage. Sun Lakes is a development consisting of approximately 3,818 residences, one 18 hole championship golf course, one 18 hole executive course and other amenities. A large percentage of the water consumed by Sun Lakes is used for irrigation of the golf courses located within, and primarily serving, the development.

TABLE NO. 6
TEN LARGEST USERS OF WATER
12 Months Ended June 30, 2014

Customers	Business Type	12 Month Consumption (AFY)	Percent of System Consumption	Percent of System Revenue
Sun Lakes	Commercial[1]	1,079.03	13.64%	12.79%
Banning Unified School District	Government	297.94	3.77	3.62
Smith Correctional Facility	Government	218.94	2.77	1.08
City of Banning	Government	222.96	2.82	0.64
Robertson's Ready Mix	Commercial	155.71	1.97	1.61
High Valley Water District	Utility	74.01	0.94	0.86
San Gorgonio Hospital	Hospital	56.00	0.71	0.71
Mt Springs Mfg. Home Community	Residential	49.42	0.62	0.57
Peppertree Apartments	Residential	41.96	0.53	0.49
H K Realty	Residential	37.80	0.48	0.44
Total[2][3]		2,233.77	28.25%	22.84%

Source: City of Banning.
[1] The residential customers within Sun Lakes are connected to the Water Enterprise on an individual basis and their respective consumption is not reflected on this table. The Sun Lakes development is a large customer of the Water Enterprise and its water consumption is primarily for the golf courses and other common areas.
[2] Total System Consumption for fiscal year 2013/14 is 7,908 AFY.
[3] Total System Revenue for fiscal year 2013/14 is $10,245,552.

The City's projected water supply for the current year and each five years through the year 2030 is shown in the following table.

TABLE NO. 7
PROJECTED WATER SUPPLY AND DEMAND COMPARISON BASED ON POPULATION GROWTH
For the Fiscal Year Ending June 30,

Category	2015 (AFY)	2020 (AFY)	2025 (AFY)	2030 (AFY)
Total Water Supply	15,563	15,792	16,045	16,323
Total Demand	10,376	10,183	11,243	12,413
Projected Supply Surplus	**5,187**	**5,609**	**4,802**	**3,910**

Source: City of Banning.

Capital Improvement Program

The City has developed a comprehensive Capital Improvement Program for the Water Enterprise (the "Water CIP"). The Water CIP is intended to address current and future needs of the Water Enterprise. The Water CIP project anticipated to be funded with proceeds of the Bonds includes the replacement of a 20 inch transmission line in the Banning Canyon at an estimated cost of $2,500,000.

In addition to the replacement of the transmission line described above, the Water CIP project list includes the following projects for which most of the funding sources have been identified and which the City plans to complete in the next 5 years:

1. Construction of an additional well. The authority plans to construct an additional well within the eastern boundary of the City solely for the Authority's use. The well will be constructed within the Cabazon Storage Unit to provide relief in the case of overdraft conditions in other units and to accommodate future development. It is anticipated that the project will cost $1,500,000.00

2. Construction of an Irrigation Water System. The Irrigation Water System includes the installation of 5.3 miles of 24 inch water transmission pipeline from the Wastewater Treatment Plant to the intersection of Highland Home Road and Sun Lakes Boulevard. The construction of the project has been split into separate phases of construction (Segment A, B and C). The City has completed the construction of Segment A. The cost of the remaining segments have been estimated to cost $4,700,000.00.

The Water CIP also includes some projects which the Authority plans to complete as soon as funding becomes available. Such projects include, surface water run-off recharge facilities and the construction of a third well within the Beaumont Basin pursuant to the City's agreement with the Beaumont Cherry Valley Water District.

Collection Procedures

Customers being provided water, wastewater and electric services by the City receive a single monthly bill. If payment is not received by the City on or prior to the 20th day following the mailing of the original bill, accounts are considered delinquent. Customers are given an extra 10 days grace period to pay their bills before a notice is posted on their door stating that if no payment is received within 48 hours service will be discontinued due to non-payment. The City does not usually post notices or discontinue service where the amounts due are less than $[30.00]. If the City does post a notice, the customer's bill will reflect a $[12.00] notice charge. If the customer fails to pay by the date indicated in the notice and service to an account is discontinued, the customer must pay a re-connection fee to reestablish service. **[Confirm/update]**

TABLE NO. 8
HISTORIC WATER COLLECTIONS — METERED SALES
For the Fiscal Year Ended June 30,

Category	2010	2011	2012	2013	2014
Residential	$4,539,173	$4,534,773	$5,664,709	$6,054,310	$6,440,802
Commercial	1,688,688	1,770,229	2,354,828	2,410,059	2,609,985
Industrial	70,798	73,498	90,893	91,926	96,816
Public	30,746	25,057	29,787	26,776	25,905
Irrigation[(1)]	61,501	617,315	862,522	936,894	1,072,044
Total	$6,390,906	$7,020,872	$9,002,739	$9,519,965	$10,245,552
Collection Rate	[TO COME]				

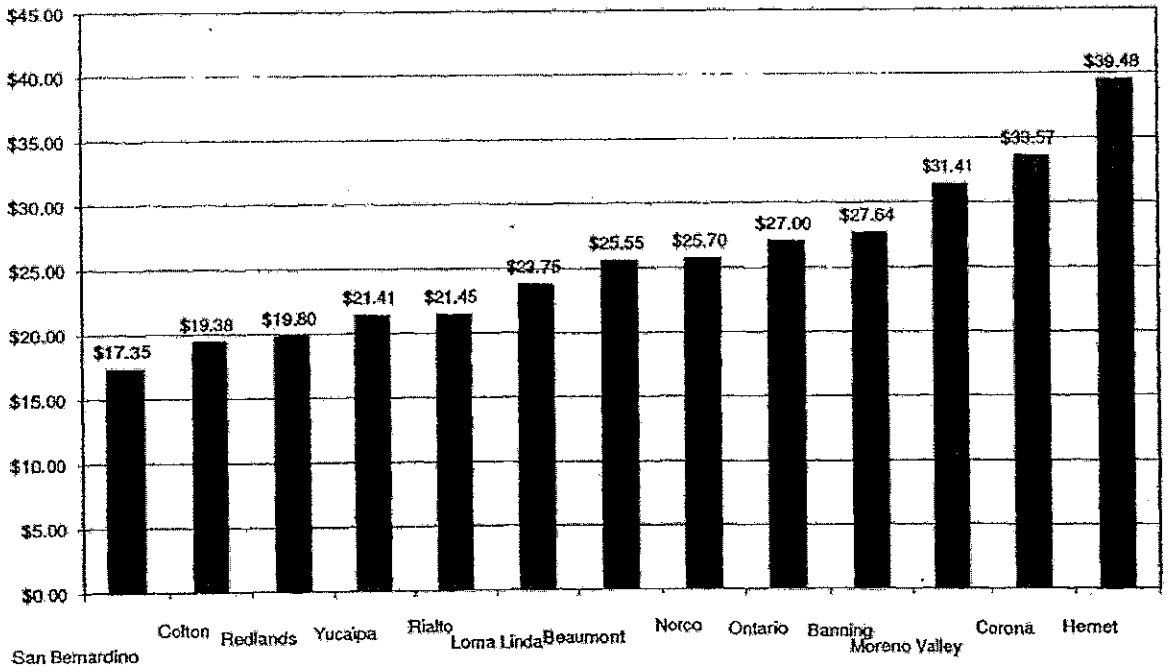
Source: City of Banning.
(1) [ADD FN EXPLAINING INCREASE SINCE FY 2010]

Table No. 8, above, reflects the amounts collected by the City only from metered sales of water from the Water Enterprise. In addition to metered charges, a customer's bill may reflect charges related to the operation of the Water Enterprise that are not included in the amounts shown in the above table but which are reflected in the amounts shown as Water Sales and Service Charges in Table No. 9, below.

The following chart reflects the comparison of a typical monthly bill for consumers of the Water Enterprise and consumers in the surrounding communities:

Comparison of Monthly Water Charges 15 hcf per month for 5/8 meter

[Provide updated table]



Source: City of Banning.

Historic Water Enterprise Operating Results

The following table presents the operating results of the Water Enterprise for the last five Fiscal Years. These results have been extracted from the City's financial statements. The City's auditor, Lance, Soll & Lunghard, LLP (the "Auditor"), has prepared the City's audited financial statements for FYE June 30, 2014, which include the operation of the Water Enterprise, are attached to this Official Statement as Appendix B and should be reviewed in their entirety.

The amounts reflected as Water Sales and Service Charges in the following table include metered sales, turn-on fees, reconnection fees, backflow charges and other operational charges that are regularly or from time to time invoiced to customers of the Water Enterprise. For the amounts concerning only metered water sales, please refer to Table 8, above.

As previously discussed, the City is classified in Tier 8 (June 2014 - February 2015 residential per capita water use of 170 gallons or more per day) and is subject to the 32% conservation standard proposed for that tier. It is projected that the Water Enterprise's revenues will be reduced by approximately $2,600,000.00 during the 2015-2016 fiscal year due to the mandated conservation measures.

TABLE NO. 9
HISTORIC OPERATING RESULTS FOR THE WATER ENTERPRISE
(For Fiscal Year Ended June 30)

	2010	2011	2012	2013	2014
Gross Revenues					
Water Sales and Service Charges	$7,225,142	$7,463,052	$9,222,407	$10,033,378	$10,608,093
Connection Fees	2,520	275	5,274	1,180	-
Interest Revenue	131,203	62,475	32,241	16,306	72,380
Miscellaneous Income [1]	219,736	69,987	174,456	106,391	-
Total Gross Revenues	**$7,578,601**	**$7,595,789**	**$9,434,378**	**$10,157,255**	**$10,680,473**
Operation and Maintenance Expenses					
Salaries and Benefits	$1,296,654	$1,428,519	$1,431,672	$1,493,970	$1,403,942
Supplies and Services	3,697,329	2,799,902	3,350,169	3,449,751	3,341,014
Repairs and Maintenance	13,550	16,875	64,977	17,998	13,000
Total Operation and Maintenance Expenses[2]	**$5,007,533**	**$4,245,296**	**$4,846,818**	**$4,961,719**	**$4,757,956**
Net Water Revenues	**$2,571,068**	**$3,350,493**	**$4,587,560**	**$5,195,536**	**$5,922,517**
Debt Service					
2005 Water Bonds	$2,298,775	$2,293,438	$2,295,438	$2,291,338	$2,291,138
Total Debt Service	**$2,298,775**	**$2,293,438**	**$2,295,438**	**$2,291,338**	**$2,291,138**
Coverage Ratio[3]	**1.12**	**1.46**	**2.00**	**2.27**	**2.58**

Source: City of Banning.
[1] Includes certain miscellaneous items and frontage fees.
[2] Pursuant to the Indenture, Water Operation and Maintenance Expenses do not include debt service or similar payments on Parity Obligations, depreciation or amortization of intangibles or other bookkeeping entries of similar nature.
[3] Debt Service coverage for fiscal year 2009-10 was below the rate covenant. Water rate increases were approved October 2010 with increases implemented October 2010, September 2011, September 2012 and September 2013.

Projected Operating Results and Coverage Ratio for the Water Enterprise

The City's projected operating results and coverage ratio for the Water Enterprise for the current and next four Fiscal Years, calculated under the provisions of the Indenture, are set forth below. These projections are based on the City's judgment as to the most probable occurrence of certain future events. The assumptions and footnotes set forth beneath the table are material to the projections and variations in the assumptions could produce substantially different financial results. Actual revenues and expenses may vary materially from these projections.

TABLE NO. 10
PROJECTED OPERATING RESULTS AND COVERAGE RATIO
FOR THE WATER ENTERPRISE
(For Fiscal Year Ending June 30)

	2015	2016	2017	2018	2019
Gross Revenues					
Water Sales and Service Charges					
Connection Fees					
Interest Revenue					
Miscellaneous Income [1]					
Total Gross Revenues					
Operation and Maintenance Expenses					
Salaries and Benefits					
Supplies and Services					
Repairs and Maintenance					
Total Operation and Maintenance Expenses[2]					
Net Water Revenues					
Debt Service					
2005 Water Bonds					
Total Debt Service					
Coverage Ratio[3]					

Source: City of Banning.
[1] [TO COME]

These estimated projections do not account for potential impact on operations resulting from the implementation of conservation measures in response to the recent Executive Order issued by Governor Brown to address the ongoing drought conditions in California or any potential challenge to the current tiered rate structure similar to the challenge faced by the City of San Juan Capistrano. See "THE WATER ENTERPRISE – Water Shortage Contingency Plan" and "CONSTITUTIONAL LIMITATIONS" herein. The City and the Authority believe, although they cannot give any assurances, that the Water Enterprise would still generate sufficient Net Water Revenues to pay Debt Service payments on the Bonds as they become due and payable. In any event, the City has covenanted in the Water Enterprise Lease Agreement to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water Enterprise during each Fiscal Year so that there are at least sufficient Net Water Revenues to pay Debt Service on the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rates and Charges."

Retirement Programs

All permanent employees of the City are covered under the California Public Employees' Retirement System ("CalPERS"), a public employee, defined benefit pension plan. CalPERS issues a separate, publicly available financial report that includes financial statements and required supplemental information of participating public entities within the State of California. Copies of the CalPERS annual financial report may be obtained from the CalPERS Executive Office, Lincoln Plaza Complex, 400 Q Street, Sacramento, CA 95811 or at www.calpers.ca.gov.

The California Public Employees' Pension Reform Act of 2012 ("PEPRA") enacted statewide pension reforms for state and local public retirement systems effective January 1, 2013. The impacts of the PEPRA primarily apply to employees first hired by a public agency on or after January 1, 2013. Some of these provisions include certain limits on the amount and types of compensation that may be included by a retirement system in calculating pension benefits, the imposition of new formulas for the calculation of pension benefits for employees, certain requirements for the sharing of the costs of pension benefits by employees, and certain limitations on the adoption of new defined benefit plans. The PEPRA prohibits certain retroactive enhancements to pension benefit formulas for all employees, imposes certain limits on subsequent employment for retired employees, prohibits the purchase of non-qualified permissive service credit by all employees after January 1, 2013, and requires for any employee the forfeiture of pension and retirement-related benefits for certain felony convictions.

For fiscal year ended June 30, 2014, as a condition of participation in CalPERS, miscellaneous plan employees are required to contribute 8% of their annual covered salary to CalPERS. The City is required to contribute at an actuarially determined rate calculated as a percentage of covered payroll. The employer contribution for the year ended June 30, 2014 was 20.255% for miscellaneous employees. For the fiscal year ended June 30, 2014, the City's annual pension cost (employer contribution) of $1,484,981 for miscellaneous employees was equal to the City's required contributions. [The Water Enterprise contributed $_____, for the fiscal years ended June 30, 2014, which represented 100% of its required contributions. The required contribution was determined as part of the June 30, 2011 actuarial valuation using the entry age normal actuarial cost method.

For fiscal year ended June 30, 2014, as a condition of participation in CalPERS, safety plan employees are required to contribute 9% of their annual covered salary to CalPERS. The City is required to contribute at an actuarially determined rate calculated as a percentage of covered payroll. The employer contribution for the fiscal year ended June 30, 2014 was 41.376% for safety employees. For the year ended June 30, 2014, the City's annual pension cost (employer contribution) of $986,426 for safety employees was equal to the City's required contributions. The required contribution was determined as part of the June 30, 2011 actuarial valuation using the entry age normal actuarial cost method. The Water Enterprise does not contribute towards the safety plan.] **[Confirm]**

CONSTITUTIONAL LIMITATIONS

Constitutional Limitations on Governmental Spending

Article XIIIA of the California Constitution limits the taxing powers of California public agencies. Article XIIIA provides that the maximum *ad valorem* tax on real property cannot exceed one percent of the "full cash value" of the property, and effectively prohibits the levying of any other *ad valorem* property tax except for taxes above that level required to pay debt service on voter-approved general obligation bonds. "Full cash value" is defined as "the County Assessor's valuation of real property as shown on the 1975/76 tax bill under 'full cash value' or, thereafter, the appraisal value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975

assessment." The "full cash value" is subject to annual adjustment to reflect inflation at a rate not to exceed two percent or a reduction in the consumer price index or comparable local data, or declining property value caused by damage, destruction or other factors.

The foregoing limitation does not apply to *ad valorem* taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters before July 1, 1978 or any bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the votes cast by the voters voting on the proposition.

Under Article XIIIB of the California Constitution, state and local government entities have an annual "appropriations limit" which limits their ability to spend certain moneys called "appropriations subject to limitation," which consist of tax revenues, certain state subventions and certain other moneys, including user charges to the extent they exceed the costs reasonably borne by the entity in providing the service for which it is levying the charge. The Authority believes that the water service and use charges imposed by the Authority do not exceed the costs the Authority reasonably bears in providing water service. In general terms, the "appropriations limit" is to be based on certain 1978/79 expenditures, and is to be adjusted annually to reflect changes in the consumer price index, population, and services provided by these entities. Among other provisions of Article XIIIB, if an entity's revenues in any year exceed the amount permitted to be spent, the excess would have to be returned by revising tax rates or fee schedules over the subsequent two years.

Proposition 218

Proposition 218, a State ballot initiative known as the "Right to Vote on Taxes Act," was approved by the voters on November 5, 1996. The initiative added Articles XIIIC and XIIID to the California Constitution, creating additional requirements for the imposition by most local governments of "general taxes," "special taxes," "assessments," "fees," and "charges." Proposition 218 became effective, pursuant to its terms, as of November 6, 1996, although compliance with some of its provisions was deferred until July 1, 1997, and certain of its provisions purport to apply to any tax imposed for general governmental purposes (*i.e.*, "general taxes") imposed, extended or increased on or after January 1, 1995 and prior to November 6, 1996.

Article XIIID imposes substantive and procedural requirements on the imposition, extension or increase of any "fee" or "charge" subject to its provisions. A "fee" or "charge" subject to Article XIIID includes any levy, other than an *ad valorem* tax, special tax or assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership. Article XIIID prohibits, among other things, the imposition of any proposed fee or charge, and, possibly, the increase of any existing fee or charge, in the event written protests against the proposed fee or charge are presented at a required public hearing on the fee or charge by a majority of owners of the parcels upon which the fee or charge is to be imposed. Except for fees and charges for water, sewer and refuse collection services, the approval of a majority of the property owners subject to the fee or charge, or at the option of the agency, by a two-thirds vote of the electorate residing in the affected area, is required within 45 days following the public hearing on any such proposed new or increased fee or charge. The California Supreme Court's decisions in *Richmond v. Shasta Community Services District*, 32 Cal.4th 409 (2004) (*"Richmond"*), and *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006) (*"Bighorn"*) have clarified some of the uncertainty surrounding the applicability of Section 6 of Article XIIID to service fees and charges. In *Richmond*, the Shasta Community Services District charged a water connection fee, which included a capacity charge for capital improvements to the water system and a fire suppression charge. The Court held that both the capacity charge and the fire suppression charge were not subject to Article XIIID because a water connection fee is not a property-related fee or charge because it results from the property owner's voluntary decision to apply for the connection. In both *Richmond* and *Bighorn*, however, the

Court stated that a fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" within the meaning of Article XIIID, rejecting, in *Bighorn*, the water agency's argument that consumption-based water charges are not imposed "as an incident of property ownership" but as a result of the voluntary decisions of customers as to how much water to use.

Article XIIID also provides that "standby charges" are considered "assessments" and must follow the procedures required for "assessments" under Article XIIID and imposes several procedural requirements for the imposition of any assessment, which may include (1) various notice requirements, including the requirement to mail a ballot to owners of the affected property; (2) the substitution of a property owner ballot procedure for the traditional written protest procedure, and providing that "majority protest" exists when ballots (weighted according to proportional financial obligation) submitted in opposition exceed ballots in favor of the assessments; and (3) the requirement that the levying entity "separate the general benefits from the special benefits conferred on a parcel" of land. Article XIIID also precludes standby charges for services that are not immediately available to the parcel being charged.

Article XIIID provides that all existing, new or increased assessments are to comply with its provisions beginning July 1, 1997. Existing assessments imposed on or before November 5, 1996, and "imposed exclusively to finance the capital costs or maintenance and operations expenses for [among other things] water" are exempted from some of the provisions of Article XIIID applicable to assessments.

Article XIIIC extends the people's initiative power to reduce or repeal existing local taxes, assessments, fees and charges. This extension of the initiative power is not limited by the terms of Article XIIIC to fees, taxes, assessment fees and charges imposed after November 6, 1996 and absent other authority could result in retroactive reduction in any existing taxes, assessments, fees or charges. In *Bighorn*, the Court concluded that under Article XIIIC local voters by initiative may reduce a public agency's water rates and delivery charges. The Court noted, however, that it was not holding that the authorized initiative power is free of all limitations, stating that it was not determining whether the electorate's initiative power is subject to the public agency's statutory obligation to set water service charges at a level that will "pay the operating expenses of the agency, . . . provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due."

[On April 20, 2015, the California Court of Appeal, Fourth District, issued an opinion in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* upholding tiered water rates under Proposition 218 provided that the tiers correspond to the actual cost of furnishing service at a given level of usage. The opinion was specific to the facts of the case, including a finding that the City of San Juan Capistrano did not attempt to calculate the actual costs of providing water at various tier levels. The Authority's water rates are described under the caption "THE WATER ENTERPRISE – Water Rates and Charges."

The Authority believes that its current water rates comply with the requirements of Proposition 218 and expects that any future water rates will comply with Proposition 218's procedural and substantive requirements to the extent applicable thereto. There has not been a similar challenge to the Water Enterprise tiered water rates. However, no assurance can be made that a similar challenge will not be made in the future. If there was a successful challenge, and the City was required to cease from charging any water rate that was determined to be in violation of Article XXIID, the City and the Authority believe, although they cannot give any assurances, that the Water Enterprise would still generate sufficient Net Water Revenues to make payments of interest on and principal of the Bonds. The Authority is unable to predict at this time how Proposition 218 will be interpreted by the future court rulings or what

the ultimate impact of *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* will be.] [**TO BE CONFIRMED**]

Proposition 26

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIIIA and XIIIC. The proposition imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes. Proposition 26, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIIIA, XIIIC and XIIID pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the State or local government of providing the service or product to the payor. Proposition 26 applies to charges imposed or increased by local governments after the date of its approval. The Authority believes its water rates and charges are not taxes under Proposition 26. The Authority is unable to predict at this time how Proposition 26 will be interpreted by the courts or what its ultimate impact will be.

Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID, and Proposition 26 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time, other initiatives have been, and could be, proposed, and if qualified for the ballot, could be adopted affecting the Authority's revenues or the Authority's ability to expend revenues. The Authority is unable to predict either the likelihood of qualification for ballot or passage of these measures or the nature and impact of these measures on the finances or operations of the Water Enterprise.

RISK FACTORS

PURCHASE OF THE BONDS INVOLVES CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE BONDS IS ENCOURAGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE FACTORS DESCRIBED BELOW WHICH, AMONG OTHERS, COULD AFFECT THE MARKET PRICE OF THE BONDS TO AN EXTENT THAT CANNOT BE DETERMINED. HOWEVER, THEY DO NOT PURPORT TO BE AN EXHAUSTIVE LISTING OF RISKS AND OTHER CONSIDERATIONS WHICH MAY BE RELEVANT TO AN INVESTMENT IN THE BONDS. IN ADDITION, THE ORDER IN WHICH THE FOLLOWING FACTORS ARE PRESENTED IS NOT INTENDED TO REFLECT THE RELATIVE IMPORTANCE OF ANY SUCH RISKS.

Bonds are Limited Obligations

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE COUNTY OF RIVERSIDE (THE "COUNTY"), THE AGENCY, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. NONE OF THE CITY, THE COUNTY, THE AGENCY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY, IS LIABLE FOR THE PAYMENT OF THE BONDS. IN NO EVENT SHALL THE BONDS OR ANY INTEREST OR REDEMPTION PREMIUM THEREON BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES

OTHER THAN THOSE OF THE AUTHORITY AS PROVIDED IN THE INDENTURE. THE AUTHORITY HAS NO TAXING POWER. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE AGENCY, THE CITY, THE COUNTY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

Limitations on Revenues

The ability of the Authority to comply with its covenants under the Indenture and to generate Net Water Revenues sufficient to pay the principal of and interest on the Bonds may be adversely affected by actions and events outside of the control of the Authority and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or persons obligated to pay assessments, fees and charges. See "CONSTITUTIONAL LIMITATIONS." Furthermore, the remedies available to the owners of the Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

Enterprise Expenses And Collections

There can be no assurance that the expenses for the Water Enterprise will remain at the levels described in this Official Statement. Changes in technology, energy or other expenses would reduce the Net Water Revenues and could require substantial increases in the applicable rates or charges. Such rate increases could increase the likelihood of nonpayment, and could also decrease demand. Although the Authority has covenanted to fix, prescribe, revise and collect rates, fees and charges of the Water Enterprise at certain levels, there can be no assurance that such amounts will be collected in the amounts and at the time necessary to make timely payments with respect to the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rates and Charges."

No Liability of the Authority to the Owners

Except as expressly provided in the Indenture, the Authority will not have any obligation or liability to the Bondowners with respect to the observance or performance of other agreements, conditions, covenants and terms required to be observed or performed by the City under the Lease, the Water Management Agreement or any related documents or with respect to the performance by the Trustee of any duty required to be performed by it under the Indenture.

Limitations on Remedies Available to Owners of the Bonds and the Trustee

The enforceability of the rights and remedies of the Owners of the Bonds and the Trustee, and the obligations incurred by the City, the Authority, and each Enterprise, may be subject to the following: the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual equity principles which may limit the specific enforcement under state law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the Owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay,

limitations or modification of their rights. Remedies may be limited since the Water Enterprise serves essential public purposes.

Limited Recourse on Default

If the Authority defaults on its obligations to make debt service payments on the Bonds, pursuant to the Indenture, the Trustee, as assignee of the Authority, has the right to accelerate the total unpaid principal amount of the Bonds. However, in the event of a default and such acceleration, there can be no assurance that the Trustee will have sufficient moneys available for payment of the Bonds.

Loss of Tax Exemption

As discussed under the caption "TAX MATTERS" herein, interest with respect to the Bonds could fail to be excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for purposes of federal income taxation retroactive to the date of the execution and delivery of the Bonds as a result of future acts or omissions of the Authority in violation of its covenants contained in the Indenture. Should such an event of taxability occur, the Bonds are not subject to special redemption or any increase in interest rate, and will remain outstanding until maturity or until redeemed under one of the redemption provisions contained in the Indenture.

Secondary Market

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that the Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Such prices could be substantially different from the original purchase price.

Forecasts and Forward-Looking Statements

Although the Authority and the City believe that the projections herein of future operating results of the Water Enterprise are reasonable, there can be no assurance that operating results will match the projections due to changes in general economic conditions and similar factors. In addition, the Water Enterprise and economic development within the service area of the City are subject to federal, State and local regulations. There can be no assurance that the Water Enterprise will not be adversely affected by future economic conditions, governmental policies or other factors beyond the control of the City and the Authority.

This Official Statement contains certain "forward-looking statements" concerning the Authority's operations, the Water Enterprise, and the operations, performance and financial condition of the City, the Authority, the Water Enterprise, including their future economic performance, plans and objectives and the likelihood of success in developing and expanding. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Authority and City. The words "may," "would," "could," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate" and similar expressions are meant to identify these forward-looking statements. Results may differ materially from those expressed or implied by these forward-looking statements.

Regulatory Risk

Laws and regulations governing groundwater management, the diversion and storage of surface waters and water treatment are enacted and promulgated by government agencies on the federal, State and local levels. Compliance with these laws and regulations may be costly.

Although the Authority has covenanted in the Indenture to prescribe, revise and collect revenues for the Water Enterprise during each Fiscal Year which are at least sufficient to pay operating and maintenance expenses, to pay required debt service and meet certain coverage requirements, no assurance can be given that the cost of compliance with such laws and regulations will not adversely affect the ability of the Authority to generate Net Water Revenues in the amounts required to pay debt service on the Bonds. See "THE WATER ENTERPRISE – Water Shortage Contingency Plan" herein.

Casualty Risk; Earthquakes

Any natural disaster or other physical calamity, including earthquake, may have the effect of reducing Revenues through damage to the Water Enterprise and/or adversely affecting the economy of the surrounding area. The Indenture and the Lease require the Authority to maintain insurance or self-insurance, but only if and to the extent available at reasonable cost from reputable insurers, and the Authority is not expressly required to provide earthquake insurance. The State, including the Riverside County area, is a seismically active region. In the event of total loss of the Water Enterprise, there can be no assurance that insurance proceeds will be adequate to redeem all outstanding Bonds or that losses in excess of the insured amount will not occur.

Announcements on January 20, 1995 by the scientists associated with the Southern California Earthquake Center indicated that the probability of a magnitude 7 or greater earthquake on the Richter Scale occurring in Southern California is between 80% and 90% in the 30 year period following the announcement. It is impossible to accurately predict the cost or effect of such an earthquake on the Water Enterprise and on the City's ability to provide continued uninterrupted service to all parts of its service area.

A future earthquake could cause significant damage to the City and the facilities of the Water Enterprise and could adversely affect the ability of the City to meet all of its financial obligations. On January 17, 1994, an earthquake of approximately 6.6 magnitude on the Richter Scale was centered in the northwest San Fernando Valley section of the City of Los Angeles. It caused widespread damage to commercial and residential structures and to major freeways, causing business interruptions and disrupting the normal flow of traffic. Its damaging effects were felt over a large area. The Water Enterprise was not significantly damaged by this earthquake. In the event of a severe earthquake, however, the amount of moneys available to pay debt service on the Bonds could be reduced significantly.

UNDERWRITING

The Underwriters have agreed to purchase the Bonds at a purchase price of $_____, representing the principal amount of the Bonds, plus a [net] bond premium of $_____ and, less an Underwriters' discount of $_____.

The purchase contract pursuant to which the Bonds are being sold provides that the Underwriters will purchase all of the Bonds if any are purchased, and that the obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions, including the approval of certain legal matters by counsel.

The Underwriters may offer and sell the Bonds to certain dealers and others at prices lower than the initial public offering prices stated on the inside cover page hereof. The offering prices may be changed from time to time by the Underwriters.

CERTAIN LEGAL MATTERS

Legal matters in connection with the authorization, execution, delivery and sale of the Bonds are subject to the approval of Norton Rose Fulbright US LLP, Los Angeles, Califomia, Bond Counsel. The form of the approving opinion of Bond Counsel is attached hereto as APPENDIX F. Norton Rose Fulbright US LLP is also serving as Disclosure Counsel. Certain legal matters will be passed upon for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the City and the Authority by the City Attorney.

TAX MATTERS

Tax Exemption

The Internal Revenue Code of 1986 (the "Code") imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in the gross income of the owners thereof for federal income tax purposes retroactive to the date of issuance of the Bonds. The Authority has covenanted to maintain the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, Califomia, Bond Counsel, under existing statutes, regulations, rulings and court decisions, interest on the Bonds is exempt from personal income taxes of the State of California and, assuming compliance with the covenants mentioned herein, interest on the Bonds is excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. In the further opinion of Bond Counsel, under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, interest on the Bonds will not be treated as an itern of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income. A corporation's alternative minimum taxable income is the basis on which the altemative minimum tax imposed by section 55 of the Code will be computed.

Pursuant to the Indenture and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986*, to be delivered by the Authority in connection with the issuance of the Bonds, the Authority will make representations relevant to the determination of, and will make certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching its opinions described in the immediately preceding paragraph, Bond Counsel will assume the accuracy of such representations and the present and future compliance by the Authority with such covenants.

Except as stated in this section above, Bond Counsel will express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, Bond Counsel will express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel. Bond Counsel has

not undertaken to advise in the future whether any event after the date of issuance of the Bonds may affect the tax status of interest on the Bonds or the tax consequences of the ownership of the Bonds.

Bond Counsel's opinion is not a guarantee of a result, but represents its legal judgment based upon its review of existing statutes, regulations, published rulings and court decisions and the representations and covenants of the Authority described above. No ruling has been sought from the Internal Revenue Service (the "Service") with respect to the matters addressed in the opinion of Bond Counsel, and Bond Counsel's opinion is not binding on the Service. The Service has an ongoing program of auditing the tax-exempt status of the interest on municipal obligations. If an audit of the Bonds is commenced, under current procedures the Service is likely to treat the Authority as the "taxpayer," and the owners would have no right to participate in the audit process. In responding to or defending an audit of the tax-exempt status of the interest on the Bonds, tbe Authority may have different or conflicting interests from the owners. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit, regardless of its ultimate outcome.

Existing law may change to reduce or eliminate the benefit to bondholders of the exemption of interest on the Bonds from personal income taxation by the State of California or of the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. Any proposed legislation or administrative action, whether or not taken, could also affect the value and marketability of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed or future change in tax law.

A copy of the form of opinion of Bond Counsel relating to the Bonds is included in APPENDIX F.

Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds

To the extent that a purchaser of a Bond acquires that Bond at a price in excess of its "stated redemption price at maturity" (within the meaning of section 1273(a)(2) of the Code), such excess will constitute "bond premium" under the Code. Section 171 of the Code, and the Treasury Regulations promulgated thereunder, provide generally that bond premium on a tax-exempt obligation must be amortized over the remaining term of the obligation (or a shorter period in the case of certain callable obligations); the amount of premium so amortized will reduce the owner's basis in such obligation for federal income tax purposes, but such amortized premium will not be deductible for federal income tax purposes. Such reduction in basis will increase the amount of any gain (or decrease the amount of any loss) to be recognized for federal income tax purposes upon a sale or other taxable disposition of the obligation. The amount of premium that is amortizable each year by a purchaser is determined by using such purchaser's yield to maturity. The rate and timing of the amortization of the bond premium and the corresponding basis reduction may result in an owner realizing a taxable gain when its Bond is sold or disposed of for an amount equal to or in some circumstances even less than the original cost of the Bond to the owner.

The excess, if any, of the stated redemption price at maturity of Bonds of a maturity over the initial offering price to the public of the Bonds of that maturity is "original issue discount." Original issue discount accruing on a Bond is treated as interest excluded from the gross income of the owner thereof for federal income tax purposes and is exempt from California personal income tax to the same extent as would be stated interest on that Bond. Original issue discount on any Bond purcbased at sucb initial offering price and pursuant to such initial offering will accrue on a semiannual basis over the term of the Bond on the basis of a constant yield method and, within each semiannual period, will accrue on a ratable daily basis. The amount of original issue discount on sucb a Bond accruing during each period is added to the adjusted basis of such Bond to determine taxable gain upon disposition (including sale, redemption

or payment on maturity) of such Bond. The Code includes certain provisions relating to the accrual of original issue discount in the case of purchasers of Bonds who purchase such Bonds other than at the initial offering price and pursuant to the initial offering

Persons considering the purchase of Bonds with original issue discount or initial bond premium should consult with their own tax advisors witb respect to the determination of original issue discount or amortizable bond premium on such Bonds for federal income tax purposes and with respect to the state and local tax consequence of owning and disposing of such Bonds.

Other Tax Consequences

Although interest on the Bonds may be exempt from California personal income tax and excluded from the gross income of the owners thereof for federal income tax purposes, an owner's federal, state or local tax liability may be otherwise affected by the ownership or disposition of the Bonds. The nature and extent of these other tax consequences will depend upon the owner's other items of income or deduction. Without limiting the generality of the foregoing, prospective purchasers of the Bonds should be aware that (i) section 265 of the Code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds and the Code contains additional limitations on interest deductions applicable to financial institutions that own tax-exempt obligations (such as the Bonds), (ii) with respect to insurance companies subject to the tax imposed by section 831 of the Code, section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15% of the sum of certain items, including interest on the Bonds, (iii) interest on the Bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by section 884 of the Code, (iv) passive investment income, including interest on the Bonds, may be subject to federal income taxation under section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income, (v) section 86 of the Code requires recipients of certain Social Security and certain Railroad Retirement benefits to take into account, in determining the taxability of such benefits, receipts or accruals of interest on the Bonds and (vi) under section 32(i) of the Code, receipt of investment income, including interest on the Bonds, may disqualify the recipient thereof from obtaining the earned income credit. Bond Counsel will express no opinion regarding any sucb otber tax consequences.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

The Verification Agent, an independent certified public accountant, upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to them that were prepared by the Underwriters, relating to the sufficiency of monies deposited into the Escrow Fund created under the Escrow Agreement to redeem all of the outstanding 2005 Bonds on the Redemption Date.

The report of the Verification Agent, will include the statement that the scope of its engagement is limited to verifying the mathematical accuracy of the computations contained in such schedules provided to it, and that it has no obligation to update its report because of events occurring, or date or information coming to its attention, subsequent to the date of its report.

LITIGATION

There is no action, suit, proceeding, inquiry or investigation, notice of wbich has been served on the Authority, at law or in equity before or by any court, government agency, public board or body, pending against the Authority, affecting the existence of the Authority or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of

the Bonds or the pledge and lien on the Net Water Revenues pursuant to the Indenture, or contesting or affecting as to the Authority the validity or enforceability of the Bond Law, the Bonds, the Indenture or the Lease, or contesting the tax-exempt status of interest on the Bonds, or contesting the completeness or accuracy of this Official Statement, or contesting the powers of the Authority for the issuance of the Bonds, or the execution and delivery or adoption by the Authority of the Indenture or the Lease, or in any way contesting or challenging the consummation of the transactions contemplated hereby or thereby, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity of the Bond Law, as to the Authority, or the authorization, execution, delivery or performance by the Authority of the Bonds, the Indenture or the Lease.

RATINGS

Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P"), [is expected to assign the Bonds the ratings of "___" with the understanding that insurance policy securing the payment when due of the principal and interest on such bonds will be issued by the Insurer] has assigned an underlying rating of "___" to the Bonds. Such ratings reflect only the views of S&P and an explanation of the significance of such ratings may be obtained only from S&P.

There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by S&P, if in the judgment of the rating agency circumstances so warrant. Any such downward revision or withdrawal of the ratings may have an adverse effect on the market price of the Bonds.

CONTINUING DISCLOSURE

The Authority has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the Authority and the Water Enterprise, not later than March 31 following the end of the Authority's Fiscal Year (currently its Fiscal Year ends on June 30), commencing with the report for Fiscal Year ended June 30, 2015 (each, an "Annual Report"), and to provide notices of the occurrences of certain enumerated events. The Annual Report will be filed by the Dissemination Agent on behalf of the Authority with the Municipal Securities Rulemaking Board. The Municipal Securities Rulemaking Board has made such information available to the public without charge through its EMMA system. The specific nature of information to be contained in each Annual Report or the notice of listed events is set forth in "APPENDIX D – FORM OF CONTINUING DISCLOSURE AGREEMENT." These covenants have been made by the Authority in order to assist the Underwriters in complying with Rule 15c2-12, as amended (the "Rule") promulgated by the Securities and Exchange Commission. [**DESCRIPTION OF PAST 5-YEAR COMPLIANCE TO COME**]

MISCELLANEOUS

This Official Statement does not constitute a contract with the purchasers of the Bonds. All information included herein has been provided by the Authority, except where attributed to other sources. Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized.

All of the preceding descriptions and summaries of certain legal documents, other applicable legislation, agreements, reports and other documents are made subject to the provisions of such documents respectively, and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents available from the Underwriters and following issuance of

the Bonds, on file at the offices of the Trustee in Los Angeles, California, for further information in connection therewith.

AUTHORIZATION OF OFFICIAL STATEMENT

The delivery of this Official Statement has been duly authorized by the Authority and the City.

BANNING UTILITY AUTHORITY

By:_____
Executive Director

CITY OF BANNING

By:_____
Interim City Manager

APPENDIX A

GENERAL INFORMATION ABOUT THE CITY OF BANNING

The following information relating to the City of Banning (the "City") and the County of Riverside, California (the "County") has been supplied by the City and is provided solely for purposes of information. Neither the City nor the County is obligated in any manner to pay principal of or interest on the Bonds or to cure any delinquency or default on the Bonds. The Bonds are payable only from Net Water Revenues and other amounts held under the Indenture. The Underwriters and their counsel make no representation with respect to any of such information.

General Information

The City is located alongside Interstate 10 approximately 80 miles east of Los Angeles and 23 miles west of Palm Springs. The City covers approximately 27 square miles. The City is well known for its picturesque qualities and is nestled between the majestic San Gorgonio and San Jacinto Mountains, the two tallest peaks in Southern California. The community enjoys a rural lifestyle, nearby outdoor recreation opportunities, and invigorating healthful clear air.

Government Organization

The City was incorporated as a general law City in 1913. The City has a "city council/city manager" form of local government. The five members of the City Council are elected at-large from the community to serve four-year terms of office and the City Council selects one of its members to serve as mayor. The City has [___] full-time employees.

Governmental Services

The City maintains its own police department which consists of [___] sworn offices and [___] civilian personnel. The City contracts with the California Department of Forestry in cooperation with the Riverside County Fire Department for fire protection services within the City. The City provides general government services such as plan checking, building permit processing and code enforcement. Electricity, water and wastewater services are provided by the City. Students in the City attend Banning Unified School District for K-12 schools.

Transportation

The City is located along Interstate 10, a major traffic route. The City is also located alongside the Union Pacific Railroad. The City owns a municipal airport which also provides hangar and tie down service. Locally, the City provides both fixed route bus and dial-a-ride services.

Population

The table on the following page provides a comparison of population growth for the City, surrounding cities and the County between 2011 and 2015.

CHANGE IN POPULATION
CITY OF BANNING AND RIVERSIDE COUNTY
2011-2015

	CITY OF BANNING		RIVERSIDE COUNTY	
Year (January 1)	Popnlation	Percentage Change	Population	Percentage Change
2011	29,721	-	2,205,731	-
2012	29,982	0.9	2,229,467	1.1
2013	30,137	0.5	2,253,516	1.1
2014	30,306	0.6	2,280,191	1.2
2015	30,491	0.6	2,308,441	1.2

Source: State of California Department of Finance, Population Research Unit, "Population Estimates for California Cities and Counties."

Employment and Industry

The City is located in the Riverside Area Metropolitan Statistical Area ("MSA") which includes all of Riverside and San Bernardino Counties. In addition to varied manufacturing employment, the MSA has large and growing commercial and service sector employment, as reflected in the following table.

RIVERSIDE-SAN BERNARDINO-ONTARIO MSA
ANNUAL AVERAGE EMPLOYMENT[1]
2010-2014

INDUSTRY	2010	2011	2012	2013	2014
Construction	59,700	59,100	62,600	70,000	77,000
Durable Goods	55,400	55,800	56,900	57,300	59,800
Educational and Health Services	154,100	157,600	167,200	184,500	193,600
Farm	15,000	14,900	15,000	14,500	14,300
Financial Activities	41,00	39,900	40,900	42,200	42,700
Goods Producing	145,900	145,200	150,500	158,600	168,500
Government	234,300	227,500	224,600	225,200	228,800
Information	14,00	12,200	11,700	11,500	11,200
Leisure and Hospitality	122,800	124,000	129,400	135,900	144,300
Manufacturing	85,200	85,100	86,700	87,300	90,200
Nondurable Goods	29,800	29,300	29,800	30,100	30,400
Other Services	38,200	39,100	40,100	41,100	43,200
Professional and Business Services	123,600	126,000	127,500	132,400	137,800
Real Estate and Rental	15,500	14,600	14,900	15,600	16,200
Retail Trade	155,500	158,500	162,400	164,800	168,700
Service Providing	998,900	1,002,800	1,029,800	1,073,300	1,116,700
Transportation, Warehousing and Utilities	66,600	68,800	73,900	79,400	87,300
Wholesale Trade	48,700	49,200	52,200	59,000	56,400
Total, All Industries	**1,159,700**	**1,162,900**	**1,195,300**	**1,246,400**	**1,299,500**

(1) The employment figures by industry which are shown above are not directly comparable to the "Total, All Industries" employment figures due to rounded data.

Source: State Employment Development Department, Labor Market Information Division.

The major employers operating within the City and their respective number of employees as of June 30, 2014 are as follows:

CITY OF BANNING
TOP EMPLOYERS

Name of Company	Employment	Type of Business/Product

Source: City of Banning.

Commercial Activity

The following table summarizes the volume of retail sales and taxable transactions for the City for 2009 through 2013, the latest years available.

CITY OF BANNING
TOTAL TAXABLE TRANSACTIONS
2009-2013

Year	Retail Sales ($000's)	% Change	Retail Sales Permits	Total Taxable Transactions ($000's)	% Change	Issued Sales Permits
2009	130,173	-	315	156,232	-	451
2010	133,218	2.3%	340	146,742	(6.1)%	471
2011	143,230	7.5	323	157,071	7.0	448
2012	146,600	2.3	340	165,579	5.4	466
2013	154,595	5.5	332	175,386	5.9	460

Source: State Board of Equalization, "Taxable Sales in California (Sales & Use Tax)." 2014 data not available.

APPENDIX B

AUDITED FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR ENDED JUNE 30, 2014

APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS

APPENDIX D

FORM OF CONTINUING DISCLOSURE AGREEMENT

APPENDIX E

BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E under the caption "General" concerning The Depository Trust Company, New York, New York ("DTC"), and DTC's book-entry system has been obtained from DTC and the Authority and the City take no responsibility for the completeness or accuracy thereof. The Authority and the City cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The Authority and the City are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Bonds or an error or delay relating thereto. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC's Direct and Indirect Participants are on file with DTC.

General

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to DTC's Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. The information on such web site is not incorporated herein by reference.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of the Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of such principal, premium, if any, and interest to Cede & Co. (or such

other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered as described in the Indenture.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates will be printed and delivered.

Discontinuance of DTC Services

In the event that that DTC shall discontinue providing its services as depository with respect to the Bonds or the Authority shall discontinue the use of a book-entry system of transfers through DTC (or a successor securities depository), the following provisions would apply: (i) the principal of the Bonds will payable upon presentation of such Bonds by the registered owners thereof at the Office of the Trustee; (ii) interest on the Bonds will be payable on each Interest Payment Date by check mailed by the Trustee on the date on which interest is due to the registered owners of the Bonds at the close of business on the Record Date at the addresses of the registered owners as they appear on the Registration Books maintained by the Trustee, except that for registered owners of more than $1,000,000 in principal amount of Bonds who, prior to the Record Date preceding any Interest Payment Date, have provided the Trustee with wire transfer instructions, interest payable on such Bonds will be paid in accordance with the wire transfer instructions provided by such registered owners; (iii) Bonds may be exchanged for an equal aggregate principal amount of Bonds of other Authorized Denominations and of the same tenor and maturity upon surrender thereof at the Office of the Trustee upon payment by the registered owner of any charges the Trustee may make; and (iv) any Bond may, in accordance with its terms, be transferred, upon the Registration Books under the Indenture, by the person in whose name it is registered, in person or by his attorney duly authorized in writing, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed by the registered owner or his duly authorized attorney and upon payment by the registered owner of any charges the Trustee may make under the Indenture; provided, that the Trustee will not be required to transfer any Bonds during the period established by the Trustee for the selection of such Bonds for redemption or any Bonds that have been selected for redemption pursuant to the Indenture.

APPENDIX F

PROPOSED FORM OF OPINION OF BOND COUNSEL

[Dated the Date of Closing]

Banning Utility Authority
99 E. Ramsey Street
Banning, California 92220

City of Banning
99 E. Ramsey Street
Banning, California 92220

$_____
Banning Utility Authority
Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series

Ladies and Gentlemen:

In our role as Bond Counsel to the Banning Utility Authority (the "Authority"), we have examined certified copies of the proceedings taken in connection with the issuance by the Authority of its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds") in the aggregate principal amount of $_____. We have also examined supplemental documents furnished to us and have obtained such certificates and documents from public officials as we have deemed necessary for the purposes of this opinion. The Bonds are issued under Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code, pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), and pursuant to an authorizing resolution of the Board of the Authority adopted on July __, 2015. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Indenture.

The Bonds are being issued to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the Authority's $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), currently outstanding in the aggregate principal amount of $29,165,000; and (iii) pay costs of issuance of the Bonds.

The Bonds are subject to redemption prior to maturity as provided in the Indenture.

Based upon the foregoing, we are of the opinion that:

1. The Indenture has been duly and validly authorized, executed and delivered by the Authority and, assuming the Indenture constitutes the legally valid and binding obligation of the Trustee, constitutes the legally valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, and the Bonds are entitled to the benefits of the Indenture.

2. The proceedings for the issuance of the Bonds have been taken in accordance with the laws and Constitution of the State of California, and the Bonds, having been issued in duly authorized form and executed by the proper officials and delivered to and paid for by the purchasers, constitute legal and binding special obligations of the Authority enforceable in accordance with their terms.

3. The Bonds are secured by a pledge of the Net Water Revenues and all moneys in certain funds and accounts established pursuant to the Indenture, subject to the application thereof on the terms and conditions as set forth in the Indenture.

4. Under existing statutes, regulations, rulings and court decisions, and assuming compliance with the covenants mentioned below, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 (the "Code") from the gross income of the owners thereof for federal income tax purposes. We are further of the opinion that under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, that interest on the Bonds will not be treated as an item of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income of that corporation. A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed. We are further of the opinion that interest on the Bonds is exempt from personal income taxes of the State of California under present state law.

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Non-compliance with such requirements could cause the interest on the Bonds to fail to be excluded from the gross income of the owners thereof retroactive to the date of issuance of the Bonds. Pursuant to the Indenture and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986* being delivered by the Authority in connection with the issuance of the Bonds, the Authority is making representations relevant to the determination of, and is undertaking certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching our opinions described in the immediately preceding paragraph, we have assumed the accuracy of such representations and the present and future compliance by the Authority with such covenants. Further, except as stated in the preceding paragraph, we express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel.

The opinions expressed in paragraphs 1 through 3 above are qualified to the extent the enforceability of the Bonds and the Indenture may be limited by applicable bankruptcy, insolvency, debt adjustment, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally or as to the availability of any particular remedy. The enforceability of the Bonds and the Indenture is subject to the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, to the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a

proceeding in equity or at law, and to the limitations on legal remedies against governmental entities in California.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any fact or circumstance that may hereafter come to our attention or to reflect any change in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and are not binding on the Internal Revenue Service; rather, such opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

Respectfully submitted,

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INDENTURE OF TRUST

Dated as of August 1, 2015

by and between

BANNING UTILITY AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION
as Trustee

Authorizing the Issuance of

$_____
Banning Utility Authority
Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series

TABLE OF CONTENTS

Page

ARTICLE I.
DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS
2

Section 1.01. Definitions 2
Section 1.02. Interpretation 16

ARTICLE II.
THE BONDS
17

Section 2.01. Authorization of Bonds 17
Section 2.02. Terms of the Bonds 17
Section 2.03. Transfer of Bonds 18
Section 2.04. Use of Securities Depository 19
Section 2.05. Exchange of Bonds 20
Section 2.06. Registration Books 20
Section 2.07. Form and Execution of Bonds 20
Section 2.08. Temporary Bonds 21
Section 2.09. Bonds, Mutilated, Lost, Destroyed or Stolen 21
Section 2.10. CUSIP Numbers 22
Section 2.11. Parity Obligations 22

ARTICLE III.
ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS
23

Section 3.01. Issuance of the Bonds 23
Section 3.02. Application of the Proceeds of the Bonds 23
Section 3.03. Establishment and Application of Costs of Issuance Fund 23
Section 3.04. Establishment and Application of Water Project Fund 24
Section 3.05. Validity of Bonds 24

ARTICLE IV.
REDEMPTION OF BONDS
24

Section 4.01. Terms of Redemption 24
Section 4.02. Selection of Bonds for Redemption 26
Section 4.03. Notice of Redemption 26
Section 4.04. Partial Redemption of Bonds 27
Section 4.05. Effect of Redemption 27

TABLE OF CONTENTS
(continued)

Page

ARTICLE V.
REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST
27

Section 5.01. Pledge and Assignment; Transfers to Bond Fund 27
Section 5.02. Covenant Regarding Net Water Revenues 28
Section 5.03. Creation of Bond Fund and Accounts Therein; Allocation of Net Water Revenues 28
Section 5.04. Application of Interest Account 29
Section 5.05. Application of Principal Account 29
Section 5.06. Application of Sinking Account 29
Section 5.07. Application of Reserve Account 29
Section 5.08. Application of Redemption Fund 30
Section 5.09. Rates and Charges 30
Section 5.10. [Reserved] 31
Section 5.11. Budget and Appropriation of Debt Service Payments 31
Section 5.12. Special Obligation of the Authority; Obligations Absolute 31
Section 5.13. Investments 32
Section 5.14. Valuation of Investments 33

ARTICLE VI.
PARTICULAR COVENANTS
33

Section 6.01. Punctual Payment; Compliance with Documents 33
Section 6.02. Extension of Payment of Bonds 33
Section 6.03. Against Encumbrances 34
Section 6.04. Power to Issue Bonds and Make Pledge and Assignment 34
Section 6.05. Accounting Records and Financial Statements 34
Section 6.06. [Reserved] 34
Section 6.07. Continuing Disclosure 34
Section 6.08. Covenants to Maintain Tax-Exempt Status 35
Section 6.09. Waiver of Laws 39
Section 6.10. Protection of Security and Rights of Owners 40
Section 6.11. Further Assurances 40
Section 6.12. Maintenance, Utilities, Taxes and Assessments 40
Section 6.13. Operation of Water Enterprise 40
Section 6.14. Public Liability and Property Damage Insurance 41
Section 6.15. Casualty Insurance 41
Section 6.16. Insurance Net Proceeds; Form of Policies 41
Section 6.17. Eminent Domain 42
Section 6.18. Restriction on Sale of Water Enterprise 42

TABLE OF CONTENTS
(continued)

Page

ARTICLE VII.
EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS
42

Section 7.01. Events of Default and Acceleration of Maturities 42
Section 7.02. Application of Funds Upon Acceleration 43
Section 7.03. Other Remedies; Rights of Bond Owners [and Bond Insurer] 44
Section 7.04. Power of Trustee to Control Proceeding 45
Section 7.05. Appointment of Receivers 45
Section 7.06. Non-Waiver 45
Section 7.07. Rights and Remedies of Bond Owners 46
Section 7.08. Termination of Proceedings 46

ARTICLE VIII.
THE TRUSTEE
47

Section 8.01. Duties, Immunities and Liabilities of Trustee 47
Section 8.02. Merger or Consolidation 48
Section 8.03. Liability of Trustee 48
Section 8.04. Right to Rely on Documents 50
Section 8.05. Preservation and Inspection of Documents 51
Section 8.06. Compensation and Indemnification 51

ARTICLE IX.
MODIFICATION OR AMENDMENT OF THIS INDENTURE
51

Section 9.01. Amendments Permitted 51
Section 9.02. Effect of Supplemental Indenture 53
Section 9.03. Endorsement of Bonds; Preparation of New Bonds 53
Section 9.04. Amendment of Particular Bonds 53
Section 9.05. Notice to Rating Agencies 53
Section 9.06. Copy to [Bond Insurer 53

ARTICLE X.
DEFEASANCE
54

Section 10.01. Discharge of Indenture 54
Section 10.02. Discharge of Pledge of Net Water Revenues 55
Section 10.03. Deposit of Money or Securities with Trustee 55
Section 10.04. Unclaimed Funds 56

TABLE OF CONTENTS
(continued)

Page

ARTICLE XI.
[BOND INSURANCE]
56

Section 11.01. Bond Insurer's Default-Related Provisions 56
Section 11.02. Amendments and Supplements 57
Section 11.03. Defeasance Provisions 57
Section 11.04. Notices to be Given to the Bond Insurer 57
Section 11.05. Payments Unconditional 58
Section 11.06. Reimbursement of Expenses 58
Section 11.07. Payment Procedure Pursuant to Bond Insurance Policy 58
Section 11.08. Reserve Policy Provisions 59

ARTICLE XII.
MISCELLANEOUS
60

Section 12.01. Liability of Authority Limited to Net Water Revenues 60
Section 12.02. Limitation of Rights to Parties, Bond Owners 61
Section 12.03. Funds and Accounts 61
Section 12.04. Waiver of Notice; Requirement of Mailed Notice 61
Section 12.05. Destruction of Bonds 61
Section 12.06. Severability of Invalid Provisions 61
Section 12.07. Notices 62
Section 12.08. Evidence of Rights of Bond Owners 62
Section 12.09. Disqualified Bonds 63
Section 12.10. Money Held for Particular Bonds 63
Section 12.11. Waiver of Personal Liability 63
Section 12.12. Successor Is Deemed Included in All References to Predecessor 63
Section 12.13. Execution in Several Counterparts 63
Section 12.14. Governing Law 63

INDENTURE OF TRUST

This INDENTURE OF TRUST, dated as of August 1, 2015, is by and between the BANNING UTILITY AUTHORITY, a joint powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America with a corporate trust office in Los Angeles, California, being qualified to accept and administer the trusts hereby created (the "Trustee");

WITNESSETH:

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated as of July 12, 2005, by and between the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency") and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose of financing and refinancing capital improvements of member entities of the Authority; and

WHEREAS, under the Bond Law, the Authority is authorized to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities and to provide financing and refinancing for public capital improvements of public entities; and

WHEREAS, the Authority has previously issued its $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), of which $29,165,000 remain outstanding; and

WHEREAS, for the purpose of refunding the 2005 Bonds currently outstanding [, and financing certain capital improvements to the City's water utility system (the "Water Enterprise")], the Authority has determined to issue its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds") in the aggregate principal amount of $_____, pursuant to and secured by this Indenture in the manner provided herein; and

WHEREAS, the Authority has determined that in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and premium (if any) thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has found and determines, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee, and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture as a valid and binding agreement for

the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of the Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and premium (if any) on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective owners from time to time of the Bonds, as follows:

ARTICLE I.

DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture and of any indenture supplemental hereto and of any certificate, opinion, request, or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. In addition, all capitalized terms used herein and not otherwise defined in this Section 1.01 shall have the respective meanings given such terms in the Water Lease.

"Agency" means the Community Redevelopment Agency of the City of Banning, a public body corporate and politic organized under the laws of the State, and any successor thereto.

"Agreement" means that certain Joint Exercise of Powers Agreement, dated as of July 12, 2005, by and between the City and the Agency, as hereafter duly amended and supplemented from time to time, creating the Authority for the purposes, among other things, of assisting the City and the Agency in the financing and refinancing of Public Capital Improvements, as such term is defined in the Bond Law.

"Annual Debt Service" means, for each Bond Year, (i) with respect to each of the Bonds, the Debt Service payable in such Bond Year, or (ii) with respect to Parity Obligations, the required payments scheduled to be made with respect to all Outstanding Parity Obligations in such Bond Year provided, that for the purposes of determining compliance with Section 5.09 and conditions for the issuance of Parity Obligations pursuant to Section 2.11:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations and by subparagraph (C) with respect to Parity Obligations as to which a Payment Agreement is in force, and by subparagraph (D) with respect

to certain Parity Payment Agreements, interest on any Parity Obligation shall be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount of interest deemed to be payable on any Variable Interest Rate Parity Obligation shall be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the Assumed RBI-based Rate;

(C) Interest on Payments or Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Parity Obligations with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the Authority expected to be produced by the terms of such Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead shall be treated as an obligation bearing interest at a fixed interest rate, and (ii) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead shall be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Parity Obligation with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions shall be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the Authority based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the Authority to make payments to the Qualified Counterparty based on a fixed rate, payments by the Authority to the Qualified Counterparty shall be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the Authority shall be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual Variable Interest Rate on such Parity Obligation, and such Parity Obligation shall set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it shall be assumed that the variable interest rate payment

component payable pursuant to the Payment Agreement is equal in amount to the variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the Authority or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that is required to be used to calculate interest on the Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it shall be assumed:

(a) Authority Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the Authority under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the Authority to the Qualified Counterparty will be based upon an interest rate equal to the Assumed RBI-based Rate, and payments by the Qualified Counterparty to the Authority will be based on the fixed rate specified by the Payment Agreement; and

(b) Authority Obligated to Make Payments Based on Fixed Interest Rate. If payments by the Authority under the Payment Agreement are based on a fixed interest rate and payments by the Qualified Counterparty are based on a variable interest rate index, payments by the Authority to the Qualified Counterparty will be based on an interest rate equal to the rate that is one hundred and five percent (105%) of the fixed interest rate specified by the Payment Agreement to be paid by the Authority, and payments by the Qualified Counterparty to the Authority will be based on a rate equal to the Assumed RBI-based Rate as the variable interest rate deemed to apply to the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (C)(l), (2) and (3) of this definition, the Authority shall not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(D) Debt Service on Parity Payment Agreements. No interest shall be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any other Parity Obligation, interest on that Parity Payment

(1) Authority Obligated to Make Payments Based on Fixed Interest Rate. If the Authority is obligated to make Payment Agreement Payments based on a fixed interest rate and the Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the Authority will be based on the specified fixed rate, and

payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made; and

(2) Authority Obligated to Make Payments Based on Variable Interest Rate Index. If the Authority is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the Authority will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (D)(1) and (2) of this definition, the Authority shall not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt Service on any Balloon Parity Obligations, it shall be assumed that the principal of those Balloon Parity Obligations, together with interest thereon at a rate equal to the Assumed RBI-based Rate, will be amortized in equal annual installments over a term of thirty (30) years from the date of issuance.

"Assumed RBI-based Rate" means, as of any date of calculation, an assumed interest rate equal to ninety percent (90%) of the average RBI during the twelve (12) calendar months immediately preceding the month in which the calculation is made.

"Authority" means the Banning Utility Authority, a joint powers authority duly organized and existing under the Agreement and the laws of the State.

"Authorized Denomination" means denominations of $5,000 or any integral multiple thereof.

"Authorized Representative" means: (a) with respect to the Authority, its Chairperson, Vice Chairperson, Executive Director, Treasurer, Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chairperson and filed with the City and the Trustee; and (b) with respect to the City, its Mayor, City Manager, City Clerk, Treasurer, Finance Director or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its Mayor or City Manager and filed with the Trustee.

"Balloon Parity Obligation" means any Parity Obligation described as such in such Parity Obligation.

"Board" means the Board of Directors of the Authority.

"Bond Counsel" means (a) Norton Rose Fulbright US LLP, Los Angeles, California, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Code.

"Bond Fund" means the fund by that name established pursuant to Section 5.03.

["Bond Insurance Policy" means the municipal bond new issue insurance policy issued by the Bond Insurer that guarantees payment of principal of and interest on the Bonds.]

["Bond Insurer" means _____ or any successor thereto.]

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

"Bond Year" means each twelve-month period extending from November 2 in one calendar year to November 1 of the succeeding calendar year, both dates inclusive, except that the first Bond Year shall extend from the Closing Date to November 1, 2015 with respect to the Bonds.

"Bonds" means the Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series, authorized by and at any time Outstanding pursuant to the Bond Law and the Indenture.

"Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California, or in any state in which the Trust Office of the Trustee is located, are closed. If any payment hereunder is due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day with the same effect as if made on such previous day.

"City" means the City of Banning, a municipal corporation organized under the laws of the State.

"Closing Date" means August __, 2015, being the date of delivery of the Bonds to the Original Purchasers.

"Code" means the Internal Revenue Code of 1986.

"Corporation" means the Banning Public Facilities Corporation.

"Costs of Issuance" means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds and the application of the proceeds of the Bonds, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority, initial fees and expenses of the Trustee and Escrow Agent and their counsel, title insurance premiums, municipal bond insurance premiums and other costs of credit enhancement, appraisal and valuation fees, compensation to any

financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents and costs of printing.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.03.

"Debt Service" means, during any period of computation, the amount obtained for such period by totaling the following amounts: (a) the principal amount of all Outstanding Serial Bonds coming due and payable by their terms in such period; (b) the minimum principal amount of all Outstanding Term Bonds scheduled to be redeemed by operation of mandatory sinking account deposits in such period; and (c) the interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds no longer Outstanding.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Event of Default" means any of the events specified in Section 7.01.

"Escrow Agent" means U.S. Bank National Association, acting as escrow agent under the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement, dated as of August 1, 2015, by and between the Escrow Agent and the Authority relating to the defeasance of the currently outstanding 2005 Bonds.

"Federal Securities" means any of the following (which solely for purposes of Section 10.01(b) hereof are non-callable and non-prepayable) and which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein: cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Moody's (or any combination of the foregoing) [unless the Bond Insurer otherwise approves].

"Fiscal Year" means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority, as its official fiscal year period.

"Gross Water Revenues" means, for any Fiscal Year, all income, rents, rates, fees, charges and other moneys derived by the Authority from the operation of the Water Enterprise, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges, or other moneys derived from the sale, furnishing, and supplying of water and other services, facilities, and commodities sold, furnished or supplied through the facilities of the Water Enterprise, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees (including connection fees), charges or other moneys to the extent that the use

of such earnings and income is limited by or pursuant to law to the Water Enterprise, and (iii) the proceeds derived by the Authority directly or indirectly from the sale, lease or other disposition of a part of the Water Enterprise as permitted hereby; provided that the term "Gross Water Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the Authority.

"Guaranteed Investment Contracts" means investment agreements which allow for withdrawals at such times as required by the Indenture with providers whose unsecured obligations are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

"Indenture" means this Indenture of Trust as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

"Independent Accountant" means any certified public accountant or firm of certified public accountants appointed and paid by the Authority, and who, or each of whom (a) is in fact independent and not under domination of the Authority; (b) does not have any substantial interest, direct or indirect, in the Authority, and (c) is not connected with the Authority as an officer or employee of the Authority but who may be regularly retained to make annual or other audits of the books of or reports to the Authority.

"Information Services" means the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at *www.emma.msrb.org*; provided, however, in accordance with the then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called Bonds as the Authority may designate in writing to the Trustee.

"Interest Account" means the account by that name established in the Bond Fund pursuant to Section 5.03.

"Interest Payment Date" means each May 1 and November 1 of each year, commencing [November 1, 2015].

"Letter of Representations" means the letter of the Authority and the Trustee delivered to and accepted by DTC (or such other applicable Securities Depository) on or prior to the issuance of the Bonds in book entry form setting forth the basis on which DTC (or such other applicable Securities Depository) serves as depository for the Bonds issued in book entry form, as originally executed or as it may be supplemented or revised or replaced by a letter to a substitute Securities Depository.

"Maximum Annual Debt Service" means, as of the date of any calculation, the maximum Debt Service payable during such period of time and the greatest Annual Debt Service payable on any Outstanding Parity Obligations or Parity Obligations then being issued, during the current or any future Bond Year.

"Management Agreement" means the Water Enterprise Management Agreement dated as of December 1, 2005, by and between the Authority and the City, relating to the operation and management of the Water Enterprise by the City on behalf of the Authority.

"Moody's" means Moody's Investors Service, its successors and assigns or, if such entity shall be dissolved, liquidated, or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the City, with the approval of the Authority, by notice to the Trustee.

"Net Water Revenues" means, for any Fiscal Year, an amount equal to all of the Gross Water Revenues received with respect to such Fiscal Year, minus the amount required to pay all Water Operation and Maintenance Expenses.

"Original Purchasers" means Stifel, Nicolaus & Company, Inc. and Williams Capital Group, as the original purchasers of the Bonds upon their delivery by the Trustee on the Closing Date.

"Outstanding," when used as of any particular time with reference to Parity Obligations, means all Parity Obligations which have not been paid or otherwise satisfied as provided in the proceedings and instruments pursuant to which such Parity Obligations have been issued or incurred; and when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 12.09) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.01, including Bonds (or portions thereof) described in Section 12.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture. For purposes of Section 2.11 and Section 5.09 hereof only, (i) Parity Payment Agreements related to other Parity Obligations which are included in determining Annual Debt Service on such other Parity Obligations, and (ii) Parity Bank Agreements as to which no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City shall not be considered Outstanding for purposes of this Agreement.

"Owner" or "Bondholder," whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"Parity Payment Agreement" means a Payment Agreement which is a Parity Obligation.

"Parity Obligations," means any leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the Authority payable and secured by a pledge of and lien upon any of the Net Water Revenues on a parity with the Bonds, entered into or issued pursuant to and in accordance with Section 2.11 hereof.

"Payment Agreement" means a written agreement for the purpose of managing or reducing the Authority's exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or

forward basis by the Authority and a Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments, or any combination thereof or any similar device.

"Payment Agreement Payments" mean the amounts required to be paid periodically by the Authority to the Qualified Counterparty pursuant to a Payment Agreement.

"Payment Agreement Receipts" mean the amounts required to be paid periodically by the Qualified Counterparty to the Authority pursuant to a Payment Agreement.

"Permitted Investments" means any of the following, to the extent permitted by the laws of the State: [CONFIRM]

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership

2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration
Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration
Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing
notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations

3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System
Consolidated systemwide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2, including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee or such holding company provides investment advisory or other management services.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks including the Trustee, its parent holding company and their affiliates. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF, which may be from or with the Trustee, its parent holding company and their affiliates.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements, with providers rated, or guaranteed by guarantors rated, at the time of investment, in the top three categories (without regard to modifiers) by any two or more Rating Agencies.

H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories (without regard to modifiers) assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P including the Trustee, its parent holding company and their affiliates.

K. Repurchase Agreements which satisfy the following criteria:

Repurchase Agreements provide for the transfer of securities from a dealer bank, financial entity or securities firm (seller/borrower) to the City (buyer/lender) or the Trustee or a third party custodial agent, and the transfer of cash from the City to the dealer bank, financial entity or securities firm with an agreement that the dealer bank, financial entity or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the municipal entity and a dealer bank or securities firm or other financial entity

   a. Primary dealers on the Federal Reserve reporting dealer list which are rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   b. Banks rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   c. Financial Entities rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies.

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are those securities listed in (A), (B) and (C) above.

   b. The term of the repo may be up to 30 days, or greater than 30 days if subject to put or redemption at par to pay project/construction costs and/or debt service on the Bonds.

   c. The collateral must be delivered to the municipal entity, trustee or third party acting as agent for the trustee before/simultaneous with payment (perfection by possession of certificated securities).

d. Valuation of Collateral

(I) The securities must be valued weekly, marked-to-market at current market price plus accrued interest

(a) The value of collateral must be equal to at least 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm or financial entity under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are any of those listed in (C) above, then the value of collateral must equal 105%.

L. U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks (including the Trustee and its affiliates) which have a rating on their short-term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1+" by S&P and maturing no more than 360 days after the date of purchase, provided that ratings on holding companies are not considered as the rating of the bank.

M. Local Agency Investment Fund of the State of California ("LAIF"), created pursuant to Section 16429.1 of the California Government Code.

N. The County Treasurer's Investment Pool so long as such Pool is rated AA- or better by S&P or Fitch or Aa3 or better by Moody's.

"Principal" or "Principal Amount" shall mean, as of any date of calculation, the principal amount of the Bonds.

"Principal Account" means the account by that name established in the Bond Fund pursuant to Section 5.03.

"Principal Payment Date" means November 1 of each year, commencing [November 1, 2016].

"Qualified Counterparty" means a party (other than the Authority) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has been or whose debt service obligations have been assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), and (2) who is otherwise qualified to act as the other party to a Payment Agreement with the Authority under any applicable laws.

"Qualified Reserve Account Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company, [approved in form and substance by the Bond Insurer] and deposited with the Trustee pursuant to the Indenture, provided that all of the following requirements are met: (i) at the time of delivery of such letter of credit or surety bond, the long-term credit rating of such bank is within the highest rating category of Moody's and S&P, or the claims paying ability of such insurance company is rated within the two highest rating categories of A.M. Best & Company and S&P; (ii) such letter of credit or surety bond has a term which ends no earlier than the last Interest Payment Date of the series of Bonds to which the Reserve Requirement applies; (iii) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to the Indenture; and (iv) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder amounts necessary to carry out the purposes specified in the Indenture, including the replenishment of the Interest Account or the Principal Account.

"RBI" means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the Authority, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate on actively traded thirty (30) year United States Treasury obligations.

"Record Date" means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month preceding such Interest Payment Date.

"Redemption Fund" means the fund by that name established pursuant to Section 5.08.

"Registration Books" means the records maintained by the Trustee pursuant to Section 2.06 for the registration and transfer of ownership of the Bonds.

"Reserve Account" means the account by that name in the Bond Fund established pursuant to Section 5.03.

["Reserve Policy" means the Qualified Reserve Account Credit Instrument issued by the Bond Insurer on the Closing Date.]

"Reserve Requirement" means as of any date of calculation thereafter, an amount equal to the least of: (i) 100% of the Maximum Annual Debt Service for the then current or every subsequent Bond Year; (ii) 125% of average Annual Debt Service as of the date issuance of the Bonds, and (iii) ten percent (10%) of the proceeds (within the meaning of section 148 of the Tax Code) of the Bonds.

"S&P" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business, its successors and assigns or, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the City, with the approval of the Authority, by notice to the Trustee.

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attn. Call Notification Department, Fax-(212) 855-

7232, and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Certificate of the Authority delivered to the Trustee.

"Serial Bonds" means the Bonds not subject to redemption from mandatory sinking fund payments.

"Sinking Account" means the account by that name in the Bond Fund established pursuant to Section 5.03.

"State" means the State of California.

"Supplemental Indenture" means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

"Tax Regulations" means temporary and permanent regulations promulgated under or with respect to sections 103 and 141 through 501 inclusive, of the Code.

"Term Bonds" means, collectively, the Bonds maturing on November 1, 20__ or November 1, 20__.

"Trustee" means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, or its successor, as Trustee hereunder as provided in Section 8.01.

"Trust Office" means the corporate trust office of the Trustee at the address set forth in Section 12.07, provided, however for transfer, registration, exchange, payment and surrender of Bonds "Trust Office" means care of the corporate trust office of the Trustee in St. Paul, Minnesota, or such other office designated by the Trustee from time to time and such office as the Trustee may designate in writing to the Authority from time to time as the place for transfer, registration, surrender, exchange or payment of the Bonds.

"Undertaking To Provide Continuing Disclosure" shall mean the Continuing Disclosure Agreement, by the Authority and Willdan Financial Services, as Dissemination Agent, dated August 1, 2015 and described in Section 6.07 hereof.

"Variable Interest Rate" means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate shall be as specified in the applicable Parity Obligation, which Parity Obligation shall also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate shall remain in effect, and (ii) the time or times based upon which any change in such variable interest rate shall become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

"Variable Interest Rate Parity Obligations" mean, for any-period of time, all in accordance with the definition of "Annual Debt Service" set forth in this Section 1.01, any Parity Obligations that bear a Variable Interest Rate during such period, except that (i) Parity Obligations shall not be treated as Variable Interest Rate Parity Obligations if the net economic effect of interest rates on particular payments of the Parity Obligations and interest rates on other payments of the same Parity Obligations, as set forth in such Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case, is to produce obligations that bear interest at a fixed interest rate, and (ii) Payments and Parity Obligations with respect to which a Payment Agreement is in force shall be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate.

"Water Enterprise" means the City's water system, consisting of the property and assets described in the Water Lease.

"Water Fund" means the fund by that name established pursuant to Section 5.01(b).

"Water Lease" means the Water Enterprise Lease Agreement, dated as of December 1, 2005, by and between the Authority and the City, relating to the lease of the Water Enterprise by the Authority from the City.

"Water Operation and Maintenance Expenses" means all expenses and costs of management, operation, maintenance and repair of the Water Enterprise, and all incidental costs, fees and expenses properly chargeable to the Water Enterprise, including payments required of the Authority pursuant to contract for the purchase or delivery of water which do not constitute Parity Obligations (but excluding debt service or other similar payments on Parity Obligations or other obligations and depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature).

"Water Project Fund" means the fund by that name established pursuant to Section 3.04.

"Written Certificate", "Written Request" and "Written Requisition" of the Authority means, respectively, a written certificate, request or requisition signed in the name of the Authority by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

Section 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter; masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture: the words "herein", "hereof", "hereby", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II.

THE BONDS

Section 2.01. Authorization of Bonds. The Authority hereby authorizes the issuance hereunder of the Bonds, which shall constitute special obligations of the Authority, for the purpose of providing funds to (i) refund the 2005 Bonds; (ii) [finance certain capital improvements to the Water Enterprise; (iii) purchase a surety policy for the Reserve Account; and (iv)] pay costs of issuance related to the Bonds. The Bonds are hereby designated the "Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series". The aggregate principal amount of Bonds initially issued and Outstanding under this Indenture shall equal _____ Dollars ($_____). This Indenture constitutes a continuing agreement with the Trustee and the Owners from time to time of the Bonds to secure the full payment of the principal of and interest and premium (if any) on all the Bonds, subject to the covenants, provisions and conditions herein contained.

Section 2.02. Terms of the Bonds. The Bonds shall be issued in fully registered form without coupons in Authorized Denominations. The Bonds shall initially be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York, and shall be evidenced by one Bond for each of the maturities in the principal amounts set forth below. DTC is hereby appointed depository for the Bonds, and registered ownership may not thereafter be transferred except as set forth in Section 2.04. The Bonds shall mature on November 1 in the years and in the amounts set forth below and shall bear interest on each Interest Payment Date at the rates set forth below.

Maturity Date (November 1)	Principal Amount	Interest Rate
2015		
2015		
2016		
2017		
2018		
2019		
2019		
2020		
2021		
2022		
2023		
2030		
2035		
2036		

Interest on the Bonds shall be payable semi-annually on May 1 and November 1 calculated based on a 360-day year of twelve (12) thirty-day months on each Interest Payment Date, commencing [November 1, 2015], to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed by first class mail to the Owner at the address of such Owner as its appears on the Registration Books; provided however, that payment of interest or principal may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee prior to the applicable Record Date. Principal of any Bond and any premium upon redemption shall be paid by check or wire of the Trustee upon presentation and surrender thereof at the Trust Office. Principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America.

Each Bond shall be dated the Closing Date and shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before October 15, 2015, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Section 2.03. Transfer of Bonds. Subject to Section 2.05, any Bond may, in accordance with its terms, be transferred on the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee. Transfer of any Bond shall not be permitted by the Trustee during the period established by the Trustee for selection of Bonds for redemption or if such

Bond has been selected for redemption pursuant to Article IV. Whenever any Bonds or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and shall deliver a new Bond or Bonds for a like aggregate principal amount. The Trustee may require the Bond Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

Section 2.04. Use of Securities Depository.

(a) The Bonds shall be initially registered as provided in Section 2.02. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except:

(i) to any successor of Cede & Co., as nominee of DTC, or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (a) hereof (a "substitute depository"); provided, that any successor of Cede & Co., as nominee of DTC or a substitute depository, shall be qualified under any applicable laws to provide the services proposed to be provided by it;

(ii) to any substitute depository, upon (1) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository, or (2) a determination by the Authority to substitute another depository for DTC (or its successor) because DTC or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided, that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) to any person as provided below, upon (1) the resignation of DTC or its successor (or substitute depository or its successor) from its functions as depository, or (2) a determination by the Authority to remove DTC or its successor (or any substitute depository or its successor) from its functions as depository.

(iv) in the case of any transfer pursuant to clause (i) or clause (ii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Trustee, together with a Written Request of the Authority to the Trustee, a new Bond for each maturity shall be authenticated and delivered in the aggregate principal amount of the Bonds then Outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Written Request of the Authority.

(v) in the case of any transfer pursuant to clause (iii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Trustee, together with a Written Request of the Authority to the Trustee, new Bonds shall be authenticated and delivered in such denominations numbered in the manner determined by the Trustee and registered in the names of such persons as are requested in such a Written Request of the Authority, subject to the limitations of Section 2.02 hereof; provided, the Trustee shall not be required to deliver such Bonds within a period less than sixty (60) days from the date of receipt of such a Request of the Authority. After any transfer pursuant to this subsection, the Bonds shall be transferred pursuant to Section 2.03.

(vi) the Authority and the Trustee shall be entitled to treat the person in whose name any Bond is registered as the Owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Authority; and the Authority and the Trustee shall have no responsibility nor shall they have any liability for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Bonds, and neither the Authority nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party, including DTC or its successor (or substitute depository or its successor), except for the Owner of any Bonds.

(vii) so long as the Outstanding Bonds are registered in the name of Cede & Co. or its registered assigns, the Authority and the Trustee shall cooperate with Cede & Co., as sole registered Owner, or its registered assigns in effecting payment of the principal of and interest on the Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

(viii) notwithstanding anything to the contrary contained herein, so long as the Bonds are registered as provided in this Section 2.04, payment of principal of and interest on the Bonds shall be made in accordance with the Letter of Representations delivered to DTC with respect to the Bonds.

Section 2.05. Exchange of Bonds. Any Bond may be exchanged upon surrender thereof at the Trust Office for an equal aggregate principal amount of Bonds of other authorized denominations and of the same tenor and maturity. Exchange of any Bond shall not be permitted during the period established by the Trustee for selection of Bonds for redemption or if such Bond has been selected for redemption pursuant to Article IV. The Trustee shall require the Bond Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such transfer. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Authority.

Section 2.06. Registration Books. The Trustee will keep or cause to be kept, at the Trust Office, sufficient records for the registration and transfer of ownership of the Bonds, which shall at all reasonable times be open to inspection during regular business hours by the Authority and the Owners with reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

Section 2.07. Form and Execution of Bonds. The Bonds shall be substantially in the form attached hereto as Exhibit A and hereby made a part hereof. The Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signatures of its Chairperson and attested with the manual or facsimile signature of its Secretary or any assistant duly appointed by the Board, and shall be delivered to the Trustee for authentication by it. In case any officer of the Authority who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued

and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though the individual who signed the same had continued to be such officer of the Authority. Also, any Bond may be signed on behalf of the Authority by any individual who on the actual date of the execution of such Bond shall be the proper officer although on the nominal date of such Bond such individual shall not have been such officer.

Only such of the Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.08. Temporary Bonds. The Bonds may be issued in temporary form exchangeable for definitive Bonds when ready for delivery. Any temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority, shall be in fully registered form without coupons and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds it will execute and deliver definitive Bonds as promptly thereafter as practicable, and thereupon the temporary Bonds may be surrendered, for cancellation, at the Trust Office and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.09. Bonds, Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series, tenor, and Authorized Denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and destroyed. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Trustee and, if such evidence be satisfactory to them and indemnity for them satisfactory to the Authority and the Trustee shall be given, the Authority, at the expense of the Owner of such lost, destroyed or stolen Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof) upon receipt of the aforementioned indemnity. The Trustee may require payment of a reasonable fee for each new Bond issued under this Section 2.09 and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section 2.09 in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

Section 2.10. CUSIP Numbers. The Trustee and the Authority shall not be liable for any defect or inaccuracy in the CUSIP number that appears on any Bond or in any redemption notice. The Trustee may, in its discretion, include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the Trustee nor the Authority shall be liable for any inaccuracies in such numbers.

Section 2.11. Parity Obligations. The Authority covenants that no additional bonds or other indebtedness shall be issued or incurred on a basis senior to the Bonds that are payable out of the Net Water Revenues in whole or in part. Additional obligations may be issued on a basis subordinate to the Bonds to the extent required. Except for obligations incurred to prepay or post a security deposit for the payment of the Bonds or Parity Obligations, the Authority may issue or incur Parity Obligations during the term of the Bonds only if:

(a) no event of default has occurred and is continuing under this Indenture;

(b) the Net Water Revenues, calculated in accordance with generally accepted accounting principles, as shown by the books of the Authority for the most recent completed Fiscal Year for which audited financial statements are available, or for any more recent consecutive twelve (12) month period selected by the Authority, in either case verified by a certificate or opinion of an independent accountant or financial consultant, are at least equal to 120% of the amount of Maximum Annual Debt Service; and

(c) upon the issuance of such Parity Obligations a reserve fund shall be established for such Parity Obligations in an amount at least equal to the lesser of (i) maximum annual debt service on such Parity Obligations, or (ii) the maximum amount then permitted under the Code.

Either or both of the following items may be added to such Net Water Revenues for the purpose of applying the restriction contained in subsection (b) above:

(i) An allowance for revenues from any additions to or improvements or extensions of the Water Enterprise to be constructed with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been constructed with moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 70% of the estimated additional average annual Net Water Revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Obligation, all as shown by the certificate or opinion of a qualified independent consultant employed by the District, may be added to such Net Water Revenues for the purpose of applying the restriction contained in subsection (b).

(ii) An allowance for earnings arising from any increase in the charges made for service from the Water Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which the Net Water Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional

obligations, as shown by the certificate or opinion of a qualified independent consultant employed by the Authority.

ARTICLE III.

ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS

Section 3.01. Issuance of the Bonds. At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver Bonds in the aggregate principal amount of _____ Dollars ($_____).

Section 3.02. Application of the Proceeds of the Bonds. The proceeds received from the sale of the Bonds ($_____, including net issue [premium/discount] and excluding underwriter's discount [and Bond Insurance premium and surety premium which will be paid directly to the Bond Insurer by the Original Purchasers on behalf of the Authority]) shall be deposited in trust with the Trustee, who shall forthwith set aside such proceeds as follows:

(a) The Trustee shall deposit the amount of $_____ in the Costs of Issuance Fund;

(b) The Trustee shall transfer to the Escrow Agent the amount of $_____ to be deposited in the Escrow Fund established and held under the Escrow Agreement;

(c) [The Trustee shall deposit the remaining balance of such proceeds, in the amount of $_____ in the Water Project Fund to be applied as provided in Section 3.04.]

The Trustee may, in its discretion, establish additional accounts in its books and records to facilitate the transfer of moneys.

[On the Closing Date, the Original Purchaser will wire a payment in the amount of $_____ directly to the Bond Insurer, as payment on behalf of the Authority for the Bond Insurance Policy Premium in the amount of $_____ and the Reserve Policy Premium in the amount of $_____.]

Section 3.03. Establishment and Application of Costs of Issuance Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund." The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance upon submission of Written Requisitions of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. The Trustee has no obligation at any time to monitor the applications of any moneys paid pursuant to a Written Requisition of the Authority. Ninety days after the Closing Date, or upon the earlier Written Request of the Authority, all amounts remaining in the Costs of Issuance Fund shall be transferred by the Trustee to the Interest Account of the Bond Fund and the Costs of Issuance Fund shall be closed.

Section 3.04. Establishment and Application of Water Project Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the "Water Project Fund." Except as otherwise provided herein, moneys in the Water Project Fund shall be used solely to finance capital additions and/or improvements to the Water Enterprise. The Trustee shall disburse moneys in the Water Project Fund as follows:

(a) Before any payment from the Water Project Fund shall be made, the City shall file or cause to be filed with the Trustee, a Requisition of the City which shall be substantially in the form attached hereto as Exhibit B; and

(b) Within five (5) Business Days following receipt of each such Requisition of the City, or as soon thereafter as possible, the Trustee shall pay the amount set forth in such Requisition of the City as directed by the terms thereof out of the Water Project Fund.

Upon abandonment or completion of the improvement of the Water Enterprise, and delivery by the Authority to the Trustee of a notice to that effect, any excess funds shall be transferred to the Redemption Fund and used to redeem Bonds at the earliest redemption date. Upon such transfer, the Water Project Fund shall be closed.

Notwithstanding the foregoing provisions of this Section 3.04, upon the occurrence and continuation of an Event of Default under and as defined in Section 7.01(a) or (b), the Trustee shall immediately withdraw all amounts then on deposit in the Water Project Fund and apply such amounts in accordance with the provisions of Section 7.02.

The Trustee may conclusively rely on the Written Requisition of the City submitted in accordance with this Section 3.04 as complete authorization for disbursements made hereunder.

Section 3.05. Validity of Bonds. The validity of the authorization and issuance of the Bonds is not dependent on and shall not be affected in any way by any proceedings taken by the Authority or the Trustee with respect to or in connection with the Water Lease. The recital contained in the Bonds that the same are issued pursuant to the Constitution and laws of the State shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV.

REDEMPTION OF BONDS

Section 4.01. Terms of Redemption.

(a) Mandatory Sinking Account Redemption. The Term Bonds maturing on November 1, 20__ and November 1, 20__ are subject to mandatory redemption, in part by lot, from Sinking Account payments set forth in the following schedule on November 1 in each year, commencing November 1, 20__ and November 1, 20__, respectively, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to subsections (b) or (c) below, the total amount of Sinking Account payments to be made subsequent to such redemption shall be reduced in an

amount equal to the principal amount of the Term Bonds so redeemed by reducing each such future Sinking Account payment on a pro rata basis (as nearly as practicable) in integral multiples of $5,000, as shall be designated pursuant to written notice filed by the Authority with the Trustee.

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

In lieu of such redemption, the Trustee may apply amounts in the Sinking Account to the purchase of Term Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as may be directed by the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Term Bonds, as set forth in a Written Request of the Authority. The par amount of Term Bonds so purchased by the Authority in any twelve-month period immediately preceding any mandatory Sinking Account payment date in the table above will be credited towards and will reduce the principal amount of Term Bonds required to be redeemed on the succeeding Principal Payment Date.

(b) Optional Redemption. The Bonds maturing on or after November 1, [2026] shall be subject to optional redemption, as a whole or in part on any date prior to the maturity thereof, at the option of the Authority, on or after November 1, [2025], from funds derived by the Authority from any source, at par, together with accrued interest.

(c) Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Bonds shall also be subject to redemption as a whole or in part on any date, pro rata by maturity

and by lot within a maturity (in a manner determined by the Trustee) from moneys deposited in the Redemption Fund to the extent insurance proceeds received with respect to the Water Enterprise are not used to repair, rebuild or replace the Water Enterprise pursuant to Section 6.15 of this Indenture, or to the extent of condemnation proceeds received with respect to the Water Enterprise and elected by the Authority to be used for such purpose pursuant to Section 6.17 of this Indenture, or to the extent excess funds remain upon the abandonment or completion of improvements to the Water Enterprise pursuant to Section 3.04 of this Indenture, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption.

Section 4.02. Selection of Bonds for Redemption. Whenever provision is made in Section 4.01 of this Indenture for the redemption of less than all of the Bonds, the Trustee shall select the Bonds to be redeemed from all Bonds or such given portion thereof not previously called for redemption, pro rata by maturity or, at the election of the Authority set forth in a Written Request of the Authority, filed with the Trustee, from such maturities as the Authority shall determine, and by lot within a maturity in any manner which the Trustee, in its sole discretion, shall deem appropriate and fair. Any such determination shall be deemed conclusive. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate $5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

Section 4.03. Notice of Redemption. The Authority shall give the Trustee notice of its determination to redeem any Bonds in accordance with Section 4.01(b) or (c) not less than 30 days and no more than 90 days prior to the date fixed for redemption. Notice of redemption shall be mailed by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date, to respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books, and by first class mail, facsimile or electronic mails, to the Securities Depositories and to the Information Services. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity or series) are to be redeemed, the CUSIP numbers and (if less than all Bonds of a maturity are redeemed) Bond numbers of the Bonds to be redeemed, the maturity or maturities of the Bonds to be redeemed and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

Any notice given pursuant to this paragraph may be conditional and/or rescinded by written notice given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this Section.

Notwithstanding anything in this Article IV to the contrary, the Trustee shall not mail notice of any redemption of the Bonds pursuant to Section 4.01(c) unless the Trustee shall have on deposit, as of the date of such mailing, an amount of funds sufficient to pay in full the redemption price of all of the Bonds to be redeemed as such payments become due and payable.

Section 4.04. Partial Redemption of Bonds. Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

Section 4.05. Effect of Redemption. Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed pursuant to the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed.

ARTICLE V.

REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.01. Pledge and Assignment; Transfers to Bond Fund.

(a) Pledge of Net Water Revenues. All of the Net Water Revenues and any other amounts (including the proceeds of the sale of the Bonds) held in any of the funds or accounts under the Indenture, are hereby irrevocably pledged, charged and assigned to the punctual payment of the principal of and interest and premium, if any, on the Bonds, and except as otherwise provided herein the Net Water Revenues and such other funds shall not be used for any other purpose so long as any of the Bonds remain Outstanding. Such pledge, charge and assignment shall constitute, on a parity with any Parity Obligations, a first lien on the Net Water Revenues and such other moneys for the payment of the principal of and interest and premium, if any, on the Bonds in accordance with the terms hereof. All Net Water Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall be paid by the Authority to the Trustee pursuant hereto.

(b) Deposits Into Water Fund; Transfers to Bond Fund. The Authority shall cause the City, and the City has agreed and covenanted pursuant to the Water Lease, to deposit all of the Gross Water Revenues immediately upon receipt in the Water Fund, which fund is hereby established and which shall be maintained and held in trust by the Authority as a separate fund.

The Authority shall, from the moneys in the Water Fund, pay all Water Operation and Maintenance Expenses (including amounts reasonably required to be set aside in contingency reserves for Water Operation and Maintenance Expenses, the payment of which is not then immediately required) as they become due and payable. On or before the tenth (10th) Business Day preceding each Interest Payment Date, provided no Event of Default as described in Section 7.01 hereof has occurred and is continuing, the Authority shall cause the City to disburse the following amounts from the Water Fund, in the following order of priority:

(i) to the Trustee for deposit into the Bond Fund the amount equal to (i) the aggregate amount of interest coming due and payable on the Bonds on the next succeeding Interest Payment Date, plus (ii) one-half of the aggregate amount of the principal coming due and payable on the next succeeding Principal Payment Date, which payments shall be made on a parity basis with any outstanding Parity Obligations; and

(ii) to the Trustee for deposit in the Reserve Account, the amount, if any, required to restore the balance in the Reserve Account to the Reserve Requirement, the notice of which deficiency shall have been given by the Trustee to the Authority pursuant to Section 5.07 hereof.

Amounts remaining in the Water Fund immediately after making the transfers required to be made pursuant to this Section 5.01(b) shall be released to the Authority free and clear of the lien of the Indenture, to be used by the Authority for any lawful purpose including but not limited to making lease payments pursuant to the Water Lease.

Section 5.02. Covenant Regarding Net Water Revenues. The Authority shall cause the City to manage, conserve and apply the Gross Water Revenues on deposit in the Water Fund in such a manner that all deposits required to be made pursuant to the preceding Section 5.01 will be made at the times and in the amounts so required.

Section 5.03. Creation of Bond Fund and Accounts Therein; Allocation of Net Water Revenues. There are hereby created the following funds and accounts to be held and administered by the Trustee pursuant to this Indenture: the Bond Fund, and, within the Bond Fund, the Interest Account, the Principal Account, the Sinking Account, and the Reserve Account. On or about the fifth Business Day preceding each date on which interest on the Bonds becomes due and payable, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Net Water Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(a) The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such date on all Bonds then Outstanding.

(b) The Trustee shall deposit in the Principal Account, one-half (½) of the aggregate amount of principal becoming due and payable on the Outstanding Serial Bonds plus, deposit to

the Sinking Account, one-half (½) of the aggregate amount of the mandatory Sinking Account payment required to be paid for Outstanding Term Bonds on the next succeeding Principal Payment Date, until the balance in said accounts are equal to said respective aggregate amounts of such principal and mandatory Sinking Account payments.

(c) The Trustee shall deposit in the Reserve Account the amount, if any, required to restore the balance in the Reserve Account to the Reserve Requirement, the notice of which deficiency shall have been given by the Trustee to the Authority pursuant to Section 5.07 hereof.

(d) The Trustee shall transfer any remaining amounts in the Bond Fund to the Authority for any lawful use with respect to the Water Enterprise.

Section 5.04. Application of Interest Account. All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture).

Section 5.05. Application of Principal Account. All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates.

Section 5.06. Application of Sinking Account. All moneys on deposit in the Sinking Account shall be used and withdrawn by the Trustee for the sole purpose of redeeming or purchasing (in lieu of redemption) Term Bonds pursuant to Section 4.01(a).

Section 5.07. Application of Reserve Account. All amounts in the Reserve Account shall be used and withdrawn by the Trustee solely for the purpose of (a) paying interest on or principal of the Bonds, when due and payable to the extent that moneys deposited in the Interest Account or Principal Account, respectively, are not sufficient for such purpose, (b) paying the redemption price of Term Bonds to be redeemed pursuant to Section 4.01(a) in the event that amounts on deposit in the Sinking Account are not sufficient for such purpose, and (c) making the final payments of principal of and interest on the Bonds. On the date on which all Bonds shall be retired hereunder or provision made therefor pursuant to Article X, all moneys then on deposit in the Reserve Account shall be withdrawn by the Trustee and paid to the Authority for use by the Authority for any lawful purpose. If as of the first (1st) day of the month preceding any Interest Payment Date there shall be any deficiency in the Reserve Account (whether due to a payment therefrom or due to the fluctuation in market value of securities credited thereto, or otherwise), the Trustee shall promptly notify the Authority in writing of the amount of such deficiency and the Authority shall cause the City to pay to the Trustee the amount of such deficiency as provided in Section 5.01(b) hereof. Semiannually, on or before each Interest Payment Date, the Trustee shall value the Reserve Account at fair market value and any amounts on deposit in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Bond Fund.

The Reserve Requirement may be satisfied by crediting to the Reserve Account moneys or a Qualified Reserve Account Credit Instrument or any combination thereof, which in the aggregate make funds available in the Reserve Account in an amount equal to the Reserve

Requirement. Upon deposit of such Qualified Reserve Account Credit Instrument, the Trustee shall transfer any excess amounts then on deposit in the Reserve Account in excess of the Reserve Requirement into a segregated account of the Bond Fund, which monies shall be applied upon written direction of the Authority either (i) to the payment within one year of the date of transfer of capital expenditures of the Authority permitted by law, or (ii) to the redemption of Bonds on the earliest succeeding date on which such redemption is permitted hereby, and pending such application shall be held either not invested in investment property (as defined in section 148(b) of the Code), or invested in such property to produce a yield that is not in excess of the yield on the Bonds; *provided, however*, that the Authority may by written direction to the Trustee cause an alternative use of such amounts if the Authority shall first have obtained a written opinion of nationally recognized bond counsel substantially to the effect that such alternative use will not adversely affect the exclusion pursuant to section 103 of the Code of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In any case where the Reserve Account is funded with a combination of cash and a Qualified Reserve Account Credit Instrument, the Trustee shall deplete all cash balances before drawing on the Qualified Reserve Account Credit Instrument. With regard to replenishment, any available moneys provided by the Authority or the City shall be used first to reinstate the Qualified Reserve Account Credit Instrument and second, to replenish the cash in the Reserve Account. In the event the Qualified Reserve Account Credit Instrument is drawn upon, the Authority shall make payment of interest on amounts advanced under the Qualified Reserve Account Credit Instrument after making any payments pursuant to this subsection.

[On the Closing Date, the Reserve Account will be funded with the Reserve Policy in full satisfaction of the Reserve Requirement.]

Section 5.08. Application of Redemption Fund. The Trustee shall establish and maintain the Redemption Fund, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds to be redeemed pursuant to Section 4.01(c); provided, however, that at any time prior to selection for redemption of any such Bonds, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed pursuant to a Written Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds.

Section 5.09. Rates and Charges. The Authority makes the covenants set forth in this Section 5.09 with respect to the Water Enterprise as a whole and the Gross Water Revenues and the Net Water Revenues generated by the Water Enterprise.

(a) Covenant Regarding Gross Water Revenues. The Authority shall fix, prescribe, revise and collect rates, fees and charges for the Water Enterprise as a whole for the services and improvements furnished by the Water Enterprise during each Fiscal Year that are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Water Revenues that are sufficient to pay the following amounts in the following order of priority:

(i) Water Operation and Maintenance Expenses estimated by the Autbority to become due and payable in such Fiscal Year;

(ii) Debt Service payments as they become due and payable during such Fiscal Year, without preference or priority, except to the extent such Debt Service payments are payable from the proceeds of the Bonds or from any other source of legally available funds of the Authority that bave been deposited with the Trustee for such purpose prior to the commencement of such Fiscal Year;

(iii) the amount, if any, required to restore the balance in the Reserve Account to the full amount of the Reserve Requirement; and

(iv) other payments required to meet any other obligations of the Authority that are charges, liens, encumbrances upon, or which are otherwise payable, from Gross Water Revenues during such Fiscal Year.

(b) Covenant Regarding Net Water Revenues. In addition, the Authority shall fix, prescribe, revise and collect, or cause to be fixed, prescribed, revised and collected, rates, fees and charges for the services and improvements furnished by the Water Enterprise during each Fiscal Year which are sufficient to yield Net Water Revenues for the Water Enterprise, which are at least equal to one hundred fifteen percent (115%) of the Maximum Annual Debt Service payments coming due and payable in such Fiscal Year.

(c) Covenant Regarding Charging Rates. The Authority will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Water Enterprise to pay the rates and charges applicable to the Water Enterprise provided to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The Authority will not permit any part of the Water Enterprise or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof).

Section 5.10. [Reserved].

Section 5.11. Budget and Appropriation of Debt Service Payments. So long as any Bonds remain Outstanding, the Authority covenants that it shall adopt and make all necessary budgets and appropriations of the Debt Service payments from the Net Water Revenues. In the event any Debt Service payment requires the adoption by the Authority of any supplemental budget or appropriation, the Authority shall promptly adopt the same. The covenants on the part of the Authority contained in this Section 5.11 shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Authority to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Authority to carry out and perform the covenants and agreements in this Section 5.11.

Section 5.12. Special Obligation of the Authority; Obligations Absolute. The Authority's obligation to pay the Debt Service payments and any other amounts coming due and

payable hereunder shall be a special obligation of the Authority limited solely to the Net Water Revenues. Under no circumstances shall the Authority be required to advance moneys derived from any source of income other than the Net Water Revenues and other sources specifically identified herein for the payment of the Debt Service payments, nor shall any other funds or property of the Authority be liable for the payment of the Debt Service payments and any other amounts coming due and payable hereunder.

The obligations of the Authority to make the Debt Service payments from the Net Water Revenues and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the Authority or the Trustee of any obligation with respect to the Water Enterprise, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the Authority by the Trustee. Until such time as all of the Debt Service payments and all other amounts coming due and payable hereunder shall have been fully paid or prepaid, the Authority (a) will not suspend or discontinue payment of any Debt Service payments or such other amounts, and (b) will perform and observe all other covenants contained in this Indenture, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Water Enterprise, sale of the Water Enterprise, the taking by eminent domain of title to or temporary use of any component of the Water Enterprise, commercial frustration of purpose, any change in the tax law or other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Indenture.

Section 5.13. Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments, which mature or are available on or before the dates on which such monies are anticipated to be needed. Moneys (if any) in the Reserve Account shall be invested in Permitted Investments maturing, except in the case of Permitted Investments qualifying as Guaranteed Investment Contracts, no later than five (5) years from the date of investment. Such investments shall be directed by the Authority pursuant to a Written Request of the Authority filed with the Trustee at least two (2) Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments described in clause [D] of the definition thereof. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder sball be deposited in the Bond Fund, provided, however, that all earnings on the investment of amounts in the Reserve Account shall be retained therein to the extent required to maintain the Reserve Requirement, and, to the extent not so required, such amounts shall be deposited, when available, in the Bond Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section 5.13.

The Trustee may sell at the best price reasonably obtainable, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority will not receive such confirmations to the extent permitted by law. The Trustee will provide to the Authority periodic cash transaction statements that include detailed information for all investment transactions made by the Trustee under this Indenture.

The Trustee may make any investments authorized hereunder through the Trustee's own bond or investment department or trust investment department, or those of its parent or any affiliate.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

Section 5.14. Valuation of Investments. For the purpose of determining the amount in any fund or account, the value of Permitted Investments credited to such fund or account shall be valued by the Trustee on or before each Interest Payment Date at the market value thereof (excluding any accrued interest). The Trustee may utilize computer pricing services as are available to it in making such valuations. Any deficiency in a fund or account resulting from a decline in market value shall be restored by the Authority no later than the next scheduled valuation date. A Qualified Reserve Account Credit Instrument shall be valued at the maximum amount that can be drawn on such a Qualified Reserve Account Credit Instrument.

ARTICLE VI.

PARTICULAR COVENANTS

Section 6.01. Punctual Payment; Compliance with Documents. The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Net Water Revenues and other assets pledged for such payment as provided in this Indenture, and will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture.

Section 6.02. Extension of Payment of Bonds. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which

shall not have been so extended. Nothing in this Section 6.02 shall be deemed to limit the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

Section 6.03. Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Net Water Revenues and other the funds and accounts pledged or assigned under this Indenture while any of the Bonds are Outstanding, except as set forth in this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserve the right to issue other obligations for such purposes.

Section 6.04. Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Net Water Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, use reasonable efforts to defend, preserve and protect said pledge and assignment of Net Water Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

Section 6.05. Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established pursuant to this Indenture. The Trustee shall, upon the written request of the holder of any of the Outstanding Bonds, provide a copy of the monthly statements relating to the Bonds. Such books of record and account shall be available for inspection by the Authority [or the Bond Insurer] during regular business hours with reasonable prior notice.

The Authority shall at all times keep, or cause to be kept, proper books of record and account prepared in accordance with industry standards in which complete and accurate entries shall be made of all transactions made by it relating to Net Water Revenues and all funds and accounts established pursuant to this Indenture. The Authority shall cause to be performed a component audit of the Water Enterprise within 240 days of the end of each Fiscal Year.

Section 6.06. [Reserved].

Section 6.07. Continuing Disclosure. The Authority hereby covenants and agrees that it will comply with and carry out all of the provisions of its Undertaking To Provide Continuing Disclosure with respect to the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. Notwithstanding any other provision of this Indenture, failure of the Authority to comply with such Undertaking To Provide Continuing Disclosure shall not be considered an Event of Default; however, any Bondholder may take such actions, as provided in such Undertaking To Provide Continuing Disclosure, as may be necessary

and appropriate to cause the Authority to comply with its obligations under such Undertaking To Provide Continuing Disclosure.

Section 6.08. Covenants to Maintain Tax-Exempt Status. The Authority covenants as follows in this Section.

(a) Special Definitions. When used in this Section, the following terms have the following meanings:

"Computation Date" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Facilities" means any property the acquisition, construction or improvement of which was financed directly or indirectly with Gross Proceeds of the Bonds.

"Gross Proceeds" means any proceeds as defined in section 1.148-1(b) of the Tax Regulations (referring to sales, investment and transferred proceeds), and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of the Bonds.

"Investment" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Nongovernmental Output Property" means any property (or interest therein) that prior to its acquisition by the City was used by (or manufactured for or to the order of or held for the use by) any Nongovernmental Person (whether actually so used or not) in connection with any electric and gas generation, transmission, distribution, or related facilities.

"Nongovernmental Person" refers to any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, or an agency or instrumentality acting solely on behalf thereof.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and that is not acquired to carry out the governmental purposes of the Bonds.

"Prior Issue" refers to the 2005 Bonds.

"Rebate Amount" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Tax Regulations" means the United States Treasury Regulations promulgated pursuant to sections 103 and 141 through 150 of the Code.

"Yield" of

(i) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and

(ii) the Bonds has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest to Become Taxable. The Authority shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner that if made or omitted, respectively, would cause the interest on any of the Bonds to fail to be excluded pursuant to section 103(a) of the Code from the gross income of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Authority or the City receives a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Authority or the City, as the case may be, shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, the Authority shall at all times prior to the payment and cancellation of the last Bond to be paid and canceled:

(1) use its best efforts to ensure that the City exclusively owns, operate and possess all of the Facilities that are to be refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity in respect of the use by any Nongovernmental Person of Gross Proceeds of the Bonds or the Prior Issue, or any of the Facilities, other than taxes of general application within the jurisdiction of the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

Without limiting the foregoing, except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, neither of the City nor the Authority will: (i) permit any Nongovernmental Person to hold any ownership, proprietary or possessory interest in the financed property; (ii) contract with any Nongovernmental Person for the provision of operating or other services with respect to any function of the financed property (unless either (A) such arrangement requires no payment of fees to such Nongovernmental Person other than as direct reimbursement of third party costs or reasonable administrative overhead, or (B) such arrangement conforms to administrative guidance of the Internal Revenue Service in order to assure that such arrangement does not create a private business use relationship of the Nongovernmental Person to the financed property); or (iii) contract with any Nongovernmental Person for the sale of output or

capacity of the financed property unless such contract is described either in section 1.141-7(c) of the Treasury Regulations (describing certain types of output contracts that do not have the effect of transferring the benefits of owning the property and the burdens of paying debt service on the financing of the property) or in section 1.141-7(f) of the Treasury Regulations (describing certain types of output contracts that while having the effect of transferring such benefits and burdens but nevertheless may be disregarded in evaluating private business use). As set forth above, for purposes of the preceding sentence, the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issues.

Except as would not cause any Bond to be a "private activity bond", no portion of the Gross Proceeds will be used (directly or indirectly) for the acquisition of any interest in any Nongovernmental Output Property. As set forth above, for purposes of the preceding sentence, the City and the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issue.

(d) No Private Loan. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, the Authority shall not use Gross Proceeds of any Bond to make or finance loans to any Nongovernmental Person. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (a) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (b) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (c) indirect benefits of such Gross Proceeds, or burdens and benefits of ownership of any property acquired, constructed or improved with such Gross Proceeds, are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause any Bond to become an "arbitrage bond" within the meaning of section 148 of the Code and the Tax Regulations and rulings thereunder, the Authority shall not at any time prior to the final maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, would materially exceed the Yield of such Bond within the meaning of said section 148.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Tax Regulations and rulings thereunder, the Authority shall not take or omit to take any action that would cause any Bond to be "federally guaranteed" within the meaning of section 149(b) of the Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The Authority shall timely file any information required by section 149(e) of the Code with respect to the Bonds with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(i) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Tax Regulations and rulings thereunder:

(1) The Authority shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Bond is discharged. However, to the extent permitted by law, the Authority or the City may commingle Gross Proceeds of the Bonds with its other money, provided that the Authority or the City, as the case may be, separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Authority shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Tax Regulations and rulings thereunder. The Authority shall maintain a copy of the calculation with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) In order to assure the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, the Authority shall pay to the United States the amount that when added to the future value of previous rebate payments made for the Bonds equals (A) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Tax Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (B) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, such rebate payments shall be made by the Authority or the City at the times and in the amounts as are or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder for execution and filing by the Authority or the City.

(4) The Authority shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (i) and (ii) above, and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) or other provision of the Tax Regulations.

(h) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Tax Regulations and rulings thereunder, the Authority shall not, at any time prior to the final maturity of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to paragraph (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the Bonds not been relevant to either party.

(i) Bonds Not Hedge Bonds.

(1) The Authority represents that neither the Refunded Bonds nor any Bonds are or will become "hedge bonds" within the meaning of section 149(g) of the Code.

(2) Without limitation of paragraph (i) above, with respect to the Bonds (or to that portion of the Bonds that is to be applied to the refunding of the Refunded Bonds), either: (A) (I) on the date of issuance of the Refunded Bonds, the Authority or the City reasonably expected that at least 85% of the spendable proceeds of the Refunded Bonds would be expended within the three-year period commencing on such date of issuance, and (II) no more than 50% of the proceeds of the Refunded Bonds were invested in Nonpurpose Investments having a substantially guaranteed yield for a period of four years or more; or (B) (I) the provisions of section 149(g) of the Code did not apply to the Refunded Bonds, (II) the average maturity of the refunding bonds is not later than that of the Refunded Bonds, and (III) the amount of the refunding bonds is not in excess of the amount of the Refunded Bonds.

(3) For purposes of this paragraph (j), (A) "Refunded Bonds" shall refer to the bonds of any issue refunded or re-refunded (immediately or through multiple generations of prior issues) by the Bonds, (B) in applying paragraph (ii) above, "Refunded Bonds" shall refer only to bonds that are not refunding bonds, and (C) in applying clause (ii)(B) above, "refunding bonds" refers to, and said clause (ii)(B) has been applied separately to, each issue being refunded or re-refunded by the Bonds (and to the portion of each issue (treating such portion as a separate issue) to the extent such issue is being refunded or re-refunded by the Bonds) that was itself a refunding issue.

(j) Elections. The Authority hereby directs and authorizes any Authorized Representative of the Authority and the City hereby directs and authorizes any Authorized Representative of City to make elections permitted or required pursuant to the provisions of the Code or the Tax Regulations, as such Authorized Representative of the Authority or Authorized Representative of the City (after consultation with Bond Counsel) deems necessary or appropriate in connection with the Bonds, in the Tax Certificate relating to the Bonds or similar or other appropriate certificate, form or document.

(k) Closing Certificate. The Authority agrees to execute and deliver in connection with the issuance of the Bonds a *Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986*, or similar document containing additional representations and covenants pertaining to the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, which representations and covenants are incorporated as though expressly set forth herein.

Section 6.09. Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in

this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

Section 6.10. Protection of Security and Rights of Owners. The Authority will preserve and protect the security of the Bonds and the Owners. From and after the date of issuance of any Bonds, such Bonds shall be incontestable by the Authority.

Section 6.11. Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

Section 6.12. Maintenance, Utilities, Taxes and Assessments. So long as any Bonds remain Outstanding, all improvement, repair and maintenance of the Water Enterprise shall be the responsibility of the Authority, and the Authority shall pay for or otherwise arrange for the payment of all utility services supplied to the Water Enterprise, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Water Enterprise resulting from ordinary wear and tear.

The Authority shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority affecting the Water Enterprise or its interest or estate therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Authority shall be obligated to pay only such installments as are required to be paid so long as any Bonds remain Outstanding as and when the same become due.

The Authority may, at the Authority's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Trustee shall notify the Authority that, in its opinion, by nonpayment of any such items, the interest of the Owners of the Bonds hereunder will be materially adversely affected, in which event the Authority shall promptly pay such taxes, assessments or charges or provide the Trustee with full security against any loss which may result from nonpayment, in form satisfactory to the Trustee.

Section 6.13. Operation of Water Enterprise. The Authority covenants and agrees to operate the Water Enterprise in an efficient and economical manner and to operate, maintain and preserve the Water Enterprise in good repair and working order. The Authority covenants that, in order to fully preserve and protect the priority and security of the Bonds, the Authority shall pay from the Gross Water Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Water Enterprise which, if unpaid, may become a lien or charge upon the Gross Water Revenues prior or superior to the lien granted hereunder, or which may otherwise impair the ability of the Authority to pay the Debt Service payments in accordance herewith.

The Authority covenants and agrees to honor its obligations pursuant to the Management Agreement, and the Authority shall cause the City to honor the obligations of the City under the Management Agreement. The Authority hereby assigns all of its right, title and interest in and to the Management Agreement, with the exception of the indemnification rights granted pursuant to Article IX thereof, to the Trustee for the benefit of the Trustee [and the Bond Insurer].

Section 6.14. Public Liability and Property Damage Insurance. The Authority shall maintain or cause to be maintained, so long as any Bonds remain Outstanding, but only if and to the extent available at reasonable cost from reputable insurers, a standard comprehensive general insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, assignees and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Water Enterprise. Said policy or policies shall provide coverage in such liability limits and shall be subject to such deductibles as shall be customary with respect to works and property of a like character. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the Authority or the City, and may be maintained in whole or in part in the form of self-insurance by the Authority or the City, in the form of the participation by the Authority or the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such proceeds shall have been paid.

Section 6.15. Casualty Insurance. The Authority shall procure and maintain, or cause to be procured and maintained, so long as any Bonds remain Outstanding, but only in the event and to the extent available from reputable insurers at reasonable cost, casualty insurance against loss or damage to any improvements constituting any part of the Water Enterprise, covering such hazards as are customarily covered with respect to works and property of like character. Such insurance may be subject to deductible clauses which are customary for works and property of a like character. Such insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the Authority and may be maintained in whole or in part in the form of self-insurance by the Authority, subject to the provisions of Section 6.16, or in the form of the participation by the Authority in a joint powers agency or other program providing pooled insurance. All amounts collected from insurance against accident to or destruction of any portion of the Water Enterprise shall be used to repair, rebuild or replace such damaged or destroyed portion of the Water Enterprise, and to the extent not so applied or to the extent the Authority determines it is not economically feasible or in the best interests of the Authority to so repair, rebuild or replace such damaged or destroyed portion of the Water Enterprise, shall be applied to redeem the Bonds.

Section 6.16. Insurance Net Proceeds; Form of Policies. The Authority shall pay or cause to be paid when due the premiums for all insurance policies required by the Water Lease. The Authority shall annually on or before December 1 deliver to the Trustee a certificate to the effect that the Authority has complied with the requirements of Sections 6.14 and 6.15 hereof. In the event that any insurance required pursuant to Sections 6.14 or 6.15 shall be provided in the form of self-insurance, the Authority shall file with the Trustee annually, within ninety (90) days following the close of each Fiscal Year, a statement of an independent actuarial consultant

identifying the extent of such self-insurance and stating the determination that the Authority maintains sufficient reserves with respect thereto. In the event that any such insurance shall be provided in the form of self-insurance by the Authority, the Authority shall not be obligated to make any payment with respect to any insured event except from Gross Water Revenues or from such reserves.

Section 6.17. Eminent Domain. Any amounts received as awards as a result of the taking of all or any part of the Water Enterprise by the lawful exercise of eminent domain, at the election of the Authority (evidenced by a Written Certificate of the Authority filed with the Trustee and the Authority) shall either (a) be used for the lease, acquisition or construction of improvements and extension of the Water Enterprise, or (b) be applied to redeem the Bonds.

Section 6.18. Restriction on Sale of Water Enterprise. The Authority covenants that, so long as any Bonds remain Outstanding, the Authority will not sell, lease, encumber or otherwise dispose of the Water Enterprise, a substantial portion of the Water Enterprise, or the Authority's rights to receive Gross Water Revenues, or suffer the Water Enterprise, a substantial portion of the Water Enterprise, or the Authority's rights to receive Gross Water Revenues to be sold, leased, encumbered or otherwise disposed of, except to another public entity, unless the proceeds of such sale, lease, encumbrance or other disposal shall be adequate, and shall be used, to discharge this Indenture as provided in Article X hereof. For purposes of this covenant, a "substantial portion" of the Water Enterprise shall consist of more than five percent (5%) of the book value of the Water Enterprise. Nothing in this covenant shall be construed to restrict the sale by the Authority of less than a substantial portion of the Water Enterprise, provided that such sale is determined by the Authority to be necessary or desirable for the improvement, expansion or repair of the Water Enterprise, and the proceeds of such sale are used either to fund such improvement, expansion or repair of the Water Enterprise, or to redeem a portion of the Bonds pursuant to Section 4.01(b) hereof.

ARTICLE VII.

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

Section 7.01. Events of Default and Acceleration of Maturities. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for mandatory sinking fund redemption, by declaration or otherwise. [No effect shall be given to payments made under the Bond Insurance Policy for purposes of this subsection.]

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable. [No effect shall be given to payments made under the Bond Insurance Policy for purposes of this subsection.]

(c) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such default

shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the City and the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice (other than a default in the payment of any fees and expenses owing to the Trustee) can be corrected, but not within such sixty (60) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America, or if a federal or state court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the Federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any federal or state court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

Upon the occurrence and during the continuance of any Event of Default the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding, [and upon receipt of the prior written consent of the Bond Insurer (provided the Bond Insurer has not failed to comply with its payment obligations pursuant to the Bond Insurance Policy)], the Trustee shall, declare the principal of all of the Bonds and Parity Obligations then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority shall deposit with the Trustee a sum sufficient to pay all of the principal of and interest on the Bonds and Parity Obligations having come due prior to such declaration, with interest on such overdue principal and interest calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds and Parity Obligations, and the reasonable fees and expenses of the Trustee, together with interest thereon at the prime rate of the Trustee then in effect, and any and all other defaults known to the Trustee (other than in the payment of the principal of and interest on the Bonds having come due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee or the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding may, by written notice to the Authority and to the Trustee, on behalf of the Owners of all of the Outstanding Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Section 7.02. Application of Funds Upon Acceleration. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture and all other funds then held by the Trustee hereunder shall be applied by the Trustee

in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of fees, charges and expenses of the Trustee (including fees and disbursements of its counsel and financial consultants) incurred in and about the performance of its powers and duties under this Indenture; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.

Section 7.03. Other Remedies; Rights of Bond Owners [and Bond Insurer]. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy, in addition to the remedy specified in Section 8.01, at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds, and to enforce any rights of the Trustee under or with respect to this Indenture.

If an Event of Default shall have occurred and be continuing and if requested so to do by the Owners of a majority in aggregate principal amount of Outstanding Bonds and indemnified as provided in Section 8.06, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VII, as the Trustee, being advised by counsel, shall deem in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

[For all purposes of this Indenture, upon the occurrence of any Event of Default, the Bond Insurer shall be deemed to be the sole Owner of the Bonds insured pursuant to the Bond Insurance Policy, except with respect to the giving of notice of such Event of Default to the Owners of the Bonds. The Bond Insurer shall have the right, upon the occurrence of any Event of Default, to (i) notify the Authority, the Trustee or any receiver or receivers of the Gross Water Revenues and other amounts pledged hereunder, of such Event of Default, and (ii) request that the Trustee or receiver intervene in any related judicial proceedings that affect the Bonds or the security therefor. The Trustee and the receiver are required to accept such notice from the Bond Insurer].

Section 7.04. Power of Trustee to Control Proceeding. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in aggregate principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact. Trustee's counsel shall not be deemed under any circumstances to be counsel to the Owners. Communications between the Trustee and Trustee's counsel shall deemed confidential and privileged entitled to all protection under the law.

Section 7.05. Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Net Water Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 7.06. Non-Waiver. Nothing in this Article VII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Net Water Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or contract by the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Trustee or Bond Owners by the Bond Law or by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Bond Owners, as the case may be.

Section 7.07. Rights and Remedies of Bond Owners. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity acceptable to the Trustee in its sole discretion against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) the Trustee has not received any inconsistent direction during such 60-day period from the Owners of a majority in aggregate principal amount of the Outstanding Bonds.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 7.08. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Authority, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE VIII.

THE TRUSTEE

Section 8.01. Duties, Immunities and Liabilities of Trustee.

(a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants whatsoever shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a corporate trustee would exercise or use under the circumstances.

(b) The Authority may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and the Authority shall remove the Trustee if at any time requested to do so by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding or their attorneys duly authorized in writing, or if at any time the Trustee shall cease to be eligible in accordance with subsection (e) of this Section 8.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and thereupon shall appoint a successor Trustee by an instrument in writing. Any such removal shall be made upon at least thirty (30) days' prior written notice to the Trustee.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and by giving the Bond Owners notice of such resignation by mail at the respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing. [The Bond Insurer shall be furnished with written notice of any resignation or removal of the Trustee, and the appointment of any successor thereto.]

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee pursuant to the terms hereof. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the Authority shall petition any federal or state court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, shall signify its acceptance of such appointment by executions and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance shall become vested with all the rnoneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as

may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall mail or cause the successor Trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the respective addresses shown on the Registration Books. If the Authority fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

(e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, authorized under such laws to exercise corporate trust powers, which shall have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least Fifty Million Dollars ($50,000,000), and subject to supervision or examination by federal or State agency, so long as any Bonds are Outstanding. If such corporation publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining agency above referred to then for the purpose of this subsection (e), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section 8.01.

Section 8.02. Merger or Consolidation. Any bank or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 8.01 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

Section 8.03. Liability of Trustee.

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not and does not assume responsibility or liability for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture or the Bonds, nor shall the Trustee incur any responsibility or liability in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations herein or in the Bonds assigned to or imposed upon it and the Trustee expressly disclaims any obligation to make any such undertaking. The Trustee shall only be responsible for the representations contained in its certificate of authentication on the Bonds.

The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder, unless and until the trust administrator of this Indenture shall have actual knowledge thereof, or shall have received written notice thereof at the Trust Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee shall not be responsible for the validity, effectiveness or priority of any collateral given to or held by it, nor shall the Trustee have any duty or obligation to monitor continuing notice filing requirements, if any.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it is not assured to its satisfaction that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; provided, however, that if the Trustee shall advance any such funds at anytime the Trustee shall be entitled to immediate reimbursement at the highest rate permitted by law.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents or attorneys or receivers and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver or attorney appointed in good faith by it hereunder.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of Owners pursuant to this Indenture, unless such Owners shall have offered to the Trustee such security or indemnity acceptable to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy; and provided further that in the event the Trustee shall act, the scope of its obligations and duties thereunder shall not thereby be deemed, under any circumstances, to be expanded.

(i) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(j) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority of the Water Enterprise. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from this Indenture for the existence, furnishing or use of the Water Enterprise.

(k) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or other disclosure material prepared or distributed with respect to the Bonds.

Section 8.04. Right to Rely on Documents. The Trustee shall be protected in acting upon any notice, direction, requisition, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with its counsel with regard to legal questions, and the opinion of such counsel or counsel to the Authority shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

Section 8.05. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority and any Bond Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

Section 8.06. Compensation and Indemnification. Absent any fee agreement between the Trustee and the Authority to the contrary, the Authority shall pay to the Trustee (solely from Gross Water Revenues) from time to time the compensation for all services rendered under this Indenture and also all reasonable expenses and disbursements, incurred in and about the performance of its powers and duties under this Indenture. In the event the Trustee advances its own funds for the payment of the Bonds or for the protection or benefit of the Owners of the Bonds, the Authority shall promptly reimburse the Trustee for such advances with interest at the maximum rate allowed by law.

The Authority shall indemnify, defend and hold harmless the Trustee and its officers, directors, agents and employees, against any loss, liability or expense incurred without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. As security for the performance of the obligations of the Authority under this Section 8.06, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest on particular Bonds. The rights of the Trustee and the obligations of the Authority under this Section 8.06 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture.

ARTICLE IX.

MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 9.0I. Amendments Permitted.

(a) This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time, [upon receipt of the prior written consent of the Bond Insurer], by an indenture or indentures supplemental hereto, which the Authority and the Trustee may enter into when the written consent of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding, exclusive of Bonds disqualified as provided in this Indenture, shall have been filed with the Trustee. No such modification or amendment shall (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Net Water Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by

this Indenture on such Net Water Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding, or (iii) modify any of the rights or obligations of the Trustee hereunder without its written consent thereto. It shall not be necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

[Notwithstanding any other provision of this Indenture, the Bond Insurer shall have the right, in lieu of Owners of the Bonds, to consent on behalf of such owners to any Supplemental Indenture that requires the consent of Owners of Bonds.]

(b) This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to limit or surrender any right or power herein reserved to or conferred upon the Authority;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel;

(iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

(iv) to modify, amend or supplement this Indenture in such manner as to cause interest on the Bonds to remain excludable from gross income under the Code; or

(c) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) Prior to the Trustee entering into any Supplemental Indenture hereunder, there shall be delivered to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect

the exclusion from gross income for purposes of federal income taxation of interest on the Bonds.

(e) Notice of any modification hereof or amendment hereto shall be given by the Authority to each rating agency which then maintains a rating on the Bonds [and the Bond Insurer], at least fifteen (15) days prior to the effective date of the related Supplemental Indenture.

Section 9.02. Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.03. Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after the execution of any Supplemental Indenture pursuant to this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Trust Office or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Trust Office, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same series and maturity.

Section 9.04. Amendment of Particular Bonds. The provisions of this Article IX shall not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by him.

Section 9.05. Notice to Rating Agencies. For all purposes of this Indenture: any rating agency rating the Bonds must receive notice from the Authority of each amendment and a copy thereof at least 15 days in advance of its execution or adoption.

Section 9.06. Copy to [Bond Insurer. A full original transcript of all proceedings relating to the execution of an amendment hereunder shall be provided to the Bond Insurer].

ARTICLE X.

DEFEASANCE

Section 10.01. Discharge of Indenture. Any portion or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority with respect to such Bonds:

(a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, in trust, at or before maturity, money or non-callable Federal Securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or

(c) by delivering such Bonds to the Trustee for cancellation.

If the Authority shall also pay or cause to be paid all other sums payable hereunder, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge such Bonds and this Indenture with respect to such Bonds), and notwithstanding that any of such Bonds shall not have been surrendered for payment; this Indenture and the pledge of Net Water Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon the Written Request of the Authority, the Trustee shall be authorized to take such actions and execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction. In the event all Outstanding Bonds are paid as provided in this Section 10.01, the Trustee shall pay over, transfer, assign or deliver to the Authority all moneys or securities or other property held by it pursuant to this Indenture which are not required for the payment or redemption of any Bonds not theretofore surrendered for such payment or redemption and after payment of amounts due to the Trustee under the Indenture.

[Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Authority, and the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Authority to the registered owners of the Bonds shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such registered owners of the Bonds. Notwithstanding anything herein to the contrary, this Indenture shall not be discharged until all expenses pursuant to Section 11.06 hereof shall have been paid in full. The Authority's obligation to pay such amounts shall survive payment in full of the Bonds.]

Section 10.02. Discharge of Pledge of Net Water Revenues. Upon the deposit with the Trustee, in trust, at or before maturity, of money or non-callable Federal Securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, then the pledge of Net Water Revenues in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Authority may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation shall be deemed to be paid and retired.

Section 10.03. Deposit of Money or Securities with Trustee. Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or non-callable Federal Securities in the necessary amount to pay or redeem any Bonds, the money or non-callable Federal Securities so to be deposited or held may include money or non-callable Federal Securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be [(unless the Bond Insurer otherwise approves)]:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount of such Bonds and all unpaid interest thereon to the redemption date; or

(b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium become due, provided that in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above).

In the event of an advance refunding to pay or redeem any Bonds, the Authority shall cause a verification report to be delivered of an independent nationally recognized certified

public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the Indenture, if no separate escrow agreement is utilized), the terms of the escrow agreement or this Indenture, if applicable, shall be controlling.

Section 10.04. Unclaimed Funds. Notwithstanding any provisions of this Indenture, and subject to applicable provisions of State law, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two (2) years after the principal of such Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date when such Bonds became due and payable, shall be repaid to the Authority free from the trusts created by this Indenture and at the request of the Trustee an indemnification agreement acceptable to the Authority and the Trustee indemnifying the Trustee with respect to claims of Owners of Bonds which have not yet been paid, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI.

[BOND INSURANCE]

Section 11.01. Bond Insurer's Default-Related Provisions.

(a) The Trustee shall, to the extent there are no other available funds held under this Indenture, use the remaining funds in the Water Project Fund to pay principal or interest on the Bonds in the event of a payment default; provided, however, that this requirement may be waived in the discretion of the Bond Insurer.

(b) In determining whether a payment default has occurred or whether a payment on the Bonds has been made under the Indenture, no effect shall be given to payments made under the Bond Insurance Policy.

(c) Any acceleration of the Bonds or any annulment thereof shall be subject to the prior written consent of the Bond Insurer (if it has not failed to comply with its payment obligations under the Bond Insurance Policy).

(d) The Bond Insurer shall receive immediate notice of any payment default and notice of any other default known to the Trustee or the Authority within 30 days of the Trustee's or the Authority's knowledge thereof.

(e) For all purposes of the Indenture governing events of default and remedies, except the giving of notice of default to Owners, the Bond Insurer shall be deemed to be the sole Owner of the Bonds it has insured for so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.

The Bond Insurer shall be included as a party in interest and as a party entitled to (i) notify the Authority, the Trustee, or any applicable receiver of the occurrence of an Event of Default and (ii) request the Trustee or receiver to intervene in judicial proceedings that affect the Bonds or the security therefor. The Trustee or receiver shall be required to accept notice of default from the Bond Insurer.

Section 11.02. Amendments and Supplements.

(a) Any amendment or supplement to the Indenture shall be subject to the prior written consent of the Bond Insurer. Any rating agency rating the Bonds must receive notice of each amendment and a copy thereof at least 15 days in advance of its execution or adoption. The Bond Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

(b) Successor Trustees, Etc. No resignation or removal of the Trustee shall become effective until a successor has been appointed and has accepted the duties of Trustee. The Bond Insurer shall be furnished with written notice of the resignation or removal of the Trustee and the appointment of any successor thereto.

Section 11.03. Defeasance Provisions. In the event of an advance refunding, the Authority shall cause to be delivered a verification report of an independent nationally recognized certified public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the authorizing document, if no separate escrow agreement is utilized), the terms of the escrow agreement or authorizing document, if applicable, shall be controlling.

Section 11.04. Notices to be Given to the Bond Insurer. While the Bond Insurance Policy is in effect:

(i) Notice of any drawing upon or deficiency due to market fluctuation in the amount, if any, on deposit, in the Reserve Account;

(ii) Notice of the redemption, other than mandatory sinking fund redemption, of any of the Bonds, or of any advance refunding of the Bonds, including the principal amount, maturities and CUSIP numbers thereof; and

(iii) Notice of any material events pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934;

(iv) Such additional information as the Bond Insurer may reasonably request from time to time.

Section 11.05. Payments Unconditional. The payment obligations under the Water Lease shall be absolute and unconditional, free of deductions and without any abatement, offset, recoupment, diminution or set-off whatsoever.

Section 11.06. Reimbursement of Expenses. The Authority shall pay or reimburse the Bond Insurer for any and all charges, fees, costs, and expenses that the Bond Insurer may reasonably pay or incur in connection with the following: (i) the administration, enforcement, defense, or preservation of any rights or security hereunder or under any other transaction document; (ii) the pursuit of any remedies hereunder, under any other transaction document, or otherwise afforded by law or equity, (iii) any amendment, waiver, or other action with respect to or related to this Indenture or any other transaction document whether or not executed or completed; (iv) the violation by the Authority of any law, rule, or regulation or any judgment, order or decree applicable to it; (v) any advances or payments made by the Bond Insurer to cure details of the Authority under the transaction documents; or (vi) any litigation or other dispute in connection with this Indenture, any other transaction document, or the transactions contemplated hereby or thereby, other than amounts resulting from the failure of the Bond Insurer to honor its payment obligations under the Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver, or consent proposed in respect of this Indenture or any other transaction document. The obligations of the Authority to the Bond Insurer shall survive discharge and termination of this Indenture.

Section 11.07. Payment Procedure Pursuant to Bond Insurance Policy. As long as the Bond Insurance Policy shall be in full force and effect, the Authority and the Trustee agree to comply with the following provisions:

(i) If, on the third day preceding any Interest Payment Date for the Bonds there is not on deposit with the Trustee sufficient moneys available to pay all principal and interest on the Bonds due on such date, the Trustee shall immediately notify the Bond Insurer and U.S. Bank Trust National Association, New York, New York, or its successor as its Fiscal Agent (the "Fiscal Agent") of the amount of such deficiency. If, by said Interest Payment Date, the Authority has not provided the amount of such deficiency, the Trustee shall simultaneously make available to the Bond Insurer and to the Fiscal Agent the registration books for the Bonds maintained by the Trustee. In addition:

(i) The Trustee shall provide the Bond Insurer with a list of the Owners entitled to receive principal or interest payments from the Bond Insurer under the terms of the Bond Insurance Policy and shall make arrangements for the Bond Insurer and its Fiscal Agent

(1) to mail checks or drafts to Owners entitled to receive full or partial interest payments from the Bond Insurer and (2) to pay principal of the Bonds surrendered to the Fiscal Agent by the Owners entitled to receive full or partial principal payments from the Bond Insurer; and

(ii) The Trustee shall, at the time it makes the registration books available to the Bond Insurer pursuant to (i) above, notify Owners entitled to receive the payment of principal or interest on the Bonds from the Bond Insurer (1) as to the fact of such entitlement, (2) that the Bond Insurer will remit to them all or part of the interest payments coming due subject to the terms of the Bond Insurance Policy, (3) that, except as provided in paragraph (b) below, in the event that any Owners is entitled to receive full payment of principal from the Bond Insurer, such Owners must tender his Bond with the instrument of transfer in the form provided on the Bond executed in the name of the Bond Insurer, and (4) that, except as provided in paragraph (b) below, in the event that such Owner is entitled to receive partial payment of principal from the Bond Insurer, such Owner must tender his Bond for payment first to the Trustee, which shall note on such Bond the portion of principal paid by the Trustee, and then, with an acceptable form of assignment executed in the name of the Bond Insurer, to the Fiscal Agent, which will then pay the unpaid portion of principal to the Owner subject to the terms of the Bond Insurance Policy.

(ii) In the event that the Trustee has notice that any payment of principal or interest on a Bond has been recovered from an Owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee shall, at the time it provides notice to the Bond Insurer, notify all Owners that in the event that any Owner's payment is so recovered, such Owner will be entitled to payment from the Bond Insurer to the extent of such recovery, and the Trustee shall furnish to the Bond Insurer its records evidencing the payments of principal of and interest on the Bonds which have been made by the Trustee and subsequently recovered from Owners, and the dates on which such payments were made.

(iii) The Bond Insurer shall, to the extent it makes payment of principal or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy and, to evidence such subrogation, (i) in the case of subrogation as to claims for past due interest, the Trustee shall note the Bond Insurer's rights as subrogee on the registration books maintained by the Trustee upon receipt from the Bond Insurer of proof of the payment of interest thereon to the Owners of such Bonds and (ii) in the case of subrogation as to claims for past due principal, the Trustee shall note the Bond Insurer's rights as subrogee on the registration books for the Bonds maintained by the Trustee upon receipt of proof of the payment of principal thereof to the Owners of such Bonds. Notwithstanding anytbing in this Indenture or the Bonds to the contrary, the Trustee shall make payment of such past due interest and past due principal directly to the Bond Insurer to the extent that the Bond Insurer is a subrogee with respect thereto.

Section 11.08. Reserve Policy Provisions.

(a) The Authority's repayment of any draws under the Reserve Policy and related reasonable expenses incurred by the Bond Insurer (together with interest thereon, from the date of such draw or incurrence of such expenses, at a rate equal to the lower of (i) the prime rate of Citibank, N.A., in effect from time to time, plus 2% per annum and (ii) the highest rate permitted by law) shall enjoy the same priority as the obligation to maintain and refill the Reserve Account. Repayment of draws, expenses and accrued interest (collectively, "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw. If and to the extent that cash has also been deposited in the Reserve Account, all such cash shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing under the Reserve Policy, and repayment of any Policy Costs shall be made prior to replenishment of any such cash amounts. If, in addition to the Reserve Policy, any other Reserve Policy ("Additional Reserve Policy") is provided, drawings under the Reserve Policy and any such Additional Reserve Policy, and repayment of Policy Costs and reimbursement of amounts due under the Additional Reserve Policy, shall be made on a pro rata basis (calculated by reference to the Maximum Amounts available thereunder) after applying all available cash in the Reserve Account and prior to replenishment of any such cash draws, respectively.

(b) If the Authority shall fail to repay any Policy Costs in accordance with the requirements of Paragraph (a) above, the Bond Insurer shall be entitled to exercise any and all remedies available at law or in equity or under the Indenture other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect Owners.

(c) The Indenture shall not be discharged until all Policy Costs owing to the Bond Insurer shall have been paid in full.

(d) As security for the Authority's repayment obligations with respect to the Reserve Policy, to the extent that the Indenture pledges or grants a security interest in the Net Water Revenues as security for the Bonds, the Bond Insurer shall also hereby be granted a security interest in all such Net Water Revenues, subordinate only to that of the Owners.

(e) No Additional Bonds may be issued unless Net Water Revenues equal at least one times coverage of the Authority's obligations with respect to repayment of Policy Costs then due and owing. Furthermore, no Additional Bonds may be issued without the Bond Insurer's prior written consent if any Policy Costs are past due and owing to the Bond Insurer.

(f) The Trustee shall ascertain the necessity for a claim upon the Reserve Policy and shall provide notice to the Bond Insurer in accordance with the terms of the Reserve Policy at least two business days prior to each Interest Payment Date.

ARTICLE XII.

MISCELLANEOUS

Section 12.01. Liability of Authority Limited to Net Water Revenues. Notwithstanding anything in this Indenture or in the Bonds contained, the Authority shall not be required to advance any moneys derived from any source other than the Bonds or Net Water

Revenues and the funds and accounts pledged or assigned under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes hereof any funds of the Authority that may be made available to it for such purposes.

Section 12.02. Limitation of Rights to Parties, Bond Owners. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee and the Owners of the Bonds.

Section 12.03. Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations hereunder.

Section 12.04. Waiver of Notice; Requirement of Mailed Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice shall be required to be given by mail, such requirement shall be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

Section 12.05. Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Authority of any Bonds, the Trustee shall, in lieu of such cancellation and delivery, destroy such Bonds as may be allowed by law, and, upon written request of the Authority, deliver a certificate of such destruction to the Authority.

Section 12.06. Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

Seetion 12.07. Notices. All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by the recipient (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority: Banning Utility Authority
99 E. Ramsey Street
Banning, California 92220
Attention: Executive Director

If to the Trustee: U.S. Bank National Association
633 W. Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Corporate Trust Services
Ref: Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series

If to the [Bond Insurer]: [TO COME, IF NECESSARY];

Section 12.08. Evidence of Rights of Bond Owners. Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Indenture.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

Section 12.09. Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, unless all outstanding Bonds are then so owned or held, Bonds which are known by the Trustee to be owned or held by or for the account of the Authority or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned that have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 12.09 if the pledgee shall certify to the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Authority shall specify to the Trustee those Bonds which are disqualified pursuant to this Section 12.09.

Section 12.10. Money Held for Particular Bonds. The money held by the Trustee for the payment of the interest or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however,* to the provisions of Section 10.04 hereof, but without any liability for interest thereon.

Section 12.11. Waiver of Personal Liability. No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

Section 12.12. Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 12.13. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 12.14. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Banning Utility Authority has caused this Indenture to be signed in its name by its Executive Director, and U.S. Bank National Association, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

BANNING UTILITY AUTHORITY

By:_____
Executive Director

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By:_____
Authorized Signatory

EXHIBIT A

FORM OF BOND

R-_____ $____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

Banning Utility Authority
Water Enterprise Revenue Bond, Refunding and Improvement Projects, 2015 Series

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
____%	November 1, 20___	August __, 2015	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The Banning Utility Authority, a joint powers authority, duly organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the fifteenth day of the month preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before October 15, 2015 in which event it shall bear interest from the Dated Date specified above; provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, at the Interest Rate per annum specified above, payable semiannually on May 1 and November 1, in each year, commencing [November 1, 2015] (collectively, the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender hereof at the corporate trust office of U.S. Bank National Association (the "Trustee"), St. Paul, Minnesota (the "Trust Office"). Interest hereon is payable by check of the Trustee mailed by first class mail to the Registered Owner hereof at the Registered Owner's address as it appears on the registration

books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the Trustee prior to such Record Date by a Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States of America designated by such Registered Owner in such written request.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"), in an aggregate principal amount of $_____ all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued pursuant to the provisions of Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), and pursuant to an Indenture of Trust, dated as of August 1, 2015, by and between the Authority and the Trustee (the "Indenture") and a resolution of the Board of the Authority adopted on July __, 2015, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Net Water Revenues (as defined in the Indenture), and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

This Bond and the interest and premium, if any, hereon and all other Bonds and the interest and premium, if any, thereon (to the extent set forth in the Indenture) are special obligations of the Authority, and are payable from, and are secured by a charge and lien on the Net Water Revenues (as defined in the Indenture). As and to the extent set forth in the Indenture, all of the Net Water Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture, to the payment of the principal of and interest and premium (if any) on the Bonds.

Neither this Bond nor the payment of the principal or any part thereof nor any interest thereon constitutes a debt, liability or obligation of the City, the Community Redevelopment Agency of the City of Banning (the "Agency"), the County of Riverside, the State of California, or any of its political subdivisions, other than the Authority, and neither the City, the Agency, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Net Water Revenues.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

Bonds maturing on or after November 1, 2026 shall be subject to optional redemption, as a whole or in part on any date prior to the maturity thereof, at the option of the Authority, on or after November 1, 2025, from funds derived by the Authority from any source, at par, together with accrued interest.

The Term Bonds maturing on November 1, 20__ and November 1, 20__ are also subject to mandatory redemption from sinking account payments made by the Authority, in part by lot, on November 1 in each year commencing November 1, 20__ and November 1, 20__, respectively, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium, as set forth in the following tables:

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

The Bonds are also subject to redemption as a whole, or in part, on any date, pro rata by maturity and by lot within a maturity, (in a manner determined by the Trustee) from moneys deposited in the Redemption Fund, to the extent of (i) sale or disposition proceeds not used to lease or construct improvements or extensions to the Water Enterprise; (ii) insurance or condemnation proceeds received with respect to the Water Enterprise and elected by the Authority to be used for such purpose; or (iii) excess Bond proceeds remain following completion or abandonment of the expansion and improvement of the Water Enterprise, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

As provided in the Indenture, notice of redemption shall be mailed by the Trustee by first class mail not less than 20 nor more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, (as defined in the Indenture), shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Bond may be exchanged at the Trust Office of the Trustee for Bonds of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations. Transfer or exchange of this Bond will not be permitted during the period established by the Trustee for selection of Bonds for redemption or if this Bond has been selected for redemption.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Bond Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Bond Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon endorsed shall have been manually signed by the Trustee.

Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Indenture.

STATEMENT OF INSURANCE

[TO COME]

IN WITNESS WHEREOF, the Banning Utility Authority has caused this Bond to be executed in its name and on its behalf with the manual signature of its Chairperson and attested to by the manual signature of its Secretary, all as of the Dated Date specified above.

BANNING UTILITY AUTHORITY

By:_____
Chairperson

Attest:

_____
Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated: _____, ____ U.S. Bank National Association, as Trustee

By:_____
Authorized Signatory

(FORM OF ASSIGNMENT)

For value received, the undersigned do(es) hereby sell, assign and transfer unto

_____

_____

_____

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and does hereby irrevocably constitute and appoint attorney, to transfer the same on the registration books of the Trustee, with full power of substitution in the premises.

Dated:_____

Signature Guaranteed:

_____

Notes: Signature(s) must be guaranteed by an eligible guarantor.

_____

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS, REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES

(Issue Date: August __, 2015)

Requisition of the City
(Water Project Fund)
(Section 3.04 of the Indenture)

Request No.: P-___ (to be sequentially numbered)

Project Component	Amount of This Draw	Aggregate Amount Draws Including This Draw

(Continue on Additional Sheet if Necessary)

Name and Address of party to whom payment is to be made:

_____

Purpose for which the obligation was incurred:

_____

The undersigned (the "City") hereby represents, warrants and certifies to the Trustee that it is authorized to tender this requisition and that a duly authorized representative of the City has executed this requisition, that if the payment is to be made to the City for amounts that it has paid or will pay to third parties, then the City has either made payment or will make payment within three business days of receipt of moneys requisitioned hereunder, that the aggregate number of business days during this calendar year during which it has held such amounts before making payment does not exceed twenty, and that the Trustee has no duty under the Indenture to audit or otherwise monitor, in any respect, the application or use of such funds paid pursuant to this requisition.

Date: _____

CITY OF BANNING

By: _____

Title: _____

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ESCROW AGREEMENT

by and between the

BANNING UTILITY AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION
as Escrow Agent

Dated as of August 1, 2015

ESCROW AGREEMENT

This ESCROW AGREEMENT, dated as of August 1, 2015, by and between the BANNING UTILITY AUTHORITY (the "Authority"), a joint powers authority organized and existing under the laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Escrow Agent and as Prior Trustee (the "Escrow Agent" and the "Prior Trustee");

W I T N E S S E T H:

WHEREAS, the Authority has previously issued its $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), of which $29,165,000 remain outstanding, pursuant to an Indenture of Trust, dated as of December 1, 2005 (the "Prior Indenture"), by and between Authority and the Prior Trustee; and

WHEREAS, the Authority desires to refund the 2005 Bonds; and

WHEREAS, the Authority has approved the issuance of its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"), the proceeds of which are to be used in part to effect the refunding of the 2005 Bonds;

NOW, THEREFORE, in consideration of the mutual premises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. As used herein, the following terms shall have the following meanings:

"Authority" means the Banning Utility Authority.

"City" means the City of Banning.

"Code" means the Internal Revenue Code of 1986.

"Escrow Agent" means U.S. Bank National Association and its successors and assigns, and any other corporation or institution that may at any time be substituted in its place as provided in Section 14 hereof.

"Escrow Fund" means the Escrow Fund established and held by the Escrow Agent pursuant to Section 3 hereof.

"Escrow Requirements" means the amount sufficient to pay the principal and interest with respect to the 2005 Bonds becoming due prior to the Redemption Date and the redemption price on the Redemption Date.

"Escrow Securities" means the Federal Securities (as defined in the Prior Indenture) deposited in the Escrow Fund pursuant to Section 5 hereof.

"2005 Bonds" means the $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series.

"Prior Indenture" means the Indenture of Trust, dated as of December 1, 2005, by and between the Authority and the Prior Trustee, relating to the 2005 Bonds.

"Prior Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the 2005 Bonds.

"Redemption Date" means November 1, 2016, the date on which the 2005 Bonds are to be prepaid.

"Refunding Bonds" means the Authority's Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series.

"Refunding Bonds Indenture" means the Indenture of Trust, dated as of August 1, 2015, by and between the Authority and the Refunding Bonds Trustee.

"Refunding Bonds Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the Refunding Bonds.

SECTION 2. The Authority hereby appoints U.S. Bank National Association as Escrow Agent under this Escrow Agreement for the benefit of the holders of the 2005 Bonds. The Escrow Agent hereby accepts the duties and obligations of Escrow Agent under this Escrow Agreement and agrees that the irrevocable instructions to the Escrow Agent herein provided are in a form satisfactory to it. The applicable and necessary provisions of the Prior Indenture, including particularly the Redemption provisions thereof, are incorporated herein by reference. Reference herein to, or citation herein of, any provisions of the Prior Indenture shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

SECTION 3. There is created and established with the Escrow Agent a special and irrevocable trust fund designated the "2005 Bonds Escrow Fund" (the "Escrow Fund"), to be held by the Escrow Agent separate and apart from all other funds and accounts, and used only for the purposes and in the manner provided in this Escrow Agreement.

SECTION 4. The Authority herewith deposits, or causes to be deposited, with the Escrow Agent into the Escrow Fund, to be held in irrevocable trust by the Escrow Agent and to be applied solely as provided in this Escrow Agreement, the sum of $_____, as follows:

(i) from the proceeds of the Refunding Bonds, the sum of $_____; and

(ii) from the Reserve Account created under the Prior Indenture, the sum of $_____.

The Authority hereby instructs the Prior Trustee that any moneys or investments remaining in the funds and accounts of the Prior Indenture which are not required to make the foregoing deposits or rebated to the U.S. Treasury are to be transferred on the Redemption Date, or as soon as practicable thereafter, to the Refunding Bonds Trustee for deposit into the Water Fund under the Refunding Bonds Indenture.

SECTION 5. The Escrow Agent acknowledges receipt of the moneys described in Section 4 above. The Escrow Agent agrees immediately to invest $_____ of such amounts in the Escrow Securities set forth in Exhibit A hereto, to deposit such Escrow Securities in the Escrow Fund, and to retain the amount of $____ in cash in the Escrow Fund.

The Escrow Agent shall not have the power to sell, transfer, request the redemption of or otherwise dispose of any of the Escrow Securities or to substitute other securities therefor.

SECTION 6. As the principal of the Escrow Securities shall mature and be paid, and the investment income and earnings thereon are paid, the Escrow Agent shall not reinvest such moneys, except as may be provided in Exhibit A hereto. Such amounts shall be applied by the Escrow Agent to the payment of the Escrow Requirements for the equal and ratable benefit of the holders of the 2005 Bonds.

SECTION 7. The Authority has caused schedules to be prepared relating to the sufficiency of the anticipated receipts from the Escrow Securities listed in Exhibit A to pay the Escrow Requirements.

SECTION 8. The Authority hereby directs and the Escrow Agent hereby agrees that the Escrow Agent will take all the actions required to be taken by it hereunder, in order to effectuate this Escrow Agreement. The liability of the Escrow Agent for the payment of the Escrow Requirements shall be limited to the application, in accordance with this Escrow Agreement, of the principal amount of the Escrow Securities and the interest earnings thereon available for such purposes in the Escrow Fund.

SECTION 9. (a) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of defeasance to the owners of the 2005 Bonds substantially in the form of Exhibit B attached hereto.

(b) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of redemption to the owners of the 2005 Bonds containing the information prescribed in Section 4.03 of the Prior Indenture, substantially in the form of Exhibit C attached hereto.

(c) The Escrow Agent is hereby further instructed to post a copy of such notices, when mailed, to (A) the Securities Depositories (as hereinafter defined) and (B) the Information Services (as hereinafter defined).

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attn. Call Notification Department, Fax (212) 855-7232, or, in accordance with then-current guidelines of the Securities and Exchange

Commission, such other addresses and/or such other securities depositories as the City may designate in a Certificate of the City delivered to the Escrow Agent.

"Information Services" means the Electronic Municipal Market Access system (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at www.emma.msrb.org; or, in accordance with then-current guidelines of the Securities and Exchange Commission, to such other addresses and/or such other services providing information with respect to called bonds as the Authority may designate in a certificate of the Authority delivered to the Escrow Agent.

SECTION 10. The Authority irrevocably instructs the Escrow Agent and the Prior Trustee to pay to the respective owners of the 2005 Bonds presented for payment, through and including the Redemption Date, from amounts held in the Escrow Fund, the principal of the 2005 Bonds maturing prior to and on the Redemption Date plus in each case unpaid interest accrued thereon to the Redemption Date.

After such payment has been made on the Redemption Date, all moneys remaining in the Escrow Fund shall be transferred to the Trustee for deposit in the Water Fund.

SECTION 11. The trust hereby created shall be irrevocable and the holders of the 2005 Bonds shall have an express lien limited to all moneys and Escrow Securities in the Escrow Fund, including the interest earnings thereon, until paid out, used and applied in accordance with this Escrow Agreement.

SECTION 12. This Escrow Agreement is made pursuant to and in furtherance of the Prior Indenture and for the benefit of the holders from time to time of the 2005 Bonds and it shall not be repealed, revoked, altered, amended or supplemented without the written consent of all such holders and the written consent of the Escrow Agent and the Authority; provided, however, that the Authority and the Escrow Agent may, without the consent of, or notice to, such holders enter into such amendments or supplements as shall not be inconsistent with the terms and provisions of this Escrow Agreement, for any one or more of the following purposes:

(a) to cure an ambiguity or formal defect or omission in this Escrow Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the 2005 Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and

(c) to transfer to the Escrow Agent and make subject to this Escrow Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to conclusively rely upon an opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the 2005 Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 13. In consideration of the services rendered by the Escrow Agent under this Escrow Agreement, the Authority agrees to and shall pay to the Escrow Agent its fees, plus expenses, including all reasonable expenses, charges, counsel fees and other disbursements incurred by it or by its attomeys, agents and employees in and about the performance of their powers and duties hereunder. Notwithstanding the foregoing, the Escrow Agent shall have no lien whatsoever upon any of the moneys or Escrow Securities in the Escrow Fund for the payment of such proper fees and expenses.

SECTION 14. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from the trusts hereby created by giving not less than 60 days' written notice to the Authority and the Prior Trustee, specifying the date when such resignation will take effect in the same manner as a notice is to be mailed pursuant to Section 9 hereof, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of the 2005 Bonds or by the Authority as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and to the Authority and the Prior Trustee and signed by the holders of a majority in principal amount of the 2005 Bonds.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in the case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Escrow Agent may be appointed by the holders of a majority in principal amount of the 2005 Bonds, by an instrument or concurrent instruments in writing, signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the Authority shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in principal amount of the 2005 Bonds, and any such temporary Escrow Agent so appointed by the Authority shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or the Authority pursuant to the foregoing provisions of this Section within 60 days after written notice of the removal or resignation of the Escrow Agent has been given to the Authority, the holder of any of the 2005 Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation or institution with trust powers organized under the financial institution laws of the United States or any state, and shall have at the time of appointment capital and surplus of not less than $100,000,000. For purpose of this Section 14, a corporation or institution with trust powers organized under the financial institution laws of the United States or any state shall be deemed to have combined capital and surplus of at least $100,000,000 if it

has a combined capital surplus of at least $20,000,000 and is a wholly-owned subsidiary of a corporation having a combined capital and surplus of at least $100,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Authority, an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trust, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Authority execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor. Should any transfer, assignment or instrument in writing from the Authority be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instrument in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Any corporation or association into which the Escrow Agent, or any successor to it in the trusts created by this Escrow Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it shall be a party or any successor to a substantial portion of the Escrow Agent's corporate trust business, shall, if it meets the qualifications set forth in the fifth paragraph of this Section and if it is otherwise satisfactory to the Authority, be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 15. The Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement except as provided in Section 5 hereof. The Escrow Agent shall have no power or duty to transfer or otherwise dispose of the moneys held hereunder except as provided in this Escrow Agreement.

SECTION 16. To the extent permitted by law, the Authority hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the Authority or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant thereto, the retention of such securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement. The Authority shall not be required

to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's successors, assigns, agents and employees or the material breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the Authority or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement.

SECTION 17. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the Authority, and the Escrow Agent assumes no responsibility for the correctness thereof. The Escrow Agent makes no representation as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the Redemption of the 2005 Bonds pursuant to the Prior Indenture or to the validity of this Escrow Agreement as to the Authority and, except as otherwise provided herein, the Escrow Agent shall incur no liability in respect thereof. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence or willful misconduct, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may consult with counsel, who may or may not be counsel to the Authority, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel) may be deemed to be conclusively established by a written certification of the Authority. Whenever the Escrow Agent shall deem it necessary or desirable that a matter specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel be proved or established prior to taking, suffering, or omitting any such action, such matter may be established only by such a certificate or such an opinion. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to this Escrow Agreement.

No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business shall be the successor to the Escrow Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 18. This Escrow Agreement shall terminate upon payment of all 2005 Bonds on the Redemption Date, or upon such later date on which all amounts held in the Escrow Fund have been disbursed as provided herein.

SECTION 19. THIS ESCROW AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 20. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Authority or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

All the covenants, promises and agreements in this Escrow Agreement contained by or on behalf of the Authority or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 21. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first-above written.

BANNING UTILITY AUTHORITY

By_____
Executive Director

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent and as Prior Trustee

By_____
Authorized Officer

Exhibit A
Schedule of Escrow Securities

Principal Amount	Security	Maturity Date	Coupon	Purchase Price

Exhibit B

NOTICE OF DEFEASANCE TO THE OWNERS OF

Banning Utility Authority
$35,635,000
Water Enterprise Bonds
Refnnding and Improvement Projects, 2005 Series

NOTICE IS HEREBY GIVEN to the applicable owners of the outstanding Banning Utility Authority, $35,635,000 Water Enterprise Bonds Refunding and Improvement Projects, 2005 Series, as listed below (the "Bonds"), that in connection with the Bonds maturing in the years 2015 through 2035, inclusive, and bearing the CUSIP numbers set forth below (the "Defeased Bonds"), there has been deposited with U.S. Bank National Association (the "Trustee"), moneys which will be sufficient to pay the redemption price of and interest on the Defeased Bonds through and including the redemption date of November 1, 2016. The redemption price of, and interest on, such Defeased Bonds shall be paid only from moneys deposited with the Trustee as aforesaid. As a result of such deposit, such Defeased Bonds are deemed to have been paid in accordance with the applicable provisions of the Indenture of Trust, dated as of December 1, 2005, by and between the Banning Utility Authority and the Trustee, pursuant to which the Bonds were issued.

Maturity Date (November 1)	Principal Amount	Interest Rate	CUSIP (066626)
2015	$340,000	3.875%	AW2
2015	500,000	4.500	AK8
2016	875,000	4.000	AL6
2017	910,000	4.000	AM4
2018	945,000	4.125	AN2
2019	485,000	4.125	AX0
2019	500,000	4.500	AP7
2020	1,025,000	5.000	AQ5
2021	1,080,000	5.000	AR3
2022	1,135,000	5.000	AS1
2023	1,190,000	5.000	AT9
2030	10,255,000	5.250	AU6
2035	9,925,000	5.250	AV4

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2015

By: U.S. Bank National Association, as Trustee

Exhibit C

NOTICE OF REDEMPTION TO THE OWNERS OF

Banning Utility Authority
$35,635,000
Water Enterprise Bonds
Refunding and Improvement Projects, 2005 Series

NOTICE IS HEREBY GIVEN pursuant to the terms of the Indenture of Trust, dated as of December 1, 2005, by and between the Banning Utility Authority (the "Authority") and U.S. Bank National Association, as trustee, that all of the Banning Utility Authority, $35,635,000 Water Enterprise Bonds Refunding and Improvement Projects, 2005 Series, as listed below (the "Bonds"), initially issued on December 8, 2005, have been selected for redemption on November 1, 2016 (the "Redemption Date") at a redemption price equal to the principal amount of the Bonds to be redeemed (the "Redemption Price") together with interest accrued to the Redemption Date.

Maturity Date (November 1)	Principal Amount	Interest Rate	CUSIP (066626)
2016	$875,000	4.000%	AL6
2017	910,000	4.000	AM4
2018	945,000	4.125	AN2
2019	485,000	4.125	AX0
2019	500,000	4.500	AP7
2020	1,025,000	5.000	AQ5
2021	1,080,000	5.000	AR3
2022	1,135,000	5.000	AS1
2023	1,190,000	5.000	AT9
2030	10,255,000	5.250	AU6
2035	9,925,000	5.250	AV4

Pursuant to the governing documents, payment of the Redemption Price on the Bonds called for redemption will be paid upon presentation of the Bonds in the following manner:

If by First Class/Registered/Certified Mail: *Express Delivery Only:* *By Hand Only:*

Interest with respect to the principal amount of the Bonds designated to be redeemed shall cease to accrue on and after the Redemption Date.

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2016

By: U.S. Bank National Association, as Trustee

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CONTINUING DISCLOSURE AGREEMENT

THIS CONTINUING DISCLOSURE AGREEMENT (this "Disclosure Agreement"), dated as of August 1, 2015, is by and between tbe Banning Utility Authority (the "Authority") and [Willdan Financial Services], as dissemination agent (the "Dissemination Agent"), in connection with the issuance by the Authority of $_____ aggregate principal amount of the Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds").

WITNESSETH:

WHEREAS, this Disclosure Agreement is being executed and delivered by the Authority and the Dissemination Agent for the benefit of the owners and beneficial owners of the Bonds and in order to assist the purchaser of the Bonds in complying with the Rule (as defined herein);

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. **Definitions**. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as Trustee. In addition, the following capitalized terms shall have the following meanings:

"Annual Report" means any Annual Report provided by the Autbority pursuant to, and as described in, Sections 2 and 3 hereof.

"Annual Report Date" means each March 31 after the end of the Fiscal Year.

"Disclosure Representative" means the [Executive Director] of the Authority or his or her designee, or such other officer or employee as the Authority shall designate in writing to the Dissemination Agent and the Trustee from time to time.

"Dissemination Agent" means [Willdan Financial Services], acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Authority and which has filed with the Trustee a written acceptance of such designation.

"EMMA" means the Electronic Municipal Market Access system, maintained on the internet at http://emma.msrb.org by the MSRB.

"Fiscal Year" sball mean the period beginning on July 1 of each year and ending on the next succeeding June 30, or any twelve-month or fifty-two week period hereafter selected by the Authority, witb notice of such selection or change in fiscal year to be provided as set forth berein.

"Listed Events" means any of the events listed in Section 4 hereof and any other event legally required to be reported pursuant to the Rule.

"MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of tbe Securities Exchange Act of 1934 or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through EMMA.

"Official Statement" means the Official Statement, dated _____, 2015, relating to the Bonds.

"Participating Underwriter" means any of the original purchaser(s) of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

"Repository" means, until otherwise designated by the SEC, EMMA.

"Rule" means Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same has been or may be amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

Section 2. Provision of Annual Reports.

(a) The Authority shall provide, or shall cause the Dissemination Agent to provide, to MSRB, through EMMA, not later than the Annual Report Date, an Annual Report which is consistent with the requirements of Section 3 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as provided by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 3 of this Disclosure Agreement. Not later than 15 Business Days prior to the Annual Report Date, the Authority shall provide the Annual Report to the Dissemination Agent. If the Fiscal Year changes for the Authority, the Authority shall give notice of such change in the manner provided under Section 4(e) hereof.

(b) If by 15 Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, through EMMA, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Authority to determine if the Authority is in compliance with subsection (a). The Authority shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder. The Dissemination Agent may conclusively rely upon such certification of the Authority and shall have no duty or obligation to review such Annual Report.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

(ii) (if the Dissemination Agent is other than the Trustee), to the extent appropriate information is available to it, file a report with the Authority certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided.

Section 3. Content of Annual Reports. The Authority's Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the Authority for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental

entities from time to time by the Governmental Accounting Standards Board. If the Authority's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) The following tables presented in the Official Statement, updated for the Fiscal Year covered by the Annual Report:

(i) [Table No. __ "Demand and Sales – Historic and Projected Water Consumption Sales"; but only the annual update of historic consumption;

(ii) Table No. __ "Demand and Sales – Ten Largest Users of Water";

(iii) Table No. __ "Collection Procedures – Historic Water Collections – Metered Sales"; and

(iv) Table No. __ "Demand and Sales – Historic Water Enterprise Operating Results".]

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Authority is an "obligated person" (as defined by the Rule), which are available to the public on EMMA or filed with the SEC. The Authority shall clearly identify each such document to be included by reference.

Section 4. <u>Reporting of Significant Events</u>.

(a) Pursuant to the provisions of this Section 4, the Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, in a timely manner not more than ten (10) Business Days after the event:

(1) principal and interest payment delinquencies;

(2) defeasances;

(3) tender offers;

(4) rating changes;

(5) adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax- status of the Bonds;

(6) unscheduled draws on the debt service reserves reflecting financial difficulties;

(7) unscheduled draws on credit enhancements reflecting financial difficulties;

(8) substitution of credit or liquidity providers or their failure to perform; or

(9) bankruptcy, insolvency, receivership or similar proceedings.

For these purposes, any event described in the immediately preceding paragraph (9) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Authority in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Authority, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Authority.

(b) Pursuant to the provisions of this Section 4, the Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

(1) mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the Authority or their termination;

(2) appointment of a successor or additional Trustee or the change of the name of a Trustee;

(3) nonpayment related defaults;

(4) modifications to the rights of Owners;

(5) notices of redemption; or

(6) release, substitution or sale of property securing repayment of the Bonds.

(c) Whenever the Authority obtains knowledge of the occurrence of a Listed Event, described in subsection (b) of this Section 4, the Authority shall as soon as possible determine if such event is material under applicable federal securities law.

(d) If the Authority determines that the occurrence of a Listed Event described in subsection (b) of this Section 4 is material under applicable federal securities law, the Authority shall promptly notify the Dissemination Agent in writing and instruct the Dissemination Agent to report the occurrence to the Repository in a timely manner not more than ten (10) Business Days after the event.

(e) If the Dissemination Agent has been instructed by the Authority to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB.

Section 5. **Filings with the MSRB**. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 6. **Termination of Reporting Obligation**. The Authority's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Authority shall give notice of such termination in the same manner as for a Listed Event under Section 4 hereof.

Section 7. **Dissemination Agent**. The Authority may, from time to time, appoint or engage another Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

Section 8. **Amendment; Waiver**. Notwithstanding any other provision of this Disclosure Agreement, the Authority may amend this Disclosure Agreement, provided no amendment increasing or affecting the obligations or duties of the Dissemination Agent shall be made without the consent of such party, and any provision of this Disclosure Agreement may be waived if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the Authority and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

Section 9. **Additional Information**. Nothing in this Disclosure Agreement shall be deemed to prevent the Authority from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Authority chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Authority shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 10. **Default**. In the event of a failure of the Authority or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee, at the written direction of any Participating Underwriter or the holders of at least 25% of the aggregate amount of principal evidenced by Outstanding Bonds and upon being indemnified to its reasonable satisfaction, shall, or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Authority, Trustee or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the Authority, the Trustee or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

Section 11. **Duties, Immunities and Liabilities of Trustee and Dissemination Agent**. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall not be responsible for the form or content of any Annual Report or notice of Listed Event. The Dissemination Agent shall receive reasonable compensation for its services provided under this Disclosure Agreement. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Authority agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorney's fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Authority under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 12. **Beneficiaries**. This Disclosure Agreement shall inure solely to the benefit of the Authority, the Trustee, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 13. **Counterparts**. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Disclosure Agreement as of the date first above written.

BANNING UTILITY AUTHORITY

By:_____
Responsible Officer

[WILLDAN FINANCIAL SERVICES], as
Dissemination Agent

By:_____
Authorized Officer

EXHIBIT A

NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF FAILURE TO FILE ANNUAL REPORT

Name of Obligor: BANNING UTILITY AUTHORITY

Name of Issue: BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS, REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES

Date of Issuance: August __, 2015

NOTICE IS HEREBY GIVEN that the Authority has not provided an Annual Report with respect to the above-captioned Bonds as required by the Continuing Disclosure Agreement, dated as of August 1, 2015, by and among the Authority and [Willdan Financial Services]. [The Authority anticipates that the Annual Report will be filed by _____.]

Dated: _____, 20__ [_____], on behalf of the Authority

cc: Banning Utility Authority

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$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

BOND PURCHASE CONTRACT

_____ __, 2015

Banning Utility Authority
99 East Ramsey Street
Banning, California 92220
Attention: Executive Director

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the "Representative"), as representative of itself and The Williams Capital Group, L.P. (together with the Representative, the "Underwriters"), offers to enter into this Bond Purchase Contract (this "Purchase Contract") with the Banning Utility Authority (the "Authority"). This offer is made subject to the Authority's acceptance by execution of this Purchase Contract and delivery of the same to the Underwriters on or before 11:59 p.m. on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the Authority at any time prior to such acceptance. Upon the Authority's acceptance hereof, the Purchase Contract will be binding upon the Authority and the Underwriters. Capitalized terms used in this Purchase Contract and not otherwise defined herein shall have the respective meanings set forth for such terms in the Trust Indenture (defined below).

Section 1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations set forth in this Purchase Contract, the Underwriters agree to purchase from the Authority, and the Authority agrees to sell and deliver to the Underwriters, all (but not less than all) of the $_____ Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds") at a purchase price of $_____ (being an amount equal to the principal amount of the Bonds, plus/less a net original issue premium/discount of $_____ and less an Underwriters' discount of $_____). The obligations of the Underwriters to purchase, accept delivery of and pay for the Bonds shall be conditioned on the sale and delivery of all of the Bonds by the Authority to the Underwriters at Closing (as such term is defined herein).

Section 2. Bond Terms; Authorizing Instruments. (a) The Bonds shall be dated their date of delivery and shall mature and bear interest as shown on Exhibit A attached hereto. The Bonds shall be as described in, and shall be issued and secured under, an Indenture of Trust, dated as of August 1, 2015 (the "Trust Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee"). The Bonds are payable and subject to redemption as provided in the Trust Indenture and as described in the Official Statement.

(b) The Bonds will be issued pursuant to Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584, and are payable from and secured by the Authority's pledge of "Net Water Revenues" under and as defined in the Trust Indenture.

(c) The net proceeds of the sale of the Bonds will be used: (i) to refund the Authority's Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"); (ii) [to finance certain capital improvements to the City of Banning's (the "City") water system (the "Enterprise")]; and (iii) to pay the costs of issuing the Bonds.

Section 3. Public Offering. The Underwriters agree to make an initial bona fide public offering of all of the Bonds, at not in excess of the initial public offering yields or prices set forth on Exhibit A attached hereto. Following the initial public offering of the Bonds, the offering prices may be changed from time to time by the Underwriters. The Authority acknowledges and agrees that: (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction between the Authority and the Underwriters; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principal and are not acting as Municipal Advisors (as such term is defined in Section 15B of The Securities Exchange Act of 1934, as amended) to the Authority; (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the Authority with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or is currently providing other services to the Authority on other matters); (iv) the Underwriters have financial interests that may differ from and be adverse to those of the Authority; and (v) the Authority has consulted its own legal, financial and other advisors to the extent that it has deemed appropriate.

Section 4. Official Statement; Continuing Disclosure. (a) The Authority has delivered to the Underwriters the Preliminary Official Statement dated _____ __, 2015 (the "Preliminary Official Statement") and will deliver to the Underwriters the final Official Statement dated the date of this Purchase Contract (as amended and supplemented from time to time pursuant to Section 5(i) of this Purchase Contract, the "Official Statement").

(b) The Authority hereby authorizes the use of the Official Statement and the information contained therein by the Underwriters in connection with the public offering and the sale of the Bonds. The Authority consents to the use by the Underwriters prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds. The Underwriters hereby agree that they will not send any confirmation requesting payment for the purchase of any Bonds unless the confirmation is accompanied by or preceded by the delivery of a copy of the Official Statement. The Underwriters agree: (1) to provide the Authority with final pricing information on the Bonds on a timely basis prior to the Closing; and (2) to take any and all other actions necessary to comply with applicable Securities and Exchange Commission rules and Municipal Securities Rulemaking Board (the "MSRB") rules governing the offering, sale and delivery of the Bonds to ultimate purchasers.

(c) In connection with the issuance of the Bonds, and in order to assist the Underwriters in complying with the provisions of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"), the Authority will execute a Continuing Disclosure Agreement, dated as of August 1, 2015 (the "Continuing Disclosure Undertaking"), with Willdan Financial Services, as

dissemination agent (the "Dissemination Agent"), under which the Authority will undertake to provide certain financial and operating data as required by Rule 15c2-12. The form of the Continuing Disclosure Undertaking is attached as an appendix to the Preliminary Official Statement.

Section 5. Representations, Warranties and Covenants of the Authority. The Authority hereby represents, warrants and agrees with the Underwriters that:

(a) The Board of the Authority has taken official action by resolution (the "Authority Resolution") adopted by a majority of the members of the Board of the Authority at a regular meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the Trust Indenture, the Continuing Disclosure Undertaking, the Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), this Purchase Contract (together with the Trust Indenture, the Continuing Disclosure Undertaking and the Escrow Agreement, the "Authority Agreements") and the Official Statement, and the taking of any and all such action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated hereby.

(b) The Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "State") and has all necessary power and authority to adopt the Authority Resolution and to enter into and perform its duties under the Authority Agreements.

(c) By all necessary official action, the Authority has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the Bonds and the Authority Agreements, and the consummation by it of all other transactions contemplated by the Authority Resolution, the Authority Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered, the Authority Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the Authority, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the Authority's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) As of the date hereof, except as described in the Preliminary Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against, and notice of which has been served on and received by, the Authority or, to the best knowledge of the Authority, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the Authority, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of Authority Agreements

or the Bonds, or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, the Water Lease (as such term is defined in the Trust Indenture), the Management Agreement (as such term is defined in the Trust Indenture) or any other agreement or instrument to which the Authority is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the Authority required for the execution and delivery of this Purchase Contract and the other Authority Agreements or the consummation by the Authority of the transactions contemplated by the Official Statement or the Authority Agreements.

(g) Any certificate signed by any official of the Authority authorized to do so shall be deemed a representation and warranty by the Authority to the Underwriters as to the statements made therein.

(h) The Authority is not in default, and at no time has the Authority defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i) If any event occurs of which the Authority has knowledge between the date of this Purchase Contract and the date of the Closing that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Authority shall notify the Representative and if, in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will cooperate with the Underwriters in causing the Official Statement to be amended or supplemented in a form and in a manner approved by the Representative. All expenses thereby incurred will be paid by the Authority, and the Underwriters will file, or cause to be filed, the amended or supplemented Official Statement with the MSRB's Electronic Municipal Market Access database ("EMMA").

(j) The Authority will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order: (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate; and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions. The Authority will not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(k) The Authority is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of any state or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or any loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, including but not limited to the Water Lease and the Management Agreement, which breach or default has or may have an adverse effect on the ability of the Authority to perform its obligations under the Authority Agreements, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a

default or event of default under any such instrument; and the adoption, execution and delivery of the Authority Agreements, if applicable, and compliance with the provisions on the Authority's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, including but not limited to the Water Lease and the Management Agreement, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Authority or under the terms of any such law, regulation or instrument, except as may be provided by the Authority Agreements.

(l) Except as set forth in the Official Statement under the caption "CONTINUING DISCLOSURE," the Authority has complied in all material respects with its continuing disclosure undertakings in the past five years.

Section 6. The Closing. (a) At 8:00 A.M., Pacific Time, on _____ __, 2015, or on such earlier or later time or date as may be agreed upon by the Representative and the Authority (the "Closing"), the Authority shall deliver or cause to be delivered to the Trustee, the Bonds in definitive form, registered in the name of Cede & Co., as the nominee of The Depository Trust Company, New York, New York ("DTC") (so that the Bonds may be authenticated by the Trustee and credited to the account specified by the Representative under DTC's FAST procedures). Prior to the Closing, the Authority shall deliver, at the offices of Norton Rose Fulbright US LLP ("Bond Counsel") in Los Angeles, California, or such other place as is mutually agreed upon by the Representative and the Authority, the other documents described in this Purchase Contract. On the date of the Closing, the Underwriters shall pay the purchase price of the Bonds as set forth in Section 1 of this Purchase Contract in immediately available funds to the order of the Trustee.

(b) The Bonds shall be issued in fully registered form and shall be prepared and delivered as one Bond for each maturity registered in the name of a nominee of DTC. It is anticipated that CUSIP identification numbers will be inserted on the Bonds, but neither the failure to provide such numbers nor any error with respect thereto shall constitute a cause for failure or refusal by the Underwriters to accept delivery of the Bonds in accordance with the terms of this Purchase Contract.

Section 7. Conditions to Underwriters' Obligations. The Underwriters have entered into this Purchase Contract in reliance upon the representations and warranties of the Authority contained herein and to be contained in the documents and instruments to be delivered on the date of the Closing, and upon the performance by the Authority of its obligations to be performed hereunder and under such documents and instruments to be delivered at or prior to the date of the Closing. The Underwriters' obligations under this Purchase Contract are and shall also be subject to the following conditions:

(a) The representations and warranties of the Authority contained in this Agreement shall be true and correct in all material respects on the date of this Purchase Contract and on and as of the date of the Closing as if made on the date of the Closing.

(b) As of the date of the Closing, the Official Statement shall not have been amended, modified or supplemented, except in any case as may have been agreed to by the Representative.

(c) (i) As of the date of the Closing, the Authority Resolution, the Authority Agreements, the Water Lease and the Management Agreement shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by the Authority and the Representative; and (ii) the Authority shall perform or have performed all of its obligations required under or specified in the Authority Resolution, the Authority Agreements, the Water Lease, the Management Agreement and this Purchase Contract to be performed at or prior to the date of the Closing.

(d) As of the date of the Closing, all necessary official action of the Authority relating to the Authority Agreements, the Authority Resolution and the Official Statement shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect.

(e) Subsequent to the date of this Purchase Contract, up to and including the date of the Closing, there shall not have occurred any change in the financial affairs of the Authority or the City, or in the operations of the Enterprise, as described in the Official Statement, which in the reasonable professional judgment of the Representative materially impairs the investment quality of the Bonds.

(f) As of or prior to the date of the Closing, the Underwriters shall have received each of the following documents:

(A) Certified copies of the Authority Resolution.

(B) Duly executed copies of the Authority Agreements, the Water Lease and the Management Agreement.

(C) The Preliminary Official Statement and the Official Statement, with the Official Statement duly executed on behalf of the Authority.

(D) An approving opinion of Bond Counsel, dated as of the Closing, as to the validity of the Bonds and the exclusion of interest on the Bonds from federal and State income taxation, addressed to the Authority substantially in the form attached as an appendix to the Official Statement, and a reliance letter with respect thereto addressed to the Underwriters and the Trustee.

(E) A supplemental opinion of Bond Counsel, addressed to the Underwriters, to the effect that:

(1) The Purchase Contract has been duly executed and delivered by the Authority and is valid and binding upon the Authority, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles;

(2) The Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Trust Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(3) The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE BONDS" (other than statements relating to DTC or its book-entry system), "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "TAX MATTERS," and in Appendices C and F, insofar as such statements purport to describe certain provisions of the Bonds, or to state legal conclusions and the opinion of Bond Counsel

regarding the tax exempt nature of the Bonds for federal and State income tax purposes, present a fair and accurate summary of the provisions thereof.

(F) A defeasance opinion of Bond Counsel relating to the 2005 Bonds, in form and substance satisfactory to Bond Counsel, the Trustee and the Underwriters.

(G) A letter, dated the Closing Date and addressed to the Underwriters, of Norton Rose Fulbright US LLP, Disclosure Counsel, to the effect that Disclosure Counsel is not passing upon and has not undertaken to determine independently or to verify the accuracy or completeness of the statements contained in the Official Statement, and is, therefore, unable to make any representation to the Underwriters in that regard, but on the basis of its participation in conferences with representatives of the Authority, the City, the Authority Counsel, Bond Counsel, the Authority's Financial Advisor, representatives of the Underwriters and others, during which conferences the content of the Official Statement and related matters were discussed, and its examination of certain documents, and, in reliance thereon and based on the information made available to it in its role as Disclosure Counsel and its understanding of applicable law, Disclosure Counsel advises the Underwriters as a matter of fact, but not opinion, that no information has come to the attention of the attorneys in the firm working on such matter which has led them to believe that the Official Statement (excluding therefrom the financial and statistical data, forecasts, charts, numbers, estimates, projections, assumptions and expressions of opinion included in the Official Statement, information regarding DTC and its book entry system and the information set forth in Appendices B, D and E, as to all of which no opinion is expressed) as of its date and as of the Closing contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and advising the Underwriters that, other than reviewing the various certificates and opinions required by this Purchase Contract regarding the Official Statement, Disclosure Counsel has not taken any steps since the date of the Official Statement to verify the accuracy of the statements contained in the Official Statement.

(H) An opinion of the Authority Counsel, dated as of the Closing addressed to the Authority and the Underwriters, substantially in the form attached hereto as Exhibit D.

(I) An executed Rule 15c2-12 certificate of the Authority, dated as of the date of the Preliminary Official Statement, in the form attached hereto as Exhibit B.

(J) An executed closing certificate of the Authority, dated as of the Closing, in the form attached hereto as Exhibit C.

(K) The opinion or opinions of counsel of the Trustee and the Escrow Agent, dated as of the Closing, addressed to the Authority and the Underwriters, in form and substance satisfactory to Bond Counsel and the Representative.

(L) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Trustee to the effect that the Trustee has accepted the duties imposed by the Trust Indenture and is authorized to carry out such duties.

(M) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Escrow Agent to the

effect that the Escrow Agent has accepted the duties imposed by the Escrow Agreement and is authorized to carry out such duties.

(N) Evidence of required filings with the California Debt and Investment Advisory Commission.

(O) A copy of the executed Blanket Issuer Letter of Representations by and between the Authority and DTC relating to the book entry system.

(P) Evidence that the rating or ratings assigned to the Bonds as of the date of the Closing are as set forth in the Official Statement.

(Q) A certified copy of the general resolution of the Trustee and the Escrow Agent authorizing the execution and delivery of certain documents by certain officers of the Trustee and the Escrow Agent, which resolution authorizes the execution and delivery of the Trust Indenture and the Escrow Agreement and the authentication and delivery of the Bonds by the Trustee.

(R) An opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, counsel to the Underwriters, addressed to the Underwriters and in form and substance satisfactory to the Representative.

(S) A report of [Digital Assurance Certification LLC] as to compliance by the Authority and related entities with their respective continuing disclosure undertakings.

(T) A tax arbitrage certificate with respect to the Bonds, in form and substance satisfactory to Bond Counsel and the Representative.

(U) A certificate of the Dissemination Agent to the effect that the Continuing Disclosure Undertaking has been duly executed and delivered by the Dissemination Agent and, subject to due authorization and delivery by the Authority, is valid and binding upon the Dissemination Agent, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles.

(V) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters or Bond Counsel may reasonably request to evidence compliance by the Authority with legal requirements, the truth and accuracy, as of the date of the Closing, of the representations of the Authority herein contained and of the Official Statement and the due performance or satisfaction by the Authority at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Authority.

All of the opinions, letters, certificates, instruments and other documents mentioned in this Purchase Contract shall be deemed to be in compliance with the provisions of this Purchase Contract if, but only if, they are in form and substance satisfactory to the Representative. If the Authority is unable to satisfy the conditions to the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds contained in this Purchase Contract, or if the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriters nor the Authority shall be under further obligations hereunder, except that the

respective obligations of the Authority and the Underwriters set forth in Section 12 of this Purchase Contract shall continue in full force and effect.

Section 8. Conditions to Authority's Obligations. The performance by the Authority of its respective obligations under this Purchase Contract is conditioned upon: (i) the performance by the Underwriters of their obligations hereunder; and (ii) receipt by the Authority of opinions addressed to the Authority, receipt by the Underwriters of opinions addressed to the Underwriters, and the delivery of certificates being delivered on the date of the Closing by persons and entities other than the Authority.

Section 9. Termination Events. The Underwriters shall have the right to terminate the Underwriters' obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds by notifying the Authority of its election to do so if, after the execution hereof and prior to the Closing, any of the following events occurs:

(A) the marketability of the Bonds or the market price thereof, in the reasonable opinion of the Representative, has been materially and adversely affected by any decision issued by a court of the United States (including the United States Tax Court) or of the State, by any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Department of the Treasury of the United States, the Internal Revenue Service, or other governmental agency of the United States, or any governmental agency of the State, or by a tentative decision or announcement by any member of the House Ways and Means Committee, the Senate Finance Committee, or the Conference Committee with respect to contemplated legislation or by legislation enacted by, pending in, or favorably reported to either the House of Representatives or either House of the Legislature of the State, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State by the Governor of the State in an executive communication, affecting the tax status of the Authority or the City, their property or income, their debt or contractual obligations (including the Bonds) or the interest thereon or any tax exemption granted or authorized by the Internal Revenue Code of 1986, as amended;

(B) the United States becomes engaged in hostilities that result in a declaration of war or a national emergency, or any other outbreak of hostilities occurs, or a local, national or international calamity or crisis occurs, financial or otherwise, the effect of such outbreak, calamity or crisis being such as, in the reasonable opinion of the Representative, would affect materially and adversely the ability of the Underwriters to market the Bonds;

(C) there occurs a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States, New York or State authorities;

(D) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission is issued or made to the effect that the issuance, offering or sale of the Bonds is or would be in violation of any provision of the Securities Act of 1933, as then in effect, or of the Securities Exchange Act of 1934, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(E) legislation is enacted by the House of Representatives or the Senate of the Congress of the United States of America, or a decision by a court of the United States of America is rendered, or a ruling or regulation by or on behalf of the Securities and Exchange Commission or

other governmental agency having jurisdiction of the subject matter is made or proposed to the effect that the Bonds are not exempt from registration, qualification or other similar requirements of the Securities Act of 1933, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(F) in the reasonable judgment of the Representative, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be materially and adversely affected because additional material restrictions not in force as of the date hereof are imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(G) the Office of the Comptroller of the Currency, The New York Stock Exchange or other national securities exchange, or any governmental authority, imposes, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increases materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, or financial responsibility requirements of the Underwriters;

(H) a general banking moratorium is established by federal, New York or State authorities;

(I) any legislation, ordinance, rule or regulation is introduced in or enacted by any governmental body, department or agency in the State or a decision of a court of competent jurisdiction within the State is rendered, which, in the reasonable opinion of the Representative, after consultation with the Authority, materially adversely affects the market price of the Bonds;

(J) any federal or State court, authority or regulatory body takes action materially and adversely affecting the collection of Gross Water Revenues under the Trust Indenture; or

(K) any rating of the Bonds is downgraded, suspended or withdrawn by a national rating service, which, in the reasonable opinion of the Representative, materially adversely affects the marketability or market price of the Bonds;

(L) an event occurs which in the reasonable opinion of the Representative requires a supplement or amendment to the Official Statement and: (i) the Authority refuses to prepare and furnish such supplement or amendment; or (ii) in the reasonable judgment of the Representative, the occurrence of such event materially and adversely affects the marketability of the Bonds or renders the enforcement of the sale contracts of the Bonds impracticable;

(M) an order, decree or injunction issued by any court of competent jurisdiction, or order, ruling, regulation (final, temporary or proposed), official statement or other form of notice or communication issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental authority having jurisdiction of the subject matter, to the effect that: (i) obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Trust Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended; or (ii) the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(N) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any domestic governmental authority or by any domestic national securities exchange, which are material to the marketability of the Bonds; or

(O) the commencement of any action, suit or proceeding described in Section 5(e) or Section 6(e).

Section 10. Changes in Official Statement. After the Closing, the Authority will not adopt any amendment of or supplement to the Official Statement to which the Representative shall reasonably object in writing unless the Authority or its counsel determines that such amendment or supplement is required under applicable law. Within 90 days after the Closing or within 25 days following the "end of the underwriting period" (as such term is defined below), whichever occurs first, if any event relating to or affecting the Bonds, the Enterprise, the Trustee or the Authority shall occur as a result of which it is necessary, in the opinion of the Representative, to amend or supplement the Official Statement in order to make the Official Statement not misleading in any material respect in the light of the circumstances existing at the time it is delivered to a purchaser, the Authority will forthwith prepare and furnish to the Underwriters an amendment or supplement that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to purchaser, not misleading. The Authority shall cooperate with the Underwriters in the filing by the Underwriters of such amendment or supplement to the Official Statement with the MSRB. As used herein, the term "end of the underwriting period" means the later of such time as: (i) the Authority delivers the Bonds to the Underwriters; or (ii) tbe Underwriters do not retain, directly or as members of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Notwithstanding the foregoing, unless the Representative gives notice to the contrary, the "end of the underwriting period" shall be the date of the Closing. Any notice delivered pursuant to this provision shall be written notice delivered to the Authority at or prior to the date of the Closing and shall specify a date (other than the date of the Closing) to be deemed the "end of the underwriting period."

Section 11. Payment of Expenses. (a) The Underwriters shall be under no obligation to pay, and the Authority shall pay the following expenses incident to the performance of the Authority's obligations hereunder:

(i) the fees and disbursements of Bond Counsel and Disclosure Counsel;

(ii) the cost of printing and delivering the Bonds, the Preliminary Official Statement and the Official Statement (and any amendment or supplement prepared pursuant to Section 11 of this Purchase Contract);

(iii) the fees and disbursements of accountants, advisers and of any other experts or consultants retained by the Authority, including the Authority Counsel; and

(iv) any other expenses and costs of the Authority incident to the performance of their respective obligations in connection with the authorization, issuance and sale of the Bonds, including out of pocket expenses and regulatory expenses, and any other expenses agreed to by the parties.

(b) The Underwriters shall pay all expenses incurred by it in connection with the public offering and distribution of the Bonds including, but not limited to:

(i) all advertising expenses in connection with the offering of the Bonds; and

(ii) all out-of-pocket disbursements and expenses incurred by the Underwriters in connection with the offering and distribution of the Bonds (including without limitation the fees and expenses of its counsel and the MSRB, CUSIP Bureau, California Debt and Investment Advisory Commission and California Public Securities Association fees, if any), except as provided in clause (a) above.

Section 12. Notices. Any notice or other communication to be given to the Authority under this Purchase Contract may be given by delivering the same in writing to the Authority at the address set forth on the first page of this Purchase Contract, and any notice or other communication to be given to the Underwriters under this Purchase Contract may be given by delivering the same in writing to

Stifel, Nicolaus & Company Incorporated, as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104
Attention: Guillermo Garcia

Section 13. Survival of Representations, Warranties, Agreements. All of the Authority's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect regardless of: (a) any investigations made by or on behalf of the Underwriters; or (b) delivery of and payment for the Bonds pursuant to this Purchase Contract. The agreements contained in this Section and in Section 12 shall survive any termination of this Purchase Contract.

Section 14. Benefit; No Assignment. This Purchase Contract is made solely for the benefit of the Authority and the Underwriters (including their successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. The rights and obligations created by this Purchase Contract are not subject to assignment by the Underwriters or the Authority without the prior written consent of the other parties hereto.

Section 15. Severability. In the event that any provision of this Purchase Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Purchase Contract.

Section 16. Counterparts. This Purchase Contract may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute the Purchase Contract by signing any such counterpart.

Section 17. Governing Law. This Purchase Contract shall be governed by the laws of the State.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Section 18. Effectiveness. This Purchase Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the Authority, and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

STIFEL, NICOLAUS & COMPANY
INCORPORATED, as Representative

By: _____
Title: Authorized Officer

Accepted:

BANNING UTILITY AUTHORITY

By:_____
Executive Director

Time of Execution: _____ Pacific Time

EXHIBIT A

$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

MATURITY SCHEDULE

Principal Payment Date (November 1)	*Principal*	*Coupon*	*Yield*	*Price*
	$	%	%	

(C) Priced to first optional redemption date of November 1, 20__ at par.

EXHIBIT B

$_____*
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

15c2-12 CERTIFICATE

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the Banning Utility Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate on behalf of the Authority, and further hereby certifies and reconfirms on behalf of the Authority as follows:

(1) This Certificate is delivered in connection with the offering and sale of the above captioned bonds (the "Bonds") in order to enable the underwriter of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule").

(2) In connection with the offering and sale of the Bonds, there has been prepared a Preliminary Official Statement, setting forth information concerning the Bonds and the Authority (the "Preliminary Official Statement").

(3) As used herein, "Permitted Omissions" means the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters, all with respect to the Bonds.

(4) The Preliminary Official Statement is, except for the Permitted Omissions, deemed final within the meaning of Rule 15c2-12, and the information therein is accurate and complete except for the Permitted Omissions.

Dated: _____ __, 2015

BANNING UTILITY AUTHORITY

By:_____
Executive Director

* *Preliminary, subject to change.*

EXHIBIT C

$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

CLOSING CERTIFICATE OF THE AUTHORITY

The undersigned hereby certifies and represents that he is the duly appointed and acting representative of the Banning Utility Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the Authority as follows:

(i) The representations, warranties and covenants of the Authority contained in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and between the Authority and Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, are true and correct and in all material respects on and as of the date of the Closing, with the same effect as if made on the date of the Closing.

(ii) The Authority Resolution is in full force and effect at the date of the Closing and has not been amended, modified or supplemented, except as agreed to by the Authority and the underwriters.

(iii) The Authority has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) The statements and descriptions in the Official Statement pertaining to the Authority do not contain any untrue or misleading statement of a material fact and do not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given to such terms in the Purchase Contract.

Dated: _____ __, 2015

BANNING UTILITY AUTHORITY

By:_____
Executive Director

EXHIBIT D

_____ __, 2015

Banning Utility Authority
99 East Ramsey Street
Banning, California 92220

Stifel, Nicolaus & Company, Incorporated,
as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104

Opinion of Authority Counsel

with reference to

$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

Ladies and Gentlemen:

In my capacity as the General Counsel to the Banning Utility Authority (the "Authority") in connection with the issuance by the Authority of the above-referenced bonds (the "Bonds"), I have examined such documents, certificates and records as I have deemed relevant and necessary as the basis for the opinion set forth herein. Capitalized terms used and not otherwise defined herein shall have the same meanings as assigned to them in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and between Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, and the Authority.

Relying on my examination described above and pertinent law and subject to the limitations and qualifications set forth hereinafter, I am of the following opinion:

1. The Authority is a joint exercise of powers authority organized and validly existing under the laws of the State of California.

2. Resolution No. ____ of the Authority (the "Authority Resolution") has been duly adopted at a regular meeting of the Board of the Authority that was duly called and held on July __, 2015 pursuant to law, with all required public notice and at which a quorum was present and acting throughout. The Authority Resolution is in full force and effect and has not been amended or repealed.

3. The Authority has duly authorized, executed and delivered the Official Statement, and the Authority Agreements. Assuming due authorization, execution and delivery by the other parties thereto, as necessary, the Authority Agreements constitute legal, valid and binding agreements of the Authority enforceable against the Authority in accordance with their terms, except

as the enforceability thereof may be limited by applicable bankruptcy, insolvency, debt adjustment, fraudulent conveyance or transfer, moratorium, reorganization or other laws affecting the enforcement of creditors' rights generally and equitable remedies if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and limitations on remedies against public agencies.

4. The execution and delivery by the Authority of the Authority Agreements, the Official Statement and the other instruments contemplated by any of such documents to which the Authority is a party, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, trust agreement, contract, agreement or other instrument to which the Authority is a party or is otherwise subject or bound in a manner which would materially adversely affect the Authority's performance under the Authority Agreements.

5. There is no action, suit or proceeding before or by any court, public board or body pending (with service of process having been accomplished on the Authority) or, to the best of my knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the Authority or the titles of its officers to their respective offices; (b) in any way question or affect the validity or enforceability of the Authority Agreements or the Bonds; or (c) find illegal, invalid or unenforceable the Authority Agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Bonds to which the Authority is a party.

The opinion is based on such examination of the laws of the State of California as I deemed relevant for the purposes of this opinion. I have not considered the effect, if any, of the laws of any other jurisdiction upon matters covered by this opinion. I have assumed the genuineness of all documents and signatures, presented to me. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in such documents. I express no opinion as to the status of the Bonds or the interest thereon or the Authority Agreements under any federal securities laws or any state securities or "Blue Sky" law or any federal, state or local tax law. Further, I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained in the Authority Agreements. Without limiting any of the foregoing, I express no opinion as to any matter other than as expressly set forth above.

I am furnishing this opinion as General Counsel to the Authority. Except for the Authority, no attorney-client relationship has existed or exists between me and the addressees hereof in connection with the Bonds or by virtue of this opinion. This opinion is rendered solely in connection with the financing described herein, and may not be relied upon by you for any other purpose. I disclaim any obligation to update this opinion. This opinion shall not extend to, and may not be used, quoted, referred to, or relied upon by any other person, firm, corporation or other entity without my prior written consent.

Respectfully submitted,

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CITY OF BANNING
AGENDA REPORT

MEETING OF: July 14, 2015

TO: Mayor and City Council

FROM: Dean Martin, Interim City Manager

SUBJECT: Approval of the attached Resolution Approving the Economic Refunding of the Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007

RECOMMENDATION:

Adopt a resolution of the "City Council of Banning acting as the Legislative Body of Banning Financing Authority authorizing the issuance of its Refunding Revenue Bonds (Electric System Project) Series 2015, approving a Bond Purchase Agreement, an Indenture, an Escrow Agreement, a Preliminary Official Statement, and taking certain other actions in connection therewith."

BACKGROUND:

During the summer of 2007, the Banning Financing Authority, through the City of Banning, issued a series of electric system revenue bonds to assist in the financing of improvements in the electric system for the City's service area.

The electric bonds financed the construction of a new substations, circuit breakers, underground feeders, land, and other improvements to the electric system.

With interest rates near historic lows, the City's financing team analyzed the potential to refund (refinance) the existing bonds without extending the term of the original issuance and found that the electric bonds presented significant savings to the City.

Based on today's rates (subject to market conditions), the bonds can now be refunded with an estimated net-present-value savings of approximately $1.05 million.

In keeping with the City's policy goals and objectives, the refunding supports the City's goal of providing sound fiscal stewardship for the City of Banning. In an effort to effect the most benefit from the low interest-rate environment, City staff and the financing team have moved with significant expediency.

Attached for your review are the various documents needed to effect the refunding of the Electric and Water Utility Bonds. Below is a brief description of the key documents attached.

Key Bond Documents

Preliminary Official Statements: Serves as the primary marketing and disclosure document for potential buyers of the bonds. It explains credit and legal provisions, gives an overview of operations, and provides key operating and financial data.

Trust Indentures: This agreement sets forth the rights and protections of bondholders and establishes the trust relationship between the bondholders and US Bank, the trustee. It provides for the authentication and delivery of the Bonds, establishes the terms and conditions upon which the Bonds are to be issued and secured, and secures the payment of the principal and interest.

Installment Sale Agreement(Electric Utility): Provides for the sale of the Electric Utility improvements and the simultaneous purchase of those same improvements by the City. The sale is accomplished via installment payments exactly equal to the annual debt service payments.

Escrow Agreement: The refunding proceeds of the bond sale are invested in government securities which is then placed into an escrow account. Those funds are invested at a rate which will result in sufficient funds being available to call the bonds for redemption at the first opportunity.

Continuing Disclosure Agreement: Once the bonds are issued, regular and periodic operational and financial information must be made available for existing bondholders and potential investors in the secondary market. Events of Default must also be disclosed. This document memorializes what is required and when as well as where the information will be made available.

FISCAL IMPACT:

The recommended action does not, in itself, cause any new financial obligations. At today's interest rates (subject to the market at actual time of pricing the bonds and offering them to the market), the bonds can be refunded with an estimated net-present-value savings of approximately $1.05 million, or $60,000 annually.

RECOMMENDED BY:

Dean Martin
Interim City Manager

RESOLUTION NO. 2015-02FA

RESOLUTION OF THE COMMISSION OF THE CITY OF BANNING FINANCING AUTHORITY AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $50,000,000 PRINCIPAL AMOUNT OF ITS REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2015; APPROVING AN INDENTURE OF TRUST, AN INSTALLMENT SALE AGREEMENT, A BOND PURCHASE AGREEMENT; AN ESCROW AGREEMENT AND A PRELIMINARY OFFICIAL STATEMENT RELATED THERETO; AND APPROVING THE TAKING OF CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Banning Financing Authority (the "Authority"), is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and the powers of such Authority include the power to issue bonds for any of its corporate purposes; and

WHEREAS, the City of Banning (the "City") owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the Authority desires to issue its Refunding Revenue Bonds (Electric System Project), Series 2015 (the "2015 Bonds") to refund the 2007 Bonds currently outstanding and finance certain capital improvements to the Electric System; and

WHEREAS, the Authority has reviewed the documentation related to the issuance of the 2015 Bonds.

NOW, THEREFORE, THE CITY OF BANNING FINANCING AUTHORITY DOES RESOLVE AS FOLLOWS:

Section 1. Pursuant to the Act, the Authority hereby approves the issuance of the 2015 Bonds in an amount not to exceed $_____ in accordance with the terms and conditions of the Indenture of Trust relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by the President, the Executive Director, the Treasurer or any member of the Commission (each, a "Responsible Officer"), with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The Authority hereby approves the Installment Sale Agreement relating to the 2015 Bonds in substantially the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Authority hereby approves the Bond Purchase Agreement relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, the true interest cost rate on the 2015 Bonds shall not exceed [_____]% per annum and the underwriter's discount shall not exceed [____]%.

Section 4. The Authority hereby approves the Escrow Agreement relating to the 2007 Bonds in substantially the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The Authority hereby approves the Preliminary Official Statement prepared in connection with the issuance of the 2015 Bonds (the "Preliminary Official Statement"), substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of disclosure counsel to the Authority. Each of the Responsible Officers is hereby authorized to execute and deliver a certificate deeming the Preliminary Official Statement final for purposes of SEC Rule 15c2-12. Upon the pricing of the 2015 Bonds, each of the Responsible Officers is hereby authorized to prepare and execute a final Official Statement (the "Official Statement"), substantially the form of the Preliminary Official Statement, with such additions thereto and changes therein as approved by any Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority hereby authorizes the distribution of the Preliminary Official Statement and the Official Statement by the underwriter in connection with the offering and sale of the 2015 Bonds.

Section 6. Any Responsible Officer is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this resolution.

Section 7. The Secretary of the Authority shall certify to the adoption of this resolution, and thenceforth and thereafter the same shall be in full force and effect. Notwithstanding the foregoing, such certification and any of the other duties and responsibilities assigned to the Secretary pursuant to this resolution may be performed by an Assistant Secretary with the same force and effect as if performed by the Secretary hereunder.

PASSED, ADPPROVED AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, Chairperson

ATTEST:

_____
Marie A. Calderon, Secretary

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PRELIMINARY OFFICIAL STATEMENT DATED JULY __, 2015

NEW ISSUE - BOOK-ENTRY ONLY

RATINGS
[Insured: Standard & Poor's: "____"]
Underlying: Standard & Poor's: "__"
(See "RATINGS" herein)

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, under existing statutes, regulations, rulings and court decisions, and assuming compliance with the tax covenants described herein, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. It is also the opinion of Bond Counsel that under existing law interest on the Bonds is exempt from personal income taxes of the State of California. See "TAX MATTERS."

$[_____]*
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2015

Dated: Date of Delivery **Due: June 1, as shown on the inside cover hereof**

The City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") are being issued by the City of Banning Financing Authority (the "Authority") to (i) refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007, currently outstanding in the amount of $40,045,000, (ii) finance certain improvements (the "Facilities") to the electric system (the "Electric System") of the City of Banning (the "City"), (iii) [pay the insurance premium for the Bonds,] (iv) [fund a Reserve Fund for the Bonds], and (v) pay costs of issuance of the Bonds.

The Bonds are being issued as fully registered bonds, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), and will be available to ultimate purchasers in the denomination of $5,000 or any integral multiple thereof, under the book-entry system maintained by DTC. Ultimate purchasers of Bonds will not receive physical certificates representing their interest in the Bonds. So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, references herein to the owners shall mean Cede & Co., and shall not mean the ultimate purchasers of the Bonds. Interest on the Bonds will be payable on December 1 and June 1 of each year, commencing December 1, 2015. Payments of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by U.S. Bank National Association, Los Angeles, California (the "Trustee"), so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursements of such payments to DTC's Participants is the responsibility of DTC and disbursements of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants, as more fully described herein. See "THE BONDS – Book-Entry System" and "APPENDIX G – BOOK-ENTRY ONLY SYSTEM" herein.

The Bonds are issued pursuant to that certain Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), among the Authority, the City and the Trustee. The Bonds are special obligations of the Authority secured by and payable solely from Revenues as defined in the Indenture, consisting primarily of Installment Payments to be paid by the City under the Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), by and between the City and the Authority.

The Bonds are subject to special mandatory redemption, mandatory sinking fund redemption and redemption from optional prepayment of Installment Payments prior to maturity as more fully described herein.* See "THE BONDS – Redemption" herein.

The City's obligation to make payments under the Installment Sale Agreement is secured by and payable from all Net Revenues, being Gross Revenues derived by the City from the ownership and operation of the Electric System (as described herein), excluding Operation and Maintenance Costs of the Electric System. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein.

[Payment of the principal of and interest on the Bonds when due will be insured by a municipal bond insurance policy to be issued by _____ to be issued simultaneously with the delivery of the Bonds. See "BOND INSURANCE" herein.]

The Bonds are limited obligations of the Authority and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of the Authority or any of its income or receipts, except the Revenues. The full faith and credit of the Authority, the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Agency") and the City (the Agency and the City being the parties to the agreement creating the Authority) is not pledged for the payment of the principal of or interest on the Bonds and no tax or other source of funds, other than the Revenues, is pledged to pay the principal of or interest on the Bonds. The payment of the principal of or interest on the Bonds does not constitute a debt, liability or obligation of the Authority, the City or the Agency for which any such entity is obligated to levy or pledge any form of taxation or for which any such entity has levied or pledged any form of taxation. The Authority has no taxing power.

For a discussion of some of the risks associated with the purchase of the Bonds, see "RISK FACTORS" herein.

This cover page contains information for quick reference only. It is not intended to be a summary of all factors relating to an investment in the Bonds. Investors must read the entire Official Statement before making any investment decision.

The Bonds are offered when, as and if issued by the Underwriters, subject to approval of legality by Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed on for the Authority by Norton Rose Fulbright US LLP as Disclosure Counsel, for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the Authority and the City by Aleshire & Wynder, LLP. It is anticipated that the Bonds will be available for delivery through the book-entry facilities of DTC on or about August __, 2015.

[STIFEL LOGO] [WILLIAMS CAPITAL LOGO]

Dated: _____, 2015

* Preliminary; subject to change.

MATURITY SCHEDULE

$[_____]*
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015
(Base CUSIP† 066614)

Maturity (June 1)	Principal Amount	Interest Rate	Yield	CUSIP†
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				
2034				
2035				
2036				
2037				
2038				

$_____ ___% Term Bonds maturing June 1, 20__ Yield ___%; CUSIP† ___

* Preliminary; subject to change.

† CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. CUSIP numbers have been assigned by an independent company not affiliated with the Authority and are included solely for the convenience of investors. None of the Authority, the City, the Underwriters, or the Financial Advisor, are responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Bond.

No dealer, broker, salesperson or other person has been authorized by the Autbority, the City or the City's Public Works Department (the "Department") to give any information or to make any representations, other than as contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as baving been authorized by the Authority, the City or the Department. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

Tbis Official Statement is not to be construed as a contract with the purchasers of the Bonds. Statements contained in this Official Statement which involve estimates, forecasts, or matters of opinion, whetber or not expressly so described herein, are intended solely as such and are not to be construed as representation of facts.

All other information set forth herein has been furnished by the Authority, the City, and the Department, and includes information obtained from other sources which are believed to be reliable. The information and expressions of opinion contained herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made bereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority, the City, or the Department since the date hereof. Tbis Official Statement is submitted with respect to the sale of the Bonds referred to berein and may not be reproduced or used, in whole or in part, for any other purpose, unless authorized in writing by the Authority, the City, and the Department. All summaries of the documents and laws are made subject to the provisions thereof and do not purport to be complete statements of any or all sucb provisions.

The Underwriters have provided the following two paragraphs for inclusion in this Official Statement:

The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS, INSTITUTIONAL INVESTORS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ABOVE, AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited witb the Municipal Securities Rulemaking Board througb the Electronic Municipal Market Access ("EMMA") web site. The City also maintains a web site. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Bonds.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and tbe information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, SEC Rule 15c2-12.

FORWARD-LOOKING STATEMENTS

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are generally identifiable by the terminology used such as "plan," "project," "expect," "anticipate," "intend," "believe," "estimate," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Except as specifically set forth herein, the City does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

CITY OF BANNING
AND
CITY OF BANNING FINANCING AUTHORITY

CITY COUNCIL/AUTHORITY COMMISSION MEMBERS

Debbie Franklin, *Mayor/President*
Art Welch, *Mayor Pro Tem/Vice President*
Edward Miller, *Council Member/Commission Member*
George Moyer, *Council Member/Commission Member*
Don M. Peterson, *Council Member/Commission Member*

CITY STAFF

Dean Martin, *City Manager/Interim Executive Director*
Marie A. Calderon, *City Clerk/Authority Secretary*
Fred Mason, *Electric Utility Director*
Art Vela, *Acting Public Works Director*
Aleshire & Wynder, LLP, *City Attorney/Authority Counsel*

SPECIAL SERVICES

BOND COUNSEL/DISCLOSURE COUNSEL

Norton Rose Fulbright US LLP
Los Angeles, California

FINANCIAL ADVISOR

Urban Futures, Inc.
Orange, California

TRUSTEE

U.S. Bank National Association
Los Angeles, California

DISSEMINATION AGENT

Willdan Financial Services
Temecula, California

VERIFICATION AGENT
[TBD]

TABLE OF CONTENTS

Page

INTRODUCTION 1

General 1
Authority for Issuance 1
The Authority 1
Security for the Bonds 2
[Bond Insurance 2
Description of the Bonds 2
Bond Owners' Risks 3
Changes Affecting the Electric Utility Industry 3
Professionals Involved in the Offering 3
Offering and Delivery of the Bonds 4
Continuing Disclosure 4
Other Matters 4

THE BONDS 4

General 4
Redemption 5
Transfer and Exchange of Bonds 6
Book-Entry System 7
Bond Debt Service 7

ESTIMATED SOURCES AND USES OF FUNDS 8

PLAN OF FINANCE 8

General 8
Refunding of 2007 Bonds 8
Financing of Capital Improvements 9

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS 10

Assignment of Revenues and Installment Sale Agreement 10
Reserve Fund 10
Qualified Reserve Fund Credit Instrument 11
Issuance of Additional Debt; Parity Obligations 11
Installment Payments 12
Rate Covenant; Collection of Rates and Charges 14
Covenants of the City 15
Special Obligation 17

BOND INSURANCE 18

THE ELECTRIC SYSTEM 18

General 18
Management and Employees 18
Electric System Facilities 19
Power Supply Resources 20

TABLE OF CONTENTS
(continued)

Page

Forward Market Power Purchases 23
Future Power Resources 24
Transmission Resources 24
Wholesale Transactions 26
Historical and Projected Customers, Retail Energy Sales, Revenues and Demand 27
Largest Customers 28
Capital Requirements 29
Insurance 29
Indebtedness 30
Rates and Charges; Recent Rate Increase 31
Summary of Historical Operating Results 32
Projected Operating Results, Cash Flows and Coverage Ratio 33

RISK FACTORS 35

The Bonds are Limited Obligations 35
Electric System Expenses And Collections 35
No Liability of the Authority to the Owners 35
Limitations on Remedies 35
Limited Recourse on Default 36
Loss of Tax Exemption 36
Secondary Market 36
Forecasts and Forward-Looking Statements 36
Rate Regulation 37
Certain Factors Affecting the Electric Utility Industry 37
Articles XIIIC and XIIID of the State Constitution 37
Proposition 26 38
Future Initiatives 38
Casualty Risk; Earthquakes 39

DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS 39

State Legislation 39
Future Regulation 44
Impact of Developments on the City 44

OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY 45

Federal Energy Legislation 45
Environmental Issues 46
Other Factors 50

THE AUTHORITY 51

CONTINUING DISCLOSURE 51

TAX MATTERS 52

Tax Exemption 52
Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds 53

TABLE OF CONTENTS
(continued)

Page

Other Tax Consequences 54

CERTAIN LEGAL MATTERS 54

VERIFICATION OF MATHEMATICAL COMPUTATIONS 54

LITIGATION 55

PROFESSIONAL FEES 55

UNDERWRITING 55

RATINGS 55

FINANCIAL STATEMENTS 55

MISCELLANEOUS 56

APPENDIX a – CITY AUDITED FINANCIAL STATEMENTS FISCAL YEAR ENDING JUNE 30, 2014 A-1
APPENDIX B – GENERAL INFORMATION ABOUT THE CITY OF BANNING B-1
APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS C-1
APPENDIX D – FORM OF OPINION OF BOND COUNSEL D-1
APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT E-1
APPENDIX F – SPECIMEN MUNICIPAL BOND INSURANCE POLICY F-1
APPENDIX G – BOOK-ENTRY ONLY SYSTEM G-1

VICINITY MAP

[To Be Inserted]

OFFICIAL STATEMENT

$[_____]*
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2015

INTRODUCTION

This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The sale and delivery of the Bonds to potential investors are made only by means of the entire Official Statement.

General

The purpose of this Official Statement (which includes the cover page and the appendices attached hereto) is to provide information concerning the issuance, sale and delivery by the City of Banning Financing Authority (the "Authority") of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds"), in the aggregate principal amount of $[_____]*. The proceeds of the sale of the Bonds will be used to (i) refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007, currently outstanding in the amount of $40,045,000, (ii) finance certain improvements (the "Facilities") to the electric system (the "Electric System") of the City of Banning (the "City"), (iii) [pay the insurance premium for the Bonds,] (iv) [fund a Reserve Fund for the Bonds], and (v) pay costs of issuance of the Bonds. See "THE BONDS – Estimated Sources and Uses of Funds" and "PLAN OF FINANCE" herein. The Authority and the City will enter into an Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), pursuant to which the Authority will sell the Improvements to the City in consideration for Installment Payments sufficient in amount to pay the principal of and interest on the Bonds.

Authority for Issuance

The Bonds are being issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), among the Authority, the City, and U.S. Bank National Association, as trustee (the "Trustee").

The Authority

The Authority is a joint exercise of powers authority organized under the laws of the State of California whose members are the City and the Successor Agency to Community Redevelopment Agency of the City of Banning (the "Agency"). The Authority was formed, among other things, to finance and refinance, through the issuance of bonds or other instruments of indebtedness, capital improvements and working capital and other costs as permitted by the Act.

* Preliminary; subject to change.

Security for the Bonds

The Bonds are special obligations of the Authority secured by and payable solely from the Revenues, consisting of (a) all amounts received by the Authority or the Trustee pursuant or with respect to the Installment Sale Agreement, including, without limiting the generality of the foregoing, all of the Installment Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), prepayments, insurance proceeds, and condemnation proceeds, but excluding any Additional Payments; (b) all moneys and amounts held in the funds and accounts established under the Indenture; and (c) investment income with respect to any moneys held by the Trustee pursuant to the Indenture.

The City's obligation to make payments under the Installment Sale Agreement is secured by and payable from Net Revenues, being Gross Revenues derived by the City from the ownership and operation of the Electric System (as described herein), less Operation and Maintenance Costs of the Electric System. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein. Also, see "THE ELECTRIC SYSTEM - Rates and Charges; Recent Rate Increase" herein for a discussion of Electric System rate increases approved by the City Council of the City in March 2013.

The Bonds are limited obligations of the Authority and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of the Authority or any of its income or receipts, except the Revenues. The full faith and credit of the Authority, the Agency and the City, which are parties to the agreement creating the Authority, are not pledged for the payment of the principal of or interest on the Bonds and no tax or other source of funds, other than the Revenues, is pledged to pay the principal of or interest on the Bonds. The payment of the principal of or interest on the Bonds does not constitute a debt, liability or obligation of the Authority, the Agency or the City for which any such entity is obligated to levy or pledge any form of taxation or for which any such entity has levied or pledged any form of taxation. The Authority has no taxing power.

[Bond Insurance

Payment of the principal of and interest on the Bonds when due will be insured by a municipal bond insurance policy (the "Policy") to be issued by _____ (the "Bond Insurer") simultaneously with the delivery of the Bonds. See "BOND INSURANCE" herein.]

Description of the Bonds

For a more complete description of the Bonds and the Indenture pursuant to which they are being issued, see "THE BONDS" and "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" herein.

General. The Bonds will be dated as of and bear interest from their Delivery Date, at the rates set forth on the inside cover page hereof. See "THE BONDS." The Bonds, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository of the Bonds. Individual purchases of the Bonds will be made in book-entry form only. Principal of and interest on the Bonds will be payable by DTC through the DTC participants. See "THE BONDS – Book-Entry System" and APPENDIX G – BOOK-ENTRY ONLY SYSTEM" herein. Purchasers of the Bonds will not receive physical delivery of the Bonds purchased by them.

Redemption*. The Bonds are subject to special mandatory redemption, mandatory sinking fund redemption and redemption from optional prepayment of Installment Payments prior to maturity as more fully described herein. See "THE BONDS - Redemption" herein.

Denomination. The Bonds are being delivered in the minimum denominations of $5,000 or any integral multiple thereof within a single maturity.

Registration, Transfers and Exchanges. The Bonds will be issued and delivered as fully registered Bonds and will be subject to transfer, exchange and replacement as described herein. See "THE BONDS" and "APPENDIX C - SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" herein.

Payments. Interest on the Bonds will be payable semiannually on December 1 and June 1 of each year (each an "Interest Payment Date") commencing December 1, 2015. Principal of the Bonds will be payable upon the presentation and surrender thereof at the corporate trust office of the Trustee, in Los Angeles, California when due. Interest on the Bonds is payable by check of the Trustee mailed on or before each Interest Payment Date to the persons in whose names such Bonds are registered at the close of business on the Record Date, which is the fifteenth (15th) calendar day of the month immediately preceding any Interest Payment Date, or by wire transfer pursuant to the procedure described herein.

Bond Owners' Risks

Certain events could affect the ability of the Authority to make the payments of the principal of and interest on the Bonds when due. See "RISK FACTORS" herein for a discussion of certain factors which should be considered, in addition to other matters set forth herein, in evaluating an investment in the Bonds.

Changes Affecting the Electric Utility Industry

The electric utility industry has faced unprecedented changes in recent years, especially in California. See "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS" and "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY" herein.

Professionals Involved in the Offering

U.S. Bank National Association, Los Angeles, California, will act as Trustee with respect to the Bonds pursuant to the Indenture.

All proceedings in connection with the issuance of the Bonds are subject to the approval of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel. Certain legal matters will be passed upon for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the City and the Authority by Aleshire & Wynder, LLP, in its capacity as City Attorney and Authority Counsel.

* Preliminary; subject to change.

Offering and Delivery of the Bonds

The Bonds are offered when, as and if issued and received by the Underwriters, subject to approval as to their legality by Bond Counsel and the satisfaction of certain other conditions. It is anticipated that the Bonds will be available for delivery through the book-entry facilities of DTC, on or about August __, 2015.

Continuing Disclosure

The City has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City, including the Electric System, and to provide notices of the occurrence of certain listed events. See "CONTINUING DISCLOSURE" and "APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT" herein.

Other Matters

The summaries of and references to documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each document, statute, report, or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in a particular agreement or other document and, as used herein, has the meaning given it in such agreement or document. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" for summaries of certain of such definitions.

THE BONDS

General

The Bonds will be dated the date of their initial delivery and will bear interest at the rates and mature on the dates and in the amounts set forth on the inside cover page of this Official Statement, payable semiannually on each June 1 and December 1 of each year commencing on December 1, 2015 (each, an "Interest Payment Date") to the maturity of the Bonds. The Bonds are subject to redemption as provided herein. Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Bonds shall be payable semiannually calculated based on a 360-day year of twelve (12) thirty-day months on each Interest Payment Date to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed on the Interest Payment Date by first class mail to the Owner at the address of such Owner as its appears on the Registration Books; provided however, that payment of interest will be made by wire transfer in immediately available funds to an account at a financial institution in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee before the applicable Record Date. Any such written request shall remain in effect until rescinded in writing by the Owner. Principal of any Bond and any premium upon redemption shall be paid by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

Principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America. So long as Cede & Co. is the registered owner of the Bonds, payments of principal and interest on the Bonds will be paid to DTC as registered owner of the Bonds. See "THE BONDS – Book-Entry System" and "APPENDIX G – BOOK-ENTRY ONLY SYSTEM" herein.

Redemption*

Redemption from Prepayments of Installment Payments. The Bonds maturing on or before June 1, 20__ shall not be subject to optional redemption prior to maturity. The Bonds maturing on or after June 1, 20__ shall be subject to redemption prior to their respective maturity dates, at the option of the Authority, by lot within a maturity on any date on or after June 1, 20__, from prepayment of Installment Payments made at the option of the City at the redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

Mandatory Sinking Fund Redemption. The Bonds maturing on June 1, 20__ and June 1, 20__ are also subject to redemption prior to their respective stated maturities, on any June 1 on or after June 1, 20__ and June 1, 20__, respectively, in part by lot, from mandatory sinking account payments at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, without premium, as set forth below in the aggregate respective principal amounts and on the respective dates as set forth in the following tables; provided, however, that if some but not all of such Bonds have been redeemed pursuant to optional or special mandatory redemption provisions of the Indenture, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of $5,000.

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Notice of Redemption. The Trustee on behalf and at the expense of the Authority shall mail (by first-class mail, postage prepaid) notice of any redemption to: (i) the respective Owners of any Bonds designated for redemption, at least twenty (20) but not more than sixty (60) days prior to the redemption date, at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services, at least twenty (20) but not more than sixty (60) days prior to the redemption date; provided, however, that neither failure to receive any such notice so

* Preliminary; subject to change.

mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. In addition to mailed notice, the notice to the Securities Depositories and Information Services shall be given by telephonically confirmed facsimile transmission or overnight delivery service or by such other means approved by such institutions. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the bond numbers and the maturity or maturities (in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date. Any notice given pursuant to this paragraph may be rescinded by a written certificate given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this paragraph, but in no event later than the date set for redemption.

Selection of Bonds for Redemption. Whenever provision is made in the optional or special mandatory redemption of Bonds of more than one maturity, the Bonds to be redeemed shall be selected in inverse order of maturity or, at the election of the Authority evidenced by a Written Request of the Authority filed with the Trustee at least thirty (30) days prior to the date of redemption, on a pro rata basis among maturities (provided that, in any event, the principal and interest due on the Bonds Outstanding following such redemption shall be equal in time and amount to the unpaid payments due under the Installment Sale Agreement); and in each case, the Trustee shall select the Bonds to be redeemed within any maturity by lot in any manner which the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, all Bonds shall be deemed to be comprised of separate $5,000 portions and such portions shall be treated as separate Bonds which may be separately redeemed.

Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption shall have been duly provided, such Bonds so called shall cease to be entitled to any benefit under the Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. All Bonds redeemed pursuant to the Indenture shall be canceled and shall be destroyed by the Trustee.

Transfer and Exchange of Bonds

The registration of any Bond may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Bonds may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same interest rate and maturity. The Authority shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee may require the payment by the Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. The Trustee may refuse to transfer or exchange either (i) any Bond during the period established by the Trustee for the selection of Bonds for redemption pursuant to the Indenture, or (ii) the portion of any Bond which the Trustee has selected for redemption pursuant to the provisions of the Indenture.

Book-Entry System

The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will be registered in the name of Cede & Co. (DTC's partnership nominee), and will be available to ultimate purchasers in the denomination of $5,000 or any integral multiple thereof, under the book-entry system maintained by DTC. Ultimate purchasers of Bonds will not receive physical certificates representing their interest in the Bonds. So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, references herein to the Owners shall mean Cede & Co., and shall not mean the ultimate purchasers of the Bonds. Payments of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by the Trustee, so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursements of such payments to DTC's Participants is the responsibility of DTC and disbursements of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants. See "APPENDIX G - BOOK-ENTRY ONLY SYSTEM."

Bond Debt Service

The following table sets forth the annual debt service schedule for the Bonds.

Bond Year Ending (June 1)	Principal	Interest	Total

Total

ESTIMATED SOURCES AND USES OF FUNDS

The following sets forth the estimated sources and uses of funds related to the issuance of the Bonds.

Sources of Funds	
Principal Amount of Bonds	$
Amounts Held Under 2007 Indenture	
Less: Underwriters' Discount	
[Net] Original Issue Premium (Discount)	
Total Sources of Funds	$
Uses of Funds:	
Deposit to Acquisition and Construction Fund	$
Deposit to Costs of Issuance Fund[(1)]	
Deposit to Escrow Fund	
Deposit to Reserve Fund	
Total Uses of Funds	$

(1) Costs of issuance include fees and expenses of Bond Counsel, Disclosure Counsel and the Trustee, verification agent, the premium for the bond insurance policy (if any), rating agency fees, printing expenses and other costs of issuance of the Bonds.

PLAN OF FINANCE

General

The Bonds are being issued to (i) refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007 (the "2007 Bonds"), currently outstanding in the amount of $40,045,000, (ii) finance certain improvements (the "Facilities") to the electric system (the "Electric System") of the City of Banning (the "City"), (iii) [pay the insurance premium for the Bonds,] (iv) [fund a Reserve Fund for the Bonds], and (v) pay costs of issuance of the Bonds.

Refunding of 2007 Bonds

A portion of the proceeds of the Bonds, together with other available funds, will be deposited into an escrow fund (the "Escrow Fund") held under an Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), and applied to pay the principal and interest with respect to the 2007 Bonds becoming due prior to June 1, 2017 (the "Redemption Date") and on the Redemption Date for the purpose of refunding all of the outstanding 2007 Bonds. The 2007 Bonds were issued pursuant to an Indenture of Trust, dated as of June 1, 2007, by and between the Authority and U.S. Bank National Association as Trustee thereunder, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010 (the "2007 Indenture").

The amounts deposited in the Escrow Fund will be held solely for the 2007 Bonds and will not be available to pay the principal of or interest on the Bonds or any obligations other than the 2007 Bonds. _____ (the "Verification Agent"), upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to it, relating to the sufficiency of moneys deposited into the Escrow Fund to pay the principal, interest and redemption premium of the 2007 Bonds. See "VERIFICATION OF MATHEMATICAL COMPUTATIONS."

Financing of Capital Improvements

Approximately $11,000,000 of the net proceeds of the Bonds will be used to finance various rehabilitation and replacement projects to improve the Electric System. These existing and new developments will place increased demands on the City's Electric System and will require the upgrading of existing Electric System facilities and the construction of new facilities.

A portion of the proceeds of the Bonds will be deposited into the Acquisition and Construction Fund for the purpose of financing the Facilities. The following table sets forth a general description of the Facilities, the Fiscal Year in which they are expected to be undertaken and the expected budget for the Facilities.

Fiscal Year	Project Description	Budget[(1)(2)]
2016	Construct new Electric Warehouse at City Yard	$2,700,000
2016	Upgrade Alola Substation from 4kV to 12kV, complete 4kV to 12kV conversion of distribution system	3,450,000
2016	Upgrade Airport Substation from 4kV to 12kV	2,100,090
2017	Replace two old wooden poles at Midway Substation freeway crossing with new engineered steel poles	500,000
2017	Extend Sunset Substation distribution circuits to interconnect with the Wilson Street circuit	1,900,000

(1) Preliminary, subject to change.
(2) Budgeted costs are based on projected increases in the Producer Price Index for construction materials and components.

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

Assignment of Revenues and Installment Sale Agreement

Under the Indenture, the Authority assigns to the Trustee, on behalf of the Owners, all of the Authority's right, title and interest to and in the Revenues and all of the right, title and interest of the Authority in the Installment Sale Agreement (other than the rights of the Authority under the Installment Sale Agreement to Additional Payments, indemnification and attorneys' fees). Subject to the terms of the Indenture, all Revenues the Trustee collects and receives shall be applied to the payment of principal of and interest and premium (if any) on the Bonds equally, without priority for series, issue, number or date, in accordance with the terms hereof. So long as any of the Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that a portion of the Revenues may be used for purposes as expressly permitted by the Indenture.

"Revenues" are defined in the Indenture as (a) all amounts received by the Authority or the Trustee pursuant or with respect to the Installment Sale Agreement, including, without limiting the generality of the foregoing, all of the Installment Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), prepayments, insurance proceeds, condemnation proceeds, but excluding any Additional Payments; (b) all moneys and amounts held in the funds and accounts established under the Indenture; and (c) investment income with respect to any moneys held by the Trustee under the Indenture.

Reserve Fund

Under the Indenture, a Reserve Fund is created for the Bonds (the "Reserve Fund") which shall be held in trust by the Trustee. An amount equal to the Reserve Requirement (as defined below) shall be maintained in the Reserve Fund at all times, subject to the provisions of the Indenture, and any deficiency therein shall be replenished from the first available Revenues pursuant to the Indenture. Under the Indenture, the "Reserve Requirement" means, as of any date of calculation by the City, the least of (i) ten percent (10%) of the proceeds (within the meaning of section 148 of the Code) of the Bonds; (ii) 125% of average Annual Debt Service as of the date issuance of the Bonds: or (iii) the Maximum Annual Debt Service for that and any subsequent year.

Under the Indenture, moneys in the Reserve Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to the Indenture, in the event that the moneys in the Bond Service Fund are insufficient therefor. In the event that the amount on deposit in the Bond Service Fund on any date is insufficient to enable the Trustee to pay in full the aggregate amount of principal of and interest on the Bonds coming due and payable, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption, the Trustee shall withdraw the amount of such insufficiency from the Reserve Fund and transfer such amount to the Bond Service Fund.

In the event that the amount on deposit in the Reserve Fund exceeds the Reserve Requirement on the fifteenth calendar day of the month preceding any Interest Payment Date, the amount of such excess shall be withdrawn therefrom by the Trustee and transferred to the Bond Service Fund and credited against the Installment Payment or Installment Payments next due from the City.

Qualified Reserve Fund Credit Instrument

The Authority may fund all or a portion of the Reserve Requirement with one or more Qualified Reserve Fund Credit Instruments, which is defined in the Indenture as an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee pursuant to the terms of the Indenture provided that all of the following requirements are met: (i) the long-term credit rating of such bank or insurance company at the time of delivery of such letter of credit or surety bond is rated in one of the two highest rating categories by Moody's or S&P; (ii) such letter of credit or surety bond has a term of at least twelve (12) months; (iii) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to the terms of the Indenture; and (iv) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the amounts available to repay the principal of and interest on the Bonds.

Upon deposit of any Qualified Reserve Fund Credit Instrument with the Trustee, the Trustee shall transfer any excess amounts then on deposit in the Reserve Fund into a segregated account of the Bond Service Fund, which monies shall be applied at the written direction of the Authority either (i) to the payment within one year of the date of transfer of capital expenditures of the Authority permitted by law, or (ii) to the redemption of Bonds on the earliest succeeding date on which such redemption is permitted hereby, and pending such application shall be held either not invested in investment property (as defined in section 148(b) of the Code), or invested in such property to produce a yield that is not in excess of the yield on the Bonds; provided, however, that the Authority may by written direction to the Trustee cause an alternative use of such amounts if the Authority shall first have obtained a written opinion of nationally recognized bond counsel substantially to the effect that such alternative use will not adversely affect the

exclusion pursuant to section 103 of the Internal Revenue Code of 1986 (the "Code") of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In any case where the Reserve Fund is funded with a combination of cash and a Qualified Reserve Fund Credit Instrument, the Trustee shall deplete all cash balances before drawing on the Qualified Reserve Fund Credit Instrument. With regard to replenishment, any available moneys provided by the Authority shall be used first to reinstate the Qualified Reserve Fund Credit Instrument and second, to replenish the cash in the Reserve Fund. In the event the Qualified Reserve Fund Credit Instrument is drawn upon, the Authority shall make payment of interest on amounts advanced under the Qualified Reserve Fund Credit Instrument after making any payments to the Bond Service Fund pursuant to the terms of the Indenture.

In the event the Qualified Reserve Fund Credit Instrument will lapse or expire, the Trustee shall draw upon such Qualified Reserve Fund Credit Instrument prior to its lapsing or expiring in the full amount of such Qualified Reserve Fund Credit Instrument, make deposits from available Revenues to the Reserve Fund to increase the amount on deposit therein to the Reserve Requirement or substitute such Qualified Reserve Fund Credit Instrument with a Qualified Reserve Fund Credit Instrument that satisfies the requirements described above.

Issuance of Additional Debt; Parity Obligations

The Authority has covenanted in the Indenture that except for the Bonds, no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

Pursuant to the terms of the Installment Sale Agreement, in addition to the Installment Payments, the City may issue or incur other bonds, notes, loans, advances or indebtedness payable from Net Revenues on a parity with the Installment Payments to provide financing for the Electric System in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Obligations subject to the following specific conditions which are made conditions precedent to the issuance and delivery of such Parity Obligations:

(a) No Event of Default shall have occurred and be continuing, and the City shall deliver a certificate to that effect to the Trustee;

(b) The Net Revenues, calculated in accordance with accounting principles consistently applied, as shown by the books of the City for the latest Fiscal Year or as shown by the books of the City for any more recent twelve (12) month period selected by the City, in either case verified by a certificate or opinion of an Independent Accountant employed by the City, plus (at the option of the City) the Additional Revenues, shall be at least equal to one hundred twenty percent ([120%]) of the amount of Maximum Annual Debt Service; [DISCUSS]

(c) There shall be established upon the issuance of such Parity Obligations a reserve fund for such Parity Obligations in an amount equal to the lesser of (i) the maximum amount of debt service required to be paid by the City with respect to such Parity Obligations during any Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code; and

(d) The trustee or fiscal agent for such Parity Obligations shall be the same entity performing the functions of Trustee under the Indenture.

The provisions of subsection (b) above shall not apply to any Parity Obligations if all of the proceeds of which (other than proceeds applied to pay costs of issuing such Parity Obligations and to make a reserve fund deposit required pursuant to subsection (c) above) shall be deposited in an irrevocable escrow for the purpose of paying the principal of and interest and premium (if any) on any Installment Payments or on any outstanding Parity Obligations.

Under the terms of the Installment Sale Agreement, the City may not issue or incur any additional bonds or other obligations during the term of the Installment Sale Agreement having any priority in payment of principal or interest out of the Net Revenues over the Installment Payments. However, nothing in the Installment Sale Agreement is intended or shall be construed to limit or affect the ability of the City to issue or incur Parity Obligations or obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established under the Installment Sale Agreement.

Installment Payments

Under the Installment Sale Agreement, the City agrees to pay to the Authority, its successors and assigns, but solely from the "Net Revenues" (consisting of "Gross Revenues" less "Operation and Maintenance Costs") and other funds pledged under the Installment Sale Agreement, the "Purchase Price," together with interest on the unpaid principal balance payable in Installment Payments coming due and payable in the respective amounts and on the respective Installment Payment Dates specified in the Installment Sale Agreement. These terms are defined in the Installment Sale Agreement as follows:

"Net Revenues" is defined as meaning, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

"Gross Revenues" is defined as meaning all income, rents, rates, fees, charges and otber moneys derived from the ownership or operation of the Electric System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the City from the sale, furnishing and supplying of electric or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Electric System (other than the non-by-passable usage based cbarge supporting the City's public benefit program), plus (2) tbe earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, including City reserves and tbe Reserve Fund established under the Indenture, but excluding in all cases customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City and excluding any proceeds of taxes required by law to be used by the City to pay bonds bereafter issued.

"Electric System" is defined as meaning the entire electric system of the City, including all facilities, properties and improvements at any time owned, controlled or operated by the City for the provision of electricity, and any necessary lands, rights, entitlements and otber property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City, including the Improvements.

"Operation and Maintenance Costs" is defined as meaning the reasonable and necessary costs and expenses paid by the City for maintaining and operating the Electric System, including but not limited to (a) the cost of utilities, including electricity and other forms of energy supplied to the Electric System, (b) the reasonable expenses of management and repair and otber costs and

expenses necessary to maintain and preserve the Electric System in good repair and working order and (c) the reasonable administrative costs of the City attributable to the operation and maintenance of the Electric System, including insurance and other costs described in the Installment Sale Agreement, but in all cases excluding (i) debt service payable on obligations incurred by the City with respect to the Electric System, including but not limited to the Installment Payments and debt service payments on any Parity Obligations, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature, (iv) City's public benefit program expenditures, and (v) periodic administrative transfers to the City's general fund.

"Purchase Price" is defined as meaning the amount to be paid by the City under the Installment Sale Agreement as the purchase price of the Improvements, being equal to the aggregate principal amount of the Bonds.

Under the Installment Sale Agreement, all of the Net Revenues are irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments and any Parity Obligations (described above) and except as otherwise provided in the Installment Sale Agreement the Net Revenues shall not be used for any other purpose so long as any of the Installment Payments remain unpaid. Such pledge, charge and assignment shall constitute a first lien on the Net Revenues and such other moneys for the payment of the Installment Payments and any Parity Obligations in accordance with the terms of the Installment Sale Agreement.

The obligations of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained in the Installment Sale Agreement shall be absolute and unconditional and until such time as all of the Installment Payments and all other amounts coming due and payable under the Installment Sale Agreement shall have been fully paid or prepaid, the City may not suspend or discontinue payment of any Installment Payments or such other amounts, will perform and observe all other agreement contained in the Installment Sale Agreement, and will not terminate the Installment Sale Agreement for any cause. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Special Obligation" herein.

Under the Installment Sale Agreement, all of the Gross Revenues shall be deposited by the City immediately upon receipt in the Electric Utility Fund, which fund is established by the Installment Sale Agreement and held by the City. The City shall use funds in the Electric Utility Fund to pay Operation and Maintenance Costs as such payments become due and payable. The City covenants and agrees that all Net Revenues will be held by the City in the Electric Utility Fund in trust for the benefit of the Trustee (as assignee of the rights of the Authority under the Installment Sale Agreement) and the Bond Owners, and for the benefit of tbe owners of any Parity Obligations. On or before each Installment Payment Date, the City shall withdraw from the Electric Utility Fund, and transfer to tbe Trustee for deposit in the Revenue Fund, and to the trustee for any Parity Obligations, as applicable, an amount of Net Revenues which, together with the balance then on deposit in the Bond Service Fund (other than amounts resulting from the prepayment of the Installment Payments pursuant to the Installment Sale Agreement and other than amounts required for payment of principal of or interest on any Bonds and Parity Obligations which have matured or been called for redemption but which have not been presented for payment), is equal to the aggregate amount of the Installment Payments coming due and payable on the next succeeding Interest Payment Date, together with any amounts required to restore the balance in the Reserve Fund to the Reserve Requirement. In support of the foregoing, the City shall set aside each month equal amounts necessary to make such transfers on or before each Installment Payment Date.

The City is required under the Installment Sale Agreement to manage, conserve and apply the Gross Revenues on deposit in the Electric System Fund in such a manner tbat all deposits required to be

made will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default shall have occurred and be continuing under the Installment Sale Agreement, the City may use and apply Net Revenues in the Electric Utility Fund for (i) the payment of Additional Payments (as defined in the Installment Sale Agreement), (ii) the payment of any subordinate obligations or any unsecured obligations, (iii) the acquisition and construction of extensions and betterments to the Electric System, (iv) the prepayment of any obligations of the City relating to the Electric System, (v) transfers from the Electric Utility Fund to the General Fund of the City for administrative costs, or (vi) any other lawful purposes of the Electric Utility Fund. All monies in the Electric System Fund may be invested by the City from time to time in any Authorized Investment.

Rate Covenant; Collection of Rates and Charges

Under the Installment Sale Agreement, the City agrees that it shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

(a) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;

(b) Adjustable Annual Debt Service (as defined in the Installment Sale Agreement);

(c) All amounts, if any, required to restore the balance in the Reserve Fund and any reserve fund securing any Parity Obligations to the full amount of the Reserve Requirement and the reserve requirement with respect to any Parity Obligations; and

(d) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to one hundred twenty percent (120%) of the amount described in the preceding clause (b) for such Fiscal Year.

See "THE ELECTRIC SYSTEM – Rates and Charges; Recent Rate Increase" herein for a discussion of Electric System rate increases approved by the City Council of the City in March 2013.

Covenants of the City

In addition to the covenant described above under the caption "Rate Covenant; Collection of Rates and Charges," the City makes certain other covenants in the Installment Sale Agreement which are summarized below. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – The Installment Sale Agreement" herein.

Maintenance, Utilities, Taxes and Assessments. Throughout the term of the Installment Sale Agreement, all improvement, repair and maintenance of the Electric System shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Electric System, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the

payment of the cost of the repair and replacement of the Electric System resulting from ordinary wear and tear.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Electric System or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Installment Sale Agreement as and when the same become due.

Operation of the Electric System. The City covenants and agrees to operate the Electric System in an efficient and economical manner and to operate, maintain and preserve the Electric System in good repair and working order. The City covenants that, in order to fully preserve and protect tbe priority and security of the Bonds, the City shall pay from the Gross Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Electric System which, if unpaid, may become a lien or charge upon the Gross Revenues or the Net Revenues prior or superior to the lien granted under the Installment Sale Agreement, or which may otherwise impair the ability of the City to pay the Installment Payments in accordance therewith.

Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the term of the Installment Sale Agreement, but only if and to the extent available at reasonable cost from reputable insurers, a standard comprehensive general insurance policy or policies in protection of the Authority, the City and their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Electric System. Said policy or policies shall provide coverage in such liability limits and shall be subject to such deductibles as shall be customary with respect to works and property of a like character. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of the Installment Sale Agreement, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such proceeds shall have been paid.

Casualty Insurance. The City shall procure and maintain, or cause to be procured and maintained, throughout the term of the Installment Sale Agreement, but only in the event and to the extent available from reputable insurers at reasonable cost, casualty insurance against loss or damage to any improvements constituting any part of the Electric System, covering such hazards as are customarily covered with respect to works and property of like character. Sucb insurance may be subject to deductible clauses which are customary for works and property of a like character. Such insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the City and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of the Installment Sale Agreement, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. All amounts collected from insurance against accident to or destruction of any portion of the Electric System shall be used to repair, rebuild or replace such damaged or destroyed portion of the Electric System, and to the extent not so applied, shall be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under the special mandatory redemption provisions of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

Eminent Domain. Any amounts received as awards as a result of the taking of all or any part of the Electric System by the lawful exercise of eminent domain, at the election of the City (evidenced by a Written Certificate of the City filed with the Trustee and the Authority) shall either (a) be used for the acquisition or construction of improvements and extension of the Electric System, or (b) be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under the special mandatory redemption provisions of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

Records and Accounts. The City shall keep proper books of record and accounts of the Electric System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Electric System. Said books shall, upon prior request, be subject to the reasonable inspection by the Owners of not less than ten percent (10%) in aggregate principal amount of the Outstanding Bonds, or their representatives authorized in writing. The City shall cause the books and accounts of the Electric System to be audited annually by an Independent Accountant, not more than two hundred seventy (270) days after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Owners at the office of the City.

Covenants Related to Tax-Exempt Status of the Bonds. The City make certain covenants relating to the tax-exempt status of the Bond, including that it will take such actions as are necessary to insure: (i) that the interest on the Bonds will not become includable in the gross income of the owners thereof for federal income tax purposes; (ii) that no Bond will become a "private activity bond" within the meaning of section 141 of the Code; (iii) that the Bonds will not become "arbitrage bonds" within the meaning of section 148 of the Code; (iv) that the Bonds will not be treated as "federally guaranteed" within the meaning of section 149(b) of the Code and the Tax Regulations and rulings thereunder; and (v) take certain other actions relating to certain reports and to amounts rebatable to the United States under the Code.

Sale of the Electric System Property. Except as provided in the Installment Sale Agreement, the City covenants that the Electric System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole unless such sale is to a public entity. Neither the Net Revenues nor any other funds pledged or otherwise made available to secure payment of the Installment Payments shall be mortgaged, encumbered, sold, leased, pledged, any charge placed thereon, or disposed or used except as authorized by the terms of the Installment Sale Agreement. The City shall not enter into any agreement which impairs the operation of the Electric System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, or which otherwise would impair the rights of the Bond Owners and the owners of any Parity Obligations with respect to the Net Revenues. If any substantial part of the Electric System shall be sold, the payment therefor shall either (a) be used for the acquisition or construction of improvements, extensions or replacements of facilities constituting part of the Electric System, or (b) to the extent not so used, be paid to the Trustee to be applied to pay or prepay the Installment Payments or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

Special Obligation

The City's obligation to pay the Installment Payments, the Additional Payments and any other amounts coming due and payable under the Installment Sale Agreement shall be a special obligation of the City limited solely to the Net Revenues. Under no circumstances shall the City be required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified in the Installment Sale Agreement for the payment of the Installment Payments and the Additional Payments, nor shall any other funds or property of the City be liable for the payment of the

Installment Payments and the Additional Payments and any other amounts coming due and payable under the Installment Sale Agreement.

The obligations of the City to make the Installment Payments and the Additional Payments from the Net Revenues and to perform and observe the other agreements contained in the Installment Sale Agreement shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City, the Authority or the Trustee of any obligation to the City or otherwise with respect to the Electric System, whether under the Installment Sale Agreement or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable under the Installment Sale Agreement shall have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in the Installment Sale Agreement, and (c) will not terminate the Installment Sale Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Electric System, failure to complete the Acquisition and Construction of any Improvements by the estimated Completion Date thereof, the taking by eminent domain of title to or temporary use of any component of the Electric System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or the Installment Sale Agreement.

BOND INSURANCE

[TO COME, IF APPLICABLE]

THE ELECTRIC SYSTEM

General

Pursuant to resolution of the City Council of the City, the City established the Electric System in 1922 through the purchase of all of the property and facilities of the privately owned Light and Power Utility, which prior to its purchase by the City provided electric service to the City. The Electric System currently serves 10,836 residential, 1,005 commercial, 6 industrial and 123 other customers in an approximately 22 square mile service area. Service is provided over a 34.4kV subtransmission system to six distribution substations and is delivered to end users over City owned distribution lines. For Fiscal Year 2014, total energy generated equaled 145,203 MWh and total energy purchases equaled 43,118 MWh. Peak demand in Fiscal Year 2014 was 40.5 MW. The City's all-time peak demand was 47.6 MW in Fiscal Year 2006.

The City Council of the City is the governing body for the Electric System and approves all major operational decisions, including rate setting, operating budgets, power resource acquisitions, enhancement of distribution facilities and capital projects. Day-to-day operation of the Electric System is managed by the Electric Utility Director.

Management and Employees

The following are biographical summaries of the Electric Utility Director and the Power Resource and Revenue Administrator.

Frederick H. Mason – Mr. Mason has served as the City's Electric Utility Director since July 2009. In that capacity, Mr. Mason oversees the day-to-day planning and administration of all activities and programs of the Electric System, as well as the development, interpretation and enforcement of Electric System policies and procedures. Previously, Mr. Mason was the City's Electric Utility Power Resource and Revenue Administrator. Prior to joining the City, Mr. Mason was the Power Resource-Energy Transaction Analyst and Field Services Manager for Riverside Public Utilities for a period of seven years. Mr. Mason holds a Bachelor of Science degree and a Masters in Business Administration from the University of Redlands.

James Steffens – Mr. Steffens is the Utility Financial Analyst for the City, a position he has held since September 2011. Mr. Steffens responsibilities include analysis of financial and market data and representation of the City in communications with other utilities, energy suppliers, the California Independent System Operator Corporation and the Federal Energy Regulatory Commission. He also manages the City's Public Benefit Programs. Prior to joining the City, Mr. Steffens was a financial consultant to government agencies through Willdan Financial Services. Mr. Steffens holds a Bachelor of Arts degree in Economics from California State University, Fullerton and a Masters in Business Administration from the University of Arizona.

As of June 30, 2014, the Electric System directly employed 22 employees. 18 of these employees are represented by the International Brotherhood of Electrical Workers ("IBEW") in all matters pertaining to wages, benefits and working conditions, while the three mid-manager level employees are represented

by the Teamsters Local 1932. The Electric Utility Director is an "At Will" employee with a separate Employment Agreement. The current memorandum of understanding with the IBEW expires on June 30, 2016. In addition, 12 employees provided customer service support such as meter reading, field services and billing, while also providing support for the City's water utility. These 12 employees report to the City's Finance Department. 11 of these employees are represented by the IBEW, while the remaining mid-manager level employee is represented by Teamsters Local 1932. All employees are members of the California Public Employees Retirement System. See "THE ELECTRIC SYSTEM – Retirement Program."

Electric System Facilities

Through agreement with Southern California Edison Company ("Edison"), the Electric System utilizes Edison's subtransmission system in bringing power from the California Independent System Operator ("CAISO") controlled high voltage transmission grid to the Electric System's distribution system at Banning Substation. The City owns two 34.4kV subtransmission circuits totaling approximately ten miles which feed each of the Electric System's six substations. These six substations have 27 circuits feeding approximately 145 miles of overhead and underground lines of 2,400/4160Y volts and 7,200/12,470Y volts. Underground lines total approximately 22 miles or 15% of the total.

The Electric System also has three small hydroelectric generating units located in San Gorgonio Wash. The two lower generating units were rebuilt in 2015 with a combined capacity of .48 MW and started regular operations in June. The two units are projected to produce a total of approximately 4,000 MWh's of electricity each year. The upper generating unit is currently being evaluated to determine whether there is a cost benefit for rebuilding it. If rebuilt, the upper unit would have a capacity of .15 MW.

The following table sets forth information concerning voltages, capacities and circuits for the Electric System's six substations.

Table 1
CITY OF BANNING ELECTRIC
SYSTEM SUBSTATIONS

Substation	Voltage	Capacity (MW)	Distribution Feeders
34 – 4kV			
Alola #1	34.5 -2.4/4.16	3.75	2
Alola #2	34.5 -2.4/4.16	3.75	2
Alola #3	34.5 -2.4/4.16	2.00	1
Airport	34.5 -2.4/4.16	3.75	2
34 – 12kV			
22nd Street	34.5 -7.4/12.47	15.00	3
Midway #1	34.5 -7.4/12.47	7.50	2
Midway #2	34.5 -7.4/12.47	7.50	2
San Gorgonio #1	34.5 -7.4/12.47	10.00	2
San Gorgonio #2	34.5 -7.4/12.47	10.00	2
Sunset #1	34.5 - 7.4/12.47	25.00	5
Sunset #2	34.5 - 7.4/12.47	25.00	4

Source: City of Banning Electric Department.

Power Supply Resources

Peak demand for the Electric System increased annually from 41.9 MW in Fiscal Year 2010 to 46.9 MW in Fiscal Year 2013. Peak demand in Fiscal Year 2014 decreased to 40.5 MW. The decline in peak demand was due to a very mild summer, which resulted in lower demand for air conditioning. For Fiscal Years 2010 through 2014 total retail sales increased from 135,545 MWh to 138,926 MWh. For Fiscal Year 2014, total energy generated equaled 145,203 MWh and total energy purchases equaled 43,118 MWh, for a total of 188,321 MWh of electricity.

As discussed above under the caption "Electric System Facilities," the City has three small hydroelectric generating units which had previously operated infrequently and did not significantly contribute to the Electric System's supply resources. However, with the two lower units being rebuilt in 2015, they will produce approximately 4,000 MWh per year, or three percent of the Utility's power supply requirements. The principal supply resources for the Electric System are derived from the City's membership in the Southern California Public Power Authority ("SCPPA"), a joint powers agency, and the City's participation through SCPPA in (i) Unit 3 of the San Juan Generating Station ("San Juan Unit 3"), (ii) the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 and associated facilities ("PVNGS"), (iii) direct entitlements to the output of hydroelectric generating plants at the Hoover Dam (the "Hoover Upratings Project"), and (iv) certain power purchase agreements between SCPPA and two divisions of Ormat Technologies, Inc. relating to two geothermal energy facilities located in the Imperial Valley of California (the "Ormat Geothermal Energy Projects"). In addition, the City also makes energy purchases in the wholesale market to cover its summer peaking energy and capacity requirements.

In anticipation of the shutdown of San Juan Unit 3 (which will be discussed in more detail later), the City Council approved power sales agreements to obtain capacity and energy from two new SCPPA projects, which will provide the capacity and energy needed to replace the San Juan resource. The two agreements include a 9 MW share of the Puente Hills Landfill Gas-to-Energy Facility, and an 8 MW share of the RE Astoria 2 Solar Project. Both of these facilities are certified renewable energy through the California Energy Commission and will begin providing capacity, energy and associated renewable attributes to the City beginning in 2017. These two agreements are standard power purchase contracts, and do not have a "take or pay" provision.

The following table sets forth certain information regarding the Electric System's power supply resources during the Fiscal Year ended June 30, 2014.

Table 2
CITY OF BANNING
ELECTRIC SYSTEM POWER SUPPLY RESOURCES
(Fiscal Year Ended June 30, 2014)

Source	Capacity Available (MW)	Actual Energy (MWh)	Percent of Total Energy
Joint Powers Agency (SCPPA)			
San Juan[1]	20.0	125,213	66.5%
PVNGS	2.0	18,291	9.7
Hoover	2.0	1,699	0.9
Subtotal	24.0	145,203	77.1
Purchased Power			
CAISO[2]	N/A	15,344	8.2
Ormat[3]	3.4	27,774	14.7
Subtotal		43,118	22.9
Total	**27.4**	**188,321**	**100%**

[1] See "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS - State Legislation - Greenhouse Gas Emissions regarding recent legislation that could adversely affect the use of coal-fired generating plants, including San Juan.
[2] Consists of purchases made in the forward market to cover summer peaking energy requirements.
[3] Also through SCPPA.
Source: City of Banning Electric Department.

As noted, the City is a member of SCPPA, a joint powers agency created for the planning, financing, acquiring, constructing, operating and maintaining of electric generating and transmission projects for participation by some or all of its members. Through its membership in SCPPA, the City is a participant in the following projects.

San Juan Unit 3. The San Juan Generating Station consists of a four unit, coal fired steam electric generating plant located near the town of Farmington in San Juan County, New Mexico. The combined net generating capacity of the four units is 1,800 MW. San Juan Unit 3 has a maximum gross rated capacity of 540 MW and net capacity of 497 MW. The four units were put into operation between 1976 and 1982. In 1993, SCPPA and five of its members negotiated a purchase agreement with Century Power Corporation under which SCPPA purchased a 41.8% interest in San Juan Unit 3 and related common facilities of the San Juan Generating Station, entitling SCPPA to approximately 208 MW of power generated by San Juan Unit 3. SCPPA entered into power sales contracts with five members of SCPPA, including the City. Under these power sales contracts, SCPPA sells 100% of its entitlement to capacity and energy of San Juan Unit 3 on a "take or pay" basis. The City has a 9.8% (20 MW) entitlement in SCPPA's interest in San Juan Unit 3. SCPPA financed its interest in Unit 3 by issuing revenue bonds in an aggregate principal amount of $237,375,000, of which approximately $42,935,000 in aggregate principal amount were outstanding as of June 1, 2015. In Fiscal Year 2014, San Juan Unit 3 provided 125,213 MWh of energy to the City at an average cost of delivered energy of $67.68 per MWh.

In June 2014, the nine owners of the San Juan Generating Station reached a non-binding agreement in principle on an ownership restructuring of the San Juan Generating Station, which if implemented, would result in the shutdown of Units 2 & 3 by December 31, 2017 as part of the overall settlement of matters regarding emissions at San Juan. Most, but not all, of the regulatory approvals and other conditions have been obtained or satisfied in order to implement this proposed ownership restructuring.

In December 2014 SCPPA successfully closed the refunding of the San Juan Power Project's 2005 Refunding Series A Bonds, which resulted in gross savings of $6.3 million and an NPV of $4.95 million, and a new final maturity of January 1, 2017. This ensures that all San Juan Unit 3 related debt will be paid off prior to the unit shutting down December 31, 2017.

In June 2015, the nine owners of San Juan Generating Station completed developing the binding agreements necessary for the final restructuring of ownership and the shutdown of Units 2 & 3 by December 31, 2017. The individual owners still need to obtain final approval through their various governing boards, which is expected to be completed by August 1, 2015.

Palo Verde Nuclear Generating Station. Through its participation in SCPPA, the City has an entitlement to the Palo Verde Nuclear Generating Station near Phoenix, Arizona. SCPPA, pursuant to the Arizona Nuclear Power Project ("ANPP") Participation Agreement, has a 5.91% interest in PVNGS, consisting of Units 1, 2 and 3 and certain associated facilities and contractual rights, a 5.56% ownership interest in the ANPP High Voltage Switchyard and contractual rights, and a 6.55% share of the rights to use certain portions of the ANPP Valley Transmission System in order to transmit PVNGS power to its members which are participating in the project.

SCPPA has sold the entire capability of SCPPA's interest pursuant to power sales contracts with certain of its members, including the City. Under the PVNGS power sales contract, the participants are entitled to SCPPA generation capability based on their respective PVNGS entitlements and are obligated to make payments on a "take or pay" basis.

Commercial operation and initial deliveries from PVNGS Units 1, 2 and 3 commenced in January 1986, September 1986 and January 1988, respectively. Transmission is accomplished through agreements with Salt River Project Agricultural Improvement and Power District, the Los Angeles Department of Water and Power ("LADWP") and Edison. SCPPA had outstanding approximately $36,130,000 aggregate principal amount of bonds with respect to PVNGS as of June 1, 2015.

In response to increased competition in the electric utility business, in 1997 SCPPA began taking steps designed to accelerate the payment of all fixed rate bonds relating to PVNGS by July 1, 2004 (the "PVNGS Restructuring Plan"). Such steps consisted primarily of refunding certain outstanding bonds for savings and accelerating payments by the PVNGS project participants on the bonds issued by SCPPA for PVNGS. The PVNGS Restructuring Plan accomplishes substantial savings to the PVNGS project participants from and after the time the principal of an interest on such fixed rate bonds were paid or provision for the payment thereof was made (i.e., from and after July 1, 2004). Under the PVNGS Restructuring Plan, the delivered cost of energy produced by PVNGS decreased significantly on July 1, 2004.

The City has a 1.00% entitlement interest (2 MW) in SCPPA's ownership interest in the PVNGS, the ANPP High Voltage Switchyard and the ANPP Valley Transmission System. In Fiscal Year 2014, PVNGS provided 18,291 MWh of energy to the City at an average cost of delivered energy of $41.23 per MWh.

Hoover Uprating Project. The City participated in the Hoover Uprating Project which consisted principally of the uprating of the capacity of 17 generating units at the hydroelectric power plant of the Hoover Dam, which is located approximately 25 miles from Las Vegas, Nevada. Modern insulation technology made it possible to "uprate" the nameplate capacity of existing generators. The United States Bureau of Reclamation (the "Bureau") owns and operates the Hoover Dam facility and the Western Area Power Association markets the power from the facility. The City and certain other members of SCPPA obtained entitlements to capacity and associated firm energy which they assigned to SCPPA by agreement dated March 1, 1986 in return for SCPPA's agreement to make advance payments to the Bureau on behalf of such members. The entitlements of the City and these SCPPA members currently total 94 MW of capacity and approximately 107,000 MWh of associated energy annually from the Hoover Uprating Project. As of June 1, 2015, SCPPA has outstanding approximately $6,095,000 aggregate principal amount of bonds with respect to the Hoover Uprating Project. The City has an entitlement of approximately 2 MW. In Fiscal Year 2014, the Hoover Uprating Project provided 1,699 MWh of energy to the City at an average cost of delivered energy of $36.56 per MWh.

Ormat Geothermal Energy Projects. In 2005, SCPPA entered into a power purchase agreement (the "Ormat Power Purchase Agreement") with OrHeber 2, Inc., which is a division of Ormat Technologies, Inc. ("Ormat"). This agreement provides for the purchase of 10 MW of electric generation from a geothermal energy facility located in the Heber area of the Imperial Valley of California. In turn, pursuant to certain power sales agreements (the "Ormat Power Sales Agreements"), SCPPA agreed to sell the energy purchased by it to four of its members, including the City. The City's contract share of the purchased power is 1 MW or 10% of the total 10 MW output. Under the City's Ormat Power Sales Agreement, the City pays an initial cost for delivered energy of $57.50 per MWh, with an annual increase of 1.5%.

The Ormat Power Purchase Agreement and the Ormat Power Sales Agreements (including the City's Ormat Power Sales Agreement) have terms of 25 years from January 1 immediately following the commercial operation dates for the geothermal energy facilities. The Heber facility was completed and commenced delivering energy in January 2006, and thus the agreements relating to that facility have an expiration date of January 1, 2032.

In 2008 Ormat requested, and the SCPPA participants agreed to substitute the generating facility supplying power related to the Ormat Power Purchase Agreement. The new geothermal facility which provides power per the Agreement is the "Heber South" generating facility, which has a capacity of 14 MW versus the original Heber facility's 10 MW. The City's share continues to be 10%, but the actual capacity increased from 1 MW to 1.4 MW. Additionally, the City agreed to take 2 MW of capacity from the original Heber facility, under the same terms and conditions, thereby additionally increasing its overall capacity from 1.4 MW to 3.4 MW. With this change in facilities and increased capacity, there was an update in the pricing of the power, the original pricing methodology applies to the first 9.5 MW delivered each hour, but electricity in excess of 9.5 MW delivered any hour will be charged at an initial price of $76 per MWh, with an annual increase of one and one-half percent. All other aspects of the Ormat Power Purchase Agreement remain unchanged.

The Ormat Power Purchase Agreement is subject to early termination by either party thereto in its sole discretion as of January 1 immediately following the 15th or 20th anniversary of the commercial operation date relating to the facility which is the subject of the agreement. In the event of such termination, the Ormat Power Sales Agreement relating to the facility would concurrently terminate. Furthermore, each Ormat Power Sales Agreement is subject to early termination by either party thereto immediately following the 15th or 20th anniversary of the commercial operation date relating to the facility which is the subject of the agreement. If this termination right is exercised by any SCPPA member pursuant to its Ormat Power Sales Agreement, then SCPPA shall unilaterally terminate all of the

Ormat Power Sales Agreements unless the contract shares subscribed to by the remaining SCPPA members are increased to 100%. If all of the Ormat Power Sales Agreements are terminated, SCPPA shall terminate the Ormat Power Purchase Agreement in accordance with its right of termination contained therein.

In Fiscal Year 2014, the City purchased 27,774 MWh of energy pursuant to its Ormat Power Sales Agreement at an average cost of delivered energy of $69.03 per MWh.

See "THE ELECTRIC SYSTEM – Indebtedness" for a description of the City's share of SCPPA's obligations discussed above.

Forward Market Power Purchases

In addition to power supply resources associated with the City's participation in SCPPA projects, the City has made energy purchases in the forward market to cover its summer peaking energy and capacity requirements. In this regard, the City evaluates responses to requests for proposal from various energy suppliers and selects the supplier providing the most economical cost. There is no assurance that the City will be able to engage in forward market purchases in the future. For the past several years, the City has found that it has been more cost effective to purchase needed peaking energy in the CAISO wholesale markets.

The cost of obtaining necessary energy will depend upon contract requirements and the current market price for energy. Spot market prices are dependent upon such factors as natural gas prices, the availability of generating sources in the region, fuel type, and weather conditions such as ambient temperatures and the amount of rainfall or snowfall. Generating unit outages, dry weather, hot or cold temperatures, time of year, transmission constraints, and other factors can all affect the supply and price of energy. See "DEVELOPMENTS IN THE ENERGY MARKETS."

Future Power Resources

General. The Electric System's current resources meet its customer demand in the months of October through May ("Winter Months"). Summer peaking requirements are purchased for the months of June through September. The quantity of peaking power actually purchased fluctuates depending on load projections. Current Electric System resources are expected to cover demand during the Winter Months until San Juan Unit 3 shuts down December 31, 2017. As previously noted, the City executed power sales agreements with SCPPA for power to replace that which was being lost with the shutdown of the San Juan Unit 3 facility. Those two projects, which will begin providing capacity and power to the City in 2017, are described in more detail below.

Puente Hills Landfill Gas-to-Energy Facility. The Puente Hills Landfill Gas-to-Energy Facility is an existing facility that is currently under contract with Southern California Edison. SCPPA has negotiated to start taking the output from the facility, which has a nameplate capacity of 46 MW, as of January 1, 2017. The City's share of the project will be 20.9302% or approximately 9.6 MW of the nameplate capacity. However, because the Puente Hills Landfill has shut down and is no longer accepting waste, the actual capacity of the facility will decrease each year at an estimated rate of 4-6%, as the available "fuel" is depleted. The projected capacity of the facility for 2017 is estimated at 41.5 MW, which will result in the City receiving approximately 8.7 MW of capacity and associated energy. The project has a fixed price of $80 per MWh and a term of 13 years. The facility is located in Los Angeles County (Whittier) near the interchange of the I-605 and CA-60 freeways, and will interconnect with the CAISO's system at Southern California Edison's Hillgen Substation.

RE Astoria 2 Solar Project. The RE Astoria 2 Solar Project is being developed by Recurrent Energy (which has developed other renewable energy projects for SCPPA) and the project is scheduled to begin commercial operation in 2017. The project will be 75 MW and is the second phase of a larger project that was developed for Pacific Gas & Electric. The City's share of the project will be 13% or 8 MWs of capacity. The project has a fixed price of $64 per MWh and a term of 20 years. It will be sited on approximately 840 acres in California on the border between Los Angeles and Kern Counties, and will interconnect with the California Independent System Operator's ("CAISO") system at Southern California Edison's Whirlwind Substation.

Transmission Resources

Transmission resources are an integral component of the City's plan to provide economical and reliable electric service to its customers. The City currently has several firm capacity transmission agreements to deliver up to 26 MW of remote generation to the City's takeout point at the Devers 230 substation. In addition, the City has a Wholesale Distribution Access Tariff ("WDAT") Agreement with Edison that allows the City to utilize Edison's distribution system to deliver electricity from the takeout point over the Devers 115 line to the Banning Substation to serve the City's entire retail customer load.

Effective January 1, 2003, the City turned over operational control of its high voltage and certain low voltage transmission entitlements to the CAISO, thereby becoming a Participating Transmission Owner (PTO) in the CAISO. In exchange for the transfer of control to the CAISO of its transmission facilities and certain contractual transmission rights, the City was entitled to receive, until December 31, 2010, firm transmission rights commensurate with the transmission facilities and transmission rights which it turned over to the CAISO. After that time, the firm transmission rights would convert to Congestion Revenue Rights, which are financial instruments used to offset congestion charges on the applicable transmission paths.

As a PTO in the CAISO, the City continues to own its transmission facilities and to be bound by its contractual arrangements. The CAISO provides to the City (as well as other participants) access to the CAISO Controlled Grid. However, the CAISO maintains operational control for the benefit of all market participants by providing non-discriminatory transmission access, congestion management, grid security, and control area services.

The City is currently part owner of two transmission projects, and also has contractual arrangements for additional firm transmission. The following table summarizes these resources.

Table 3
CITY OF BANNING -- ELECTRIC UTILITY
FIRM TRANSMISSION SERVICE AGREEMENTS
As of June 30, 2014

Transmission Line / Path	Owner/Party	City's Capacity	Primary Use
Mead – Phoenix	SCPPA	3 MW	PVNGS, Westwing, Marketplace
Mead – Adelanto	SCPPA	12 MW	PVNGS, Marketplace
Adelanto – Victorville/Lugo	LADWP	12 MW	PVNGS, Marketplace
Victorville/Lugo – Devers 230	LADWP	8 MW	PVNGS, Marketplace
Mead 230 – Dever 230	Edison	2 MW	Hoover

Source: City of Banning Electric Department.

Mead-Phoenix Transmission Project. This 256-mile, 500 kV AC transmission line, which was placed into commercial operation on April 15, 1996, extends between a southern terminus at the existing Westwing Substation (in the vicinity of Phoenix, Arizona) and a northern terminus at Marketplace Substation, a substation located approximately 17 miles southwest of Boulder City, Nevada. The line is looped through the 500-kV switchyard constructed in the existing Mead Substation in southern Nevada with an initial transfer capability of 1,300 MW. By connecting to Marketplace Substation, the Mead-Phoenix Transmission Project interconnects with the Mead-Adelanto Transmission Project and with the existing McCullough Substation. The Mead-Phoenix Transmission Project is comprised of three project components. SCPPA has executed an ownership agreement providing it with an 18.3077% member-related ownership share in the Westwing-Mead project component, a 17.7563% member-related ownership share in the Mead Substation project component, and a 22.4082% member-related ownership share in the Mead-Marketplace project component. Other owners of the line are APS, M-S-R Public Power Agency, Salt River Project and the City of Vernon, California. Through a contract with SCPPA, the City is entitled to receive 3 MW of this line's transmission capacity. The term of this contract extends for the life of the facility, or until all SCPPA bonds issued to finance the project are defeased. As of June 1, 2015 SCPPA had outstanding approximately $33,175,000 principal amount of its bonds issued to finance its interest in the Mead-Phoenix Transmission Project. The City has entered into a transmission service contract with SCPPA which obligates the City to pay the cost of its share of the transfer capability on a "take-or-pay" basis.

Mead-Adelanto Transmission Project. Through a contract with SCPPA, the City is entitled to 12 MW of transmission capacity from this 202 mile, 500 kV AC transmission line, which was placed into commercial operation on April 15, 1996. This arterial line extends between a southwest terminus at the existing Adelanto Substation in southern California and a northeast terminus at Marketplace Substation. By connecting to Marketplace Substation, the line interconnects with the Mead-Phoenix Transmission Project and the existing McCullough Substation in southern Nevada. The line has an initial transfer capability of 1,200 MW. SCPPA has executed an ownership agreement providing it with a total of a 67.9167% member-related ownership share in the project. The other owners of the line are M-S-R Public Power Agency and the City of Vernon, California. The term of this contract extends for the life of facility, or until all SCPPA bonds issued to finance the project are defeased. As of June 1, 2015, SCPPA had outstanding approximately $108,875,000 principal amount of its bonds issued to finance its interest in the Mead-Adelanto Transmission Project. The City bas entered into a transmission service contract with SCPPA which obligates the City to pay the cost of its share of the transfer capability on a "take-or-pay" basis.

See "THE ELECTRIC SYSTEM – Indebtedness" for a description of the City's share of SCPPA's obligations discussed above.

Adelanto-Victorville/Lugo. The City has a contract with LADWP for 12 MW of firm transmission service which extends and connects the Mead-Adelanto Transmission Project to the Victorville/Lugo transmission path. This contract has a fixed price of $0.27 per kW Month or $3,240 per month, based on a 12 MW entitlement.

Victorville/Lugo-Devers 230. The City has two contracts with Edison for a total of 8 MW of firm transmission service which provides transmission for the City's Palo Verde entitlement, as well as import of additional market purchases. The cost for this service is determined based on Edison's Transmission Revenue Requirement ("TRR") and is adjusted each year. Currently the cost is $4.67 per kW month or $37,360 per month for an 8 MW entitlement.

Mead 230-Devers 230. The City contracts with Edison for a total of 2 MW of firm transmission service which provides transmission for the City's Hoover entitlement. The cost for this service is

determined based on Edison's Transmission Revenue Requirement (TRR) and is adjusted each year. Currently the cost is $4.67 per kW month or $9,340 per month for a 2 MW entitlement.

Wholesale Transactions

Currently the City does not sell excess transmission capacity. Excess power is typically sold in the Day-Ahead Market, and quantities are based on the amount in excess of the anticipated Electric System customer load for the next trading day. Income from the sale of excess power was approximately $2,030,000 for the Fiscal Year ended June 30, 2014. Due to the volatility of market prices, income from the sale of excess power for Fiscal Year 2015 is conservatively estimated at $1,500,000.

Historical and Projected Customers, Retail Energy Sales, Revenues and Demand

The following table sets forth the average number of customers, metered MWh sales and revenues derived from retail sales, by classification of service, and peak demand during the past five Fiscal Years.

Table 4
CITY OF BANNING
ELECTRIC SYSTEM CUSTOMERS, RETAIL SALES, REVENUES AND DEMAND – HISTORICAL
(Fiscal Years Ended June 30)

	2010	2011	2012	2013	2014
Number of Customers					
Residential	10,552	10,623	10,679	10,693	10,768
Commercial	989	999	1,000	999	1,000
Industrial	6	6	5	5	5
Other	124	131	130	130	121
Total	11,671	11,759	11,814	11,827	11,894
Mega-Watt Hour Sales[(1)]					
Residential	67,821	64,508	67,302	68,552	66,352
Commercial	47,631	46,540	49,370	49,338	49,415
Industrial	9,146	8,933	8,555	10,121	13,379
Other	10,947	10,233	10,749	10,873	9,780
Total	135,545	130,214	135,976	138,884	138,926
Revenues from Sales[(1)]					
Residential	$12,658,211	$12,002,635	$12,226,581	$12,443,114	$13,151,115
Commercial	9,014,009	9,172,048	9,498,875	9,518,696	10,624,022
Industrial	1,650,659	1,485,423	1,367,155	1,447,083	2,131,714
Other	1,546,040	1,469,870	1,739,672	1,711,292	1,296,415
Total	$24,868,919	$24,129,976	$24,832,283	$25,120,185	$27,203,266
Peak Demand (MW)	41.9	45.0	44.3	46.9	40.5

(1) Metered Sales.
Source: City of Banning Electric Department.

For the Fiscal Year ended June 30, 2014, approximately 48% of the City's electric retail sales revenues were derived from sales to residential customers. Commercial and Industrial customers represented approximately 39% and 8% of retail sales revenues, respectively. The remaining 5% of retail sales revenues were attributable to sales to City municipal facilities.

The table below sets forth projections respecting the average number of customers, MWh sales and revenues derived from retail sales, by classification of service, and peak demand during the unaudited prior Fiscal Year and ensuing four Fiscal Years.

TABLE 5
CITY OF BANNING
ELECTRIC SYSTEM CUSTOMERS, RETAIL SALES,
REVENUES AND DEMAND - PROJECTED
(Fiscal Years Ended June 30)

	2015	2016	2017	2018	2019
Number of Customers					
Residential	10,822	10,876	10,930	10,985	11,040
Commercial	1,010	1,020	1,025	1,030	1,035
Industrial	5	5	6	6	6
Other	121	121	122	122	122
Total	11,958	12,022	12,083	12,143	12,203
Mega-Watt Hour Sales[1]					
Residential	66,684	67,017	67,352	67,689	68,027
Commercial	49,662	49,910	50,160	50,411	50,663
Industrial	13,446	13,513	13,581	13,649	13,717
Other	9,829	9,878	9,927	9,977	10,027
Total	139,621	140,319	141,020	141,725	142,434
Revenues from Sales[1]					
Residential	$13,216,871	$13,282,955	$13,349,370	$13,416,117	$13,483,197
Commercial	10,677,142	10,730,528	10,784,180	10,838,101	10,892,292
Industrial	2,142,373	2,153,084	2,163,850	2,174,669	2,185,542
Other	1,302,897	1,309,412	1,315,959	1,322,538	1,329,151
Total	$27,339,282	$27,475,979	$27,613,359	$27,751,425	$27,890,183
Peak Demand (MW)	43.7	44.1	44.5	44.9	45.3

(1) Metered Sales.
Source: City of Banning Electric Department.

Largest Customers

With one exception, no single customer of the Electric System accounted for as much as 5% of retail sales for Fiscal Year 2014, and no customer accounted for as much as 10% of those sales. Table 6 on the following page sets forth the ten largest retail customers of the Electric System, their type of business and the percentage of retail sales and consumption accounted for by each during Fiscal Year 2014.

TABLE 6
CITY OF BANNING ELECTRIC SYSTEM
TEN LARGEST RETAIL CUSTOMERS
(Fiscal Year Ended June 30, 2014)

Customer	Type of Business	Percent of Retail Sales	Consumption (kWh)
City of Banning	Local Government	9.81%	11,283,158
EDA/Facilities Management	Institutional Facility	4.64	6,517,288
San Gorgonio Memorial Hospital	Health Care	2.45	4,982,132
Banning Unified School District	Education	2.98	4,041,914
Robertson's Ready Mix	Construction Materials	2.08	2,304,704
Sun Lakes Country Club HOA	Country Club	1.48	1,992,978
Albertson's Store #6512	Grocery Retailer	1.25	1,982,400
Verizon	Service Provider	0.68	960,082
Semain Brothers	Mobile Home Park	0.58	948,324
Rio Ranch Market	Grocery Retailer	0.64	923,056
Total		26.61%	35,936,036

Source: City of Banning Electric Department.

Capital Requirements

As shown in the following table, the City expects capital requirements for the Electric System to aggregate approximately $11,726,855.00 for the next five Fiscal Years. Approximately $10,925,000.00 will be paid with Bond proceeds, with approximately $801,855.00 being funded from the Electric Improvement Fund.

	Fiscal Years Ended June 30,					
Description	2016	2017	2018	2019	2020	Total
Sunset Grade Separation	$ 400,592.00	--	--	--	--	$ 400,592.00
Downtown Undergrounding	968,542.00	--	--	--	--	968,542.00
New Utility Warehouse	2,452,847.00	--	--	--	--	2,452,847.00
Rebuild Alola Substation	3,427,387.00	--	--	--	--	3,427,387.00
Rebuild Airport Substation	2,077,487.00	--	--	--	--	2,077,487.00
Upgrade Midway Substation	--	$500,000.00	--	--	--	500,000.00
Extend Circuits at Sunset Sub	50,000.00	1,850,000.00	--	--	--	1,900,000.00

Source: City of Banning Electric Department.

Insurance

The City maintains self-insurance programs for workers' compensation and general liability claims. For general liability claims, the City is at risk for up to $50,000 per occurrence. Amounts in excess of $50,000 up to $50,000,000 are covered through the Public Entity Risk Management Authority ("PERMA"), a joint powers authority consisting of 26 public entity members, including the City and 17 other California cities. PERMA covers $1,000,000 of this amount and obtains the balance through participation in the California Joint Powers Risk Management Authority, a state-wide joint powers authority consisting of California cities and other joint powers insurance authorities.

For workers' compensation claims, the City is at risk for up to $250,000 per occurrence. Losses exceeding $250,000 and up to $500,000 are covered through PERMA under its risk-sharing pool

program, and amounts in excess of $500,000 are covered by the Local Agency Workers' Compensation Excess Joint Powers Authority, a state-wide joint powers authority consisting of California cities, joint powers authorities and special districts. Estimates for all liabilities, including an estimate for incurred by not reported claims, are included in the Self-Insurance Internal Service Fund.

PERMA also provides a non-risk sharing "deductible" or claims-servicing pool for general liability claims within the self-insured retention ("SIR") level of $50,000. Annual contributions are deposited with PERMA from which claims are paid on behalf of the City. Any claims paid by PERMA for the City in excess of deposits at year-end are recorded as "Due to Other Agencies" within the Self-Insurance Internal Service Fund. In addition, the City makes deposits with PERMA for workers' compensation claims below the $250,000 SIR from which claims are paid on behalf of the City.

Property coverage on City facilities is provided through the City's participation in PERMA's property insurance program. Through PERMA property insurance is purchased from Alliant Property Insurance Company. Coverage provided is $100,000,000 per occurrence with a deductible of $5,000 per occurrence.

The City does not maintain earthquake coverage insurance on the Improvements. See "RISK FACTORS – Casualty Risk." **[Confirm]**

Indebtedness

As previously discussed, the City is a participant in the following SCPPA projects: PVNGS, San Juan Unit 3, Hoover Upratings Project, Mead-Phoenix Transmission Project and Mead-Adelanto Transmission Project. To the extent the City participates in projects developed by SCPPA, the City is obligated to pay for its proportionate share of the cost of the particular project. Such payments are included in Operation and Maintenance Costs and, thus, are deducted from Gross Revenues in arriving at Net Revenues available for payment of Installment Payments.

The SCPPA agreements referenced above are on a "take or pay" basis, which requires payments to be made whether projects are completed or operable, or whether output from such projects is suspended, interrupted or terminated. Such payments represent the City's share of current and long-term obligations. All of these agreements contain "step-up" provisions obligating the City to pay a share of the obligations of any defaulting participant, a situation which, to date, has not occurred. The City's participation and share of the debt of SCPPA (without giving effect to any "step-up" provisions) are shown in Table 8 on the following page. The City's Ormat agreement, and the recently executed Puente Hills Landfill Gas-to-Energy Facility and RE Astoria 2 Solar Project agreements are not "take or pay". The City's participation and share of the debt of SCPPA (without giving effect to any "step-up" provisions) are shown in Table 7 on the following page.

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Table 7
CITY OF BANNING ELECTRIC SYSTEM
OUTSTANDING TAKE OR PAY OBLIGATIONS
(As of January 1, 2015)

SCPPA Project	Debt Outstanding	City Share of Debt Outstanding[1]	City Participation[2]
San Juan	$ 42,955,000	$4,209,777	9.80%
PVNGS	36,130,000	361,300	1.00
Hoover	6,090,000	129,681	2.13
Mead-Phoenix	32,210,000	331,750	1.03
Mead-Adelanto	108,760,000	1,468,271	1.35
Total	$226,145,000	$6,500,779	

(1) Excludes interest on debt.
(2) The City's participation obligation is subject to increase upon default in payment by another project participant.
Source: City of Banning Electric Department.

Rates and Charges; Recent Rate Increase

To ensure an adequate revenue stream to cover Electric System costs, the Electric System rate schedule includes a System Cost Adjustment Factor permitting an increase in rates beginning on the first day of the second calendar quarter following any calendar quarter during which the Electric System experiences a loss. This increase is imposed administratively (that is, without approval by the City Council of the City), but cannot exceed $0.02 per kWh during any calendar quarter. Uncollected revenue in excess of the $0.02 per kWh cap is carried over as an expense in the next calendar quarter.

Electric System retail rates are otherwise subject to change with the approval of the City Council of the City. City staff or an outside consultant perform an analysis of the cost of service for each Electric System customer type (residential, commercial, industrial or other) and prepare a report and recommendation to the City Council respecting any proposed rate changes. The City Council reviews the report and recommendation and either approves or rejects the proposed rate changes. Electric rates in the City are not subject to regulation by the Califomia Public Utilities Commission or any other state agency. State Legislative Assembly Bill 1890 ("AB 1890") requires the imposition of a public benefits charge ("PBC") of 2.85% of annual electric retail sales. The City collects the PBC as a 2.85% charge applied to all electric charges.

In April 2002 a rate increase was adopted which only affected Schedule C - General and Industrial Service customers (tbose with demands exceeding 20 kW). At the same time, the City also restructured the time-of-use periods for Schedule TOU customers (those with demands exceeding 500 kW) to make them more reflective of the actual demand curve.

In March 2007, the City adopted a rate increase affecting all customer classes. These increases became effective commencing in May 2007, although increases for Scbedule TOU customers were phased in over a two year period. In August 2009 the City adopted an overall twenty percent rate increase with an effective date of October 1, 2009. This increase affected all customer classes and was required due to tbe downturn in the economy, which had a significant impact on electric retail sales. In March 2013, the City adopted an overall twelve percent increase with an effective date of May 1, 2013. Under the new rate structure, no customer class subsidizes any other customer class.

The following table sets forth the average rates for the indicated customer classes for the Fiscal Years ended June 30, 2010 through June 30, 2014.

Table 8
CITY OF BANNING ELECTRIC SYSTEM
FIVE YEAR HISTORY OF RATES
Average Rate in Dollars per Kilowatt Hour
(Fiscal Years Ended June 30)

Customer Class	2010	2011	2012	2013	2014
Residential	$0.1809	$0.1861	$0.1815	$0.1815	$0.1982
Commercial	0.1893	0.1971	0.1924	0.1929	0.2150
Industrial	0.1805	0.1663	0.1539	0.1430	0.1593
Other	0.1490	0.1436	0.1618	0.1574	0.1326

Source: City of Banning Electric Department.

The following table sets forth a comparison of rates charged by certain members of SCPPA, including the City, for certain customer classes.

Table 9
CITY OF BANNING ELECTRIC SYSTEM
COMPARISON OF RATES CHARGED - SCPPA MEMBERS
(As of June 2015)

Utility	Residential (1,000 kWh - Summer Season	Commercial General Service (5,000 kWh)	Large Commercial Demand (100 kW and 50,000 kWh – Summer Season)
Banning	**$199.52**	**$988.00**	**$10,222.00**
Anaheim	182.60	787.13	6,241.87
Azusa	172.53	735.66	5,726.15
Burbank	174.57	752.52	7,118.03
Colton	182.11	985.33	9,526.88
Glendale	215.24	868.60	7,798.60
Imperial Irrigation District	135.10	659.00	6,020.00
Pasadena	214.57	756.11	6,356.27
Riverside	149.52	726.00	6,905.05

Source: City of Banning Electric Department.

Summary of Historical Operating Results

Table 10 on the next page sets forth a summary of operating results for the City's Electric System for the five Fiscal Years ended June 30, 2014. This information has been extracted from the City's audited financial statements. It has not been reviewed by the City's independent auditor. The City's audited financial statements for the Fiscal Year ended June 30, 2014, which include the operation of the Electric System, are attached to this Official Statement as APPENDIX A and should be reviewed in their entirety.

Table 10
CITY OF BANNING ELECTRIC SYSTEM
HISTORICAL OPERATING RESULTS AND COVERAGE RATIO
(Fiscal Years Ended June 30)[1]

	2010	2011	2012	2013	2014
Gross Operating Revenue					
Sales and Service Charges	$27,883,707	$27,240,024	$27,478,319	$29,138,857	$30,095,489
Connection Fees	265	266	1,060	7,155	215,991
Interest Revenue	854,325	318,044	164,027	31,239	110,175
Miscellaneous Income	283,097	172,618	505,546	81,477	-
Total Gross Revenues	$29,021,394	$27,730,952	$28,148,952	$29,258,728	$30,421,655
Operation and Maintenance Expenses	$2,383,511	$2,610,270	$2,615,386	$2,776,698	$2,873,860
Salaries and Benefits	5,240,668	3,809,767	4,535,860	4,744,751	5,082,280
Supplies and Services[2]	31,051	35,442	114,497	-	16,963
Repairs and Maintenance	174,685	159,486	151,583	148,733	147,985
Street Lighting Costs	19,135,587	18,536,737	17,281,603	18,532,961	17,000,644
Power Purchased for Resale	$26,965,502	$25,151,702	$24,698,929	$26,203,143	$25,121,732
Total Operation and Maintenance Expenses[3]					
Net Operating Revenues	$2,055,892	$2,579,250	$3,450,023	$3,055,585	$5,299,923
Debt Service					
2007 Electric Bonds	$2,670,838	$2,670,638	$2,669,238	$2,671,638	$2,667,638
Total Debt Service	$2,670,838	$2,670,638	$2,669,238	$2,671,638	$2,667,638
Coverage Ratio[4]	0.77	0.97	1.29	1.14	1.99

(1) This table does not include revenues and expenses relating to the 2.85% Public Benefits Charge.

(2) Includes amounts transferred to the City's General Fund equal to 10% of actual metered sales for fiscal years 2009/10 and 2010/11. In fiscal year 2011/12 and forward, the transfer amount of 10% is based on operating revenues. These transferred amounts will be a part of Net Operating Revenues pledged to the payment of Installment Payments under the Installment Sale Agreement and will only be transferred to the extent not needed for the payment of Installment Payments. Also, includes the inter-fund allocations for administrative costs charged to the Electric System.

(3) Pursuant to the Installment Sale Agreement, Operation and Maintenance Expenses do not include debt service or similar payments on Parity Obligations, depreciation or amortization of intangibles or other bookkeeping entries of similar nature, or public benefit program expenditures.

(4) Debt Service coverage for fiscal years 2009/10, 2010/11 and 2012/13 were below the rate covenant. Rate increases were approved in April 2013 and implemented in May 2013.

Source: City of Banning.

Projected Operating Results, Cash Flows and Coverage Ratio

At the present time, significant portions of the City remain undeveloped. In addition, certain areas of the City are underdeveloped or are in need of redevelopment. A number of new projects within these areas are currently underway or are expected to occur in the future. Among these are the following:

Commercial Projects

600 N. Highland Springs Ave	San Gorgonio Hospital – New Patient Tower
150 E. Ramsey Street	Village at Paseo San Gorgonio – Mixed Use
1450 E. Lincoln Street	24 Unit Airport Industrial Work Lofts
Hargrave & Ramsey Street	La Quinta Inn & Restaurant
Hathaway & Nicolet	Business Park (O'Donnell Group)

Tracts/Development Projects

Rancho San Gorgonio	1,543 Acres	4,862 – Single Family Dwellings
Butterfield – Pardee Homes	831 Acres	3,385 – Single Family Dwellings
Gilman Street	65 Acres	166 – Single Family Dwellings

The City's projected operating cash flows and coverage ratios for the Electric System through Fiscal Year 2019 are set forth in Table 11 on the next page. These projections are based on the City's judgment as to the occurrence of certain future events. The footnotes to the table include certain assumptions. These assumptions and the footnotes are material to the projections, and variations in the assumptions could produce substantially different financial results. Actual revenues and expenses may vary materially from these projections.

The Electric System's unaudited cash flows for the prior Fiscal Year and projections for the ensuing four Fiscal Years are set forth in Table 11. These projections are based on the City's judgment as to the occurrence of certain future events. The footnotes to the table include certain assumptions. The assumptions and footnotes set forth beneath the table are material to the projections, and variations in the assumptions could produce substantially different financial results. Actual revenues and expenses may vary materially from these projections.

Table 11
CITY OF BANNING ELECTRIC SYSTEM
PROJECTED CASH FLOW AND COVERAGE RATIO
(Fiscal Year Ended June 30)[1]

	2015[2]	2016	2017	2018	2019
Gross Operating Revenue					
Sales and Service Charges[4]	$29,705,000	$29,853,525	$30,002,793	$30,152,807	$30,303,571
Connection Fees	10,600	10,600	10,600	10,600	10,600
Interest Revenue	53,291	53,791	53,791	53,791	53,791
Miscellaneous Income	162,780	162,780	162,780	162,780	162,780
Total Gross Revenues	$29,931,671	$30,080,696	$30,229,964	$30,379,978	$30,530,742
Operation and Maintenance Expenses	$3,242,131	$2,610,270	$2,615,386	$2,776,698	$2,873,860
Salaries and Benefits[5]	4,981,470	3,809,767	4,535,860	4,744,751	5,082,280
Supplies and Services[6]	60,250	35,442	114,497	-	16,963
Repairs and Maintenance[6] [7]	160,000	159,486	151,583	148,733	147,985
Street Lighting Costs[6]	17,159,680	18,536,737	17,281,603	18,532,961	17,000,644
Insurance Premiums[6]	275,360	275,360	275,360	275,360	275,360
Power Purchased for Resale[3]	$25,878,891	$26,526,837	$26,559,583	$24,592,626	$24,626,060
Total Operation and Maintenance Expenses[8]					
Net Operating Revenues	$4,052,780	$3,553,859	$3,670,381	$5,787,322	$5,904,682
Debt Service					
2007 Electric Bonds	$2,670,038	$2,667,300	$2,668,800	$2,667,800	$2,669,300
Total Debt Service					
Coverage Ratio[4]	1.52	1.33	1.38	2.17	2.21

(1) This table does not include revenues and expenses relating to the 2.85% Public Benefits Charge.
(2) Fiscal Year 2015 based on budgeted revenues and expenditures.
(3) Power purchase expenses projected to remain flat until Fiscal Year 2018. In Fiscal Year 2018 $2 million decrease due to divesture of the San Juan power plant.
(4) Sales and Service Charges increased by 0.5% each year.
(5) Salaries and Benefits projected to increase by 1% each year.
(6) Other operating expenses projected to remain flat.
(7) Includes amount transferred to the City's General Fund equal to 10% of operating revenues. These transferred amounts will be a part of Net Operating Revenues pledged to the payments of Installment Payments under the Installment Sale Agreement and will only be transferred to the extent not needed for the payment of Installment Payments. Also, includes the inter-fund allocations for administrative costs charged to the Electric System.
(8) Electric Operations and Maintenance Expenses do not include debt service or similar payments on Parity Debt, depreciation or amortization of intangibles or other bookkeeping entries of similar nature, or public benefit program expenditures.

Source: City of Banning.

RISK FACTORS

The purchase of the Bonds involves investment risk. The following is a listing and discussion of certain risk factors that should be considered, in addition to the other matters discussed in this Official Statement, in evaluating the investment quality of the Bonds. Necessarily, this listing and discussion is neither comprehensive nor definitive and there can be no assurance that other risk factors will not become material in the future. The order in which the following risk factors are presented is not intended to reflect their relative importance.

The Bonds are Limited Obligations

The Bonds are limited obligations of the Authority and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of the Authority or any of its income or receipts, except the Revenues. The full faith and credit of the Authority, the Agency and the City is not pledged for the payment of the principal of or interest on the Bonds and no tax or other source of funds, other than the Revenues, is pledged to pay the principal of or interest on the Bonds. The payment of the principal of or interest on the Bonds does not constitute a debt, liability or obligation of the Authority, the City or the Agency for which any such entity is obligated to levy or pledge any form of taxation or for which any such entity has levied or pledged any form of taxation. The Authority has no taxing power.

Electric System Expenses And Collections

There can be no assurance that the City's expenses for the Electric System will remain at the levels described in this Official Statement. Changes in technology, increases in energy and fuel costs, new environmental regulations or other expenses may reduce the Net Revenues and could require substantial increases in the applicable rates or charges. Such rate increases could increase the likelihood of nonpayment, and could also decrease demand. Although the City has covenanted to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System at certain levels, there can be no assurance that such amounts will be collected in the amounts and at the times necessary to make timely payments with respect to the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rate Covenant; Collections of Rates and Charges."

No Liability of the Authority to the Owners

Except as expressly provided in the Indenture, the Authority will have no obligation or liability to the Owners of the Bonds with respect to the Installment Payments when due, or with respect to the observance or performance of other agreements, conditions, covenants and terms required to be observed or performed by the City under the Installment Sale Agreement or any related documents or with respect to the performance by the Trustee of any duty required to be performed by it under the Indenture.

Limitations on Remedies

The ability of the City to comply with the covenants under the Installment Sale Agreement and to generate Net Revenues sufficient to pay all Installment Payments in a timely manner may be adversely affected by actions and events outside of the control of the City and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of assessments, fees and charges. See "RISK FACTORS –Articles XIIIC and Article XIIID of the State Constitution." Furthermore, any remedies available to the Owners of the Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on remedies contained in the Indenture, the rights and obligations under the Bonds and the Indenture may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California. The opinion to be delivered by Bond Counsel concurrently with the execution and delivery of the Bonds, that tbe Bonds evidence valid and binding obligations and the Indenture constitutes a valid and binding obligation of the Authority and the City will be subject to such limitations, and the various other legal opinions to be delivered concurrently with the execution and delivery of the Bonds will be similarly qualified. See "APPENDIX D – FORM OF OPINION OF BOND COUNSEL." In the event the Authority or the City fails to comply with their respective covenants under the Indenture or to cause the timely payment of all principal or interest with respect to the Bonds, there can be no assurance that available remedies will be adequate to fully protect the interest of the holders of the Bonds.

Limited Reeourse on Default

If the City defaults on its obligations to make Installment Payments, the Trustee, as assignee of the Authority, has the right to accelerate the Installment Payments. However, in the event of a default and such acceleration, there can be no assurance that the Trustee will have sufficient revenues to pay the accelerated Bonds.

Loss of Tax Exemption

As discussed under the caption "TAX MATTERS" herein, interest with respect to the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the execution and delivery of tbe Bonds as a result of future acts or omissions of the Authority or the City in violation of their covenants contained in the Indenture or the Installment Sale Agreement. Should such an event of taxability occur, the Bonds are not subject to special redemption or any increase in interest rate and will remain outstanding until maturity or until redeemed under one of the redemption provisions contained in the Indenture.

Secondary Market

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that the Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Sucb prices could be substantially different from the original purchase price.

Forecasts and Forward-Looking Statements

Although the Authority believes tbat the City's projections of future operating results of the Electric System are reasonable, tbere can be no assurance that actual operating results will match the projections due to changes in general economic conditions and similar factors. In addition, the Electric System and economic development within the service area of the City are subject to comprehensive federal, state and local regulations. Tbere can be no assurance that the Electric System will not be adversely affected by future economic conditions, governmental policies or other factors beyond the control of the City.

This Official Statement contains certain "forward-looking statements" concerning the Authority's operations, the Electric System, and the operations, performance and financial condition of the City, the Authority, the Electric System, including their future economic performance, plans and objectives and the likelihood of success in developing and expanding. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Authority and City. The words "may," "would," "could," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate" and similar expressions are meant to identify these forward-looking statements. Results may differ materially from those expressed or implied by these forward-looking statements.

Rate Regulation

The City sets rates and charges for electric service provided at retail within its boundaries. The authority of the City to impose and collect rates and charges for power service is not currently subject to the direct regulatory jurisdiction of the California Public Utilities Commission ("CPUC") or the Federal Energy Regulatory Commission ("FERC"), and presently no other regulatory authority directly limits or restricts such rates and charges. See "THE ELECTRIC SYSTEM – Rates and Charges; Recent Rate Increase." It is possible that future Constitutional, legislative or regulatory changes could subject the rates, charges and/or service areas of the City to the direct jurisdiction of the CPUC or FERC or to other limitations or requirements under federal or State law.

Certain Factors Affecting the Electric Utility Industry

The electric utility industry in general has been, and in the future may be, affected by a number of other factors which could impact the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. The Authority is unable to predict what impact such factors will have on the business operations and financial condition of the Electric System, but the impact could be significant. This Official Statement includes a brief discussion of certain of these factors. See "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS" and "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY."

Articles XIIIC and XIIID of the State Constitution

Proposition 218, a State ballot initiative known as the "Right to Vote on Taxes Act," was approved by the voters of the State on November 5, 1996. Proposition 218 added Articles XIIIC and XIIID to the State Constitution. Article XIIID creates additional requirements for the imposition by most local governments (including the City) of general taxes, special taxes, assessments and "property-related" fees and charges. Article XIIID explicitly exempts fees for the provision of electric service from the provisions of such article. Nevertheless, Proposition 218 could indirectly affect some California municipally-owned electric utilities. For example, to the extent Proposition 218 reduces a city's general fund revenues, that city could seek to increase the transfers from its electric utility to its general fund.

Article XIIIC expressly extends the people's initiative power to reduce or repeal previously-authorized local taxes, assessments, and fees and charges. The terms "fees and charges" are not defined in Article XIIIC, although the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006), that the initiative power described in Article XIIIC may apply to a broader category of fees and charges than the property-related fees and charges governed by Article XIIID. Moreover, in the case of *Bock v. City Council of Lompoc*, 109 Cal.App.3d 52 (1980), the Court of Appeal determined that electric rates are subject to the initiative power. Thus, even electric service charges (which are expressly exempted from the provisions of Article XIIID) might be subject to the initiative provision of Article XIIIC, thereby subjecting such fees and charges imposed by the City to reduction by

the electorate. The City believes that even if the electric rates of the City are subject to the initiative power, under Article XIIIC or otherwise, the electorate of the City would be precluded from reducing electric rates and charges in a manner adversely affecting the payment of the Bonds by virtue of the "impairment of contracts clause" of the United States and California Constitutions.

Proposition 26

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIIIA and XIIIC. Proposition 26 imposes a majority voter approval requirement on local governments such as the City with respect to certain fees and charges for general purposes, and a two-thirds voter approval requirement with respect to certain fees and charges for special purposes, unless the fees and charges are expressly excluded. Proposition 26 was designed to supplement tax limitations imposed by the voters in California Constitution Articles XIIIA, XIIIC and XIIID pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product.

Proposition 26 is subject to interpretation by California courts. Proposition 26 may be interpreted to limit fees and charges for electric utility services charged by governmental entities such as the City to preclude future transfers of electric utility generated funds to a local government's general fund, if applicable, and/or to require stricter standards for the allocation of costs among customer classes. In *Citizens for Fair REU Rates v. City of Redding* (filed on January 20, 2015 and modified on February 19, 2015), for example, the California Court of Appeal considered a ratepayer challenge to a "payment in lieu of taxes" (or "PILOT") imposed by the City of Redding on its electric utility without voter approval. The city's PILOT was designed to be equivalent to the ad valorem taxes the electric utility would have had to pay if the electric utility were privately owned. The PILOT is passed through to the city's electric utility customers as part of the rates and charges for electric service. The Court of Appeal determined that a charge for electric service could be an "imposed charge," and therefore subject to Proposition 26, if the purchaser has no realistic alternative power source. Therefore, the Court held that the PILOT constituted an unconstitutional "tax" under Proposition 26 unless the city proves that the amount collected is necessary to cover the reasonable costs to the city of providing various governmental services to the city's electric utility. The Court of Appeal stated that even if the rates charged by the city are lower than those paid by others in California, they must not exceed the city's reasonable cost of providing electric service or be approved by the voters. In addition, the Court of Appeal noted that Proposition 26 has no retrospective effect as to local taxes that existed prior to November 3, 2010, but found that since the PILOT was subject to the City Council's recurring discretion, the PILOT did not escape the purview of Proposition 26. On April 29, 2015, the California Supreme Court granted review of the decision of the Court of Appeal. As a result of the California Supreme Court's grant of review, the decision of the Court of Appeal in *Citizens for Fair REU Rates v. City of Redding* is no longer considered published and may not be cited or relied on as precedent in the courts of the State.

The City is unable to predict at this time how Proposition 26 will be ultimately be interpreted by the courts or what its future impact will be.

Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID, and Proposition 26 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time, other initiatives have been, and could be, proposed, and if qualified for the ballot, could be adopted affecting the City's revenues or the City's ability to expend revenues. The City is unable to predict either the likelihood of

qualification for ballot or passage of these measures or the nature and impact of these measures on the finances or operations of the Electric System.

Casualty Risk; Earthquakes

Any natural disaster or other physical calamity could have the effect of reducing revenues through damage to the Electric System and/or adversely affecting the economy of the surrounding area. For example, the City is located in a region of seismic activity. The principal earthquake fault in the Los Angeles and City area is the San Andreas Fault, which extends an estimated 700 miles from north of the San Francisco area to the Salton Sea in Southern California.

Announcements on January 20, 1995 by the scientists associated with the Southern California Earthquake Center indicated that the probability of a magnitude 7 or greater earthquake on the Richter Scale occurring in Southern California is between 80% and 90% in the 30 year period following the announcement. It is impossible to accurately predict the cost or effect of such an earthquake on the Electric System and on the City's ability to provide continued uninterrupted service to all parts of its service area.

A future earthquake could cause significant damage to the City and the facilities of the Electric System and could adversely affect the ability of the City to meet all of its financial obligations. On January 17, 1994, an earthquake of approximately 6.6 magnitude on the Richter Scale was centered in the northwest San Fernando Valley section of the City of Los Angeles. It caused widespread damage to commercial and residential structures and to major freeways, causing business interruptions and disrupting the normal flow of traffic. Its damaging effects were felt over a large area, and the transmission services by the Cities of Pasadena and Burbank over the Pacific Intertie DC Transmission Line were temporarily interrupted because of damage to the Sylmar Converter Station. The Electric System was not significantly damaged by this earthquake. In the event of a severe earthquake, however, the amount of moneys available to pay debt service on the Bonds could be reduced significantly.

DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS

State Legislation

A number of bills affecting the electric utility industry have been introduced or enacted by the California Legislature in recent years. In general, these bills regulate greenhouse gas emissions and provide for greater investment in energy-efficiency and environmentally friendly generation and storage alternatives, principally through more stringent renewable resource portfolio standard requirements. The following is a brief summary of certain of these bills that have been enacted.

Greenhouse Gas Emissions – Executive Orders. On June 1, 2005, then Governor Arnold Schwarzenegger signed Executive Order S-3-05, which placed an emphasis on efforts to reduce greenhouse gas emissions by establishing statewide greenhouse gas reduction targets. The targets are: (i) a reduction to 2000 emissions levels by 2010; (ii) a reduction to 1990 levels by 2020; and (iii) a reduction to 80% below 1990 levels by 2050. The Executive Order also called for the California Environmental Protection Agency to lead a multi-agency effort to examine the impacts of climate change on California and develop strategies and mitigation plans to achieve the targets. On April 25, 2006, then Governor Schwarzenegger also signed Executive Order S-06-06, which directs the State of California to meet a 20% biomass utilization target within the renewable generation targets of 2010 and 2020 for the contribution to greenhouse gas emission reduction.

On April 29, 2015, Governor Jerry Brown signed Executive Order B-30-15, which establishes a new interim statewide greenhouse gas emission reduction target to reduce greenhouse gas emissions to 40% below 1990 levels by 2030. The Executive Order indicates that the new interim target is aimed at ensuring that California meets the target established by Executive Order S-3-05 of reducing greenhouse gas emission to 80% below 1990 levels by 2050. The Executive Order also directs the Califomia Natural Resources Agency to update the State's climate adaptation strategy every three years and to ensure that its provisions are fully implemented. Among other requirements, the Executive Order provides that the State's adaptation strategy must identify a lead agency or agencies that are responsible for adaptation efforts in at least the following sectors: water, energy, transportation, public health, agriculture, emergency services, forestry, biodiversity and habitat, and ocean and coastal resources. The Executive Order requires that the lead agencies for each sector must, by September 2015, outline the actions in their sector that will be taken as identified in the State's adaptation strategy and report back to the California Natural Resources Agency by June 2016.

Greenhouse Gas Emissions – Global Warming Solutions Act. Then Governor Schwarzenegger signed Assembly Bill 32, the Global Warming Solutions Act of 2006 (the "GWSA"), which became effective as law on January 1, 2007. The GWSA prescribed a statewide cap on global warming pollution with a goal of retuming to 1990 greenhouse gas emission levels by 2020. In addition, the GWSA established an annual mandatory reporting requirement for all IOUs, local publicly-owned electric utilities ("POUs") and other load-serving entities (electric utilities providing energy to end-use customers) to inventory and report greenhouse gas emissions to the California Air Resources Board ("CARB"), required CARB to adopt regulations for significant greenhouse gas emission sources (allowing CARB to design a "cap-and-trade" system) and gave CARB the authority to enforce such regulations beginning in 2012.

On December 11, 2008, CARB adopted a "scoping plan" to reduce greenhouse gas emissions. The scoping plan set out a mixed approach of market structures, regulation, fees and voluntary measures. The scoping plan included a cap-and-trade program. In August 2011, CARB revised the scoping plan in response to litigation. The revised scoping plan also included a cap-and-trade program. The scoping plan is required to be updated every five years. In October 2013, CARB released a draft of its 2013 scoping plan update. Public comments on the draft scoping plan update were submitted by November 1, 2013. CARB issued the proposed first update to the scoping plan update on February 10, 2014, which was approved by CARB on May 22, 2014. The scoping plan update recommends that a plan to extend the cap-and-trade program beyond 2020 be developed by 2017. In addition, CARB approved a resolution at its October 25, 2013 board meeting that directs CARB's executive officer to develop a plan for a post-2020 program, including a cost containment mechanism, before 2018.

On October 20, 2011, CARB adopted a regulation implementing a cap-and-trade program. The California Office of Administrative Law ("OAL") approved the regulation on December 13, 2011. The cap-and-trade regulation became effective on January 1, 2012. Emission compliance obligations under the regulation began on January 1, 2013. The cap-and-trade program covers sources accounting for 85% of California's greenhouse gas emissions, the largest program of its type in the United States.

The cap-and-trade program is being implemented in phases. The first phase of the program (January 1, 2013 to December 31, 2014) introduced a hard emissions cap covering emissions from electricity generators, electricity importers and large industrial sources emitting more than 25,000 metric tons of carbon dioxide-equivalent greenhouse gases ("CDE") per year. In 2015, the program is being expanded to cover emissions from transportation fuels, natural gas, propane and other fossil fuels. The cap will decline each year until the end of the program currently scheduled for 2020 unless otherwise extended, as expected, through an act of the State legislature.

The cap-and-trade program includes the distribution of carbon allowances equal to the annual emissions cap. Each allowance is equal to one metric ton of CDE. As part of a transition process, initially, most of the allowances were distributed for free. Additional allowances are being auctioned quarterly (auctions began in November 2012). Utilities can acquire more allowances at these auctions or on the secondary market. IOUs are required to auction the allowances they received for free from CARB. This requirement also applies to POUs that sell electricity into the ISO markets, other than sales of electricity from resources funded by municipal tax-exempt debt where the POU makes a matched purchase to serve its traditional retail customers. Utilities required to sell their allowances in the auctions are then required to purchase allowances to meet their compliance obligations, and use any remaining proceeds from the sale of their allocated allowances for the benefit of their ratepayers and to meet the goals of the GWSA. POUs that do not sell into the ISO markets, and those that sell into the ISO markets only electricity from resources funded by municipal tax-exempt debt, have three options (which are not mutually exclusive) once their allocated allowances are distributed to them. They can (i) place allowances in their compliance accounts to meet compliance obligations for plants they operate directly, (ii) place allowances in the compliance account of a joint powers agency or public power utility that generates power on their behalf, and/or (iii) auction the allowances and use the proceeds to benefit their ratepayers and meet the goals of the GWSA.

The cap-and-trade program also allows covered entities to use offset credits for compliance (not exceeding 8% of a covered entity's compliance obligation). Offsets can be generated by emission reduction projects in sectors that are not regulated under the cap-and-trade program. CARB has approved the following types of offset projects: urban forest projects, reforestation projects, destruction of ozone-depleting substances, livestock methane management projects and destruction of fugitive coal mine methane. CARB will consider additional and updated offset protocols, including a new compliance offset protocol for rice cultivation practices, the adoption of which is currently expected to occur in mid-2015.

On April 25, 2014, CARB adopted various changes to the cap-and-trade program, including provisions relating to the electricity sector such as "safe harbor" provisions under the "resource shuffling" prohibition. These changes became effective on July 1, 2014.

The California cap-and-trade program is linked to the equivalent program in Quebec, Canada. The link took effect on January 1, 2014, although the first joint auction was delayed until November 25, 2014 in order to resolve certain technical issues. California's program may be linked to additional Canadian provincial cap-and-trade programs, and possibly other U.S. state cap-and-trade programs, in later years as part of the Western Climate Initiative. The Western Climate Initiative is a regional effort consisting of California and four Canadian provinces (Quebec, British Columbia, Ontario and Manitoba), which have established a greenhouse gas reduction trading framework.

The City is unable to predict at this time the full impact of the cap-and-trade program over the long-term on the Electric System or on the electric utility industry generally or whether any additional changes to the adopted program will be made. Since the advent of the cap and trade program in 2012, regulations by the CARB have provided the electric sector, including the Electric System, with sufficient allocated greenhouse gas allowances or credits to cover existing operations in meeting retail load obligations. As a result, there have been minimal additional costs to the Electric System in managing the need for additional allowances required for retail obligations. Wholesale transactions utilizing carbon-based generation have included greenhouse gas adders as part of the transaction price and hence, no significant additional expenses for greenhouse gas emission management have been incurred under those transactions. However, the City could be adversely affected in the future if the greenhouse gas emissions of its resource portfolio are in excess of the allowances administratively allocated to it and it is required to purchase compliance instruments on the market to cover its emissions. The City may also be adversely affected depending on how the federal Clean Power Plan affects the State's cap-and-trade program.

However, with the City's divestiture of San Juan Unit 3, scheduled for December 31, 2017, and the execution of the power sales agreements for renewable energy to replace San Juan, the City's resource mix will be approximately 75% renewable energy and nearly 90% emissions free (the Palo Verde Nuclear and Hoover Large Hydro generating facilities, while not considered renewable energy, do not produce emissions). This will result in a significant reduction in the potential adverse impact of the cap-and-trade program and any other State or Federal program. See "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Environmental Issues – Greenhouse Gas Regulations under the Clean Air Act" for a brief description of the federal Clean Power Plan.

Greenhouse Gas Emissions – Emissions Performance Standard. Senate Bill 1368 ("SB 1368") became effective as law on January 1, 2007. It provides for an emission performance standard ("EPS"), restricting new investments in baseload fossil fuel electric generating resources that exceed the rate of greenhouse gas emissions for existing combined-cycle natural gas baseload generation. SB 1368 allows the California Energy Commission (the "CEC") to establish a regulatory framework to enforce the EPS for POUs such as the City. The CPUC has a similar responsibility for the IOUs. The regulations promulgated by the CEC were approved by the Office of Administrative Law on October 16, 2007. The CEC regulations prohibit any investment in baseload generation that does not meet the EPS of 1,100 pounds of carbon dioxide ("CO_2") per MWh of electricity produced, with limited exceptions for routine maintenance, requirements of pre-existing contractual commitments, or threat of significant financial harm.

In January 2012, the CEC initiated a review of the regulations for enforcement of the EPS for POUs to ensure there is adequate review of investments in facilities that do not meet the EPS. On March 19, 2014, the CEC issued its Final Conclusions in the EPS proceeding. The CEC proposed to expand the public notice requirement so that a POU would have to post a notice of a public meeting at which its governing board would consider any expenditure over $2.5 million to meet environmental regulatory requirements at a non-EPS compliant baseload facility. The CEC further proposed to require each POU to file an annual notice identifying all investments over $2.5 million that it anticipates making during the subsequent 12 months on non-EPS compliant baseload facilities to comply with environmental regulatory requirements. This requirement would be waived for any POU that has entered into a binding agreement to divest within five years of all baseload facilities exceeding the EPS. The CEC did not propose to lower the EPS. Further, by letter from the CPUC to the CEC, the CPUC expressed its view that the EPS not be lowered. A final regulatory package was unanimously adopted at the CEC's June 18, 2014 business meeting. The adopted regulations had limited changes to the proposed POU reporting requirements. CEC staff has also since confirmed that the $2.5 million threshold applies to an individual investment by each utility – not the combined investment of all participants in a project. These changes and any future changes to the EPS regulations may impact the City.

Energy Procurement and Efficiency Reporting. Senate Bill 1037 ("SB 1037") was signed by then Governor Schwarzenegger on September 29, 2005. It requires that each POU, including the City, prior to procuring new energy generation resources, first acquire all available energy efficiency, demand reduction, and renewable resources that are cost-effective, reliable and feasible. SB 1037 also requires each POU to report annually to its customers and to the CEC its investment in energy efficiency and demand reduction programs. The City has complied with such reporting requirements.

Further, California Assembly Bill 2021 ("AB 2021"), signed by then Governor Schwarzenegger on September 29, 2006, requires that the POUs establish, report, and explain the basis of the annual energy efficiency and demand reduction targets by June 1, 2007 and every three years thereafter for a ten-year horizon. A subsequent bill has changed the time interval for establishing annual targets to every four years. The City has complied with this reporting requirement under AB 2021. Future reporting requirements under AB 2021 include: (i) the identification of sources of funding for the investment in

energy efficiency and demand reduction programs; (ii) the methodologies and input assumptions used to determine cost-effectiveness; and (iii) the results of an independent evaluation to measure and verify energy efficiency savings and demand reduction program impacts. The information obtained from the POUs is being used by the CEC to present the progress made by the POUs towards the State of California's goal of reducing electrical consumption by 10% within ten years and the greenhouse gas targets presented in Executive Order S-3-05. In addition, the CEC will provide recommendations for improvement to assist each POU in achieving cost-effective, reliable, and feasible savings in conjunction with the established targets for reduction.

Renewable Portfolio Standards. Senate Bill X1 2 ("SBX1 2"), the "California Renewable Energy Resources Act," was signed into law by Governor Jerry Brown on April 12, 2011. SBX1 2 codifies the Renewable Portfolio Standard ("RPS") target for retail electricity sellers to serve 33% of their loads with eligible renewable energy resources by 2020 as provided in Executive Order S-14-08 (signed by Governor Jerry Brown in November 2008). As enacted, SBX1 2 makes the requirements of the RPS program applicable to POUs (rather than just prescribing that POUs meet the intent of the legislation as under previous statutes). However, the governing boards of POUs are responsible for implementing the requirements, rather than the CPUC, as is the case for the IOUs. In addition, the CEC is given certain enforcement authority for POUs and CARB is given the authority to set penalties. CARB is expected to complete a RPS enforcement penalties rulemaking by November 2015 for POUs.

SBX1 2 requires each POU to adopt and implement a renewable energy resource procurement plan. As set out in more detail in the CEC's RPS enforcement regulation, noted below, the plan must require the utility to procure at least the following amounts of electricity products from eligible renewable energy resources, which may include renewable energy certificates ("RECs"), as a proportion of total kilowatt hours sold to the utility's retail end-use customers: (i) over the 2011-2013 compliance period, an average of 20% of retail sales from January 1, 2011 to December 31, 2013, inclusive; (ii) over the 2014-2016 compliance period, a total equal to 20% of 2014 retail sales, 20% of 2015 retail sales, and 25% of 2016 retail sales; (iii) over the 2017-2020 compliance period, a total equal to 27% of 2017 retail sales, 29% of 2018 retail sales, 31% of 2019 retail sales, and 33% of 2020 retail sales; and (iv) for 2021 and each subsequent year, 33% of retail sales for the applicable year.

SBX1 2 grandfathers any facility approved by the governing board of a POU prior to June 1, 2010 as satisfying renewable energy procurement obligations adopted under prior law if the facility is a "renewable electrical generation facility" as defined in the bill (subject to certain restrictions). Renewable electrical generation facilities include certain out-of-state renewable energy generation facilities if such facility: (i) will not cause or contribute to any violation of a California environmental quality standard or requirement, (ii) participates in the accounting system to verify compliance with the RPS program requirements, and (iii) either (a) commenced initial commercial operation after January 1, 2005 or (b) either (x) the electricity generated by the facility is from incremental generation resulting from expansion or repowering of the facility or (y) the electricity generated by the facility was procured by a retail seller or POU as of January 1, 2010. The percentage of a retail electricity seller's RPS requirements that may be met with unbundled RECs from generating facilities outside California declines over time, beginning at 25% through 2013 and declining to a level of 10% in 2017 and beyond.

The CEC has developed detailed rules to implement SBX1 2. On June 12, 2013, the CEC adopted regulations for the enforcement of the RPS program requirements for POUs. In connection with the implementation of SBX1 2, the CEC is responsible for certifying electric generation facilities as "eligible renewable energy resources" for purposes of the RPS program and on April 30, 2013, adopted guidelines that identify the requirements, conditions and process for certification of facilities as eligible renewable energy resources. The current guidelines identify bio-methane as an eligible renewable energy resource in certain circumstances. Under these guidelines, utilities that procure bio-methane were

required to reapply for certification of the generating facilities that use the bio-methane. The CEC proposed new amendments to the RPS regulation on March 27, 2015. The formal comment period for the proposed amendments ended on May 11, 2015. The CEC is expected to consider adoption of the proposed amendments during its June 10, 2015 business meeting. As previously noted, the City's resource mix will be approximately 75% renewable energy on or before December 31, 2017.

See "THE ELECTRIC SYSTEM – Power Supply Resources" for additional information regarding the City's renewable resources.

Solar Power. On August 21, 2006, then Governor Schwarzenegger signed into law California Senate Bill 1 (also known as the "California Solar Initiative"). This legislation requires POUs, including the City, to establish a program supporting the stated goal of the legislation to install 3,000 MW of photovoltaic energy in California. POUs are also required to establish eligibility criteria in collaboration with the CEC for the funding of solar energy systems receiving ratepayer-funded incentives. The legislation gives a POU the choice of selecting an incentive based on the installed capacity or based on the energy produced by the solar energy system, measured in kilowatt-hours. Incentives would be required to decrease at a minimum average rate of 7% per year. POUs also have to meet certain reporting requirements regarding the installed capacity, number of installed systems, number of applicants, amount of awarded incentives and the contribution toward the program's goals. The City has established a program in accordance with the requirements of the California Solar Initiative.

Recently Introduced Climate Change Bills. On January 5, 2015, Governor Jerry Brown proposed three major climate goals to be completed within the next 15 years: (1) increase from 33% to 50% California's electricity derived from renewables; (2) reduce current petroleum use in cars and trucks by up to 50%; and (3) increase by 50% the efficiency of existing buildings and make heating fuels cleaner. Recently, a number of bills were introduced in the State Legislature that, if adopted, would, among other things, implement the climate goals announced by the Governor. As expected, the proposed bills would increase the State's RPS from 33% to 50% (SB 350 and AB 645) and would require CARB to approve a statewide greenhouse gas emission limit that is equivalent to 80% below the 1990 level to be achieved by 2050, as contemplated by Executive Order S-3-05, and would authorize CARB to adopt interim greenhouse gas emissions level targets to be achieved by 2030 and 2040 (SB 32). A bill (AB 21) has also been introduced that would require a statewide greenhouse gas emissions limit for 2080 to be established by 2018. Another bill (SB 180) would require state agencies to update the EPS and expand its application to secondary generation sources. The City is analyzing the bills to assess what their full impact might be. The City is unable to predict at this time the ultimate form any of the proposed bills may take or the likelihood of their passage.

Future Regulation

The electric industry is subject to continuing legislative and administrative reform. States routinely consider changes to the way in which they regulate the electric industry. Historically, both further deregulation and forms of additional regulation have been proposed for the industry, which has been highly regulated throughout its history. While there is no current proposal to further deregulate the industry, there still are additional regulations or legislative mandates being proposed or considered for the industry such as higher reliance on renewable energy and tighter regulations for greenhouse gas emission reductions. The City is unable to predict at this time the impact any such proposals will have on the operations and finances of the City's Electric System or the electric utility industry generally.

Impact of Developments on the City

The effect of the developments in the California energy markets described above on the City's Electric System cannot be fully ascertained at this time. Also, volatility in energy prices in California may return due to a variety of factors that affect both the supply and demand for electric energy in the western United States. These factors include, but are not limited to, the adequacy of generation resources to meet peak demands, the availability and cost of renewable energy, the impact of economy-wide greenhouse gas emission legislation and regulations, fuel costs and availability, weather effects on customer demand, transmission congestion, the strength of the economy in California and surrounding states and levels of hydroelectric generation, which is affected by weather conditions such as the amount of rainfall or snowfall, within the region (including the Pacific Northwest). See "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY." This price volatility may contribute to greater volatility in the revenues of the Electric System from the sale (and purchase) of electric energy and, therefore, could materially affect the City's financial condition. However, the City is currently approximately 85% resourced, which significantly reduces exposure to market volatility. In addition, the City undertakes resource planning and risk management activities and manages its resource portfolio to mitigate future price volatility and spot market rate exposure.

OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY

Federal Energy Legislation

Energy Policy Act of 2005. Under the federal Energy Policy Act of 2005 ("EPAct 2005"), the Federal Energy Regulatory Commission ("FERC") was given refund authority over POUs if they sell into short-term markets, like the ISO markets, and sell eight million MWhs or more of electric energy on an annual basis. In addition, FERC was given authority over the behavior of market participants. Under FERC's authority it can impose penalties on any seller for using a manipulative or deceptive device, including market manipulation, in connection with the purchase or sale of energy or of transmission service. The Commodity Futures Trading Commission ("CFTC") also has jurisdiction to enforce certain types of market manipulation or deception claims under the Commodity Exchange Act.

EPAct 2005 authorized FERC to issue permits to construct or modify transmission facilities located in a national interest electric transmission corridor if FERC determines that the statutory conditions are met. EPAct 2005 also required the creation of an electric reliability organization ("ERO") to establish and enforce, under FERC supervision, mandatory reliability standards ("Reliability Standards") to increase system reliability and minimize blackouts. Failure to comply with such Reliability Standards exposes a utility to significant fines and penalties by the ERO.

NERC Reliability Standards. EPAct 2005 required FERC to certify an ERO to develop mandatory and enforceable Reliability Standards, subject to FERC review and approval. The Reliability Standards apply to users, owners and operators of the Bulk-Power System, as more specifically set forth in each Reliability Standard. On February 3, 2006, FERC issued Order 672, which certified the North American Electric Reliability Corporation ("NERC") as the ERO. Many Reliability Standards have since been approved by FERC.

The ERO or the entities to which NERC has delegated enforcement authority through an agreement approved by FERC ("Regional Entities"), such as the Western Electricity Coordinating Council, may enforce the Reliability Standards, subject to FERC oversight, or FERC may independently enforce them. Potential monetary sanctions include fines of up to $1 million per violation per day. FERC Order 693 further provided the ERO and Regional Entities with the discretion necessary to assess

penalties for such violations, while also having discretion to calculate a penalty without collecting the penalty if circumstances warrant.

Other Legislation. Congress has considered and is considering numerous bills addressing domestic energy policies and various environmental matters, including bills relating to energy supplies and development (such as a federal energy efficiency standard and expedited permitting for natural gas drilling projects), global warming, physical and cyber security and water quality. Many of these bills, if enacted into law, could have a material impact on the City's Electric System and the electric utility industry generally. In light of the variety of issues affecting the utility sector, federal energy legislation in other areas such as reliability, transmission planning and cost allocation, operation of markets, environmental requirements and cyber security is also possible. However, the City is unable to predict the outcome or potential impacts of any possible legislation on the City's Electric System at this time.

Environmental Issues

General. Electric utilities are subject to continuing environmental regulation. Federal, State and local standards and procedures which regulate the environmental impact of electric utilities are subject to change. These changes may arise from continuing legislative, regulatory and judicial action regarding such standards and procedures. Consequently, there is no assurance that any City facility or project will remain subject to the laws and regulations currently in effect, will always be in compliance with future laws and regulations or will always be able to obtain all required operating permits. An inability to comply with environmental standards could result in additional capital expenditures, reduced operating levels or the shutdown of individual units not in compliance. In addition, increased environmental laws and regulations may create certain barriers to new facility development, may require modification of existing facilities and may result in additional costs for affected resources.

Greenhouse Gas Regulations Under the Clean Air Act. The United States Environmental Protection Agency (the "EPA") has taken steps to regulate greenhouse gas emissions under existing law. In 2009, the EPA issued a final "endangerment finding," in which it declared that the weight of scientific evidence requires a finding that six identified greenhouse gases, namely, CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, cause global warming, and that global warming endangers the public health and welfare. The final rule for the "endangerment finding" was published in the Federal Register on December 15, 2009. As a result of this finding, the EPA determined that it was authorized to issue regulations limiting CO_2 emissions from, among other things, motor vehicles and stationary sources, such as electric generating facilities, under the federal Clean Air Act. The EPA subsequently issued the "Tailoring Rule," published in the Federal Register on June 3, 2010, which regulates greenhouse gas emissions from large stationary sources, including electric generating facilities, if the sources emit more than the specified threshold levels of tons per year of CO_2. Large sources with the potential to emit in excess of the applicable threshold will be subject to the major source permitting requirements under the Clean Air Act, including the EPA's Prevention of Significant Deterioration ("PSD") permit program and its Title V operating permit program. Permits would be required in order to construct, modify and operate facilities exceeding the emissions threshold. Examples of such permitting requirements include, but are not limited to, the application of Best Available Control Technology (known as BACT) for greenhouse gas emissions, and monitoring, reporting, and recordkeeping for greenhouse gases.

The endangerment finding and the Tailoring Rule have been challenged in court, but were upheld on June 26, 2012 in a decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Coalition for Responsible Regulation, Inc., et al. v. EPA*. A petition for rehearing was denied on December 20, 2012. In October 2013, several petitions for review relating to these findings were consolidated in the United States Supreme Court case *Utility Air Regulatory Group v. EPA*, dealing with

the issue of whether the EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases. A decision in the case was rendered on June 23, 2014 as described below. Legislation has also been introduced in the United States Congress that would repeal the EPA's endangerment finding or otherwise prevent the EPA from regulating greenhouse gases as air pollutants.

In December 2010, the EPA announced two settlements with a number of states and environmental groups. Pursuant to one settlement agreement dated December 23, 2010, the EPA on April 13, 2012 proposed establishing New Source Performance Standards limiting CO_2 emissions from fossil-fuel fired electric generating units. In response to a June 25, 2013 Presidential memorandum (the "Presidential Memorandum"), the EPA proposed revised, generally more stringent standards on September 20, 2013 and simultaneously rescinded the April 13, 2012 proposal. The new proposed rule was published in the Federal Register on January 8, 2014. The EPA states that the revised standards would apply only to new facilities, not reconstructed or modified facilities. The Presidential Memorandum required the EPA to propose by June 1, 2014, and to finalize by June 1, 2015, standards, regulations, or guidelines that address carbon pollution from modified, reconstructed and existing power plants.

The proposed rule for new power plants would restrict CO_2 emissions from new natural gas-fired units to 1,000 pounds of CO_2 per MWh for larger units and 1,100 pounds of CO_2 per MWh for smaller units. These emission limits are based on the use of natural gas combined cycle technology. CO_2 emissions from new coal-fired units would be restricted to 1,100 pounds of CO_2 per MWh over 12 months, or 1,000-1,050 pounds over seven years. The EPA states that this emission limit reflects the use of partial carbon capture and sequestration as the best system of emission reduction that has been adequately demonstrated for coal-fired units. The basis for this assertion is being challenged in a lawsuit filed by the State of Nebraska in January 2014 in the U.S. District Court for Nebraska. The new performance standard would be the most stringent in the country (surpassing the emission performance standard of 1,100 pounds of CO_2 per MWh of electricity produced imposed by the CEC regulations in California as described under "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS – State Legislation – *Greenhouse Gas Emissions – Emissions Performance Standard*"). The rule is expected to be finalized in [June 2015], after which it is likely to be subject to further legal challenges. **[TO BE UPDATED, IF NECESSARY]**

On June 2, 2014, the EPA released its "Clean Power Plan" proposal for both existing and modified or reconstructed power plants as contemplated by the Presidential Memorandum. The proposed rule is designed to reduce CO_2 emissions from the power sector by 30% on average nationwide by 2030, as compared to 2012 levels. Under the proposal, the EPA will set different interim (2024) and final (2030) emissions targets for each state based on overall CO_2 emissions and the amount of electricity generated in the State. The emissions target for California for 2030 is proposed to be 537 pounds of CO_2 per MWh, representing a reduction of approximately 23.1% from estimated 2012 emissions levels of 698 pounds of CO_2 per MWh. States will have one year after finalization of the rule (until June 2016 under the current schedule) to design their own state implementation plans to reach the emissions target or may request an extension through 2018 for states working on multi-state plans. Interim standards would apply from 2020 to 2029, with final standards taking effect in 2030. It is proposed that state emission targets may be met in a combination of ways, including through a "Best System of Emissions Reduction," which may include coal plant efficiency upgrades, switching from coal to natural gas, and by improving energy efficiency or promoting renewable energy. In the event a state fails to develop a satisfactory implementation plan, the EPA may impose a federal implementation plan instead.

Concurrently with the release of the Clean Power Plan proposal, the EPA also released a proposal applying specifically to existing power plants subject to modification (which includes a physical or

operational change that increases the source's maximum achievable hourly rate of emissions) or reconstruction (which includes the replacement of components of an existing facility to the extent that (i) the fixed capital costs of the new components exceeds 50% of the fixed capital costs that would be required to construct a comparable entirely new facility, and (ii) it is technologically and economically feasible to meet the applicable standards). Under the proposal, reconstructed coal-fired electricity generating units with a heat input of greater than 2,000 MMBtu/h would be required to meet an emissions limit of 1,900 pounds of CO_2 per MWh. Smaller coal-fired units would be required to meet an emission limit of 2,100 pounds of CO_2 per MWh. These emissions limits are based on the use of the most efficient generating technology at the affected source. As contemplated in the proposal, modified coal-fired electricity generating units would be required to meet a unit-specific emission limit that is 2% lower than the unit's best historical annual CO_2 emissions rate since 2002 (but not lower than the proposed standards for reconstructed power plants). These standards of performance are based on a combination of best operating practices and equipment upgrades. For modified and reconstructed natural gas-fired power plants, the EPA has proposed the same emissions limits as it did for new facilities. Under the EPA's proposal, facilities with a heat input of greater than 850 MMBtu/h would be required to meet an emissions limit of 1,000 pounds of CO_2 per MWh. Smaller facilities would be required to meet an emissions limit of 1,100 pounds of CO_2 per MWh.

The proposed rules for existing, and modified or reconstructed, power plants were published in the Federal Register on June 18, 2014; comments on the proposed rules were accepted until December 1, 2014 and October 16, 2014, respectively. The EPA has indicated that it intends to finalize the "Clean Power Plan" rules in mid-summer of 2015. FERC held technical conferences throughout the nation through March 2015 to assess potential reliability impacts from the proposed rule. EPA officials have been participating in those Commissioner-led workshops.

A number of lawsuits have been filed challenging the proposed rules and seeking to prevent the EPA from moving forward to implement the proposed Clean Power Plan. Additional legal and legislative challenges are also expected.

On June 23, 2014, the United States Supreme Court issued its decision in the *Utility Air Regulatory Group v. EPA* case noted above. In the decision, the Court invalidated substantial portions of the Tailoring Rule, which purported to modify the emissions thresholds set forth in the Clean Air Act (governing when PSD and Title V permitting would be triggered) to account for greenhouse gases, while preserving various aspects of the EPA's ability to regulate greenhouse gas emissions from most new major sources. The decision holds that, for facilities that are otherwise subject to PSD permitting obligations (by virtue of their emissions of conventional pollutants), the EPA may regulate greenhouse gases from those facilities through the PSD BACT standards (without approving the EPA's current approach to BACT regulation of greenhouse gases, or any other approach that may be adopted).

The City is unable to predict the impact of the Court's decision in *Utility Air Regulatory Group v. EPA,* the outcome of any ongoing legal or legislative challenges to other EPA rulemaking with respect to greenhouse gas emissions or the effect that any future final rules promulgated by the EPA regulating greenhouse gas emissions from electric generating units will have on the City or its Electric System.

Air Quality – National Ambient Air Quality Standards. The Clean Air Act requires that the EPA establish National Ambient Air Quality Standards ("NAAQS") for certain air pollutants. When a NAAQS has been established, each state must identify areas in its state that do not meet the EPA standard (known as "non-attainment areas") and develop regulatory measures in its state implementation plan to reduce or control the emissions of that air pollutant in order to meet the applicable standard and become an "attainment area." The EPA periodically reviews the NAAQS for various air pollutants and has in recent years increased, or proposed to increase, the stringency of the NAAQS for certain air pollutants.

The EPA revised the NAAQS for particulate matter on December 14, 2012, the NAAQS for sulfur dioxide on June 22, 2010, and the NAAQS for nitrogen dioxide on February 9, 2010, and in each case made the NAAQS more stringent. It is possible that some areas will be designated as non-attainment based on the revised standards for particulate matter, nitrogen dioxide and sulfur dioxide. These developments may result in stringent permitting processes for new sources of emissions and additional state restrictions on existing sources of emissions, such as power plants. On September 2, 2011, President Obama directed the EPA to withdraw a proposal advanced by the EPA to lower the NAAQS for ozone. As a result of this withdrawal, the EPA resumed the process of issuing non-attainment designations for the ozone NAAQS under the standard set in 2008. On April 30, 2012, the EPA issued ozone non-attainment designations for areas in California, including the Los Angeles – San Bernardino Counties and the Los Angeles – South Coast Air Basin. Additional non-attainment areas for ozone have been and may continue to be designated. On May 29, 2013, the EPA proposed a rule to implement the 2008 ozone NAAQS. Comments on the proposed rule were due to the EPA by August 5, 2013. While implementing the 2008 ozone NAAQS, the EPA is continuing its review of this standard. In January 2014, the EPA released draft risk and exposure assessment documents and a draft policy assessment document relating to this review; comments were due by March 24, 2014. In addition, the Supreme Court found in its review of *EPA v. EME Homer City Generation, LP* that the EPA has authority to impose a Cross-State Air Pollution Rule (the "Transport Rule") which curbs air pollution emitted in upwind states to facilitate downwind attainment of three NAAQS. On November 26, 2014, the EPA proposed to increase the stringency of the NAAQS for ozone by lowering the existing ozone standard of 75 parts per billion ("ppb") to between 65 and 70 ppb, although the EPA is also soliciting public comment on a standard as low as 60 ppb. The new proposed rule was published in the Federal Register on December 17, 2014. Comments on the proposed rule were accepted until March 17, 2015. A final rule is expected to be issued in October 2015. On December 18, 2014, the EPA issued a final rule making initial area designations for the 2012 NAAQS for fine particulate matter ("PM2.5"), designating 14 areas in six states as non-attainment, including the Los Angeles – San Bernardino Counties and the Los Angeles – South Coast Air Basin. These PM2.5 designations became effective on April 15, 2015.

Mercury and Air Toxics Standards. On December 16, 2011, the EPA signed a rule establishing new standards to reduce air pollution from coal- and oil-fired power plants under sections 111 (new source performance standards, or "NSPS") and 112 (toxics program) of the Clean Air Act. The final rule was published in the Federal Register on February 16, 2012. The EPA updated the Mercury and Air Toxics Standards ("MATS") emission limits on November 30, 2012 and again on March 28, 2013. The EPA is currently reconsidering certain aspects of the regulation. Under section 111 of the Clean Air Act, MATS revises the standards that new and modified facilities, including coal- and oil-fired power plants, must meet for particulate matter, sulfur dioxide, and nitrogen oxide. Under section 112, MATS sets new toxics standards limiting emissions of heavy metals, including mercury, arsenic, chromium, and nickel; and acid gases, including hydrochloric acid and hydrofluoric acid, from existing and new power plants larger than 25 MW that burn coal or oil. Power plants have up to four years to meet these standards. While many plants already meet some or all of these new standards, some plants will be required to install new equipment to meet the standards. On November 25, 2014, the United States Supreme Court agreed to review the MATS rule following the filing of petitions for writ of certiorari from 23 states and industry groups; a ruling is expected in [June 2015]. **[TO BE UPDATED, IF NECESSARY]**

Regulation of Coal Combustion Residuals. On June 21, 2010, the EPA proposed to regulate coal combustion residuals ("CCR") such as ash. The EPA proposed to list these residuals as a special waste and regulate them as a hazardous waste. This would require a federal or state permitting program covering the storage, treatment, transport, disposal, and other activities related to residuals. The EPA also proposed an alternative regulation that would classify residuals as nonhazardous solid waste. Under the alternative regulation, plants could dispose of residuals in surface impoundments or landfills if they comply with national minimum standards. The disposal standards would address location, liner

requirements, groundwater monitoring and other issues, but permits would not be required under the alternative regulation. The EPA solicited additional public comments on its proposed coal combustion residual regulation on October 12, 2011 and again on August 2, 2013. The EPA released its final CCR rule on December 19, 2014, adopting the industry-preferred alternative regulation classifying CCRs as nonhazardous solid waste.

Regulation of Cooling Water Intake Structures. On April 20, 2011, the EPA proposed to regulate cooling water intake structures at certain existing power plants in order to reduce the number of fish and other aquatic organisms that are trapped against intake screens or drawn into the generating unit. The EPA proposed to require modified intake screens that would capture and safely return fish to water bodies, or require the facility's water intake velocity to be reduced, thus allowing fish to move away from intake structures. The best technology to reduce entrainment would be determined on a site-specific basis. A final regulation was released by the EPA on May 16, 2014 and became effective on October 14, 2014.

Effluent Limitations Guidelines and Standards. On June 7, 2013, the EPA proposed to set technology-based effluent limitations guidelines and standards for metals and other pollutants in wastewater discharged from steam electric power plants. The proposal would cover wastewater associated with several types of equipment and processes, including flue gas desulfurization, fly ash, bottom ash, flue gas mercury control and gasification of fuels. The EPA is also considering best management practices for surface impoundments containing CCRs. The EPA proposed four preferred alternatives for regulating wastewater discharges. The stringency of controls, types of waste streams covered, and the costs vary between the four alternatives. The public comment period on this proposal ended on September 20, 2013. The EPA was expected to issue a final rule in May 2014 but in December 2013 it announced that it would need additional time to finalize this rule.

The City purchases power from coal-fired power stations that may be affected by the regulations described above; compliance with such new rules could therefore result in an increase in the cost of power that the City purchases from such units.

Other Factors

The electric utility industry in general has been, or in the future may be, affected by a number of other factors which could affect the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. In addition to the factors discussed above, such factors include, among others, (a) effects of compliance with rapidly changing environmental, safety, licensing, regulatory and legislative requirements other than those described above (including those affecting nuclear power plants or potential new energy storage requirements), (b) changes resulting from conservation and demand-side management programs on the timing and use of electric energy, (c) changes resulting from a national energy policy, (d) effects of competition from other electric utilities (including increased competition resulting from a movement to allow direct access or from mergers, acquisitions, and "strategic alliances" of competing electric and natural gas utilities and from competitors transmitting less expensive electricity from much greater distances over an interconnected system) and new methods of, and new facilities for, producing low-cost electricity, (e) the repeal of certain federal statutes that would have the effect of increasing the competitiveness of many IOUs, (f) increased competition from independent power producers and marketers, brokers and federal power marketing agencies, (g) "self-generation" or "distributed generation" (such as microturbines and fuel cells) by industrial and commercial customers and others, (h) issues relating to the ability to issue tax-exempt obligations, including severe restrictions on the ability to sell to nongovernmental entities electricity from generation projects and transmission service from transmission line projects financed with outstanding tax-exempt obligations, (i) effects of inflation on the operating and maintenance costs of an

electric utility and its facilities, (j) changes from projected future load requirements, (k) increases in costs and uncertain availability of capital, (l) shifts in the availability and relative costs of different fuels (including the cost of natural gas and nuclear fuel), (m) sudden and dramatic increases in the price of energy purchased on the open market that may occur in times of high peak demand in an area of the country experiencing such high peak demand, such as has occurred in California, (n) inadequate risk management procedures and practices with respect to, among other things, the purchase and sale of energy and transmission capacity, (o) other legislative changes, voter initiatives, referenda and statewide propositions, (p) effects of the changes in the economy, (q) effects of possible manipulation of the electric markets, (r) natural disasters or other physical calamities, including, but not limited to, earthquakes and floods and (s) changes to the climate. Any of these factors (as well as other factors) could have an adverse effect on the financial condition of any given electric utility and likely will affect individual utilities in different ways.

The City is unable to predict what impact such factors will have on the business operations and financial condition of the Electric System, but the impact could be significant. This Official Statement includes a brief discussion of certain of these factors. This discussion does not purport to be comprehensive or definitive, and these matters are subject to change subsequent to the date hereof. Extensive information on the electric utility industry is available from the legislative and regulatory bodies and other sources in the public domain, and potential purchasers of the Bonds should obtain and review such information.

THE AUTHORITY

The Authority was established pursuant to a Joint Exercise of Powers Agreement dated as of November 12, 2003, by and between the City and the Agency in accordance with the provisions of the Joint Exercise of Powers Act, consisting Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Joint Powers Act"). Pursuant to the Joint Powers Act, the Authority is authorized to issue revenue bonds to provide funds to acquire or construct public capital improvements, such revenue bonds to be repaid from payments for such improvements, such as the Installment Payments described herein. The members of the City Council of the City comprise the Authority's Commission. The Authority has no independent staff and consequently is dependent upon the City's officers and employees to administer the day-to-day activities of the Authority on its behalf.

CONTINUING DISCLOSURE

The City will undertake all responsibilities for any continuing disclosure with respect to holders of the Bonds as described below, and the Authority shall have no liability to the holders of the Bonds or any other person with respect to such disclosure matters.

The City has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City, including the Electric System, not later than March 31 following the end of the City's Fiscal Year (currently its Fiscal Year ends on June 30), commencing with the reports for Fiscal Year ended June 30, 2015 (each, an "Annual Report"), and to provide notices of the occurrences of certain enumerated events. The Annual Report will be filed by the Dissemination Agent on behalf of the City with the Municipal Securities Rulemaking Board. The Municipal Securities Rulemaking Board has made such information available to the public without charge through its EMMA system. The specific nature of information to be contained in each Annual Report or the notice of listed events is set forth in "APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT." These covenants have been made by the City in order to assist the Underwriters in complying with Rule

15c2-12, as amended (the "Rule") promulgated by the Securities and Exchange Commission. [**DESCRIPTION OF PAST 5-YEAR COMPLIANCE TO COME**]

TAX MATTERS

Tax Exemption

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in the gross income of the owners thereof for federal income tax purposes retroactive to the date of issuance of the Bonds. Each of the Authority and the City has covenanted to maintain the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, under existing statutes, regulations, rulings and court decisions, interest on the Bonds is exempt from personal income taxes of the State of California and, assuming compliance with the covenants mentioned herein, interest on the Bonds is excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. In the further opinion of Bond Counsel, under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, interest on the Bonds will not be treated as an item of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income. A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed.

Pursuant to the Installment Sale Agreement and the Indenture and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986*, to be delivered by the Authority and the City in connection with the issuance of the Bonds, each of the Authority and the City will make representations relevant to the determination of, and will make certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching its opinions described in the immediately preceding paragraph, Bond Counsel will assume the accuracy of such representations and the present and future compliance by each of the Authority and the City with such covenants.

Except as stated in this section above, Bond Counsel will express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, Bond Counsel will express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel. Bond Counsel has not undertaken to advise in the future whether any event after the date of issuance of the Bonds may affect the tax status of interest on the Bonds or the tax consequences of the ownership of the Bonds.

Bond Counsel's opinion is not a guarantee of a result, but represents its legal judgment based upon its review of existing statutes, regulations, published rulings and court decisions and the representations and covenants of the Authority and the City described above. No ruling has been sought from the Internal Revenue Service (the "Service") with respect to the matters addressed in the opinion of Bond Counsel, and Bond Counsel's opinion is not binding on the Service. The Service has an ongoing program of auditing the tax-exempt status of the interest on municipal obligations. If an audit of the

Bonds is commenced, under current procedures the Service is likely to treat the Authority as the "taxpayer," and the owners would have no right to participate in the audit process. In responding to or defending an audit of the tax-exempt status of the interest on the Bonds, the Authority may have different or conflicting interests from the owners. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit, regardless of its ultimate outcome.

Existing law may change to reduce or eliminate the benefit to bondholders of the exemption of interest on the Bonds from personal income taxation by the State of California or of the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. Any proposed legislation or administrative action, whether or not taken, could also affect the value and marketability of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed or future change in tax law.

A copy of the form of opinion of Bond Counsel relating to the Bonds is included in APPENDIX D.

Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds

To the extent that a purchaser of a Bond acquires that Bond at a price in excess of its "stated redemption price at maturity" (within the meaning of section 1273(a)(2) of the Code), such excess will constitute "bond premium" under the Code. Section 171 of the Code, and the Treasury Regulations promulgated thereunder, provide generally that bond premium on a tax-exempt obligation must be amortized over the remaining term of the obligation (or a shorter period in the case of certain callable obligations); the amount of premium so amortized will reduce the owner's basis in such obligation for federal income tax purposes, but such amortized premium will not be deductible for federal income tax purposes. Such reduction in basis will increase the amount of any gain (or decrease the amount of any loss) to be recognized for federal income tax purposes upon a sale or other taxable disposition of the obligation. The amount of premium that is amortizable each year by a purchaser is determined by using such purchaser's yield to maturity. The rate and timing of the amortization of the bond premium and the corresponding basis reduction may result in an owner realizing a taxable gain when its Bond is sold or disposed of for an amount equal to or in some circumstances even less than the original cost of the Bond to the owner.

The excess, if any, of the stated redemption price at maturity of Bonds of a maturity over the initial offering price to the public of the Bonds of that maturity is "original issue discount." Original issue discount accruing on a Bond is treated as interest excluded from the gross income of the owner thereof for federal income tax purposes and is exempt from California personal income tax to the same extent as would be stated interest on that Bond. Original issue discount on any Bond purchased at such initial offering price and pursuant to such initial offering will accrue on a semiannual basis over the term of the Bond on the basis of a constant yield method and, within each semiannual period, will accrue on a ratable daily basis. The amount of original issue discount on such a Bond accruing during each period is added to the adjusted basis of such Bond to determine taxable gain upon disposition (including sale, redemption or payment on maturity) of such Bond. The Code includes certain provisions relating to the accrual of original issue discount in the case of purchasers of Bonds who purchase such Bonds other than at the initial offering price and pursuant to the initial offering

Persons considering the purchase of Bonds with original issue discount or initial bond premium should consult with their own tax advisors with respect to the determination of original issue discount or amortizable bond premium on such Bonds for federal income tax purposes and with respect to the state and local tax consequence of owning and disposing of such Bonds.

Other Tax Consequences

Although interest on the Bonds may be exempt from California personal income tax and excluded from the gross income of the owners thereof for federal income tax purposes, an owner's federal, state or local tax liability may be otherwise affected by the ownership or disposition of the Bonds. The nature and extent of these other tax consequences will depend upon the owner's other items of income or deduction. Without limiting the generality of the foregoing, prospective purchasers of the Bonds should be aware that (i) section 265 of the Code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds and the Code contains additional limitations on interest deductions applicable to financial institutions that own tax-exempt obligations (such as the Bonds), (ii) with respect to insurance companies subject to the tax imposed by section 831 of the Code, section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15% of the sum of certain items, including interest on the Bonds, (iii) interest on the Bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by section 884 of the Code, (iv) passive investment income, including interest on the Bonds, may be subject to federal income taxation under section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income, (v) section 86 of the Code requires recipients of certain Social Security and certain Railroad Retirement benefits to take into account, in determining the taxability of such benefits, receipts or accruals of interest on the Bonds and (vi) under section 32(i) of the Code, receipt of investment income, including interest on the Bonds, may disqualify the recipient thereof from obtaining the earned income credit. Bond Counsel will express no opinion regarding any such other tax consequences.

CERTAIN LEGAL MATTERS

Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, will render an opinion with respect to the validity and enforceability of the Bonds, the Installment Sale Agreement, and the Indenture. See "APPENDIX D – FORM OF BOND COUNSEL OPINION." Norton Rose Fulbright US LLP is also serving as Disclosure Counsel in connection with the Bonds. Certain legal matters will be passed upon for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the City and the Authority by Aleshire & Wynder, LLP, in its capacity as City Attorney and Authority Counsel.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

The Verification Agent, an independent certificated public accountant, upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to them that were prepared by the Underwriters, relating to the sufficiency of monies deposited into the Escrow Fund created under the Escrow Agreement to redeem all of the outstanding 2007 Bonds on the Redemption Date.

The report of the Verification Agent, will include the statement that the scope of its engagement is limited to verifying the mathematical accuracy of the computations contained in such schedules provided to it, and that it has no obligation to update its report because of events occurring, or date or information coming to its attention, subsequent to the date of its report.

LITIGATION

There is no action, suit or proceeding pending or, to the knowledge of the Authority or the City threatened at the present time seeking to restrain or to enjoin the execution or delivery of the Bonds or the Installment Sale Agreement or the Indenture or in any way contesting or affecting the validity or enforceability of the Bonds, the Installment Sale Agreement, the Indenture or any action of the Authority or the City contemplated with respect to the foregoing.

PROFESSIONAL FEES

In connection with the issuance of the Bonds, fees payable to certain professionals, including Norton Rose Fulbright US LLP, as Bond Counsel and Disclosure Counsel, and U.S. Bank National Association, as Trustee, are contingent upon the issuance of the Bonds.

UNDERWRITING

The Underwriters have agreed to purchase the Bonds at a purchase price of $_____, representing the principal amount of the Bonds, plus a [net] bond premium of $_____ and, less an Underwriters' discount of $_____.

The purchase contract pursuant to which the Bonds are being sold provides that the Underwriters will purchase all of the Bonds if any are purchased, and that the obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions, including the approval of certain legal matters by counsel.

The Underwriters may offer and sell the Bonds to certain dealers and others at prices lower than the initial public offering prices stated on the inside cover page bereof. The offering prices may be changed from time to time by the Underwriters.

RATINGS

[Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P") has assigned the Bonds a rating of "____", with the understanding that an insurance policy securing the payment when due of the principal and interest on the Bonds will be issued by the Bond Insurer upon the issuance of the Bonds.] S&P has also assigned an underlying rating of "___" to the Bonds. Sucb ratings reflect only the views of the rating agency and an explanation of the significance of such ratings may be obtained only from the rating agency.

There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of the rating agency circumstances so warrant. Any such downward revision or withdrawal of the ratings may have an adverse effect on the market price of the Bonds.

FINANCIAL STATEMENTS

The audited financial statements for the City for the Fiscal Year ended June 30, 2014, included in this Official Statement as APPENDIX A, bave been audited by Lance, Soll & Lunghard, LLP (the "Auditor"), as stated in the Auditor's report appearing in APPENDIX A. The City has not requested, nor has the Auditor given, the Auditor's consent to the inclusion in this Official Statement of its report on such financial statements. No review or investigation with respect to subsequent events has been undertaken in connection with such financial statements by the Auditor.

MISCELLANEOUS

There are descriptions herein of certain documents and reports which are brief summaries thereof and which do not purport to be complete or definitive, and reference is made to such documents and reports for full and complete statements of the contents thereof.

Any statement in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between any of the Authority, the City, and the purchasers or Owners of any of the Bonds.

The execution and delivery of this Official Statement has been duly authorized by the Authority and the City.

CITY OF BANNING FINANCING AUTHORITY

By: _____
President

CITY OF BANNING

By: _____
Interim City Manager

APPENDIX A

CITY AUDITED FINANCIAL STATEMENTS
FISCAL YEAR ENDING JUNE 30, 2014

APPENDIX B

GENERAL INFORMATION ABOUT THE CITY OF BANNING

The following information relating to the City of Banning (the "City") and the County of Riverside, California (the "County") has been supplied by the City and is provided solely for purposes of information. The Bonds are payable solely from Revenues and other sources as described in this Official Statement, and the taxing power of the City, the County, the State of California (the "State"),or any political subdivision thereof, is not pledged to the payment of the Bonds. The Underwriters and their counsel make no representation with respect to any of such information.

General Information

The City is located alongside Interstate 10 approximately 80 miles east of Los Angeles and 23 miles west of Palm Springs. The City covers approximately 27 square miles. The City is well known for its picturesque qualities and is nestled between the majestic San Gorgonio and San Jacinto Mountains, the two tallest peaks in Southern California. The community enjoys a rural lifestyle, nearby outdoor recreation opportunities, and invigorating healthful clear air.

Government Organization

The City was incorporated as a general law City in 1913. The City has a "city council/city manager" form of local government. The five members of the City Council are elected at-large from the community to serve four-year terms of office and the City Council selects one of its members to serve as mayor. The City has [___] full-time employees.

Governmental Services

The City maintains its own police department which consists of [___] sworn offices and [___] civilian personnel. The City contracts with the California Department of Forestry in cooperation with the Riverside County Fire Department for fire protection services within the City. The City provides general government services such as plan checking, building permit processing and code enforcement. Electricity, water and wastewater services are provided by the City. Students in the City attend Banning Unified School District for K-12 schools.

Transportation

The City is located along Interstate 10, a major traffic route. The City is also located alongside the Union Pacific Railroad. The City owns a municipal airport which also provides hangar and tie down service. Locally, the City provides both fixed route bus and dial-a-ride services.

Population

The table on the following page provides a comparison of population growth for the City, surrounding cities and the County between 2011 and 2015.

CHANGE IN POPULATION
BANNING AND RIVERSIDE COUNTY
2011-2015

	BANNING		RIVERSIDE COUNTY	
Year (January 1)	Population	Percentage Change	Population	Percentage Change
2011	29,721	-	2,205,731	-
2012	29,982	0.9	2,229,467	1.1
2013	30,137	0.5	2,253,516	1.1
2014	30,306	0.6	2,280,191	1.2
2015	30,491	0.6	2,308,441	1.2

Source: State of California Department of Finance, Population Research Unit, "Population Estimates for California Cities and Counties."

Employment and Industry

The City is located in the Riverside Area Metropolitan Statistical Area ("MSA") which includes all of Riverside and San Bernardino Counties. In addition to varied manufacturing employment, the MSA has large and growing commercial and service sector employment, as reflected in the following table.

RIVERSIDE-SAN BERNARDINO-ONTARIO MSA
ANNUAL AVERAGE EMPLOYMENT[1]
2010-2014

INDUSTRY	2010	2011	2012	2013	2014
Construction	59,700	59,100	62,600	70,000	77,000
Durable Goods	55,400	55,800	56,900	57,300	59,800
Educational and Health Services	154,100	157,600	167,200	184,500	193,600
Farm	15,000	14,900	15,000	14,500	14,300
Financial Activities	41,00	39,900	40,900	42,200	42,700
Goods Producing	145,900	145,200	150,500	158,600	168,500
Government	234,300	227,500	224,600	225,200	228,800
Information	14,00	12,200	11,700	11,500	11,200
Leisure and Hospitality	122,800	124,000	129,400	135,900	144,300
Manufacturing	85,200	85,100	86,700	87,300	90,200
Nondurable Goods	29,800	29,300	29,800	30,100	30,400
Other Services	38,200	39,100	40,100	41,100	43,200
Professional and Business Services	123,600	126,000	127,500	132,400	137,800
Real Estate and Rental	15,500	14,600	14,900	15,600	16,200
Retail Trade	155,500	158,500	162,400	164,800	168,700
Service Providing	998,900	1,002,800	1,029,800	1,073,300	1,116,700
Transportation, Warehousing and Utilities	66,600	68,800	73,900	79,400	87,300
Wholesale Trade	48,700	49,200	52,200	59,000	56,400
Total, All Industries	1,159,700	1,162,900	1,195,300	1,246,400	1,299,500

(1) The employment figures by industry which are shown above are not directly comparable to the "Total, All Industries" employment figures due to rounded data.

Source: State Employment Development Department, Labor Market Information Division.

The major employers operating within the City and their respective number of employees as of June 30, 2014 are as follows:

CITY OF BANNING
TOP EMPLOYERS

Name of Company	Employment	Type of Business/Product

Source: City of Banning.

Commercial Activity

The following table summarizes the volume of retail sales and taxable transactions for the City for 2009 through 2013, the latest years available.

CITY OF BANNING
TOTAL TAXABLE TRANSACTIONS
2009-2013

Year	Retail Sales ($000's)	% Change	Retail Sales Permits	Total Taxable Transactions ($000's)	% Change	Issued Sales Permits
2009	130,173	-	315	156,232	-	451
2010	133,218	2.3%	340	146,742	(6.1)%	471
2011	143,230	7.5	323	157,071	7.0	448
2012	146,600	2.3	340	165,579	5.4	466
2013	154,595	5.5	332	175,386	5.9	460

Source: State Board of Equalization, "Taxable Sales in California (Sales & Use Tax)." 2014 data not available.

APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS

The following definitions and summaries of the Indenture and the Installment Sale Agreement are summaries only and are not to be considered full descriptions thereof. Reference is made to further provisions of the documents described in the body of this Official Statement, and to the documents themselves.

[TO COME]

APPENDIX D

FORM OF OPINION OF BOND COUNSEL

_____, 2015

City of Banning Financing Authority
99 E. Ramsey Street
Banning, California 92220

City of Banning
99 E. Ramsey Street
Banning, California 92220

$_____
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015

Ladies and Gentlemen:

In our role as Bond Counsel to the City of Banning Financing Authority (the "Authority"), we have examined certified copies of the proceedings taken in connection with the issuance by the Authority of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") in the aggregate principal amount of $_____. We have also examined supplemental documents furnished to us and have obtained such certificates and documents from public officials as we have deemed necessary for the purposes of this opinion. The Bonds are issued under Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and among the Authority, the City of Banning (the "City") and U.S. Bank National Association, as trustee (the "Trustee"), and pursuant to the authorizing resolution of the Commission of the Authority adopted on _____, 2015. The proceeds of the sale of the Bonds will be used to refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007 and finance certain improvements (the "Facilities") to the City's Electric System. The Authority and the City will enter into an Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), pursuant to which the Authority will sell the Improvements to the City in consideration for Installment Payments. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Indenture and the Installment Sale Agreement, as applicable.

As Bond Counsel, we have examined copies certified to us as being true and complete copies of the proceedings of the Authority and the City in connection with the issuance of the Bonds. We have also examined such certificates of officers of the Authority and the City and others as we have considered necessary for the purposes of this opinion.

Based upon the foregoing, we are of the opinion that:

1. The Indenture has been duly and validly authorized, executed and delivered by the Authority and the City and, assuming such Indenture constitutes the legally valid and binding obligation of the Trustee, constitutes the legally valid and binding obligation of the Authority and the City, enforceable against the Authority and the City in accordance with its terms, and the Bonds are entitled to the benefits of the Indenture.

2. The Installment Sale Agreement has been duly and validly authorized, executed and delivered by the Authority and the City, and constitutes the legally valid and binding obligation of the Authority and the City, enforceable against the Authority and the City in accordance with its terms.

3. The proceedings for the issuance of the Bonds have been taken in accordance with the laws and Constitution of the State of California, and the Bonds, having been issued in duly authorized form and executed by the proper officials and delivered to and paid for by the purchasers, constitute legal and binding special obligations of the Authority enforceable in accordance with their terms.

4. The Bonds constitute valid and binding limited obligations of the Authority as provided in the Indenture, and are entitled to the benefits of the Indenture. The Bonds are payable from the Revenues, subject to the application thereof on the terms and conditions as set forth in the Indenture.

5. Under existing statutes, regulations, rulings and court decisions, and assuming compliance with the covenants mentioned below, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 (the "Code") from the gross income of the owners thereof for federal income tax purposes. We are further of the opinion that under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, that interest on the Bonds will not be treated as an item of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income of that corporation. A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed. We are further of the opinion that interest on the Bonds is exempt from personal income taxes of the State of California under present state law.

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Non-compliance with such requirements could cause the interest on the Bonds to fail to be excluded from the gross income of the owners thereof retroactive to the date of issuance of the Bonds. Pursuant to the Indenture and the Installment Sale Agreement, and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986* being delivered by the Authority and the City in connection with the issuance of the Bonds, each of the Authority and the City is making representations relevant to the determination of, and is undertaking certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching our opinions described in the immediately preceding paragraph, we have assumed the accuracy of such representations and the present and future compliance by each of the Authority and the City with such covenants. Further, except as stated in the preceding paragraph, we express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel.

The opinions expressed in paragraphs 1 through 4 above are qualified to the extent the enforceability of the Bonds, the Indenture and the Installment Sale Agreement may be limited by applicable bankruptcy, insolvency, debt adjustment, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally or as to the availability of any particular remedy. The enforceability of the Bonds, the Indenture and the Installment Sale Agreement is subject to the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, to the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and to the limitations on legal remedies against governmental entities in California.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any fact or circumstance that may hereafter come to our attention or to reflect any change in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and are not binding on the Internal Revenue Service; rather, such opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

Respectfully submitted,

APPENDIX E

FORM OF CONTINUING DISCLOSURE AGREEMENT

APPENDIX F

[SPECIMEN MUNICIPAL BOND INSURANCE POLICY]

APPENDIX G

BOOK-ENTRY ONLY SYSTEM

The information in this Appendix G under the caption "General" concerning The Depository Trust Company, New York, New York ("DTC"), and DTC's book-entry system has been obtained from DTC and the Authority and the City take no responsibility for the completeness or accuracy thereof. The Authority and the City cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix G. The Authority and the City are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Bonds or an error or delay relating thereto. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC's Direct and Indirect Participants are on file with DTC.

General

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to DTC's Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. The information on such web site is not incorporated herein by reference.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual

purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of the Bonds may wish to ascertain that the nominee holding tbe Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Autbority or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of such principal, premium, if any, and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or Trustee, disbursement of such payments to Direct Participants will be the responsibility of

DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered as described in the Indenture.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates will be printed and delivered.

Discontinuance of DTC Services

In the event that that DTC shall discontinue providing its services as depository with respect to the Bonds or the Authority shall discontinue the use of a book-entry system of transfers through DTC (or a successor securities depository), the following provisions would apply: (i) the principal of the Bonds will payable upon presentation of such Bonds by the registered owners thereof at the Office of the Trustee; (ii) interest on the Bonds will be payable on each Interest Payment Date by check mailed by the Trustee on the date on which interest is due to the registered owners of the Bonds at the close of business on the Record Date at the addresses of the registered owners as they appear on the Registration Books maintained by the Trustee, except that for registered owners of more than $1,000,000 in principal amount of Bonds who, prior to the Record Date preceding any Interest Payment Date, have provided the Trustee with wire transfer instructions, interest payable on such Bonds will be paid in accordance with the wire transfer instructions provided by such registered owners; (iii) Bonds may be exchanged for an equal aggregate principal amount of Bonds of other Authorized Denominations and of the same tenor and maturity upon surrender thereof at the Office of the Trustee upon payment by the registered owner of any charges the Trustee may make; and (iv) any Bond may, in accordance with its terms, be transferred, upon the Registration Books under the Indenture, by the person in whose name it is registered, in person or by his attorney duly authorized in writing, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed by the registered owner or his duly authorized attorney and upon payment by the registered owner of any charges the Trustee may make under the Indenture; provided, that the Trustee will not be required to transfer any Bonds during the period established by the Trustee for the selection of such Bonds for redemption or any Bonds that have been selected for redemption pursuant to the Indenture.

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INSTALLMENT SALE AGREEMENT

by and between

CITY OF BANNING FINANCING AUTHORITY,
as Seller

and the

CITY OF BANNING,
as Purchaser

Dated as of August 1, 2015

Relating to:

$[_____]
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS

SECTION 1.1 Definitions 1

ARTICLE II COVENANTS AND REPRESENTATIONS

SECTION 2.1 Covenants and Representations of the City 4
SECTION 2.2 Covenants and Representations of the Authority 6

ARTICLE III ISSUANCE OF BONDS; ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS

SECTION 3.1 The Bonds 6
SECTION 3.2 Documentation Required for the Improvements 6
SECTION 3.3 Acquisition and Construction of the Improvements 6
SECTION 3.4 Grant of Easements 7
SECTION 3.5 Appointment of City as Agent of Authority 7

ARTICLE IV SALE OF IMPROVEMENTS; INSTALLMENT PAYMENTS

SECTION 4.1 Sale 7
SECTION 4.2 Term 7
SECTION 4.3 Title 8
SECTION 4.4 Installment Payments 8
SECTION 4.5 Pledge and Application of Net Revenues 8
SECTION 4.6 Special Obligation of the City; Obligations Absolute 9
SECTION 4.7 Rates and Charges 10
SECTION 4.8 Superior and Subordinate Obligations 11
SECTION 4.9 Issuance of Parity Obligations 11
SECTION 4.10 Additional Payments 11

ARTICLE V MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1 Maintenance, Utilities, Taxes and Assessments 12
SECTION 5.2 Operation of Electric System 12
SECTION 5.3 Public Liability and Property Damage Insurance 12
SECTION 5.4 Casualty Insurance 13
SECTION 5.5 Insurance Net Proceeds: Form of Policies 13
SECTION 5.6 Eminent Domain 13
SECTION 5.7 Records and Accounts 13
SECTION 5.8 Tax Covenants 13
SECTION 5.9 Further Assurances 18
SECTION 5.10 Continuing Disclosure 18

ARTICLE VI DISCLAIMER OF WARRANTIES; ACCESS

TABLE OF CONTENTS
(continued)

Page

SECTION 6.1	Disclaimer of Warranties	18
SECTION 6.2	Access to the Electric System	18
SECTION 6.3	Release and Indemnification Covenants	18
SECTION 6.4	Non-Liability of Authority for Electric System Obligations	19

ARTICLE VII ASSIGNMENT, SALE AND AMENDMENT

SECTION 7.1	Assignment by the Authority	19
SECTION 7.2	Assignment by the City	19
SECTION 7.3	Sale of Electric System Property	19
SECTION 7.4	Amendment Hereof	19

ARTICLE VIII EVENTS OF DEFAULT

SECTION 8.1	Events of Default Defined	20
SECTION 8.2	Remedies on Default	20
SECTION 8.3	No Remedy Exclusive	21
SECTION 8.4	Agreement to Pay Attorneys' Fees and Expenses	21
SECTION 8.5	No Additional Waiver Implied by One Waiver	21
SECTION 8.6	Trustee and Bond Owners to Exercise Rights	21
SECTION 8.7	Rights of the Owners of Parity Obligations	21

ARTICLE IX PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 9.1	Special Mandatory Prepayment	22
SECTION 9.2	Credit for Amounts on Deposit	22
SECTION 9.3	Optional Prepayment	22

ARTICLE X MISCELLANEOUS

SECTION 10.1	Further Assurances	22
SECTION 10.2	Amendment of Indenture	22
SECTION 10.3	Notices	22
SECTION 10.4	Third Party Beneficiary	23
SECTION 10.5	Payment on Non-Business Day	23
SECTION 10.6	Governing Law	23
SECTION 10.7	Binding Effect	23
SECTION 10.8	Severability of Invalid Provisions	23
SECTION 10.9	Article and Section Headings and References	24
SECTION 10.10	Execution of Counterparts	24
SECTION 10.11	Waiver of Personal Liability	24

EXHIBIT A – Schedule of Installment Payments
EXHIBIT B – Description of the Improvements

INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT, dated as of August 1, 2015, by and between the **CITY OF BANNING FINANCING AUTHORITY**, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the **CITY OF BANNING**, a general law city duly organized and existing under the laws of the State of California (the "City"),

WITNESSETH:

WHEREAS, the City owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, the Authority is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and the powers of such Authority include the power to issue bonds for any of its corporate purposes; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), which are currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the City desires to finance certain improvements (the "Improvements") to the Electric System; and

WHEREAS, the Authority has approved the issuance of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") to assist the City in providing funds to refund the 2007 Bonds currently outstanding and finance the Improvements; and

WHEREAS, the City has determined that it is necessary and desirable to enter into this Installment Sale Agreement pursuant to which the City is to purchase the Improvements and to make Installment Payments equal in time and amount to the debt service on the Bonds allocable to the Installment Sale Agreement; and

WHEREAS, the City has approved the purchase of the Improvements from the Authority as provided in this Agreement; and

WHEREAS, the Authority and the City have duly authorized the execution and delivery of this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the respective meanings specified in the Indenture. In addition, the following terms defined in this Section 1.1 shall, for all purposes of this Agreement, have the respective meanings herein specified.

"Acquisition and Construction" means, with respect to any of the Improvements, the acquisition, construction, improvement, equipping, renovation, remodeling or reconstruction thereof.

"Acquisition and Construction Costs" means, with respect to any of the Improvements, all costs of the Acquisition and Construction thereof which are paid from moneys on deposit in the Acquisition and Construction Fund, including but not limited to:

(a) all costs required to be paid to any person under the terms of any agreement for or relating to the Acquisition and Construction of the Improvements;

(b) obligations incurred for labor and materials in connection with the Acquisition and Construction of the Improvements;

(c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the Acquisition and Construction of the Improvements;

(d) all costs of engineering and architectural services, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper Acquisition and Construction of the Improvements;

(e) any sums required to reimburse the Authority or the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the Acquisition and Construction of the Improvements;

(f) all financing costs incurred in connection with the Acquisition and Construction of the Improvements, including but not limited to Costs of Issuance and other costs incurred in connection with this Agreement and the financing of the Improvements; and

(g) the interest components of the Installment Payments during the period of Acquisition and Construction of the Improvements, to the extent not paid from the proceeds of the Bonds deposited in the Interest Account pursuant to the Indenture.

"Additional Payments" means the amounts payable by the City pursuant to Section 4.10.

"Additional Revenues" means, with respect to the issuance of any Parity Obligations, any or all of the following amounts:

(i) An allowance for Net Revenues from any additions or improvements to or extensions of the Electric System to be financed from the proceeds of such Parity Obligations or from any other source, all in an amount equal to seventy-five percent (75%) of the estimated additional Net Revenues to be derived from such additions, improvements and extensions for the first twelve (12) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by the certificate or opinion of a qualified independent engineer employed by the City.

(ii) An allowance for Net Revenues arising from any increase in the charges made for service from the Electric System which has become effective prior to the incurring of such Parity Obligations, in an amount equal to the total amount by which the

Net Revenues would have been increased if such increase in charges had been in effect during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the City, all as shown by the certificate or opinion of an Independent Accountant.

"Adjusted Annual Debt Service" means, for any Fiscal Year or any designated twelve (12) month period in question, the Annual Debt Service for such Fiscal Year or twelve month period minus the sum of the amount of the Annual Debt Service with respect to Outstanding Parity Obligations to be paid during such Fiscal Year or twelve month period, from the proceeds of Parity Obligations or interest earned thereon (other than interest deposited into the Revenue Fund), all as set forth in a Written Certificate of the City.

"Agreement" means this Installment Sale Agreement, together with any duly authorized and executed amendments hereto.

"Annual Debt Service" means, for any Fiscal Year or any designated twelve (12) month period in question, (i) with respect to the Installment Payments, the required payments scheduled to be made with respect to all Outstanding Installment Payments in such Fiscal Year or twelve (12) month period, or (ii) with respect to Parity Obligations, the required payments scheduled to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or twelve (12) month period provided, that for the purposes of determining compliance with Section 4.7 and conditions for the issuance of Parity Obligations pursuant to Section 4.9:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations and by subparagraph (C) with respect to Parity Obligations as to which a Payment Agreement is in force, and by subparagraph (D) with respect to certain Parity Payment Agreements, interest on any Parity Obligation shall be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount of interest deemed to be payable on any Variable Interest Rate Parity Obligation shall be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the Assumed RBI-based Rate;

(C) Interest on Payments or Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Parity Obligations with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the City expected to be produced by the terms of such Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead shall be treated as an obligation bearing interest at a fixed interest rate, and (ii) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead shall be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Parity Obligation with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions shall be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the City based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the City to make payments to the Qualified Counterparty based on a fixed rate, payments by the City to the Qualified Counterparty shall be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the City shall be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual Variable Interest Rate on such Parity Obligation, and such Parity Obligation shall set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it shall be assumed that the variable interest rate payment component payable pursuant to the Payment Agreement is equal in amount to the variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the City or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that is required to be used to calculate interest on the Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it shall be assumed:

(a) City Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the City under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the City to the Qualified Counterparty will be based upon an interest rate equal to the Assumed RBI-based Rate, and payments by the Qualified Counterparty to the City will be based on the fixed rate specified by the Payment Agreement; and

(b) City Obligated to Make Payments Based on Fixed Interest Rate. If payments by the City under the Payment Agreement are based on a fixed interest rate and payments by the Qualified Counterparty are based on a variable interest rate index, payments by the City to the Qualified Counterparty will be based on an interest rate equal to the rate that is one hundred and five percent (105%) of the fixed interest rate specified by the Payment Agreement to be paid by the City, and payments by the Qualified Counterparty to the City will be based on a rate equal to the Assumed RBI-based Rate as the variable interest rate deemed to apply to the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (C)(l), (2) and (3) of this definition, the City shall not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (1 0) years or less;

(D) Debt Service on Parity Payment Agreements. No interest shall be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement

Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any other Parity Obligation, interest on that Parity Payment

(1) City Obligated to Make Payments Based on Fixed Interest Rate. If the City is obligated to make Payment Agreement Payments based on a fixed interest rate and the Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the City will be based on the specified fixed rate, and payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made; and

(2) City Obligated to Make Payments Based on Variable Interest Rate Index. If the City is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the City will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (D)(l) and (2) of this definition, the City shall not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt · Service on any Balloon Parity Obligations, it shall be assumed that the principal of those Balloon Parity Obligations, together with interest thereon at a rate equal to the Assumed RBI-based Rate, will be amortized in equal annual installments over a term of thirty (30) years from the date of issuance.

"Assumed RBI-based Rate" means, as of any date of calculation, an assumed interest rate equal to ninety percent (90%) of the average RBI during the twelve (12) calendar months immediately preceding the month in which the calculation is made.

"Balloon Parity Obligation" means any Parity Obligation described as such in such Parity Obligation.

"Electric System" means the entire electric system of the City, including all facilities, properties and improvements at any time owned, controlled or operated by the City for the provision of electricity, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City, including the Improvements.

"Electric Utility Fund" means the fund by that name established and held by the City hereunder.

"Event of Default" means any of the events described in Section 8.1.

"Gross Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Electric System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the City from the sale, furnishing and supplying of electric or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Electric System (other than the non-by-passable usage based charge supporting the City's public benefit program), plus (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, including City reserves and the Reserve Fund established under Section 5.4 of the Indenture, but excluding in all cases customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City and excluding any proceeds of taxes required by law to be used by the City to pay bonds hereafter issued.

"Improvements" means the Electric System financed with the proceeds of the 2007 Bonds and the proceeds of the Bonds as described in Exhibit B attached hereto, as such description may be amended by the City from time to time pursuant to and in accordance with Section 3.2 hereof.

"Indenture" means the Indenture of Trust relating to the Bonds.

"Installment Payment Date" means the fifteenth (15th) day of each May and November during the Term of this Agreement, commencing November 15, 2015.

"Installment Payments" means the amounts payable by the City pursuant to Section 4.4, including any prepayments thereof pursuant to Article IX hereof.

"Maximum Annual Debt Service" means, with respect to any period of time, the greatest Annual Debt Service payable during such period of time on the Outstanding Installment Payments and any Outstanding Parity Obligations or Parity Obligations then being issued.

"Net Revenues" means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

"Operation and Maintenance Costs" means the reasonable and necessary costs and expenses paid by the City for maintaining and operating the Electric System, including but not limited to (a) the cost of utilities, including electricity and other forms of energy supplied to the Electric System, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Electric System in good repair and working order and (c) the reasonable administrative costs of the City attributable to the operation and maintenance of the Electric System, including insurance and other costs described in Article V hereof, but in all cases excluding (i) debt service payable on obligations incurred by the City with respect to the Electric System, including but not limited to the Installment Payments and debt service payments on any Parity Obligations, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature, (iv) City's public benefit program expenditures, and (v) periodic administrative transfers to the City's general fund.

"Outstanding," when used as of any particular time with reference to Installment Payments, means all Installment Payments which have not been paid or otherwise satisfied as provided in Article IX and when used as of any particular time with reference to Parity Obligations means all Parity Obligations which have not been paid or otherwise satisfied as provided in the proceedings and instruments pursuant to which such Parity Obligations have been issued or incurred. For purposes of Section 4.7 and Section 4.9 hereof only, (i) Parity Payment Agreements related to other Parity Obligations which are included in

determining Annual Debt Service on such other Parity Obligations, and (ii) Parity Bank Agreements as to which no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City shall not be considered Outstanding for purposes of this Agreement.

"Parity Obligations" means any leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued pursuant to and in accordance with Section 4.9 hereof.

"Parity Payment Agreement" means a Payment Agreement which is a Parity Obligation.

"Payment Agreement" means a written agreement for the purpose of managing or reducing the City's exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or forward basis by the City and a Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments, or any combination thereof or any similar device.

"Payment Agreement Payments" mean the amounts required to be paid periodically by the City to the Qualified Counterparty pursuant to a Payment Agreement.

"Payment Agreement Receipts" mean the amounts required to be paid periodically by the Qualified Counterparty to the City pursuant to a Payment Agreement.

"Purchase Price" means the amount to be paid by the City hereunder as the purchase price of the Improvements, being equal to the aggregate principal amount of the Bonds.

"Qualified Counterparty" means a party (other than the City) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has been or whose debt service obligations have been assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), and (2) who is otherwise qualified to act as the other party to a Payment Agreement with the City under any applicable laws.

"RBI" means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the City, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate on actively traded thirty (30) year United States Treasury obligations.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bond, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

"Term of this Agreement" means the time during which this Agreement is in effect, as provided in Section 4.2 hereof.

"Variable Interest Rate" means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate shall be as specified in the applicable

Parity Obligation, which Parity Obligation shall also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate shall remain in effect, and (ii) the time or times based upon which any change in such variable interest rate shall become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

"Variable Interest Rate Parity Obligations" mean, for any-period of time, all in accordance with the definition of "Annual Debt Service" set forth in this Section 1.1, any Parity Obligations that bear a Variable Interest Rate during such period, except that (i) Parity Obligations shall not be treated as Variable Interest Rate Parity Obligations if the net economic effect of interest rates on particular payments of the Parity Obligations and interest rates on other payments of the same Parity Obligations, as set forth in such Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case, is to produce obligations that bear interest at a fixed interest rate, and (ii) Payments and Parity Obligations with respect to which a Payment Agreement is in force shall be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate.

ARTICLE II

COVENANTS AND REPRESENTATIONS

SECTION 2.1 Covenants and Representations of the City. The City makes the following covenants and representations to the Authority that as of the Closing Date:

(a) The City is a general law city duly organized and validly existing under the laws of the State, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions on its part contemplated hereby, by proper action has duly authorized the execution and delivery of this Agreement.

(b) The representatives of the City executing this Agreement are fully authorized to execute the same.

(c) This Agreement has been duly authorized, executed and delivered by the City, and constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms.

(d) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its facilities are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, facilities or operations of the Electric System.

(e) No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction herein and therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or threatened against or affecting the City or the Electric System which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or upon the financial condition or operation of the Electric System, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, or the financial condition or operations of the Electric System.

(g) The City has heretofore established the Electric Utility Fund into which the City deposits and will continue to deposit all Gross Revenues, and which the City will maintain throughout the Term of this Agreement.

(h) There are no outstanding bonds, notes, loans, leases, installment sale agreements or other obligations which have any security interest in the Net Revenues, which security interest or claim is superior to or on a parity with the Installment Payments.

(i) The City has determined that it is necessary and proper for City uses and purposes that the City acquire the Electric System in the manner provided for in this Agreement, in order to provide essential services and facilities to persons residing in the City.

SECTION 2.2 Covenants and Representations of the Authority. The Authority makes the following covenants and representations as the basis for its undertakings herein contained:

(a) The Authority is a joint powers authority, duly organized and existing under the laws of the State. The Authority has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of its governing body, the Authority has been duly authorized to execute, deliver and duly perform this Agreement and the Indenture.

(b) To finance the Authority's purchase of the Electric System, the Reserve Fund deposit required by Section 3.2(b) of the Indenture and the Costs of Issuance, the Authority will issue its Bonds, which will mature, bear interest and be subject to redemption as set forth in the Indenture.

(c) The Bonds will be issued under and secured by the Indenture, and pursuant thereto, certain of the Authority's interests in this Agreement have been assigned to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(d) The Authority is not in default under any of the provisions of the laws of the State, which default would affect its existence or its powers referred to in subsection (a) of this Section 2.2.

ARTICLE III

ISSUANCE OF BONDS; ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS

SECTION 3.1 The Bonds. The Authority has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of _____ Dollars ($[_____]). The Authority and the City agree that the proceeds of sale of the Bonds shall be paid to the Trustee on the Closing Date for deposit pursuant to the terms and conditions of the Indenture. The City hereby approves the Indenture, the assignment to the Trustee of the rights of the Authority assigned under and pursuant to the Indenture, and the issuance of the Bonds by the Authority under and pursuant to the Indenture.

SECTION 3.2 Documentation Required for the Improvements. Before any payment is made for the Improvements or any component thereof to be constructed by the City from amounts on deposit in the Acquisition and Construction Fund, the City shall have made available to the Authority detailed plans and specifications relating thereto. The City may from time to time make amendments to such plans and specifications, and may thereby change or modify the description of such Improvements or component thereof.

SECTION 3.3 Acquisition and Construction of the Improvements. The Authority hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided, for the Acquisition and Construction of the Improvements in accordance with plans and specifications, construction contracts and other documents relating thereto and approved by the City pursuant to all applicable requirements of law. Direct payment of the Acquisition and Construction Costs shall be made from amounts on deposit in the Acquisition and Construction Fund, pursuant to Section 3.5 of the Indenture. All contracts for, and all work relating to, the Acquisition and Construction of the Improvements shall be subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The Authority expects that the Acquisition and Construction of the Improvements will be completed on or before three years from the date of issuance of the Bonds; provided, however, that the failure to complete the Acquisition and Construction of the Improvements by the estimated completion date thereof shall not constitute an Event of Default hereunder or a grounds for termination hereof, nor shall such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments.

The City shall have the right from time to time in its sole discretion to amend the description of the Improvements to be financed and improved hereunder. In order to exercise such right, the City shall file with the Authority an amended Exhibit B hereto.

Upon the completion of the Acquisition and Construction of the Improvements, but in any event not later than thirty (30) days following such completion, the City Representative shall execute and deliver to the Authority and the Trustee a Written Certificate which (a) states that the Acquisition and Construction of such Improvements have been substantially completed, (b) identifies the total Acquisition and Construction Costs thereof, and (c) identifies (i) the amounts, if any, to remain on deposit in the Acquisition and Construction Fund for payment of Acquisition and Construction Costs thereafter intended to be requisitioned by the Authority and (ii) the amounts to be transferred to the Bond Service Fund.

SECTION 3.4 Grant of Easements. The City hereby grants to the Authority all necessary easements, rights of way and rights of access in and to all real property or interests therein now or hereafter acquired and owned by the City, as may be necessary or convenient to enable the Authority to

acquire, construct and install the Improvements thereon or thereabouts. The City covenants that it will execute, deliver and record any and all additional documents as may be required to be executed, delivered and recorded to establish such easements, rights of way and rights of access.

SECTION 3.5 Appointment of City as Agent of Authority. The Authority hereby appoints the City as its agent to carry out all phases of the Acquisition and Construction of the Improvements pursuant to and in accordance with the provisions hereof and the Indenture. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the Acquisition and Construction of the Improvements. The Authority, or the City as agent of the Authority hereunder, shall enter into, administer and enforce all purchase orders or other contracts relating to the Acquisition and Construction of the Improvements. All contracts for, and all work relating to, the Acquisition and Construction of the Improvements shall be subject to all applicable provisions of law relating to the acquisition, construction, improvement, and equipping of like facilities and property by the City.

ARTICLE IV

SALE OF IMPROVEMENTS; INSTALLMENT PAYMENTS

SECTION 4.1 Sale. In consideration for the Installment Payments and other consideration set forth in this Agreement, the Authority hereby agrees to sell, transfer and convey to the City all of the Authority's right title and interest in and to the Improvements, and the City hereby agrees to purchase the Improvements from the Authority, upon the terms and conditions set forth in this Agreement.

SECTION 4.2 Term. The Term of this Agreement shall commence on the Closing Date, and shall end on the date on which the City shall have paid all of the Installment Payments and all other amounts due and payable hereunder. The provisions of this Section 4.2 are subject in all respects to any other provisions of this Agreement relating to the termination hereof with respect to the Electric System or any portion thereof.

SECTION 4.3 Title. On the Closing Date, title to the Improvements shall be deemed conveyed to and vested in the City. The Authority and the City shall execute, deliver and cause to be recorded any and all documents necessary to convey such title to the City.

SECTION 4.4 Installment Payments.

(a) Obligation to Pay. The City agrees to pay to the Authority, its successors and assigns, but solely from the Net Revenues and other funds pledged hereunder, the Purchase Price, together with interest on the unpaid principal balance, payable in Installment Payments coming due and payable in the respective amounts and on the respective Installment Payment Dates specified in Exhibit A hereto. The Installment Payments shall be paid by the City to the Trustee, as assignee of the Authority pursuant to the Indenture, in the amounts and at the times as set forth in Section 4.5(b). The City shall receive a credit against any Installment Payment due hereunder to the extent of any monies on deposit in the Bond Service Fund on the applicable Installment Payment Date.

(b) Effect of Prepayment. In the event that the City prepays all remaining Installment Payments in full pursuant to Article IX, the City's obligations under this Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; provided, however, that the City's obligations to compensate and indemnify the Trustee pursuant to Sections 4.10 and 6.3 shall

survive such prepayment. In the event that the City prepays the Installment Payments in part but not in whole pursuant to Section 9.1, the principal component of each succeeding Installment Payment shall be reduced in inverse order of Installment Payment Date or pro rata among such dates, as determined by the City, and the interest component of each remaining Installment Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable on the Bonds thereby redeemed pursuant to Section 4.1 of the Indenture. In any event, the remaining Installment Payments shall equal in time and amount the remaining debt service on the Bonds.

(c) Rate on Overdue Payments. In the event the City should fail to make any of the payments required in this Section 4.4 and Section 4.10, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment, at a rate of interest per annum equal to the rate borne by the Outstanding Bonds.

(d) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Authority to the Trustee in trust, pursuant to the Indenture, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Office, all amounts payable by the City pursuant to this Section 4.4 and all amounts payable by the City pursuant to Article IX.

SECTION 4.5 Pledge and Application of Net Revenues.

(a) Pledge of Net Revenues. All of the Net Revenues are hereby irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments and any Parity Obligations, and except as otherwise provided herein the Net Revenues shall not be used for any other purpose so long as any of the Installment Payments remain unpaid. Such pledge, charge and assignment shall constitute a first lien on the Net Revenues and such other moneys for the payment of the Installment Payments and any Parity Obligations in accordance with the terms hereof.

(b) Deposits Into Funds; Transfers to Make Installment Payments. All of the Gross Revenues shall be deposited by the City immediately upon receipt in the Electric Utility Fund, which fund is hereby established and held by the City. The City shall use funds in the Electric Utility Fund to pay Operation and Maintenance Costs as such payments become due and payable. Tbe City covenants and agrees that all Net Revenues will be held by the City in the Electric Utility Fund in trust for the benefit of the Trustee (as assignee of the rights of the Authority hereunder) and the Bond Owners, and for the benefit of the owners of any Parity Obligations. On or before each Installment Payment Date, the City shall withdraw from the Electric Utility Fund, and transfer to the Trustee for deposit in the Revenue Fund, and to the trustee for any Parity Obligations, as applicable, an amount of Net Revenues which, together with the balance then on deposit in the Bond Service Fund (other than amounts resulting from the prepayment of the Installment Payments pursuant to Article IX and other than amounts required for payment of principal of or interest on any Bonds and Parity Obligations which bave matured or been called for redemption but which have not been presented for payment), is equal to the aggregate amount of the Installment Payments coming due and payable on the next succeeding Interest Payment Date, together with any amounts required to restore the balance in the Reserve Fund to the Reserve Requirement. In support of the foregoing, the City shall set aside each month equal amounts necessary to make such transfers on or before each Installment Payment Date.

The City shall manage, conserve and apply the Gross Revenues on deposit in the Electric Utility Fund in such a manner that all deposits required to be made pursuant to this subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default shall have occurred and be continuing hereunder, the City may use and apply Net Revenues in the Electric Utility Fund for (i) the payment of Additional Payments, (ii) the payment of any subordinate obligations or any unsecured obligations, (iii) the acquisition and construction of extensions and betterments to the Electric System, (iv) the prepayment of any obligations of the City relating to the Electric System, (v) transfers from the Electric Utility Fund to the General Fund of the City for in-lieu fees and administrative costs, or (vi) any other lawful purposes of the Electric Utility Fund. All monies in the Electric Utility Fund may be invested by the City from time to time in any Authorized Investment.

SECTION 4.6 Special Obligation of the City; Obligations Absolute. The City's obligation to pay the Installment Payments, the Additional Payments and any other amounts coming due and payable hereunder shall be a special obligation of the City limited solely to the Net Revenues. Under no circumstances shall the City be required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and the Additional Payments, nor shall any other funds or property of the City be liable for the payment of the Installment Payments and the Additional Payments and any other amounts coming due and payable hereunder.

The obligations of the City to make the Installment Payments and the Additional Payments from the Net Revenues and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City, the Authority or the Trustee of any obligation to the City or otherwise with respect to the Electric System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder shall have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Electric System, failure to complete the Acquisition and Construction of any Improvements by the estimated Completion Date thereof, the taking by eminent domain of title to or temporary use of any component of the Electric System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or this Agreement.

Nothing contained in this Section 4.6 shall be construed to release the Authority or the Trustee from the performance of any of the agreements on its part contained herein or in the Indenture, and in the event the Authority or the Trustee shall fail to perform any such agreements, the City may institute such action against the Authority or the Trustee as the City may deem necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Authority prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority hereby agrees to cooperate fully with the City and to take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City shall so request.

SECTION 4.7 Rates and Charges. The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

(a) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;

(b) Adjustable Annual Debt Service;

(c) All amounts, if any, required to restore the balance in the Reserve Fund and any reserve fund securing any Parity Obligations to the full amount of the Reserve Requirement and the reserve requirement with respect to any Parity Obligations; and

(d) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to one hundred twenty percent (120%) of the amount described in the preceding clause (b) for such Fiscal Year.

SECTION 4.8 Superior and Subordinate Obligations. The City shall not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Net Revenues over the Installment Payments. Nothing herein is intended or shall be construed to limit or affect the ability of the City to issue or incur (a) Parity Obligations pursuant to Section 4.9, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 4.9 Issuance of Parity Obligations. In addition to the Installment Payments, the City may issue or incur other bonds, notes, loans, advances or indebtedness payable from Net Revenues on a parity with the Installment Payments to provide financing for the Electric System in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Obligations subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of such Parity Obligations:

(a) No Event of Default shall have occurred and be continuing, and the City shall deliver a certificate to that effect to the Trustee;

(b) The Net Revenues, calculated in accordance with accounting principles consistently applied, as shown by the books of the City for the latest Fiscal Year or as shown by the books of the City for any more recent twelve (12) month period selected by the City, in either case verified by a certificate or opinion of an Independent Accountant employed by the City, plus (at the option of the City) the Additional Revenues, shall be at least equal to one hundred twenty percent (120%) of the amount of Adjusted Annual Debt Service;

(c) There shall be established upon the issuance of such Parity Obligations a reserve fund for such Parity Obligations in an amount equal to the lesser of (i) the maximum amount of

debt service required to be paid by the City with respect to such Parity Obligations during any Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code; and

(d) The trustee or fiscal agent for such Parity Obligations shall be the same entity performing the functions of Trustee under the Indenture.

The provisions of subsection (b) of this Section shall not apply to any Parity Obligations if all of the proceeds of which (other than proceeds applied to pay costs of issuing such Parity Obligations and to make a reserve fund deposit required pursuant to subsection (c) of this Section) shall be deposited in an irrevocable escrow for the purpose of paying the principal of and interest and premium (if any) on any Installment Payments or on any outstanding Parity Obligations.

SECTION 4.10 Additional Payments. In addition to the Installment Payments, the City shall pay when due all costs and expenses incurred by the Authority to comply with the provisions of the Indenture, including without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund or the Acquisition and Construction Fund), and shall pay to the Trustee upon request therefor all compensation for fees due to the Trustee and all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents, together with all amounts required to indemnify the Trustee pursuant to Section 6.3 hereof or Section 6.13 of the Indenture, and all costs and expenses of attorneys, auditors, engineers and accountants. The rights of the Trustee and the obligations of the City under this Section 4.10 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1 Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Agreement, all improvement, repair and maintenance of the Electric System shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Electric System, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Electric System resulting from ordinary wear and tear.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting any Electric System or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in its opinion, by nonpayment of any such items, the interest of the Authority hereunder or under the Indenture will be materially adversely affected, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority.

SECTION 5.2 Operation of Elcctric System. The City covenants and agrees to operate the Electric System in an efficient and economical manner and to operate, maintain and preserve the Electric System in good repair and working order. The City covenants that, in order to fully preserve and protect the priority and security of the Bonds, the City shall pay from the Gross Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Electric System which, if unpaid, may become a lien or charge upon the Gross Revenues or the Net Revenues prior or superior to the lien granted hereunder, or which may otherwise impair the ability of the City to pay the Installment Payments in accordance herewith.

SECTION 5.3 Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the Term of this Agreement, but only if and to the extent available at reasonable cost from reputable insurers, a standard comprehensive general insurance policy or policies in protection of the Authority, the City and their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Electric System. Said policy or policies shall provide coverage in such liability limits and shall be subject to such deductibles as shall be customary with respect to works and property of a like character. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.5, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such proceeds shall have been paid.

SECTION 5.4 Casualty Insurance. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Agreement, but only in the event and to the extent available from reputable insurers at reasonable cost, casualty insurance against loss or damage to any improvements constituting any part of the Electric System, covering such hazards as are customarily covered with respect to works and property of like character. Such insurance may be subject to deductible clauses which are customary for works and property of a like character. Such insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the City and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.5, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. All amounts collected from insurance against accident to or destruction of any portion of the Electric System shall be used to repair, rebuild or replace such damaged or destroyed portion of the Electric System, and to the extent not so applied, shall be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under Section 2.3(a) of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

SECTION 5.5 Insurance Net Proceeds: Form of Policies. The City shall pay or cause to be paid wben due the premiums for all insurance policies required by this Agreement. The Trustee shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. In the event that any insurance required pursuant to Sections 5.3 or 5.4 shall be provided in the form of self-insurance, the City shall file with the Trustee annually, within ninety (90) days following the close of each fiscal year, a statement of an independent actuarial consultant identifying the extent of such self-insurance and stating that such consultant has determined that the City maintains sufficient reserves with respect thereto. On or before July 1 of each year, the City shall certify to the Trustee that all policies of insurance are in conformance with the requirements of this Installment Sale Agreement and the Trustee shall be entitled to rely on such certification without independent investigation.

SECTION 5.6 Eminent Domain. Any amounts received as awards as a result of the taking of all or any part of the Electric System by the lawful exercise of eminent domain, at the election of the City (evidenced by a Written Certificate of the City filed with the Trustee and the Authority) shall either (a) be used for the acquisition or construction of improvements and extension of the Electric System, or (b) be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under Section 2.3(a) of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

SECTION 5.7 Records and Accounts. The City shall keep proper books of record and accounts of the Electric System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Electric System. Said books shall, upon prior request, be subject to the reasonable inspection by the Owners of not less than ten percent (10%) in aggregate principal amount of the Outstanding Bonds, or their representatives authorized in writing. The City shall cause the books and accounts of the Electric System to be audited annually by an Independent Accountant, not more than two hundred seventy (270) days after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Owners at the office of the City.

SECTION 5.8 Tax Covenants.

(a) Special Definitions. When used in this Section, the following terms have the following meanings:

"Computation Date" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Facilities" means any property the acquisition, construction or improvement of which was financed directly or indirectly with Gross Proceeds of the Bonds.

"Gross Proceeds" means any proceeds as defined in section 1.148-1(b) of the Tax Regulations (referring to sales, investment and transferred proceeds), and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of the Bonds.

"Investment" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Nongovernmental Output Property" means any property (or interest therein) that prior to its acquisition by the City was used by (or manufactured for or to the order of or held for the use by) any Nongovernmental Person (whether actually so used or not) in connection with any electric and gas generation, transmission, distribution, or related facilities.

"Nongovernmental Person" refers to any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, or an agency or instrumentality acting solely on behalf thereof.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Tax Code, in which Gross Proceeds of the Bonds are invested and that is not acquired to carry out the governmental purposes of the Bonds.

"Prior Issue" refers to the 2007 Bonds.

"Rebate Amount" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Tax Regulations" means the United States Treasury Regulations promulgated pursuant to sections 103 and 141 through 150 of the Tax Code.

"Yield" of

(1) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and

(2) the Bonds has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest to Become Taxable. The Authority and the City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner that if made or omitted, respectively, would cause the interest on any of the Bonds to fail to be excluded pursuant to section 103(a) of the Tax Code from the gross income of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Authority or the City receives a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Authority or the City, as the case may be, shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall at all times prior to the payment and cancellation of the last Bond to be paid and canceled:

(i) use their best efforts to ensure that the City exclusively own, operate and possess all of the Facilities that are to be refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity in respect of the use by any Nongovernmental Person of Gross Proceeds of the Bonds or the Prior Issue, or any of the Facilities, other than taxes of general application within the jurisdiction of the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

Without limiting the foregoing, except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, neither of the City nor the Authority will: (i) permit any Nongovernmental Person to hold any ownership, proprietary or possessory interest in the financed property; (ii) contract with any Nongovernmental Person

for the provision of operating or other services with respect to any function of the financed property (unless either (A) such arrangement requires no payment of fees to such Nongovernmental Person other than as direct reimbursement of third party costs or reasonable administrative overhead, or (B) such arrangement conforms to administrative guidance of the Internal Revenue Service in order to assure that such arrangement does not create a private business use relationship of the Nongovernmental Person to the financed property); or (iii) contract with any Nongovernmental Person for the sale of output or capacity of the financed property unless such contract is described either in section 1.141-7(c) of the Treasury Regulations (describing certain types of output contracts that do not have the effect of transferring the benefits of owning the property and the burdens of paying debt service on the financing of the property) or in section 1.141-7(f) of the Treasury Regulations (describing certain types of output contracts that while having the effect of transferring such benefits and burdens but nevertheless may be disregarded in evaluating private business use). As set forth above, for purposes of the preceding sentence, the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issues and the Original Issue.

Except as would not cause any Bond to be a "private activity bond", no portion of the Gross Proceeds will be used (directly or indirectly) for the acquisition of any interest in any Nongovernmental Output Property. As set forth above, for purposes of the preceding sentence, the City and the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issue.

(d) No Private Loan. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not use Gross Proceeds of any Bond to make or finance loans to any Nongovernmental Person. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (a) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (b) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (c) indirect benefits of such Gross Proceeds, or burdens and benefits of ownership of any property acquired, constructed or improved with such Gross Proceeds, are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause any Bond to become an "arbitrage bond" within the meaning of section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not at any time prior to the final maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, would materially exceed the Yield of such Bond within the meaning of said section 148.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not take or omit to take any action that would cause any Bond to be "federally guaranteed" within the meaning of section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The Authority shall timely file any information required by section 149(e) of the Tax Code with respect to the Bonds with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder:

(i) The Authority and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Bond is discharged. However, to the extent permitted by law, the Authority or the City may commingle Gross Proceeds of the Bonds with its other money, provided that the Authority or the City, as the case may be, separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Authority and the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder. The Authority and the City shall maintain a copy of the calculation with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) In order to assure the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, the Authority and the City, jointly and severally but without duplication, shall pay to the United States the amount that when added to the future value of previous rebate payments made for the Bonds equals (A) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Tax Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (B) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, such rebate payments shall be made by the Authority or the City at the times and in the amounts as are or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder for execution and filing by the Authority or the City.

(iv) The Authority and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (i) and (ii) above, and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) or other provision of the Tax Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority shall not, at any time prior to the final maturity of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to paragraph (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the Bonds not been relevant to either party.

(j) Bonds Not Hedge Bonds.

(i) The Authority and the City each represents that neither the Refunded Bonds nor any Bonds are or will become "hedge bonds" within the meaning of section 149(g) of the Tax Code.

(ii) Without limitation of paragraph (i) above, with respect to the Bonds (or to that portion of the Bonds that is to be applied to the refunding of the Refunded Bonds), either: (A) (I) on the date of issuance of the Refunded Bonds, the Authority or the City reasonably expected that at least 85% of the spendable proceeds of the Refunded Bonds would be expended within the three-year period commencing on such date of issuance, and (II) no more than 50% of the proceeds of the Refunded Bonds were invested in Nonpurpose Investments having a substantially guaranteed yield for a period of four years or more; or (B) (I) the provisions of section 149(g) of the Tax Code did not apply to the Refunded Bonds, (II) the average maturity of the refunding bonds is not later than that of the Refunded Bonds, and (III) the amount of the refunding bonds is not in excess of the amount of the Refunded Bonds.

(iii) For purposes of this paragraph (j), (A) "Refunded Bonds" shall refer to the bonds of any issue refunded or re-refunded (immediately or through multiple generations of prior issues) by the Bonds, (B) in applying paragraph (ii) above, "Refunded Bonds" shall refer only to bonds that are not refunding bonds, and (C) in applying clause (ii)(B) above, "refunding bonds" refers to, and said clause (ii)(B) has been applied separately to, each issue being refunded or re-refunded by the Bonds (and to the portion of each issue (treating such portion as a separate issue) to the extent such issue is being refunded or re-refunded by the Bonds) that was itself a refunding issue.

(k) Elections. The Authority hereby directs and authorizes any Authorized Authority Representative and the City hereby directs and authorizes any Authorized City Representative to make elections permitted or required pursuant to the provisions of the Tax Code or the Tax Regulations, as such Authorized Authority Representative or Authorized City Representative (after consultation with Bond Counsel) deems necessary or appropriate in connection with the Bonds, in the Tax Certificate relating to the Bonds or similar or other appropriate certificate, form or document.

SECTION 5.9 Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and the Indenture, and for the better assuring and confirming unto the Trustee and Owners of the Bonds the rights and benefits provided herein and in the Indenture.

SECTION 5.10 Continuing Disclosure. The City will comply with the continuing disclosure requirements promulgated under Securities and Exchange Commission Rule 15c2-12(b)(5).

ARTICLE VI

DISCLAIMER OF WARRANTIES; ACCESS

SECTION 6.1 Disclaimer of Warranties. The Authority and the Trustee make no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Electric System, or any other representation or warranty with respect to the Electric System. In no event shall the Authority or the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising

out of this Agreement or the Indenture for the existence, furnishing, functioning or City's use of the Electric System.

SECTION 6.2 Access to the Electric System. The City agrees that the Authority, the Trustee [and the Bond Insurer,] and any duly authorized representative thereof, shall have the right at all reasonable times to enter upon and to examine and inspect the Electric System. The City further agrees that the Authority and the Trustee, and any duly authorized representative thereof, shall have such rights of access to the Electric System as may be reasonably necessary to cause the proper maintenance of the Electric System in the event of failure by the City to perform its obligations hereunder.

SECTION 6.3 Release and Indemnification Covenants. The City to the extent permitted by law shall and hereby agrees to indemnify and save the Authority and the Trustee and their respective officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Electric System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Electric System, (d) any act or negligence of any sublessee of the City with respect to the Electric System, (e) the Acquisition and Construction of the Electric System or the authorization of payment of the Acquisition and Construction Costs, (f) the performance by the Trustee of its duties and obligations under the Indenture, including any duties referred to in Section 8.4 of the Indenture, or (g) the offer, sale and issuance of the Bonds. No indemnification is made under this Section or elsewhere in this Agreement for willful misconduct or negligence by the Authority or the Trustee, or their respective officers, employees, successors or assigns. The rights of the Trustee and the obligations of the City under this Section 6.3 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

SECTION 6.4 Non-Liability of Authority for Electric System Obligations. The Authority and its successor and assigns shall have no obligation and shall incur no liabilities or debts whatsoever for the obligations, liabilities and debts of the City incurred in connection with the Electric System.

ARTICLE VII

ASSIGNMENT, SALE AND AMENDMENT

SECTION 7.1 Assignment by the Authority. The Authority's rights under this Agreement, including the right to receive and enforce payment of the Installment Payments to be made by the City under this Agreement have been pledged and assigned to the Trustee pursuant to the Indenture, to which pledge and assignment the City hereby consents.

SECTION 7.2 Assignment by the City. This Agreement may not be assigned by the City.

SECTION 7.3 Sale of Electric System Property. Except as provided herein, the City covenants that the Electric System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole unless such sale is to a public entity. Neither the Net Revenues nor any other funds pledged or otherwise made available to secure payment of the Installment Payments shall be mortgaged, encumbered, sold, leased, pledged, any charge placed thereon, or disposed or used except as authorized by the terms of this Agreement. The City shall not enter into any agreement which impairs the operation of the Electric System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, or which otherwise would impair the rights of the Bond Owners and the owners of any Parity Obligations with respect to the Net Revenues. If any substantial part of the Electric System shall be sold, the payment therefor shall either (a)

be used for the acquisition or construction of improvements, extensions or replacements of facilities constituting part of the Electric System, or (b) to the extent not so used, be paid to the Trustee to be applied to pay or prepay the Installment Payments or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

SECTION 7.4 Amendment Hereof. The City and the Authority shall have the right to modify or amend this Agreement, without the consent of the Trustee or any of the Bond Owners or any of the owners of Parity Obligations, but only if such amendment or modification (a) does not cause interest represented by the Bonds to be includable in gross income for federal income tax purposes in the opinion of Bond Counsel, (b) does not materially adversely affect the interests of the Owners of the Bonds or the owners of any Parity Obligations in the opinion of Bond Counsel, (c) does not modify any of the rights or obligations of the Trustee without the Trustee's written consent, and (d) only is for any one or more of the following purposes:

(i) to provide for the issuance of Parity Obligations pursuant to Section 4.9;

(ii) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;

(iii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable; or

(iv) to amend any provision thereof for the purpose of complying with the applicable requirements of the Tax Code; provided[, however, that provisions hereof expressly recognizing or granting rights in the Bond Insurer shall not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer].

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.1 Events of Default Defined. The following events shall be Events of Default hereunder:

(a) Failure by the City to pay any Installment Payment when and as the same become due and payable hereunder.

(b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of thirty (30) days.

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding causes (a) or (b), for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; provided, however, that if the City shall notify the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60-day period, such failure shall not constitute an event of default hereunder if the City shall commence to cure such failure within

such sixy (960) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

(e) The occurrence and continuation of any event of default under and as defined in the instruments authorizing the issuance of any Parity Obligations.

SECTION 8.2 Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Trustee as assignee of the Authority shall have the right, at its option and without any further demand or notice, but subject in all respects to the provisions of Article VIII of the Indenture, to:

(a) declare all principal components of the unpaid Installment Payments and the principal amount of the unpaid Parity Obligations, together with accrued interest on the Installment Payments and interest then due and payable on the entire principal amount of the unpaid Parity Obligations at the net effective rate of interest per annum then borne by the Outstanding Bonds or the rate or rates of interest then applicable to such Parity Obligations from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable;

(b) take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement; and

(c) as a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment shall confer.

The provisions of the preceding clause (a), however, are subject to the condition that if, at any time after the principal components of the unpaid Installment Payments shall have been so declared due and payable pursuant to the preceding clause (a), and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee (including any fees and expenses of its attorneys), and any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) shall have been made good, then, and in every such case, with the written consent of the Trustee, shall rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon. As provided in Section 8.6, the Trustee shall be required to exercise the remedies provided herein in accordance with the Indenture.

SECTION 8.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

SECTION 8.4 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Bonds should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred.

SECTION 8.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 8.6 Trustee and Bond Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture.

SECTION 8.7 Rights of the Owners of Parity Obligations. Notwithstanding anything in this Article VIII to the contrary, it is hereby acknowledged and agreed that the rights of the Trustee and the Bond Owners hereunder in and to the Net Revenues and the Electric System shall be exercised on a parity and proportionate basis with the rights of the owners of any Parity Obligations and any fiduciary acting for the benefit of such owners. The provisions of this Article VIII, including but limited to Section 8.2(a) and the provisions of any instruments authorizing the issuance of any Parity Obligations, shall be construed in accordance with the foregoing sentence.

ARTICLE IX

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 9.1 Special Mandatory Prepayment. The principal component of the Installment Payments shall be prepaid in whole or in part on any date, in inverse order of Installment Payment Dates or pro rata among Installment Payment Dates as determined by the City, in integral multiples of $5,000, by paying a prepayment price equal to the aggregate principal components of the Installment Payments to be prepaid, together with the interest component of the Installment Payment required to be prepaid on or accrued to such date, as required by Sections 5.4 and 5.6 hereof, and pursuant to Section 2.3(a) of the Indenture. Any such prepayment price shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds pursuant to Section 2.3(a) of the Indenture. The City shall give the Trustee and the Authority written notice of its intention to exercise its option under the second preceding sentence not less than sixty (60) days in advance of the date of exercise (or such lesser period of time as shall be consented to by the Trustee and the Authority).

SECTION 9.2 Credit for Amounts on Deposit. In the event of prepayment of the principal components of the Installment Payments in full under this Article IX, such that the Indenture shall be discharged by its terms as a result of such prepayment, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Indenture shall be credited towards the amounts then required to be so prepaid.

SECTION 9.3 Optional Prepayment. The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part (in integral multiples of $5,000) to the extent the Authority has the ability to effect an optional redemption of the Bonds under the Indenture. The City shall give the Trustee and the Authority written notice of its intention to exercise its option under this Section not less than sixty (60) days in advance of the date of exercise (or such lesser period of time as shall be consented to by the Trustee and the Authority).

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Further Assurances. The City agrees that it will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Authority or the Trustee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

SECTION 10.2 Amendment of Indenture. The Authority covenants that it shall take no action to amend or supplement the Indenture in any manner without obtaining the prior written consent of the City to such amendment or supplement.

SECTION 10.3 Notices. Any notice, request, demand or other communication under this Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:
City of Banning
99 E. Ramsey Street
Banning, California 92220
Attention: City Manager
Telephone: (951) 922-3101
Facsimile: (951) 922-3112

If to the Authority:
City of Banning Financing Authority
99 E. Ramsey Street
Banning, California 92220
Attention: Executive Director
Telephone: (951) 922-3101
Facsimile: (951) 922-3112

If to the Trustee: U.S. Bank National Association
633 W. Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Corporate Trust Services
Telephone: (213) 615-6002
Facsimile: (213) 615-6119

SECTION 10.4 Third Party Beneficiary. The Trustee shall be and is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary. [To the extent that this Agreement confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Agreement the Bond Insurer shall be and is hereby made a third-party beneficiary hereunder and may enforce any such right remedy or claim conferred, given or granted hereunder.]

SECTION 10.5 Payment on Non-Business Day. Whenever in this Agreement any payment is required to be made on a day which is not a Business Day, such payment shall be made on the first Business Day following such day.

SECTION 10.6 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State.

SECTION 10.7 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Authority and the City, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 10.8 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 10.9 Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 10.10 Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

SECTION 10.11 Waiver of Personal Liability. No member of the City Council, officer, agent or employee of the City shall be individually or personally liable for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this

Agreement; but nothing herein contained shall relieve any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

IN WITNESS WHEREOF, the Authority and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

CITY OF BANNING,
as purchaser

By: _____
Title: City Manager

CITY OF BANNING FINANCING AUTHORITY,
as seller

By: _____
Title: Executive Director

EXHIBIT A

SCHEDULE OF INSTALLMENT PAYMENTS

Installment Payment Date	Principal Component	Interest Component	Total

EXHIBIT B

DESCRIPTION OF IMPROVEMENTS

[TO BE UPDATED]

Project Description	**Budgeted Cost** [1] [2]
Install new 34.5 kV circuit breaker in an existing spare position at the Southern California Edison Company ("SCE") Substation	$ 550,000
Construct a new North Substation which will include a 115 kV Edison switchyard and a 68 kV switchyard	5,106,000
Construct the first of three 15 MVA 69/12.47 kV transformers, and 12.47 V switchgear at North Substation	2,442,000
Install 12.4 kV underground feeders 1, 2, 3 and 4 at North Substation and pick up load formerly served from San Gorgonio and Midway Substations	1,820,000
Construct a new 34.5 kV breaker and a half switchyard in the southwest corner of San Gorgonio Substation and connect to existing 34.5/12.47 kV Bank 1 and Bank 2	4,440,000
Construct a new 69 kV overhead circuit (30,000 ft.) on wood poles with underbuild from San Gorgonio Substation to the new North Substation	3,230,000
Construct a new 69 kV switchyard and install two new 56 MVA, 34.5/69 kV transformers in the northwest corner of San Gorgonio Substation	7,770,000
Install a 12.47 kV underground feeder number 5 at San Gorgonio Substation	455,000
Install Bank 2 at North Substation	2,442,000
Construct a new 69 kV switchyard and install the first of two 10 MVA, 69/12.47 kV transformers in Midway Substation	3,330,000
Install Bank 2 at Midway Substation	2,442,000
Purchase one-half acre of land for East End Substation	1,110,000
Construct a new 69 kV underground circuit (12,000 ft.) from Midway Substation to the new North Substation	2,997,000
Construct a new 69 kV overhead circuit (22,500 ft.) on wood poles with underbuild from San Gorgonio Substation to the Midway Substation	2,442,000

(1) Preliminary, subject to change.
(2) Budgeted costs are based on projected increases in the Producer Price Index for construction materials and components.

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INDENTURE OF TRUST

by and among the

CITY OF BANNING FINANCING AUTHORITY

and

CITY OF BANNING

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of August 1, 2015

Relating to:

$[_____]
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY 2

SECTION 1.1 DEFINITIONS 2
SECTION 1.2 RULES OF CONSTRUCTION 10
SECTION 1.3 EQUAL SECURITY 11

ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS 11

SECTION 2.1 AUTHORIZATION OF BONDS 11
SECTION 2.2 TERMS OF BONDS 11
SECTION 2.3 REDEMPTION OF BONDS 12
SECTION 2.4 FORM OF BONDS 14
SECTION 2.5 EXECUTION OF BONDS 14
SECTION 2.6 TRANSFER AND EXCHANGE OF BONDS 14
SECTION 2.7 REGISTRATION BOOKS 15
SECTION 2.8 ISSUANCE IN TEMPORARY FORM 15
SECTION 2.9 BONDS MUTILATED, LOST, DESTROYED OR STOLEN 15
SECTION 2.10 BOOK-ENTRY SYSTEM; LIMITED OBLIGATION 16
SECTION 2.11 REPRESENTATION LETTER 16
SECTION 2.12 TRANSFERS OUTSIDE BOOK-ENTRY SYSTEM 17
SECTION 2.13 PAYMENTS AND NOTICES TO THE NOMINEE 17
SECTION 2.14 INITIAL DEPOSITORY AND NOMINEE 17

ARTICLE III ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS 17

SECTION 3.1 ISSUANCE OF BONDS 17
SECTION 3.2 APPLICATION OF PROCEEDS AND OTHER MONEYS 18
SECTION 3.3 RESERVE FUND 18
SECTION 3.4 COSTS OF ISSUANCE FUND 19
SECTION 3.5 ACQUISITION AND CONSTRUCTION FUND 19
SECTION 3.6 VALIDITY OF BONDS 20

ARTICLE IV REVENUES; FLOW OF FUNDS 20

SECTION 4.1 ASSIGNMENT OF REVENUES 20
SECTION 4.2 RECEIPT, DEPOSIT AND APPLICATION OF REVENUES 20
SECTION 4.3 INVESTMENTS 21
SECTION 4.4 ACQUISITION, DISPOSITION AND VALUATION OF INVESTMENTS 21

ARTICLE V COVENANTS OF THE AUTHORITY; SPECIAL TAX COVENANTS 22

SECTION 5.1 PUNCTUAL PAYMENT; COMPLIANCE WITH DOCUMENTS 22
SECTION 5.2 EXTENSION OF PAYMENT OF BONDS 22
SECTION 5.3 AGAINST ENCUMBRANCES 22
SECTION 5.4 POWER TO ISSUE BONDS AND MAKE PLEDGE AND ASSIGNMENT 22
SECTION 5.5 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS 23
SECTION 5.6 NO ADDITIONAL OBLIGATIONS 23
SECTION 5.7 TAX COVENANTS RELATING TO THE BONDS 23
SECTION 5.8 INSTALLMENT SALE AGREEMENT 27

TABLE OF CONTENTS
(continued)

Page

SECTION 5.9 WAIVER OF LAWS 27
SECTION 5.10 FURTHER ASSURANCES 27
SECTION 5.11 CONTINUING DISCLOSURE 27

ARTICLE VI THE TRUSTEE 28

SECTION 6.1 APPOINTMENT OF TRUSTEE 28
SECTION 6.2 PAYMENT OF BONDS; REGISTRATION BOOKS 28
SECTION 6.3 ACCEPTANCE OF TRUSTS 28
SECTION 6.4 FEES, CHARGES AND EXPENSES OF TRUSTEE 31
SECTION 6.5 NOTICE TO BOND OWNERS OF DEFAULT 31
SECTION 6.6 INTERVENTION BY TRUSTEE 31
SECTION 6.7 REMOVAL OF TRUSTEE 31
SECTION 6.8 RESIGNATION BY TRUSTEE 31
SECTION 6.9 APPOINTMENT OF SUCCESSOR TRUSTEE 31
SECTION 6.10 MERGER OR CONSOLIDATION 32
SECTION 6.11 CONCERNING ANY SUCCESSOR TRUSTEE 32
SECTION 6.12 APPOINTMENT OF CO-TRUSTEE 32
SECTION 6.13 INDEMNIFICATION; LIMITED LIABILITY OF TRUSTEE 33

ARTICLE VII MODIFICATION AND AMENDMENT OF THIS INDENTURE 33

SECTION 7.1 AMENDMENT BY CONSENT OF BOND OWNERS 33
SECTION 7.2 DISQUALIFIED BONDS 34
SECTION 7.3 ENDORSEMENT OR REPLACEMENT OF BONDS AFTER AMENDMENT 34
SECTION 7.4 AMENDMENT BY MUTUAL CONSENT 34

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS 35

SECTION 8.1 EVENTS OF DEFAULT AND ACCELERATION OF MATURITIES 35
SECTION 8.2 APPLICATION OF FUNDS UPON ACCELERATION 36
SECTION 8.3 OTHER REMEDIES: RIGHTS OF BOND OWNERS 36
SECTION 8.4 POWER OF TRUSTEE TO CONTROL PROCEEDING 36
SECTION 8.5 APPOINTMENT OF RECEIVERS 37
SECTION 8.6 NON-WAIVER 37
SECTION 8.7 RIGHTS AND REMEDIES OF BOND OWNERS 37
SECTION 8.8 TERMINATION OF PROCEEDINGS 38

ARTICLE IX [BOND INSURANCE] 38

SECTION 9.1 INSURER'S REQUIREMENTS TO GOVERN 38
SECTION 9.2 REQUIREMENTS OF THE INSURER 38
SECTION 9.3 PAYMENTS UNDER THE POLICY 39

ARTICLE X MISCELLANEOUS 40

SECTION 10.1 LIMITED LIABILITY OF AUTHORITY 40
SECTION 10.2 BENEFITS OF INDENTURE LIMITED TO PARTIES 40
SECTION 10.3 DISCHARGE OF INDENTURE 40
SECTION 10.4 SUCCESSOR IS DEEMED INCLUDED IN ALL REFERENCES TO PREDECESSOR 41

TABLE OF CONTENTS
(continued)

Page

SECTION 10.5	EXECUTION OF DOCUMENTS BY BOND OWNERS	41
SECTION 10.6	WAIVER OF PERSONAL LIABILITY	42
SECTION 10.7	PARTIAL INVALIDITY	42
SECTION 10.8	DESTRUCTION OF CANCELED BONDS	42
SECTION 10.9	FUNDS AND ACCOUNTS	42
SECTION 10.10	NOTICES	42
SECTION 10.11	UNCLAIMED MONEYS	43
SECTION 10.12	EXECUTION IN SEVERAL COUNTERPARTS	43
SECTION 10.13	GOVERNING LAW	43

EXHIBIT A [FORM OF BOND] 1
EXHIBIT B CITY OF BANNING FINANCING AUTHORITY REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT), SERIES 2015 1

INDENTURE OF TRUST

THIS INDENTURE OF TRUST, is dated as of August 1, 2015, by and among the **CITY OF BANNING FINANCING AUTHORITY**, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), the **CITY OF BANNING**, a municipal corporation, duly organized and existing under the laws of the State of California (the "City"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, and being qualified to accept and administer the trusts hereby created (the "Trustee").

WITNESSETH:

WHEREAS, the City owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, under Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), the Authority is authorized to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities including the City, and to provide financing for public capital improvements of public entities including the City; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the City desires to finance certain improvements (the "Improvements") to the Electric System; and

WHEREAS, for the purpose of providing funds to refund the 2007 Bonds and to finance the Improvements, the Authority has determined to issue its City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015, in the aggregate principal amount of $[_____] (the "Bonds"), all pursuant to and secured by this Indenture in the manner provided herein; and

WHEREAS, the City and the Authority have determined that it is necessary and desirable to enter into an Installment Sale Agreement, dated the date hereof (the "Installment Sale Agreement"), pursuant to which the Authority will sell the Improvements to the City in consideration for Installment Payments equal in time and amount to the debt service on the Bonds; and

[WHEREAS, in order to further enhance the payments of principal of and interest on the Bonds the Authority has obtained a municipal bond insurance policy from [BOND INSURER] (the "Insurer"); and]

WHEREAS, the Authority has determined that in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and premium (if any) thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the City and the Authority have determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute

this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and premium (if any) on all Bonds at any time issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY

SECTION 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Indenture and of any Supplemental Indenture and of the Bonds and of any certificate, opinion, request or other documents herein mentioned have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. In addition, all capitalized terms used herein and not otherwise defined in this Section 1.1 shall have the respective meanings given such terms in the Installment Sale Agreement.

"Acquisition and Construction Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.5.

"Additional Payments" means the payments so designated and required to be paid by the City pursuant to Section 4.10 of the Installment Sale Agreement.

"Agency" means the Community Redevelopment Agency of the City of Banning.

"Annual Debt Service" means, for each Bond Year with respect to each of the Bonds, the sum of (a) the interest payable on the Outstanding Bonds in such Bond Year, and (b) the principal amount of the Outstanding Bonds scheduled to be paid in such Bond Year, including from mandatory sinking fund payments.

"Authority" means the City of Banning Financing Authority, a public body corporate and politic duly organized and existing pursuant to a Joint Exercise of Powers Agreement, dated November 12, 2003, between the City and the Agency.

"Authorized Investments" means any securities in which the City may legally invest funds subject to its control.

"Authorized Representative" means: (a) with respect to the Authority, its President, Vice President, Treasurer, Executive Director, Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its President, Vice President, Treasurer, Executive Director or Secretary and filed with the City and the Trustee; and (b) with respect to the City, its Mayor, Mayor Pro Tem, City Manager, Finance Director, City Clerk or any other

person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its Mayor, Mayor Pro Tem, City Manager, Finance Director or City Clerk and filed with the Trustee.

"Bond Counsel" means (a) Norton Rose Fulbright US LLP, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

"Bond Service Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.2(a).

"Bond Year" means any twelve-month period commencing on June 2 in a year and ending on the next succeeding June 1, both dates inclusive; except that the first Bond Year shall commence on the Closing Date and end on June 1, 2016.

"Bonds" means the City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015, issued and at any time Outstanding pursuant to the Bond Law and this Indenture.

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the city in which the Office of the Trustee is located.

"City" means the City of Banning, a general law city duly organized and existing under the laws of the State of California.

"Closing Date" means August __, 2015, being the date of delivery of the Bonds to the Original Purchasers.

"Costs of Issuance" means all items of expense directly or indirectly relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to printing expenses, rating agency fees, filing and recording fees, fees, expenses and charges of the City, the Authority, the Trustee, and their respective counsel, including the Trustee's first annual administrative fee, costs of obtaining bond insurance, a Qualified Reserve Fund Credit Insttument or Permitted Investment for monies held in the funds and accounts created and held hereunder, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds and the execution and delivery of the Installment Sale Agreement.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.4.

"Depository" means DTC and its successors and assigns or if (a) the then Depository resigns from its functions as securities depository of the Bonds, or (b) the Authority discontinues use of the Depository pursuant to Section 2.12 hereof, any other securities depository which agrees to follow the procedures requested to be followed by a securities depository in connection with the Bonds and which is selected by the Authority with the consent of the Trustee.

"Depository Participant" means a member of, or participant in, the Depository.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Escrow Agent" means U.S. Bank National Association, acting as escrow agent under the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement, dated as of August 1, 2015, by and between the Escrow Agent and the Authority relating to the defeasance of the currently outstanding 2007 Bonds.

"Escrow Fund" means the Escrow Fund established under the Escrow Agreement and held by the Escrow Agent.

"Event of Default" means any of the events described in Section 8.1.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term "fair market value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit the value of which is determined in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) the value of which is determined in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security-State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California, but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

"Federal Securities" means any of the following (which solely for purposes of Section 10.3(c) hereof are noncallable and nonprepayable) and which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein: cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Moody's (or any combination of the foregoing) shall be used to effect defeasance of the Bonds [unless the Insurer otherwise approves].

"Indenture" means this Indenture, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

"Independent Accountant" means any accountant or firm of such accountants appointed and paid by the City or the Authority, and who, or each of whom (a) is in fact independent and not under domination of the City or the Authority; (b) does not have any substantial interest, direct or indirect, with the City or the Authority; and (c) is not connected with the City or the Authority as an officer or employee of the City or the Authority, but who may be regularly retained to make annual or other audits of the books of or reports to the City or the Authority.

"Information Services" means the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at *www.emma.msrb.org*; provided, however, in accordance with the then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called Bonds as the Authority may designate in writing to the Trustee.

"Installment Payments" means the payments required to be paid by the City pursuant to Section 4.4 of the Installment Sale Agreement, including all prepayments thereof.

"Installment Sale Agreement" means that certain Installment Sale Agreement by and between the Authority and the City, with respect to the sale of the Improvements, dated as of August 1, 2015, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

["Insurer" means [BOND INSURER], or any successor thereto or assignee thereof, as issuer of the Policy.]

"Interest Payment Date" means June 1 and December 1 in each year, beginning December 1, 2015, and continuing so long as any Bonds remain Outstanding.

"Maximum Annual Debt Service" means the largest of the sums obtained for any Bond Year after totaling the following for each such Bond Year:

A. The principal amount of all Outstanding Bonds maturing or required to be redeemed by mandatory sinking account redemption in such year; and

B. The interest which would be due during such year on the aggregate principal amount of Bonds which would be Outstanding in such year if the Bonds Outstanding on the date of such computation were to mature or be redeemed in accordance with the applicable maturity or mandatory sinking account redemption schedule. At the time and for the purpose of making such computation, the amount of Bonds already retired in advance of the above mentioned schedule or schedules shall be deducted pro rata from the remaining amounts thereon.

"Moody's" means Moody's Investors Service, its successors and assigns or, if such entity shall be dissolved, liquidated, or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the City, with the approval of the Authority, by notice to the Trustee.

"Nominee" means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant hereto.

"Office" means the corporate trust office of the Trustee in Los Angeles, California, or at such other or additional offices as may be specified in writing to the Authority and the City.

"Original Purchasers" means Stifel, Nicolaus & Company, Inc. and Williams Capital Group, as the original purchasers of the Bonds upon their delivery by the Trustee on the Closing Date.

"Outstanding", except as provided for in Section 7.2, when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been

discharged in accordance with Section 10.3; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

"Owner", when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Registration Books.

"Permitted Investments" means [CONFIRM]

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership

2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration
Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration
Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations

3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System
Consolidated systemwide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2, including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee or such holding company provides investment advisory or other management services.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks including the Trustee, its parent holding company and their affiliates. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF, which may be from or with the Trustee, its parent holding company and their affiliates.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements, with providers rated, or guaranteed by guarantors rated, at the time of investment, in the top three categories (without regard to modifiers) by any two or more Rating Agencies.

H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories (without regard to modifiers) assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P including the Trustee, its parent holding company and their affiliates.

K. Repurchase Agreements which satisfy the following criteria:

Repurchase Agreements provide for the transfer of securities from a dealer bank, financial entity or securities firm (seller/borrower) to the City (buyer/lender) or the Trustee or a third party custodial agent, and the transfer of cash from the City to the dealer bank, financial entity or securities firm with an agreement that the dealer bank, financial entity or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the municipal entity and a dealer bank or securities firm or other financial entity

   a. Primary dealers on the Federal Reserve reporting dealer list which are rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   b. Banks rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   c. Financial Entities rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies.

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are those securities listed in (A), (B) and (C) above.

   b. The term of the repo may be up to 30 days, or greater than 30 days if subject to put or redemption at par to pay project/construction costs and/or debt service on the Bonds.

   c. The collateral must be delivered to the municipal entity, trustee or third party acting as agent for the trustee before/simultaneous with payment (perfection by possession of certificated securities).

   d. Valuation of Collateral

      (l) The securities must be valued weekly, marked-to-market at current market price plus accrued interest

         (a) The value of collateral must be equal to at least 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm or financial entity under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are any of those listed in (C) above, then the value of collateral must equal 105%.

L. U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks (including the Trustee and its affiliates) which have a rating on their short-term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1+" by S&P and maturing no more than 360 days after the date of purchase, provided that ratings on holding companies are not considered as the rating of the bank.

M. Local Agency Investment Fund of the State of California ("LAIF"), created pursuant to Section 16429.1 of the California Government Code.

N. The County Treasurer's Investment Pool so long as such Pool is rated AA- or better by S&P or Fitch or Aa3 or better by Moody's.

["Policy" means the policy of municipal bond insurance policy securing the payment of the principal of and interest on the Bonds, when due for payment.]

"Prior Trustee" means U.S. Bank National Association, as trustee under the Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010 pertaining to the 2007 Bonds.

"Qualified Reserve Fund Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee pursuant to Section 3.3(d) provided that all of the following requirements are met: (i) the long-term credit rating of such bank or insurance company at the time of delivery of such letter of credit or surety bond is rated in one of the two highest rating categories by Moody's or S&P; (ii) such letter of credit or surety bond has a term of at least twelve (12) months; (iii) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 3.3(d); and (iv) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the amounts available to repay the principal of and interest on the Bonds.

"Record Date" means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month preceding such Interest Payment Date.

"Redemption Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.2(c).

"Registration Books" means the books maintained by the Trustee pursuant to Section 2.7 for the registration and transfer of ownership of the Bonds.

"Reserve Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.3.

"Reserve Requirement" means, as of any date of calculation by the City, the least of (i) ten percent (10%) of the proceeds (within the meaning of section 148 of the Tax Code) of the Bonds; (ii) 125% of average Annual Debt Service as of the date issuance of the Bonds; or (iii) the Maximum Annual Debt Service for that and any subsequent year.

"Responsible Officer" means any Vice President, Assistant Vice President or Trust Officer or any other officer of the Trustee having regular responsibility for corporate trust matters related to this Indenture.

"Revenue Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.2.

"Revenues" means (a) all amounts received by the Authority or the Trustee pursuant or witb respect to the Installment Sale Agreement, including, without limiting the generality of the foregoing, all of the Installment Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), prepayments, insurance proceeds, and condemnation proceeds, but excluding any Additional Payments; (b) all moneys and amounts held in the funds and accounts established hereunder; and (c) investment income with respect to any moneys held by the Trustee hereunder.

"S&P" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business, its successors and assigns or, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the Authority.

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, N.Y. 10041-0099 Attn. Call Notification Department, Fax (212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Request of the Authority delivered to the Trustee.

"State" means the State of California.

"Supplemental Indenture" means any indenture, agreement, resolution or other instrument hereafter duly adopted or executed in accordance with the provisions of Section 7.1 of this Indenture.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bond, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

"Tax Regulations" means temporary and permanent regulations promulgated under or with respect to Section 103 of the Tax Code.

"Trustee" means U.S. Bank National Association, appointed by the Authority to act as trustee hereunder pursuant to Section 6.1, and its assigns or any other corporation or association which may at any time be substituted in its place, as provided in Section 6.1.

"Written Certificate", "Written Request" and "Written Requisition" of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

SECTION 1.2 Rules of Construction. All references in this Indenture to "Articles," "Sections," and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 1.3 Equal Security. In consideration of the acceptance of the Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract among the Authority, the City, the Trustee and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

SECTION 2.1 Authorization of Bonds. The Authority has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that, as of the date of issuance of the Bonds, all things, conditions, and acts required by law to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now authorized, pursuant to the Bond Law and each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture. Accordingly, the Authority hereby authorizes the issuance of the Bonds pursuant to the Bond Law and this Indenture.

SECTION 2.2 Terms of Bonds. The Bonds authorized to be issued by the Authority under and subject to the Bond Law and the terms of this Indenture shall be designated the "City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015", and shall be issued in the original principal amount of _____ Dollars ($[_____]).

The Bonds shall be issued in fully registered form without coupons in denominations of $5,000 or any integral multiple thereof, so long as no Bond shall have more than one maturity date. The Bonds shall be dated the Closing Date, shall mature on June 1 in each of the years and in the amounts, and shall bear interest at the rates, as follows:

Maturity Date (June 1)	Principal Amount	Interest Rate Per Annum

Interest on the Bonds shall be payable semiannually calculated based on a 360-day year of twelve (12) thirty-day months on each Interest Payment Date to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed on the Interest Payment Date by first class mail to the Owner at the address of such Owner as its appears on the Registration Books; provided however, that payment of interest will be made by wire transfer in immediately available funds to an account at a financial institution in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall fumish written wire instructions to the Trustee before the applicable Record Date. Any such written request shall remain in effect until rescinded in writing by the Owner. Principal of any Bond and any premium upon redemption shall be paid by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee. Principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America.

Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

SECTION 2.3 Redemption of Bonds.

(a) Special Mandatory Redemption. The Bonds shall be subject to special mandatory redemption as a whole or in part, on any date, from proceeds of an eminent domain award or proceeds of casualty insurance not used to repair or rebuild the Electric System, which proceeds may be used for such purpose pursuant to Sections 5.4 or 5.6 of the Installment Sale Agreement, at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, without premium.

(b) Redemption from Prepayments of Installment Payments. The Bonds maturing on or before June 1, 2025 shall not be subject to optional redemption prior to maturity. The Bonds maturing on or after June 1, 2026 shall be subject to redemption prior to their respective maturity dates, at the option of the Authority, by lot within a maturity on any date on or after June 1, 2025, from prepayment of Installment Payments made at the option of the City at the redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

(c) Mandatory Sinking Fund Redemption. The Bonds maturing on June 1, 20__ and June 1, 20__ are also subject to redemption prior to their respective stated maturities, on any June 1 on or after June 1, 20__ and June 1, 20__, respectively, in part by lot, from mandatory sinking account payments at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, without premium, as set forth below in the aggregate respective principal amounts and on the respective dates as set forth in the following tables; provided, however, that if some but not all of such Bonds have been redeemed pursuant to optional or special mandatory redemption provisions of the Indenture, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of $5,000. The City shall provide the Trustee with a revised sinking fund schedule.

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

(d) Notice of Redemption. The Trustee on behalf and at the expense of the Authority shall mail (by first-class mail, postage prepaid) notice of any redemption to: (i) the respective Owners of any Bonds designated for redemption, at least twenty (20) but not more than sixty (60) days prior to the redemption date, at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services, at least thirty (20) but not more than sixty (60) days prior to the redemption date; provided, however, that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. In addition to mailed notice, the notice to the Securities Depositories and Information Services shall be given by telephonically confirmed facsimile transmission or overnight delivery service or by such other means approved by such institutions. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the bond numbers and the maturity or maturities (in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Any notice given pursuant to this paragraph may be rescinded by Written Certificates given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this Section, but in no event later than the date set for redemption.

(e) Selection of Bonds for Redemption. Whenever provision is made in the foregoing subsection (a) or (b) of this Section for the redemption of Bonds of more than one maturity, the Bonds to be redeemed shall be selected in inverse order of maturity or, at the election of the Authority evidenced by a Written Request of the Authority filed with the Trustee at least sixty (60) days prior to the date of redemption, on a pro rata basis among maturities (provided that, in any event, the principal and interest due on the Bonds Outstanding following such redemption shall be equal in time and amount to the unpaid

payments due under the Installment Sale Agreement); and in each case, the Trustee shall select the Bonds to be redeemed within any maturity by lot in any manner which the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, all Bonds shall be deemed to be comprised of separate $5,000 portions and such portions shall be treated as separate Bonds which may be separately redeemed.

(f) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same series and maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(g) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption shall have been duly provided, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. All Bonds redeemed pursuant to this Section shall be canceled and shall be destroyed by the Trustee.

SECTION 2.4 Form of Bonds. The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

SECTION 2.5 Execution of Bonds. The Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signature of its President and attested by the manual or facsimile signature of its Secretary. The Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though the individual who signed the same had continued to be such officer of the Authority. Also, any Bond may be signed on behalf of the Authority by any individual who on the actual date of the execution of such Bond shall be the proper officer although on the nominal date of such Bond such individual shall not have been such officer.

Only those Bonds that bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.6 Transfer and Exchange of Bonds.

(a) Transfer of Bonds. The registration of any Bond may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond or Bonds shall be surrendered for registration of transfer, the Trustee shall execute and deliver a new Bond or Bonds of the same maturity, interest rate and aggregate principal amount, in any authorized denominations. The Authority shall pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Bond Owner of any tax or other governmental charge required to be paid with respect to such transfer.

(b) Exchange of Bonds. Bonds may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same interest rate and maturity. The Authority shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee may require the payment by the Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) Limitations on Transfer or Exchange. The Trustee may refuse to transfer or exchange either (i) any Bond during the period established by the Trustee for the selection of Bonds for redemption pursuant to Section 2.3, or (ii) the portion of any Bond which the Trustee has selected for redemption pursuant to the provisions of Section 2.3.

SECTION 2.7 Registration Books. The Trustee will keep or cause to be kept, at its Office, sufficient records for the registration and transfer of the Bonds, which shall at all times during normal business hours, and upon reasonable notice, be open to inspection by the City and the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided.

SECTION 2.8 Issuance in Temporary Form. The Bonds may be issued initially in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and be registered and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds, it will execute and fumish definitive Bonds without delay, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

SECTION 2.9 Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series, tenor and authorized denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the order of, the Authority. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to the Trustee and indemnity for the Authority and the Trustee satisfactory to the Trustee shall be given, the Authority, at the expense of the Bond Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond the Trustee may pay the same without surrender thereof upon receipt of indemnity for the Authority and the Trustee satisfactory to the Trustee). The Authority may require payment of a reasonable fee for each new Bond issued under this Section and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original contractual obligation on the part of the Authority whether or not the Bond alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture wish all other Bonds secured by this Indenture.

SECTION 2.10 Book-Entry System; Limited Obligation. The Bonds shall be initially executed, authenticated and delivered in the form of a separate single fully registered Bond (which may he typewritten) for each of the maturities of the Bonds. Upon initial execution, authentication and delivery, the ownership of each such global Bond shall be registered in the Bond Register in the name of the Nominee as nominee of the Depository. Except as provided in Section 2.12 hereof, all of the Outstanding Bonds shall be registered in the Bond Register kept by the Trustee in the name of the Nominee and the Bonds may be transferred, in whole hut not in part, only to the Depository, to a successor Depository or to another nominee of the Depository or of a successor Depository. Each global Bond shall bear a legend substantially to the following effect: "UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OE TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Authority and the Trustee shall have no responsibility or obligation to any Depository Participant or to any person on behalf of which such a Depository Participant holds a heneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Authority and the Trustee shall have no responsihility or obligation with respect to (a) the accuracy of the records of the Depository, the Nominee or any Depository Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Depository Participant, beneficial owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any Redemption Notice, (c) the selection hy the Depository and the Depository Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Depository Participant, beneficial owner or any other person, other than the Depository, of any amount with respect to principal of, interest on, or premium, if any, of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on, the Bond, for the purpose of giving Redemption Notices with respect to the Bonds and other notices with respect to the Bonds, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

The Trustee shall pay all principal of, premium, if any, and interest on, the Bonds only to or upon the order of the respective Bond Owners, as shown in the Bond Register kept by the Trustee, or their respective attorneys duly authorized in writing, and all such payments shall be valid hereunder with respect to payment of principal of, premium, if any, and interest on, the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner, as shown in the Bond Register, shall receive a Bond evidencing the ohligation to make payments of principal of, premium, if any, and interest on, such Bond pursuant to this Indenture. Upon delivery by the Depository to the Trustee and the Authority of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word Nominee in this Indenture shall refer to such new nominee of the Depository.

SECTION 2.11 Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authorized Representative is hereby authorized to execute, countersign and deliver on behalf of the Authority to such Depository a letter from the Authority representing such matters as shall be necessary to so qualify the Bonds (the "Representation Letter"). The execution and delivery of

the Representation Letter shall not in any way limit the provisions of Section 2.10 hereof or in any other way impose upon the Authority or the City any obligation whatsoever with respect to persons having beneficial interests in the Bonds other than the Owners, as shown in the Bond Register kept by the Trustee. In the written acceptance by the Trustee of the Representation Letter, the Trustee shall agree, and hereby agrees, to take all actions necessary for all representations of the Trustee in the Representation Letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of the Representation Letter, the Authority Representative and all other officers of the Authority, and their respective deputies and designees, each is hereby authorized to take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

SECTION 2.12 Transfers Outside Book-Entry System. If at any time the Depository notifies the Authority that it is unwilling or unable to continue as Depository with respect to the Bonds or if at any time the Depository shall no longer be registered or in good standing under the Securities Exchange Act or other applicable statute or regulation and a successor Depository is not appointed by the Authority within 90 days after the Authority receives notice or becomes aware of such condition, as the case may be, Section 2.10 hereof shall no longer be applicable and the Authority shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. In addition, the Authority may determine at any time that the Bonds shall no longer be represented by global bonds and that the provisions of Section 2.10 hereof shall no longer apply to the Bonds. In any such event the Authority shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. Bonds executed, authenticated and delivered in exchange for global bonds pursuant to this Section 2.12 shall be registered in such names and delivered in such Authorized Denominations as the Depository, pursuant to instructions from the Depository Participants or otherwise, shall instruct the Authority and the Trustee. The Trustee shall deliver such bonds representing the Bonds to the persons in whose names such Bonds are so registered.

If the Authority determines to replace the Depository with another qualified securities depository, the Authority shall prepare or cause to be prepared a new fully-registered global bond for each of the maturities of the Bonds, registered in the name of such successor or substitute securities depository or its nominee, or make such other arrangements as are acceptable to the Authority, the Trustee and such securities depository and not inconsistent with the terms of this Indenture.

SECTION 2.13 Payments and Notices to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments of principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed by the Depository.

SECTION 2.14 Initial Depository and Nominee. The initial Depository under this Indenture shall be DTC. The initial Nominee shall be Cede & Co., as nominee of DTC.

ARTICLE III

ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS

SECTION 3.1 Issuance of Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver Bonds in the aggregate principal amount of _____ Dollars ($[_____]), and shall deliver the Bonds to the Trustee for authentication and delivery to the Original Purchasers upon the Written Request of the Authority.

SECTION 3.2 Application of Proceeds and Other Moneys. Upon the receipt of payment for the Bonds on the Closing Date, the Trustee shall deposit the full amount thereof as follows:

(a) The Trustee shall deposit into the Costs of Issuance Fund the amount of $[_____].

(b) The Trustee shall deposit into the Acquisition and Construction Fund the amount of $[_____].

(c) The Trustee shall transfer to the Escrow Agent for deposit into Escrow Fund the amount of $_____, representing the amount, together with the amount deposited therein from certain other funds and accounts held by the Prior Trustee, necessary to refund the 2007 Bonds.

(d) The Trustee shall deposit into the Reserve Fund the amount of $[_____] equaling the Reserve Requirement.

(e) [The Trustee shall deposit into the Bond Service Fund the amount of $[_____] representing capitalized interest on the Bonds.]

The Trustee may, in its discretion, establish a temporary fund or account in its books and records to facilitate such deposits.

SECTION 3.3 Reserve Fund. (a) There is hereby created a separate fund to be known as the "Reserve Fund", which shall be held in trust by the Trustee. An amount equal to the Reserve Requirement shall be maintained in the Reserve Fund at all times, subject to the provisions of Section 4.2(b), and any deficiency therein shall be replenished from the first available Revenues pursuant to Section 4.2(b).

(b) Moneys in the Reserve Fund sball be used solely for the purpose of paying the principal of and interest on the Bonds, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to Section 2.3(c), in the event that the moneys in the Bond Service Fund are insufficient therefor. In the event that the amount on deposit in the Bond Service Fund on any date is insufficient to enable the Trustee to pay in full the aggregate amount of principal of and interest on the Bonds coming due and payable, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to Section 2.3(c), the Trustee shall withdraw the amount of such insufficiency from tbe Reserve Fund and transfer sucb amount to the Bond Service Fund.

(c) In the event that the amount on deposit in the Reserve Fund exceeds the Reserve Requirement on the fifteenth (15th) calendar day of the month preceding any Interest Payment Date, the amount of such excess shall be withdrawn therefrom by the Trustee and transferred to the Bond Service Fund and credited against the Installment Payment or Installment Payments next due from tbe City.

(d) Tbe Authority may fund all or a portion of the Reserve Requirement with one or more Qualified Reserve Fund Credit Instruments. Upon deposit of any Qualified Reserve Fund Credit Instrument with the Trustee, the Trustee shall transfer any excess amounts then on deposit in the Reserve Fund into a segregated account of the Bond Service Fund, which monies shall be applied at the written direction of the Authority either (i) to the payment witbin one year of the date of transfer of capital expenditures of the Authority permitted by law, or (ii) to the redemption of Bonds on tbe earliest succeeding date on whicb such redemption is permitted hereby, and pending such application shall be held either not invested in investment property (as defined in section 148(b) of the Tax Code), or invested in such property to produce a yield that is not in excess of the yield on the Bonds; provided, however, that

the Authority may by written direction to the Trustee cause an alternative use of such amounts if the Authority shall first have obtained a written opinion of nationally recognized bond counsel substantially to the effect that such alternative use will not adversely affect the exclusion pursuant to section 103 of the Tax Code of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In any case where the Reserve Fund is funded with a combination of cash and a Qualified Reserve Fund Credit Instrument, the Trustee shall deplete all cash balances before drawing on the Qualified Reserve Fund Credit Instrument. With regard to replenishment, any available moneys provided by the Authority shall be used first to reinstate the Qualified Reserve Fund Credit Instrument and second, to replenish the cash in the Reserve Fund. In the event the Qualified Reserve Fund Credit Instrument is drawn upon, the Authority shall make payment of interest on amounts advanced under the Qualified Reserve Fund Credit Instrument after making any payments pursuant to subsection (a) of Section 4.2.

SECTION 3.4 Costs of Issuance Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the "Costs of Issuance Fund". Except as otherwise provided herein, moneys in the Costs of Issuance Fund shall be used solely for the payment of the Costs of Issuance. The Trustee shall disburse moneys in the Costs of Issuance Fund from time to time to pay Costs of Issuance (or to reimburse the Authority for payment of Costs of Issuance) upon receipt by the Trustee of a Written Request of the Authority, substantially in the form of the first such request delivered by the Authority to the Trustee on the Closing Date, which: (a) states with respect to each disbursement to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment will be made, (iii) the amount to be disbursed, (iv) that each obligation mentioned therein is a proper charge against the Costs of Issuance Fund and has not previously been disbursed by the Trustee from amounts in the Costs of Issuance Fund, and (v) that the amount of such disbursement is for payment of Costs of Issuance incurred and payable by the Authority; (b) specifies in reasonable detail the nature of the obligation; and (c) is accompanied by a bill or statement of account (if any) for each obligation. Upon the earlier of 180 days from the Closing Date or the filing with the Trustee of a Written Certificate of the Authority stating that all Costs of Issuance have been paid, the Trustee shall withdraw all amounts then on deposit in the Costs of Issuance Fund and transfer such amounts to the Bond Service Fund.

SECTION 3.5 Acquisition and Construction Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the "Acquisition and Construction Fund." Except as otherwise provided herein, moneys in the Acquisition and Construction Fund shall be used solely for the payment of Acquisition and Construction Costs, as defined in the Installment Sale Agreement. Before any payment from the Acquisition and Construction Fund shall be made, the City shall file or cause to be filed with the Trustee, a Requisition of the City which shall be substantially in the form attached hereto as Exhibit B. The Trustee shall be entitled to rely on the representations of the City contained in such Requisition and shall not be required to independently verify the contents of such Requisition.

Within five (5) Business Days following receipt of each such Requisition, the Trustee shall pay the amount set forth in such Requisition as directed by the terms thereof out of the Acquisition and Construction Fund. Upon the Written Request of the City accompanied by a Written Certificate of the City stating that all Acquisition and Construction Costs have been paid or provision made for their payment, any unexpended moneys in the Acquisition and Construction Fund may be used to pay the costs associated with any other improvements to the Electric System, provided that in the opinion of Bond Counsel such use of the proceeds of the Bonds shall not adversely affect the exclusion of interest on the Bonds from gross income of the owners thereof. Any unexpended moneys in the Acquisition and Construction Fund subsequent to the payment of all Acquisition and Construction Cost which are not used to pay the cost of other improvements to the Electric System shall be transferred to the Bond Service Fund upon receipt by the Trustee of a Written Request of the City accompanied by a Written Certificate

of the City stating that all Acquisition and Construction Costs have been paid or provision made for their payment.

SECTION 3.6 Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be affected in any way by any proceedings taken by the Authority or the Trustee with respect to or in connection with the Installment Sale Agreement and the recital contained in the Bonds that the same are issued pursuant to the Bond Law shall be conclusive evidence of their validity and of the regularity of their issuance.

ARTICLE IV

REVENUES; FLOW OF FUNDS

SECTION 4.1 Assignment of Revenues. The Authority hereby assigns to the Trustee, on behalf of the Owners, all of the Authority's right, title and interest to and in the Revenues and all of the right, title and interest of the Authority in the Installment Sale Agreement (other than the rights of the Authority under Sections 4.10, 6.3 and 8.4 thereof). Subject to Section 4.3, all Revenues the Trustee collects and receives shall be applied to the payment of principal of and interest and premium (if any) on the Bonds equally, without priority for series, issue, number or date, in accordance with the terms hereof. So long as any of the Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that a portion of the Revenues may be used for purposes as expressly permitted by Section 4.2 hereof.

The assignment under this section to the Trustee is solely in the Trustee's capacity as Trustee under this Indenture and the duties, powers and liabilities of the Trustee in acting pursuant to such assignment shall be subject to the provisions of this Indenture, including, without limitation, the provisions of Article VI hereof. The Trustee shall not be responsible for any representations, warranties, covenants or obligations of the Authority.

SECTION 4.2 Receipt, Deposit and Application of Revenues. Except as provided in Section 4.3 hereof with regard to the deposit of earnings on investments, all of the Revenues shall be deposited by the Trustee immediately upon receipt in the Revenue Fund (which the Trustee shall establish and hold in trust hereunder) or as otherwise instructed by the City. Amounts in the Revenue Fund shall be applied solely for the uses and purposes set forth herein. The Trustee shall withdraw amounts on deposit in the Revenue Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:

(a) Bond Service Fund. On or before the fifteenth (15th) calendar day of the month preceding each Interest Payment Date, so long as any Bonds remain Outstanding hereunder, the Trustee shall withdraw from the Revenue Fund and deposit into the Bond Service Fund (which the Trustee shall establish and hold in trust hereunder) an amount which, together with other available amounts then on deposit in the Bond Service Fund, is at least equal to the sum of (i) the aggregate amount of principal of and interest coming due and payable on the Bonds on such Interest Payment Date, and (ii) the redemption price of the Term Bonds coming due and payable on such Interest Payment Date by operation of mandatory sinking fund redemption pursuant to Section 2.3(c).

Amounts in the Bond Service Fund shall be applied by the Trustee solely for the purpose of paying the principal of and interest on the Outstanding Bonds when and as such principal and interest becomes due and payable (including accrued interest on any Bonds purchased or redeemed pursuant hereto), and for the purpose of paying the principal of the Term Bonds at the maturity thereof or upon the mandatory sinking fund redemption thereof pursuant to Section 2.3(c).

If after all of the Bonds have been paid or deemed to have been paid, there are moneys remaining in the Bond Service Fund, sucb moneys shall be transferred by the Trustee to the City, after the payment of any outstanding fees and expenses of the Trustee.

(b) Reserve Fund. In the event that the amount on deposit in the Reserve Fund at any time falls below the Reserve Requirement, the Trustee shall promptly notify the City and the Authority of such fact and the Trustee shall promptly (i) withdraw the amount of such insufficiency from available Revenues on deposit in the Revenue Fund, and (ii) transfer such amount to the Reserve Fund. No deposit need be made in the Reserve Fund so long as the balance therein at least equals the Reserve Requirement.

(c) Redemption Fund. The Trustee shall deposit into the Redemption Fund all amounts required to redeem any Bonds which are subject to redemption pursuant to Sections 2.3(a) and (b) when and as such amounts become available. Amounts in the Redemption Fund shall be applied by the Trustee solely for the purpose of paying the redemption price of Bonds to be redeemed pursuant to Sections 2.3(a) and (b). Following any redemption of all of the Bonds, any moneys remaining in the Redemption Fund shall be transferred by the Trustee to the City.

SECTION 4.3 Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments, as directed pursuant to the Written Request of the City filed with the Trustee at least two (2) Business Days in advance of the making of such investments. In the absence of any such directions from the City, the Trustee shall invest any such moneys in Permitted Investments described in paragraph [(D) or paragraph (F)] of the definition thereof. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the fund or account from which such investment was made; except that all interest or gain derived from the investment of amounts in the Reserve Fund shall be deposited in the Bond Service Fund to the extent not required to maintain the Reserve Requirement on deposit in the Reserve Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee may act as sponsor, principal or agent in the acquisition or disposition of any investment. Tbe Trustee shall incur no liability for losses arising from any investments made pursuant to this Section.

Tbe Trustee may sell, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

The Authority (and the City by its execution of the Installment Sale Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority or the City the right to receive brokerage confirmations of security transactions as they occur, tbe Authority and the City specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority and the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

SECTION 4.4 Acquisition, Disposition and Valuation of Investments.

(a) Except as otherwise provided in subsection (b) of this Section, all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired and disposed of (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value, provided the Trustee is not responsible to determine Fair Market Value.

(b) Except as required pursuant to Section 5.7 hereof, the value of the investments held pursuant to this Indenture shall be determined as follows: "Value", which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows: (a) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times); the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination; (b) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times; the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; (c) as to certificates of deposit and bankers acceptances; the face amount thereof, plus accrued interest; and (d) as to any investment not specified above; the value thereof established by prior agreement between the Authority and the Trustee.

Notwithstanding anything to the contrary herein, in making any valuations of investments hereunder, the Trustee may utilize computerized securities pricing services that may be available to it, including those available through its regular accounting system and rely thereon.

ARTICLE V

COVENANTS OF THE AUTHORITY; SPECIAL TAX COVENANTS

SECTION 5.1 Punctual Payment; Compliance With Documents. The Authority shall punctually pay or cause to be paid the interest and principal to become due with respect to all of the Bonds in strict conformity with the terms of the Bonds and of this Indenture, and will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture and all Supplemental Indentures.

SECTION 5.2 Extension of Payment of Bonds. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest sball be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section 5.2 shall be deemed to limit the right of the Authority to issue bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

SECTION 5.3 Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 5.4 Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in

accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VI and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 5.5 Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds, the Revenues, the Installment Sale Agreement, and all funds and accounts held by the Trustee under this Indenture. Such books of record and account shall be available for inspection by the Authority and the City, during business hours and under reasonable circumstances.

SECTION 5.6 No Additional Obligations. The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

SECTION 5.7 Tax Covenants Relating to the Bonds.

(a) Special Definitions. When used in this Section, the following terms have the following meanings:

"Computation Date" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Facilities" means any property the acquisition, construction or improvement of which was financed directly or indirectly with Gross Proceeds of the Bonds.

"Gross Proceeds" means any proceeds as defined in section 1.148-1(b) of the Tax Regulations (referring to sales, investment and transferred proceeds), and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of the Bonds.

"Investment" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Nongovernmental Output Property" means any property (or interest therein) that prior to its acquisition by the City was used by (or manufactured for or to the order of or held for the use by) any Nongovernmental Person (whether actually so used or not) in connection with any electric and gas generation, transmission, distribution, or related facilities.

"Nongovernmental Person" refers to any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, or an agency or instrumentality acting solely on behalf thereof.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Tax Code, in which Gross Proceeds of the Bonds are invested and that is not acquired to carry out the governmental purposes of the Bonds.

"Prior Issue" refers to the 2007 Bonds.

"Rebate Amount" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Tax Regulations" means the United States Treasury Regulations promulgated pursuant to sections 103 and 141 through 150 of the Tax Code.

"Yield" of

(1) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and

(2) the Bonds has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest to Become Taxable. The Authority and the City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner that if made or omitted, respectively, would cause the interest on any of the Bonds to fail to be excluded pursuant to section 103(a) of the Tax Code from the gross income of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Authority or the City receives a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Authority or the City, as the case may be, shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall at all times prior to the payment and cancellation of the last Bond to be paid and canceled:

(1) use their best efforts to ensure that the City exclusively own, operate and possess all of the Facilities that are to be refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity in respect of the use by any Nongovernmental Person of Gross Proceeds of the Bonds or the Prior Issue, or any of the Facilities, other than taxes of general application within the jurisdiction of the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

Without limiting the foregoing, except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, neither of the City nor the Authority will: (i) permit any Nongovernmental Person to hold any ownership, proprietary or possessory interest in the financed property; (ii) contract with any Nongovernmental Person for the provision of operating or other services with respect to any function of the financed property (unless either (A) such arrangement requires no payment of fees to such Nongovernmental Person other than as direct reimbursement of third party costs or reasonable administrative overhead, or (B) such arrangement conforms to administrative guidance of the Internal Revenue Service in order to assure that such arrangement does not create a private business use relationship of the Nongovernmental Person to

the financed property); or (iii) contract with any Nongovernmental Person for the sale of output or capacity of the financed property unless such contract is described either in section 1.141-7(c) of the Treasury Regulations (describing certain types of output contracts that do not have the effect of transferring the benefits of owning the property and the burdens of paying debt service on the financing of the property) or in section 1.141-7(f) of the Treasury Regulations (describing certain types of output contracts that while having the effect of transferring such benefits and burdens but nevertheless may be disregarded in evaluating private business use). As set forth above, for purposes of the preceding sentence, the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issues and the Original Issue.

Except as would not cause any Bond to be a "private activity bond", no portion of the Gross Proceeds will be used (directly or indirectly) for the acquisition of any interest in any Nongovernmental Output Property. As set forth above, for purposes of the preceding sentence, the City and the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issue.

(d) No Private Loan. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not use Gross Proceeds of any Bond to make or finance loans to any Nongovernmental Person. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (a) property acquired, constructed or improved with sucb Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (b) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (c) indirect benefits of such Gross Proceeds, or burdens and benefits of ownership of any property acquired, constructed or improved with such Gross Proceeds, are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause any Bond to become an "arbitrage bond" within the meaning of section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not at any time prior to the final maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, would materially exceed the Yield of such Bond within the meaning of said section 148.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not take or omit to take any action that would cause any Bond to be "federally guaranteed" within the meaning of section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The Authority shall timely file any information required by section 149(e) of the Tax Code with respect to the Bonds with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder:

(1) The Authority and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments

thereof) and shall retain all records of accounting for at least six years after the day on which the last Bond is discharged. However, to the extent permitted by law, the Authority or the City may commingle Gross Proceeds of the Bonds with its other money, provided that the Authority or the City, as the case may be, separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Authority and the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder. The Authority and the City shall maintain a copy of the calculation with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) In order to assure the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, the Authority and the City, jointly and severally but without duplication, shall pay to the United States the amount that when added to the future value of previous rebate payments made for the Bonds equals (A) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Tax Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (B) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, such rebate payments shall be made by the Authority or the City at the times and in the amounts as are or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder for execution and filing by the Authority or the City.

(4) The Authority and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (i) and (ii) above, and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) or other provision of the Tax Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority shall not, at any time prior to the final maturity of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to paragraph (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the Bonds not been relevant to either party.

(j) Bonds Not Hedge Bonds.

(1) The Authority and the City each represents that neither the Refunded Bonds nor any Bonds are or will become "hedge bonds" within the meaning of section 149(g) of the Tax Code.

(2) Without limitation of paragraph (i) above, with respect to the Bonds (or to that portion of the Bonds that is to be applied to the refunding of the Refunded Bonds), either: (A) (I) on the date of issuance of the Refunded Bonds, the Authority or the City

reasonably expected that at least 85% of the spendable proceeds of the Refunded Bonds would be expended within the three-year period commencing on such date of issuance, and (II) no more than 50% of the proceeds of the Refunded Bonds were invested in Nonpurpose Investments having a substantially guaranteed yield for a period of four years or more; or (B) (I) the provisions of section 149(g) of the Tax Code did not apply to the Refunded Bonds, (II) the average maturity of the refunding bonds is not later than that of the Refunded Bonds, and (III) the amount of the refunding bonds is not in excess of the amount of the Refunded Bonds.

(3) For purposes of this paragraph (j), (A) "Refunded Bonds" shall refer to the bonds of any issue refunded or re-refunded (immediately or through multiple generations of prior issues) by the Bonds, (B) in applying paragraph (ii) above, "Refunded Bonds" shall refer only to bonds that are not refunding bonds, and (C) in applying clause (ii)(B) above, "refunding bonds" refers to, and said clause (ii)(B) has been applied separately to, each issue being refunded or re-refunded by the Bonds (and to the portion of each issue (treating such portion as a separate issue) to the extent such issue is being refunded or re-refunded by the Bonds) that was itself a refunding issue.

(k) Elections. The Authority hereby directs and authorizes any Authorized Representative of the Authority and the City hereby directs and authorizes any Authorized Representative of the City to make elections permitted or required pursuant to the provisions of the Tax Code or the Tax Regulations, as such Authorized Representative of the Authority or Authorized Representative of the City (after consultation with Bond Counsel) deems necessary or appropriate in connection with the Bonds, in the Tax Certificate relating to the Bonds or similar or other appropriate certificate, form or document.

SECTION 5.8 Installment Sale Agreement. The Trustee shall promptly collect all amounts due from the City pursuant to the Installment Sale Agreement. Subject to the provisions of Article VI, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Installment Sale Agreement.

SECTION 5.9 Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 5.10 Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Trustee and Owners of the Bonds the rights and benefits provided in this Indenture.

SECTION 5.11 Continuing Disclosure. The City covenants and agrees that it will comply with the continuing disclosure requirements with respect to the Bonds promulgated under Securities and Exchange Commission Rule 15c2-12(b)(5) as it may from time to time hereafter be amended or supplemented. The Authority shall have no liability to the Bondholders or to any other person with respect to such disclosure matters. Notwithstanding any other provisions of this Indenture, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Bondholder or Beneficial Owner may take, and the Trustee shall take, at the request of the Holders of at least 25% aggregate principal amount of Outstanding Bonds, and upon receipt of

satisfactory indemnification, such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under the Continuing Disclosure Agreement.

ARTICLE VI

THE TRUSTEE

SECTION 6.1 Appointment of Trustee. U.S. Bank National Association in Los Angeles, California, a national banking association organized and existing under and by virtue of the laws of the United States of America, is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority agrees that it will maintain a Trustee having a combined capital and surplus of at least One Hundred Million Dollars ($100,000,000), and subject to supervision or examination by federal or State authority, so long as any Bonds are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section 5.1 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

SECTION 6.2 Payment of Bonds; Registration Books. The Trustee is hereby authorized to pay the Bonds when duly presented for payment at maturity, or on redemption or purchase prior to maturity, and to cancel all Bonds upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Bonds paid and discharged. The Trustee will keep or cause to be kept at its Office sufficient books for the registration and transfer of the Bonds, which shall at all times during regular business hours be open to inspection by the City and the Authority. Upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, as provided in this Indenture with respect to the Bonds.

SECTION 6.3 Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall have no liability for the actions of any such attorney, agent or receiver chosen with reasonable care, and the Trustee shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder. The Trustee shall not be liable for any action taken or not taken in reliance upon advice or opinion of such counsel.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of

the Authority hereunder. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.3 of this Indenture.

(d) The Trustee shall not be accountable for the use of any proceeds of sale of the Bonds delivered hereunder. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the Authority with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Bonds, whether or not such committee shall represent the Owners of the majority in principal amount of the Bonds then Outstanding.

(e) In the absence of bad faith on its part, the Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, requisition, facsimile transmission, electronic mail or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith and without negligence pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be bound to recognize any person as an Owner of any Bond or to take any action at his request unless the ownership of such Bond by such person shall be reflected on the Registration Books.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Written Certificate of the City or a Written Certificate of the Authority as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default hereunder of which the Trustee has been given notice or is deemed to have notice, as provided in Section 6.3(h) hereof, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a Written Certificate of the Authority to the effect that an authorization in the form therein set forth has been adopted by the Authority, as conclusive evidence that such authorization has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder or under the Installment Sale Agreement, except failure by the City to make any of the payments to the Trustee required to be made by the City pursuant to the Installment Sale Agreement, or failure by the Authority to file with the Trustee any document required by this Indenture to be so filed subsequent to the issuance of the Bonds, unless a Responsible Officer the Trustee shall be specifically notified in writing of such default by the Owners of at least twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding and all notices or other instruments required by this Indenture or under the Installment Sale Agreement to be delivered to the Trustee must, in order to be effective, be delivered at the Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default hereunder or thereunder except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right (but not the duty) fully to inspect the Electric System, all books, papers and records of the City or the Authority pertaining to the Electric System and the Bonds, and to take such memoranda from and with regard thereto as may be desired but which is not privileged by statute or by law.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, as may be deemed desirable for the purpose of establishing the right of the Authority to the execution of any Bonds, or the right of the City or the Authority to the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Section 8.3 the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(n) No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Trustee shall provide the Authority and the City with seven days' notice prior to making any advance of its own funds hereunder, and, if the City or the Authority does not provide moneys in the amount needed, the Trustee shall be entitled to interest on the amounts advanced at a rate equal to the then 3-month certificates of deposit rate (by reference to the Wall Street Journal); provided that no such prior notice shall need be given and such interest on amounts advanced shall accrue from the date of any such advance following the occurrence of an Event of Default hereunder.

(o) The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(p) The Trustee shall not be liable for any action taken or not taken by it in accordance with the direction of a majority (or other percentage provided for herein) in aggregate principal amount of the Bonds outstanding relating to the exercise of any right, power or remedy available to the Trustee.

(q) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a

party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(r) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture provided, however, that: (i) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (ii) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (iii) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

SECTION 6.4 Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all reasonable advances, reasonable counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services, but solely from Additional Payments made by the City under the Installment Sale Agreement. Upon the occurrence of an Event of Default, the Trustee shall have a first lien with right of payment prior to payment of any Bond upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively.

SECTION 6.5 Notice to Bond Owners of Default. If an Event of Default hereunder occurs with respect to any Bonds, of which the Trustee has been given or is deemed to have notice, as provided in Section 6.3(h), then the Trustee shall promptly give written notice thereof by first-class mail to the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice.

SECTION 6.6 Intervention by Trustee. In any judicial proceeding to which the Authority is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of any of the Bonds, the Trustee may intervene on behalf of such Bond Owners, and subject to Section 6.3(l), shall do so if requested in writing by the Owners of a majority in aggregate principal amount of such Bonds then Outstanding.

SECTION 6.7 Removal of Trustee. The Owners of a majority in aggregate principal amount of the Outstanding Bonds, or the Authority (so long as no Event of Default has occurred or is continuing), may at any time remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee.

SECTION 6.8 Resignation by Trustee. The Trustee and any successor Trustee may at any time resign by giving written notice by registered or certified mail to the City and the Authority. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee in accordance with Section 6.9. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the successor Trustee shall mail notice thereof to the Bond Owners at their respective addresses set forth on the Registration Books.

SECTION 6.9 Appointment of Successor Trustee. In the event of the removal or resignation of the Trustee pursuant to Sections 6.6 or 6.7, respectively, the Authority shall promptly appoint a successor Trustee; provided that any such successor shall be a bank or trust company meeting the requirements of Section 6.1. In the event the Authority shall for any reason whatsoever fail to appoint a successor Trustee within sixty (60) days following the delivery to the Trustee of the instrument described in Section 6.6 or within sixty (60) days following the receipt of notice by the Authority

pursuant to Section 6.7, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 6.1. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the Authority purporting to appoint a successor Trustee following the expiration of such sixty (60) day period. Upon the acceptance by any successor Trustee of appointment as such, the successor Trustee shall cause notice thereof to be given by first class mail to the Bond Owners at their respective addresses set forth on the Registration Books.

SECTION 6.10 Merger or Consolidation. Any company into which the Trustee may be merged or converted or which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 6.1, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 6.11 Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the Written Request of the Authority, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

SECTION 6.12 Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 6.12 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Authority be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such

properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

SECTION 6.13 Indemnification; Limited Liability of Trustee. The Authority further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, costs, claims, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, costs, claims, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors or employees. No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder or pursuant to the Installment Sale Agreement. The Trustee shall not be liable for any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of Bonds Outstanding relating to the time, method and place of conducting any proceeding or remedy available to the Trustee under this Indenture. The obligations of the Authority under this paragraph shall be payable solely from Additional Payments made by the City under the Installment Sale Agreement and shall survive the resignation or removal of the Trustee under this Indenture or any defeasance of the Bonds. The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

The Trustee shall have no responsibility or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds. Before taking any action under Article VIII or this Article at the request of the Owners, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

ARTICLE VII

MODIFICATION AND AMENDMENT OF THIS INDENTURE

SECTION 7.1 Amendment by Consent of Bond Owners. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 7.2 hereof, are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without the consent of any Bond Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the Authority; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Authority may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners of the Bonds, in the opinion of Bond Counsel; or

(c) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds.

The Trustee shall not be required to enter into or consent to any amendment or modification which, in the sole judgment of the Trustee, might adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein.

SECTION 7.2 Disqualified Bonds. Bonds owned or held by or for the account of the City or the Authority (but excluding Bonds held in any employees' retirement fund) shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds in this article provided for, and shall not be entitled to consent to, or take any other action in this article provided for, unless all of the Outstanding Bonds shall be owned or held by or for the account of the City or the Authority, provided however, that the Trustee shall not be deemed to have knowledge that any Bond is owned by the Authority or the City or for the account of the Authority or the City unless the Authority or the City is a Registered Owner or the Trustee has received written notice that any other Registered Owner is the Owner of a Bond for the account of the City or Authority.

SECTION 7.3 Endorsement or Replacement of Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the Authority may determine that the Bonds shall bear a notation, by endorsement in form approved by the Authority, as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Office of the Trustee, a suitable notation as to such action shall be made on such Bond. If the Authority shall so determine, new Bonds so modified as, in the opinion of the Authority, shall be necessary to conform to such Bond Owners' action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Office of the Trustee, without cost to each Bond Owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

SECTION 7.4 Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Bond Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

SECTION 8.1 Events of Default and Acceleration of Maturities. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for mandatory sinking fund redemption, by declaration or otherwise.

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable.

(c) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such default shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the City and the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice (other than a default in the payment of any fees and expenses owing to the Trustee) can be corrected, but not within such sixty (60) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the Federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

(e) The occurrence and continuation of an Event of Default under and as defined in the Installment Sale Agreement.

Upon the occurrence and during the continuance of any Event of Default the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding, the Trustee shall, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority shall deposit with the Trustee a sum sufficient to pay all of the principal of and interest on the Bonds having come due prior to such declaration, with interest on such overdue principal and interest calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee, together with interest thereon at the prime rate of the Trustee then in effect, and any and all other defaults known to the Trustee (other than in the payment of the principal of and interest on the Bonds having come due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee or the Owners of a majority in aggregate principal

amount of the Bonds at the time Outstanding may, by written notice to the Authority and to the Trustee, on behalf of tbe Owners of all of the Outstanding Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 8.2 Application of Funds Upon Acceleration. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.

SECTION 8.3 Other Remedies: Rights of Bond Owners. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy, in addition to the remedy specified in Section 8.1, at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds, and to enforce any rights of the Trustee under or witb respect to this Indenture.

If an Event of Default shall have occurred and be continuing and if requested so to do by the Owners of a majority in aggregate principal amount of Outstanding Bonds and indemnified as provided in Section 6.3(l), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VIII, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as nay be deemed expedient.

SECTION 8.4 Power of Trustee to Control Proceeding. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw,

compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

SECTION 8.5 Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

SECTION 8.6 Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or conttact by the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or conttact, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Trustee or Bond Owners by the Bond Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Bond Owners, as the case may be.

SECTION 8.7 Rights and Remedies of Bond Owners. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, or the Installment Sale Agreement, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) the Trustee has not received any inconsistent direction during such 60-day period from the Owners of a majority in aggregate principal amount of the Outstanding Bonds.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, or the Installment Sale

Agreement, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

SECTION 8.8 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Authority, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE IX

[BOND INSURANCE]

SECTION 9.1 Insurer's Requirements to Govern. The provisions of this Article shall govern the terms and conditions of this Indenture, notwithstanding anything to the contrary set forth herein.

SECTION 9.2 Requirements of the Insurer. The Insurer has provided the following requirements for inclusion in this Indenture, and the Authority and the Trustee hereby agree to observe and uphold each and every such requirement applicable to each of them, respectively:

(a) The Insurer's consent is required for all amendments to this Indenture and the Installment Sale Agreement. The Insurer must be given prior notice of any such amendment. Copies of any such amendment consented to by the Insurer shall be provided to S&P.

(b) For any Supplemental Indenture executed for reasons other than (1) a refunding to obtain debt service savings, or (2) the issuance of additional bonds pursuant to this Indenture, the consent of the Insurer must be obtained by the Authority prior to the issuance of any additional bonds and/or the execution of any such Supplemental Indenture.

(c) The Insurer shall be deemed to be the sole Owner of the Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of tbe Bonds are entitled to take pursuant to Article VII and Article VIII hereof.

(d) Other than in connection with mandatory sinking fund redemptions, any acceleration of principal payments shall be subject to the prior written consent of the Insurer.

(e) The Insurer is a third-party beneficiary to this Indenture, with the power to enforce any right, remedy or claim conferred, given or granted hereunder.

(f) If the Insurer makes any payment of principal and/or interest due on the Bonds, the Bonds shall remain Outstanding for all purposes, and shall not be deemed defeased or otherwise satisfied, or paid by the Authority, and the assignment and pledge of the Revenues and all covenants, agreements

and other obligations of the Authority to the Owners hereunder shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of such Owners.

SECTION 9.3 Payments Under the Policy. If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date"), there is not on deposit with the Trustee under the Indenture, after making all transfers and deposits required under the Indenture, moneys sufficient to pay the principal of, and interest on, the Bonds due on such Payment Date, the Trustee shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent"), by telephone or telecopy, of the amount of such deficiency by 10:00 a.m., New York City time, on such Business Day. If, on the Business Day prior to the related Payment Date, there is not on deposit with the Trustee moneys sufficient to pay the principal of, and interest on, the Bonds due on such Payment Date, the Trustee shall make a claim under the Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of any deficiency in the amount available to pay principal and interest, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the related Insurer and the Insurer's Fiscal Agent by 10:00 a.m., New York City time, on such Business Day, by delivering the Notice of Nonpayment and Certificate.

For the purposes of the preceding paragraph, "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from the Trustee to the Insurer, which notice shall specify (a) the name of the entity making the claim, (b) the policy number, (c) the claimed amount and (d) the date such claimed amount will become Due for Payment. "Nonpayment" means the failure of the Authority to have provided sufficient funds to the Trustee for payment in full of all principal of, and interest on, the Bonds that are Due for Payment. "Due for Payment", when referring to the principal of Bonds, means when the stated maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments, acceleration or other advancement of maturity, unless the Insurer shall elect, in its sole discretion, to pay such principal due upon such acceleration; and when referring to interest on Bonds, means when the stated date for payment of interest has been reached. "Certificate" means a certificate in form and substance satisfactory to the Insurer as to the Trustee's right to receive payment under the Policy.

The Trustee shall designate any portion of payment of principal on Bonds paid by the Insurer at maturity on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of the Insurer, as the case may be, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Authority on any Bond or the subrogation rights of the Insurer.

The Trustee shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (as hereinafter defined) and the allocation of such funds to payment of interest on and principal paid with respect to any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

Upon payment of a claim under the Policy, the Trustee shall establish a separate special purpose trust account for the benefit of holders of Bonds referred to herein as the "Policy Payments Account" and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Policy in trust on behalf of holders of Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the

payments for which a claim was made. Such amounts shall be disbursed by the Trustee to holders of Bonds in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Limited Liability of Authority. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from any source of income other than the Revenues for the payment of the principal of or interest on the Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Revenues or any Additional Revenues). The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring indebtedness.

The Bonds shall be revenue bonds, payable exclusively from the Revenues and other funds pledged hereunder as in this Indenture provided. The general fund of the Authority is not liable, and the credit of the Authority is not pledged, for the payment of the interest on or principal of the Bonds. The Owners of the Bonds shall never have the right to compel the forfeiture of any property of the Authority. The principal of and interest on the Bonds, and any premiums upon the redemption of any thereof, shall not be a debt of the Authority, or a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues and other funds pledged to the payment thereof as in this Indenture provided.

SECTION 10.2 Benefits of Indenture Limited to Parties. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the City, the Authority, the Trustee and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Trustee and the Owners of the Bonds.

SECTION 10.3 Discharge of Indenture. If the Authority shall pay and discharge each Outstanding Bond in any one or more of the following ways -

(a) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and redemption premiums;

(c) by irrevocably depositing with the Trustee, in trust, Federal Securities in such amount as Bond Counsel or an Independent Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates; and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been mailed pursuant to Section 2.3(d) or provision satisfactory to the Trustee shall have been made for the mailing of such notice; or

(d) by delivering such Bonds to the Trustee for cancellation -

then, at the election of the Authority, and notwithstanding that any of such Bonds shall not have been surrendered for payment, the pledge of the Revenues and other funds provided for in this Indenture with respect to such Bonds, and all other pecuniary obligations of the Authority under this Indenture with respect to all such Bonds, shall cease and terminate, except only the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose as aforesaid, and all expenses and costs of the Trustee. Notice of such election shall be filed with the Trustee. Any funds thereafter held by the Trustee, which are not required for said purposes, shall be paid over to the City.

SECTION 10.4 Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture either the Authority is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions, with respect to the management, administration and control of the affairs of the Authority, that are presently vested in the Authority, and all the covenants, agreements and provisions contained in this Indenture by or on behalf of the Authority shall bind and inure to the benefit of its successors whether so expressed or not.

SECTION 10.5 Execution of Documents by Bond Owners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bond Owners in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Authority if made in the manner provided in this Section 10.5.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

The ownership of Bonds shall be provided by the Registration Books. Any request, consent, direction or vote of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in pursuance of such request, consent, direction or vote.

In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Authority (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Trustee shall be

protected in relying on any such demand, request, direction, consent or waiver, only Bonds which are registered in the name of the Authority or the Trustee has received written notice that any other Owner is holding Bonds for the account of the Authority shall be disregarded.

In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bond Owners upon such notice and in accordance with such rules and obligations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

SECTION 10.6 Waiver of Personal Liability. No member of the Authority's Board of Directors or, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the interest on or principal of the Bonds; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law.

SECTION 10.7 Partial Invalidity. If any one or more of the covenants or agreements, or portions thereof, provided in this Indenture on the part of the Authority (or of the Trustee) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Indenture or of the Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law. The Authority hereby declares that it would have entered into this Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 10.8 Destruction of Canceled Bonds. Whenever in this Indenture provision is made for the surrender to the Authority of any Bonds which have been paid or canceled pursuant to the provisions of this Indenture, Trustee shall destroy such Bonds and furnish to the Authority upon the Authority's Written Request a certificate of such destruction.

SECTION 10.9 Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the accounting records of the Authority or the Trustee, as the case may be, either as a fund or an account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account. All such records with respect to all such funds and accounts held by the Authority shall at all times be maintained in accordance with generally accepted accounting principles and all such records with respect to all such funds and accounts held by the Trustee shall be at all times maintained in accordance with corporate trust industry practices; in each case with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

SECTION 10.10 Notices. All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto [(except that any notice required to be given by any party shall also be given to the Insurer)] at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:	City of Banning 99 E. Ramsey Street Banning, California 92220 Attention: City Manager Telephone: (951) 922-3101 Facsimile: (951) 922-3112
If to the Authority:	City of Banning Financing Authority 99 E. Ramsey Street Banning, California 92220 Attention: Executive Director Telephone: (951) 922-3101 Facsimile: (951) 922-3112
If to the Trustee:	U.S. Bank National Association 633 W. Fifth Street, 24th Floor Los Angeles, California 90071 Attention: Corporate Trust Services Telephone: (213) 615-6002 Facsimile: (213) 615 6199
[If to the Insurer:	[BOND INSURER] _____ New York, New York _____ Attention: _____ Fax: (___) _____]

SECTION 10.11 Unclaimed Moneys. Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two (2) years after the date when such Bonds or interest thereon have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys if deposited with the Trustee after said date when such Bonds become due and payable, shall be repaid by the Trustee to the Authority, as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Authority for the payment of such Bonds; provided, however, that before being required to make any such payment to the Authority, the Trustee shall, at the Written Request of the Authority (and of its expense), cause to be mailed to the Owners of all such Bonds, at their respective addresses appearing on the Registration Books, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall not be less than thirty (30) days after the date of mailing of such notice, the balance of such moneys then unclaimed will be retumed to the Authority.

SECTION 10.12 Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 10.13 Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the CITY OF BANNING FINANCING AUTHORITY and the **CITY OF BANNING** have caused this Indenture to be signed in their names by their respective authorized officers, and **U.S. BANK NATIONAL ASSOCIATION**, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

CITY OF BANNING FINANCING AUTHORITY

By:_____
Title: Executive Director

CITY OF BANNING

By:_____
Title: City Manager

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By:_____
Authorized Officer

EXHIBIT A

[FORM OF BOND]

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

NEITHER THE PAYMENT OF THE PRINCIPAL OR ANY PART THEREOF NOR ANY INTEREST THEREON CONSTITUTES A DEBT, LIABILITY OR OBLIGATION OF THE CITY OF BANNING.

No. _____ $____

CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BOND
(ELECTRIC SYSTEM PROJECT), SERIES 2015

INTEREST RATE:	MATURITY DATE:	ISSUE DATE:	CUSIP:
_____%	June 1, 20__	August __, 2015	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The CITY OF BANNING FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority") for value received, hereby promises to pay (but only out of the Revenues and other assets pledged therefor as hereinafter mentioned) to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above (subject to any right of prior redemption hereinafter mentioned), the Principal Amount stated above, in lawful money of the United States of America; and to pay interest thereon in like lawful money from the Interest Payment Date next preceding the date of authentication of this Bond (unless this Bond is authenticated as of a day during the period commencing after the fifteenth day of the month preceding an Interest Payment Date and ending on or before such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or before November 15, 2015, in which event it shall bear interest from the Issue Date stated above) until payment of such principal sum shall be discharged as provided in the Indenture hereinafter mentioned, at the Interest Rate per annum stated above, payable semiannually on each June 1 and December 1, commencing December 1, 2015 (each, an "Interest Payment Date").

The principal (or redemption price) hereof is payable at the Office (as defined in the Indenture referred to below) of U.S. Bank National Association, Los Angeles, California (together with any successor trustee under the Indenture, the "Trustee"). Interest hereon is payable by check of the Trustee mailed on each Interest Payment Date to the Registered Owner as of the fifteenth (15th) day of the month preceding each Interest Payment Date at the address shown on the registration books maintained by the Trustee; provided however, that payment of interest will be made by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee before the fifteenth day of the month preceding the applicable Interest Payment Date.

It is hereby certified and recited that any and all things, conditions and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Bond Law and by the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Bond Law or by the Constitution and laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

This Bond is one of a duly authorized issue of bonds of the Authority designated as its "City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015" (the "Bonds"), in the aggregate principal amount of _____ Dollars ($[_____]), authorized pursuant to the provisions of Article 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6584) of the California Government Code (the "Bond Law"), and issued pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and among the Authority, the City of Banning (the "City"), and the Trustee.

Reference is hereby made to the Indenture (a copy of which is on file at said Office of the Trustee) and all indentures supplemental thereto and to the Bond Law for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Authority thereunder. The Registered Owner of this Bond, by acceptance hereof, assents and agrees to all the provisions of the Indenture.

The Bonds have been issued by the Authority to assist the City in financing and refinancing certain improvements to the Electric System. Pursuant to an Installment Sale Agreement, dated as of August 1, 2015, by and between the City and the Authority, the Authority will sell to the City such improvements and the City will pay, in consideration therefor, Installment Payments, secured by the Net Revenues of the Electric System, as defined in the Indenture. The scheduled Installment Payments are equal to the debt service payments on the Bonds.

The Bonds and the interest thereon are payable from Revenues (as such term is defined in the Indenture), consisting primarily of Installment Payments to be made by the City under the Installment Sale Agreement as consideration for the purchase of certain improvements to the Electric System, and are secured by a pledge and assignment of Revenues, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Bonds are special obligations of the Authority and are not a lien or charge upon the funds or property of the Authority, except to the extent of the aforesaid pledge and assignment.

The Bonds shall be subject to special mandatory redemption as a whole or in part, on any date, from proceeds of an eminent domain award or proceeds of casualty insurance not used to repair or rebuild the Electric System, which proceeds may be used for such purpose pursuant to the Installment Sale Agreement, at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, without premium.

The Bonds maturing on or before June 1, 2025 shall not be subject to optional redemption prior to maturity. The Bonds maturing on or after June 1, 2026 shall be subject to redemption prior to their respective maturity dates, at the option of the Authority, by lot within a maturity on any date on or after June 1, 2025, from prepayment of Installment Payments made at the option of the City at the redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

The Bonds maturing on June 1, 20__ and June 1, 20__ are also subject to redemption prior to their respective stated maturities, on any June 1 on or after June 1, 20__ and June 1, 20__, respectively, in part by lot, from mandatory sinking account payments at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, without premium, as set forth below in the aggregate respective principal amounts and on the respective dates as set forth in the following tables; provided, however, that if some but not all of such Bonds have been redeemed pursuant to optional or special mandatory redemption provisions of the Indenture, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of $5,000.

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to: (i) the respective Owners of any Bonds designated for redemption, at least twenty (20) but not more than sixty (60) days prior to the redemption date, at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services (as such terms are defined in the Indenture), at least twenty (20) but not more than sixty (60) days prior to the redemption; *provided, however,* that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Interest on the Bonds called for redemption will not accrue from and after the redemption date.

The Bonds are issuable as fully registered Bonds in denominations of $5,000 and any integral multiple thereof. Subject to the limitations provided in the Indenture, Bonds may be exchanged, at said Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity.

The Trustee has no obligation or liability to the Registered Owners to make payments of principal of or interest on the Bonds, except from amounts on deposit for such purposes with the Trustee. The Trustee's sole obligations are to administer for the benefit of the Registered Owners the various funds and accounts established under the Indenture and, to the extent provided in the Indenture, to enforce the rights of the Authority under the Installment Sale Agreement.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said Office of the Trustee, but only in the manner, subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond or Bonds, of authorized denomination or denominations, of the same maturity and for the same aggregate principal amount, will be issued to the transferee in exchange herefor.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all outstanding Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Indenture and the rights and obligations of the Authority and of the owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee, all as more fully set forth in the Indenture.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes and the Authority and the Trustee shall not be affected by any notice to the contrary.

STATEMENT OF INSURANCE

[TO COME, IF APPLICABLE].

IN WITNESS WHEREOF, the City of Banning Financing Authority has caused this Bond to be executed in its name and on its behalf by the manual signature of its President and attested to by the manual signature of its Secretary, all as of the Issue Date stated above.

CITY OF BANNING FINANCING AUTHORITY

By _____
President

Attest:

_____
Secretary

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated: August ____, 2015

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Officer

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

_____

(Name, Address and Tax Identification or Social Security Number)

the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

_____

Signature(s) must be guaranteed by a qualified guarantor.

_____

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT), SERIES 2015

(Issue Dated Date: August ___, 2015)

Requisition of the City
(Acquisition and Construction Fund)
(Section 3.5 of the Indenture)

Attention: Corporate Trust Department

Request No.: P-___ (to be sequentially numbered)

Project Component	Amount of This Draw	Aggregate Amount Draws Including This Draw

(Continue on Additional Sheet if Necessary)

Name and Address of party to whom payment is to be made:

_____

Purpose for which the obligation was incurred:

_____

The undersigned (the "City") hereby certifies that (i) each such cost or expense constitutes a proper charge against the Acquisition and Construction Fund for services rendered, and has not been the subject of any other payment request filed with you; and (ii) if the payment is to be made to the City for amounts that it has paid or will pay to third parties, then the City has either made payment or will make payment within three business days of receipt of moneys requisitioned hereunder and that the aggregate number of business days during this calendar year during which it has held such amounts before making payment does not exceed twenty.

Date: _____

CITY OF BANNING

By:_____
Title:_____

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ESCROW AGREEMENT

by and between the

CITY OF BANNING FINANCING AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION
as Escrow Agent

Dated as of August 1, 2015

ESCROW AGREEMENT

This ESCROW AGREEMENT, dated as of August 1, 2015, by and between the CITY OF BANNING FINANCING AUTHORITY (the "Authority"), a joint powers authority organized and existing under the laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Escrow Agent and as Prior Trustee (the "Escrow Agent" and the "Prior Trustee");

W I T N E S S E T H:

WHEREAS, the Authority has previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), of which $40,045,000 remain outstanding, pursuant to an Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010 (the "Prior Indenture"), by and among the Authority, the City of Banning, California and the Prior Trustee; and

WHEREAS, the Authority desires to refund the 2007 Bonds; and

WHEREAS, the Authority has approved the issuance of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds"), the proceeds of which are to be used in part to effect the refunding of the 2007 Bonds;

NOW, THEREFORE, in consideration of the mutual premises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. As used herein, the following terms shall have the following meanings:

"Authority" means the City of Banning Financing Authority.

"City" means the City of Banning.

"Code" means the Internal Revenue Code of 1986.

"Escrow Agent" means U.S. Bank National Association and its successors and assigns, and any other corporation or institution that may at any time be substituted in its place as provided in Section 14 hereof.

"Escrow Fund" means the Escrow Fund established and held by the Escrow Agent pursuant to Section 3 hereof.

"Escrow Requirements" means the amount sufficient to pay the principal and interest with respect to the 2007 Bonds becoming due prior to the Redemption Date and the redemption price on the Redemption Date.

"Escrow Securities" means the Federal Securities (as defined in the Prior Indenture) deposited in the Escrow Fund pursuant to Section 5 hereof.

"2007 Bonds" means the $45,790,000 City of Banning Financing Authority Revenue Bonds (Electric System Project), Series 2007.

"Prior Indenture" means the Indenture of Trust , dated as of June 1, 2007, by and among the Authority, the City, and the Prior Trustee, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010, relating to the 2007 Bonds.

"Prior Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the 2007 Bonds.

"Redemption Date" means June 1, 2017, the date on which the 2007 Bonds are to be redeemed.

"Refunding Bonds" means the Authority's Refunding Revenue Bonds (Electric System Project) Series 2015.

"Refunding Bonds Indenture" means the Indenture of Trust, dated as of August 1, 2015, by and among the Authority, the City, and the Refunding Bonds Trustee.

"Refunding Bonds Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the Refunding Bonds.

SECTION 2. The Authority hereby appoints U.S. Bank National Association as Escrow Agent under this Escrow Agreement for the benefit of the holders of the 2007 Bonds. The Escrow Agent hereby accepts the duties and obligations of Escrow Agent under this Escrow Agreement and agrees that the irrevocable instructions to the Escrow Agent herein provided are in a form satisfactory to it. The applicable and necessary provisions of the Prior Indenture, including particularly the redemption provisions thereof, are incorporated herein by reference. Reference herein to, or citation herein of, any provisions of the Prior Indenture shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

SECTION 3. There is created and established with the Escrow Agent a special and irrevocable trust fund designated the "2007 Bonds Escrow Fund" (the "Escrow Fund"), to be held by the Escrow Agent separate and apart from all other funds and accounts, and used only for the purposes and in the manner provided in this Escrow Agreement.

SECTION 4. The Authority herewith deposits, or causes to be deposited, with the Escrow Agent into the Escrow Fund, to be held in irrevocable trust by the Escrow Agent and to be applied solely as provided in this Escrow Agreement, the sum of $_____, as follows:

(i) from the proceeds of the Refunding Bonds, the sum of $_____; and

(ii) from the Reserve Account created under the Prior Indenture, the sum of $_____.

The Authority hereby instructs the Prior Trustee that any moneys or investments remaining in the funds and accounts of the Prior Indenture which are not required to make the foregoing deposits or rebated to the U.S. Treasury are to be transferred on the Redemption Date, or as soon as practicable thereafter, to the Refunding Bonds Trustee for deposit into the Bond Service Fund under the Refunding Bonds Indenture.

SECTION 5. The Escrow Agent acknowledges receipt of the moneys described in Section 4 above. The Escrow Agent agrees immediately to invest $_____ of such amounts in the Escrow Securities set forth in Exhibit A hereto, to deposit such Escrow Securities in the Escrow Fund, and to retain the amount of $____ in cash in the Escrow Fund.

The Escrow Agent shall not have the power to sell, transfer, request the redemption of or otherwise dispose of any of the Escrow Securities or to substitute other securities therefor.

SECTION 6. As the principal of the Escrow Securities shall mature and be paid, and the investment income and earnings thereon are paid, the Escrow Agent shall not reinvest such moneys, except as may be provided in Exhibit A hereto. Such amounts shall be applied by the Escrow Agent to the payment of the Escrow Requirements for the equal and ratable benefit of the holders of the 2007 Bonds.

SECTION 7. The Authority has caused schedules to be prepared relating to the sufficiency of the anticipated receipts from the Escrow Securities listed in Exhibit A to pay the Escrow Requirements.

SECTION 8. The Authority hereby directs and the Escrow Agent hereby agrees that the Escrow Agent will take all the actions required to be taken by it hereunder, in order to effectuate this Escrow Agreement. The liability of the Escrow Agent for the payment of the Escrow Requirements shall be limited to the application, in accordance with this Escrow Agreement, of the principal amount of the Escrow Securities and the interest earnings thereon available for such purposes in the Escrow Fund.

SECTION 9. (a) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of defeasance to the owners of the 2007 Bonds substantially in the form of Exhibit B attached hereto.

(b) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of redemption to the owners of the 2007 Bonds containing the information prescribed in Section 2.3 of the Prior Indenture, substantially in the form of Exhibit C attached hereto.

(c) The Escrow Agent is hereby further instructed to post a copy of such notices, when mailed, to (A) the Securities Depositories (as hereinafter defined) and (B) the Information Services (as hereinafter defined).

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attn. Call Notification Department, Fax (212) 855-7232, or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a Certificate of the City delivered to the Escrow Agent.

"Information Services" means the Electronic Municipal Market Access system (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at www.emma.msrb.org; or, in accordance with then-current guidelines of the Securities and Exchange Commission, to such other addresses and/or such other services providing information with respect to called bonds as the Authority may designate in a certificate of the Authority delivered to the Escrow Agent.

SECTION 10. The Authority irrevocably instructs the Escrow Agent and the Prior Trustee to pay to the respective owners of the 2007 Bonds presented for payment, through and including the Redemption Date, from amounts held in the Escrow Fund, the principal of the 2007 Bonds maturing prior to and on the Redemption Date plus in each case unpaid interest accrued thereon to the Redemption Date.

After such payment has been made on the Redemption Date, all moneys remaining in the Escrow Fund shall be transferred to the Trustee for deposit in the Bond Service Fund.

SECTION 11. The trust hereby created shall be irrevocable and the holders of the 2007 Bonds shall have an express lien limited to all moneys and Escrow Securities in the Escrow Fund, including the interest earnings thereon, until paid out, used and applied in accordance with this Escrow Agreement.

SECTION 12. This Escrow Agreement is made pursuant to and in furtherance of the Prior Indenture and for the benefit of the holders from time to time of the 2007 Bonds and it shall not be repealed, revoked, altered, amended or supplemented without the written consent of all such holders and the written consent of the Escrow Agent and the Authority; provided, however, that the Authority and the Escrow Agent may, without the consent of, or notice to, such holders enter into such amendments or supplements as shall not be inconsistent with the terms and provisions of this Escrow Agreement, for any one or more of the following purposes:

(a) to cure an ambiguity or formal defect or omission in this Escrow Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the 2007 Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and

(c) to transfer to the Escrow Agent and make subject to this Escrow Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to conclusively rely upon an opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the 2007 Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 13. In consideration of the services rendered by the Escrow Agent under this Escrow Agreement, the Authority agrees to and shall pay to the Escrow Agent its fees, plus expenses, including all reasonable expenses, charges, counsel fees and other disbursements incurred by it or by its attorneys, agents and employees in and about the performance of their powers and duties hereunder. Notwithstanding the foregoing, the Escrow Agent shall have no lien whatsoever upon any of the moneys or Escrow Securities in the Escrow Fund for the payment of such proper fees and expenses.

SECTION 14. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from the trusts hereby created by giving not less than 60 days' written notice to the Authority and the Prior Trustee, specifying the date when such resignation will take effect in the same manner as a notice is to be mailed pursuant to Section 9 hereof, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of the 2007 Bonds or by the Authority as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and to the Authority and the Prior Trustee and signed by the holders of a majority in principal amount of the 2007 Bonds.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in the case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Escrow Agent may be appointed by the holders of a majority in principal amount of the 2007 Bonds, by an instrument or concurrent instruments in writing, signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the Authority shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in principal amount of the 2007 Bonds, and any such temporary Escrow Agent so appointed by the Authority shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or the Authority pursuant to the foregoing provisions of this Section within 60 days after written notice of the removal or resignation of the Escrow Agent has been given to the Authority, the holder of any of the 2007 Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation or institution with trust powers organized under the financial institution laws of the United States or any state, and shall have at the time of appointment capital and surplus of not less than $100,000,000. For purpose of this Section 14, a corporation or institution with trust powers organized under the financial institution laws of the United States or any state shall be deemed to have combined capital and surplus of at least $100,000,000 if it has a combined capital surplus of at least $20,000,000 and is a wholly-owned subsidiary of a corporation having a combined capital and surplus of at least $100,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Authority, an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trust, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Authority execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor. Should any transfer, assignment or instrument in writing from the Authority be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instrument in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Any corporation or association into which the Escrow Agent, or any successor to it in the trusts created by this Escrow Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it shall be a party or any successor to a substantial portion of the Escrow Agent's corporate trust business, shall, if it meets the qualifications set forth in the fifth paragraph of this Section and if it is otherwise satisfactory to the Authority, be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 15. The Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement except as provided in Section 5 hereof. The Escrow Agent shall have no power or duty to transfer or otherwise dispose of the moneys held hereunder except as provided in this Escrow Agreement.

SECTION 16. To the extent permitted by law, the Authority hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the Authority or any other person under any other agreement or

instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant thereto, the retention of such securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement. The Authority shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's successors, assigns, agents and employees or the material breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the Authority or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement.

SECTION 17. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the Authority, and the Escrow Agent assumes no responsibility for the correctness thereof. The Escrow Agent makes no representation as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the defeasance of the 2007 Bonds pursuant to the Prior Indenture or to the validity of this Escrow Agreement as to the Authority and, except as otherwise provided herein, the Escrow Agent shall incur no liability in respect thereof. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence or willful misconduct, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may consult with counsel, who may or may not be counsel to the Authority, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel) may be deemed to be conclusively established by a written certification of the Authority. Whenever the Escrow Agent shall deem it necessary or desirable that a matter specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel be proved or established prior to taking, suffering, or omitting any such action, such matter may be established only by such a certificate or such an opinion. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to this Escrow Agreement.

No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business shall be the successor to the Escrow

Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 18. This Escrow Agreement shall terminate upon payment of all 2007 Bonds on the Redemption Date, or upon such later date on which all amounts held in the Escrow Fund have been disbursed as provided herein.

SECTION 19. THIS ESCROW AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 20. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Authority or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

All the covenants, promises and agreements in this Escrow Agreement contained by or on behalf of the Authority or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 21. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first-above written.

CITY OF BANNING FINANCING AUTHORITY

By_____
Executive Director

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent and as Prior Trustee

By_____
Authorized Officer

ACKNOWLEDGED:

CITY OF BANNING,

By: _____
Title: City Manager

Exhibit A
Schedule of Escrow Securities

Principal Amount	Security	Maturity Date	Coupon	Purchase Price

Exhibit B

NOTICE OF DEFEASANCE TO THE OWNERS OF

$45,790,000
City of Banning Financing Authority
Revenue Bonds (Electric System Project), Series 2007

NOTICE IS HEREBY GIVEN to the applicable owners of the outstanding City of Banning Financing Authority, $45,790,000 Revenue Bonds (Electric System Project), Series 2007, as listed below (the "Bonds"), that in connection with the Bonds maturing in the years 2016 through 2038, inclusive, and bearing the CUSIP numbers set forth below (the "Defeased Bonds"), there has been deposited with U.S. Bank National Association (the "Trustee"), moneys which will be sufficient to pay the redemption price of and interest on the Defeased Bonds through and including the redemption date of June 1, 2017. The redemption price of, and interest on, such Defeased Bonds shall be paid only from moneys deposited with the Trustee as aforesaid. As a result of such deposit, such Defeased Bonds are deemed to have been paid in accordance with the applicable provisions of the Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010, by and among the City of Banning Financing Authority, the City of Banning and the Trustee, pursuant to which the Bonds were issued.

Maturity Date (June 1)	Principal Amount	Interest Rate	CUSIP (066614)
2016	$ 970,000	5.00%	AH1
2017	1,020,000	5.00	AJ7
2018	1,070,000	5.00	AK4
2019	1,125,000	5.00	AL2
2020	1,180,000	5.00	AM0
2021	1,240,000	5.00	AN8
2022	1,305,000	5.00	AP3
2025	4,315,000	5.00	AT5
2027	3,240,000	4.50	AQ1
2028	1,730,000	5.00	AU2
2029	1,815,000	5.00	AV0
2032	6,010,000	5.00	AR9
2038	15,025,000	5.00	AS7

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2015

By: U.S. Bank National Association, as Trustee

Exhibit C

NOTICE OF REDEMPTION TO THE OWNERS OF

$45,790,000
City of Banning Financing Authority
Revenue Bonds (Electric System Project), Series 2007

NOTICE IS HEREBY GIVEN pursuant to the terms of the Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010, by and among the City of Banning Financing Authority (the "Authority"), the City of Banning, and U.S. Bank National Association, as trustee, that all of the $45,790,000 City of Banning Financing Authority Revenue Bonds (Electric System Project), Series 2007, as listed below (the "Bonds"), initially issued on June 21, 2007, have been selected for redemption on June 1, 2017 (the "Redemption Date") at a redemption price equal to the principal amount of the Bonds to be redeemed (the "Redemption Price") together with interest accrued to the Redemption Date.

Maturity Date (June 1)	Principal Amount	Interest Rate	CUSIP (066614)
2017	$1,020,000	5.00%	AJ7
2018	1,070,000	5.00	AK4
2019	1,125,000	5.00	AL2
2020	1,180,000	5.00	AM0
2021	1,240,000	5.00	AN8
2022	1,305,000	5.00	AP3
2025	4,315,000	5.00	AT5
2027	3,240,000	4.50	AQ1
2028	1,730,000	5.00	AU2
2029	1,815,000	5.00	AV0
2032	6,010,000	5.00	AR9
2038	15,025,000	5.00	AS7

Pursuant to the governing documents, payment of the Redemption Price on the Bonds called for redemption will be paid upon presentation of the Bonds in the following manner:

If by First Class/Registered/Certified Mail: *Express Delivery Only:* *By Hand Only:*

Interest with respect to the principal amount of the Bonds designated to be redeemed shall cease to accrue on and after the Redemption Date.

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2017

By: U.S. Bank National Association, as Trustee

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CONTINUING DISCLOSURE AGREEMENT

THIS CONTINUING DISCLOSURE AGREEMENT (this "Disclosure Agreement"), dated as of August 1, 2015, is by and between the City of Banning, California (the "City") and Willdan Financial Services, as dissemination agent (the "Dissemination Agent"), in connection with the issuance by the City of Banning Financing Authority of it $_____ aggregate principal amount of Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds").

WITNESSETH:

WHEREAS, this Disclosure Agreement is being executed and delivered by the City and the Dissemination Agent for the benefit of the owners and beneficial owners of the Bonds and in order to assist the purchaser of the Bonds in complying with the Rule (as defined herein);

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Definitions. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and among the City, the City of Banning Financing Authority and U.S. Bank National Association, as Trustee. In addition, the following capitalized terms shall have the following meanings:

"Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 2 and 3 hereof.

"Annual Report Date" means each March 31 after the end of the Fiscal Year.

"Disclosure Representative" means the [City Manager] of the City or his or her designee, or such other officer or employee as the City shall designate in writing to the Dissemination Agent and the Trustee from time to time.

"Dissemination Agent" means Willdan Financial Services, acting as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation.

"EMMA" means Electronic Municipal Market Access system, maintained on the internet at http://emma.msrb.org by the MSRB.

"Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any twelve-month or fifty-two week period hereafter selected by the City, with notice of such selection or change in Fiscal Year to be provided as set forth herein.

"Listed Events" means any of the events listed in Section 4 hereof and any other event legally required to be reported pursuant to the Rule.

"MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to he made through EMMA.

"Official Statement" means the Official Statement, dated _____, 2015, relating to the Bonds.

"Participating Underwriter" means any of the original purchaser(s) of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

"Repository" means, until otherwise designated by the SEC, EMMA.

"Rule" means Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same has been or may be amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

Section 2. Provision of Annual Reports.

(a) The City shall provide, or shall cause the Dissemination Agent to provide, to MSRB, through EMMA, not later than the Annual Report Date, an Annual Report which is consistent with the requirements of Section 3 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as provided by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 3 of this Disclosure Agreement. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent. If the Fiscal Year changes for the City, the City shall give notice of such change in the manner provided under Section 4(e) hereof.

(b) If by 15 Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, through EMMA, the Dissemination Agent has not received a copy of the Annual Report the Dissemination Agent shall contact the City to determine if the City is in compliance with subsection (a). The City shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder. The Dissemination Agent may conclusively rely upon such certification of the City and shall have no duty or obligation to review such Annual Report.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

(ii) (if the Dissemination Agent is other than the Trustee), to the extent appropriate information is available to it, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided.

Section 3. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the City for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental

entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) The following tables presented in the Official Statement, updated for the Fiscal Year covered by the Annual Report:

(i) [Table No. __ "City of Banning Electric System Customers, Retail Sales, Revenues and Demand – Historical";

(ii) Table No. __ "City of Banning Electric System Customers, Retail Sales, Revenues and Demand – Projected";

(iii) Table No. __ "City of Banning Electric System – Ten Largest Customers"; and

(iv) Table No. __ "City of Banning Electric System – Take or Pay Obligations";

(v) Table No. __ "City of Banning Elcctric System – Five Year History of Rates"; and

(vi) Table No. __ "City of Banning Electric System – Historical Operating Results."]

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the City is an "obligated person" (as defined by the Rule), which are available to the public on EMMA or filed with the SEC. The City shall clearly identify each such document to be included by reference.

Section 4. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 4, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, in a timely manner not more than ten (10) Business Days after the event:

(1) principal and interest payment delinquencies;

(2) defeasances;

(3) tender offers;

(4) rating changes;

(5) adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax- status of the Bonds;

(6) unscheduled draws on the debt service reserves reflecting financial difficulties;

(7) unscheduled draws on credit enhancements reflecting financial difficulties;

(8) substitution of credit or liquidity providers or their failure to perform; or

(9) bankruptcy, insolvency, receivership or similar proceedings.

For these purposes, any event described in the immediately preceding paragraph (9) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(b) Pursuant to the provisions of this Section 4, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

(1) mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the City or their termination;

(2) appointment of a successor or additional Trustee or the change of the name of a Trustee;

(3) nonpayment related defaults;

(4) modifications to the rights of Owners;

(5) a notice of redemption; or

(6) release, substitution or sale of property securing repayment of the Bonds.

(c) Whenever the City obtains knowledge of the occurrence of a Listed Event, described in subsection (b) of this Section 4, the City shall as soon as possible determine if such event is material under applicable federal securities law.

(d) If the City determines that the occurrence of a Listed Event described in subsection (b) of this Section 4 is material under applicable federal securities law, the City shall promptly notify the Dissemination Agent in writing and instruct the Dissemination Agent to report the occurrence to the Repository in a timely manner not more than ten (10) Business Days after the event.

(e) If the Dissemination Agent has been instructed by the City to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB.

Section 5. **Filings with the MSRB**. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 6. **Termination of Reporting Obligation**. The City's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 4 hereof.

Section 7. **Dissemination Agent**. The City may, from time to time, appoint or engage another Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. .

Section 8. **Amendment; Waiver**. Notwithstanding any other provision of this Disclosure Agreement, the City may amend this Disclosure Agreement, provided no amendment increasing or affecting the obligations or duties of the Dissemination Agent shall be made without the consent of such party, and any provision of this Disclosure Agreement may be waived if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the City and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

Section 9. **Additional Information**. Nothing in this Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the City shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 10. **Default**. In the event of a failure of the City or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee, at the written direction of any Participating Underwriter or the holders of at least 25% of the aggregate amount of principal evidenced by Outstanding Bonds and upon being indemnified to its reasonable satisfaction, shall, or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City, Trustee or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the City, the Trustee or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

Section 11. **Duties, Immunities and Liabilities of Trustee and Dissemination Agent**. [Article VI of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture.] The Dissemination Agent shall not be responsible for the form or content of any Annual Report or notice of Listed Event. The Dissemination Agent shall receive reasonable compensation for its services provided under this Disclosure Agreement. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorney's fees) of defending against any claim of liability, but excluding liabilities due to the

Dissemination Agent's negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 12. **Beneficiaries**. This Disclosure Agreement shall inure solely to the benefit of the City, the Trustee, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 13. **Counterparts**. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Disclosure Agreement as of the date first above written.

CITY OF BANNING, CALIFORNIA

By:_____
Responsible Officer

WILLDAN FINANCIAL SERVICES, as Dissemination Agent

By:_____
Authorized Officer

EXHIBIT A

NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF FAILURE TO FILE ANNUAL REPORT

Name of Obligor: CITY OF BANNING

Name of Issue: CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS, (ELECTRIC SYSTEM PROJECT)
SERIES 2015

Date of Issuance: August __, 2015

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-captioned Bonds as required by the Continuing Disclosure Agreement, dated as of August 1, 2015, by and between the City and [Willdan Financial Services] [The City anticipates that the Annual Report will be filed by _____.]

Dated: _____, 20__ [_____], on behalf of the City

cc: City of Banning, California

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$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

BOND PURCHASE CONTRACT

_____ __, 2015

City of Banning Financing Authority
99 East Ramsey Street
Banning, California 92220
Attention: Executive Director

City of Banning
99 East Ramsey Street
Banning, California 92220
Attention: City Manager

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the "Representative"), as representative of itself and The Williams Capital Group, L.P. (together with the Representative, the "Underwriters"), offers to enter into this Bond Purchase Contract (this "Purchase Contract") with the City of Banning Financing Authority (the "Authority") and the City of Banning (the "City"). This offer is made subject to the Authority's and the City's acceptance by execution of this Purchase Contract and delivery of the same to the Underwriters on or before 11:59 p.m. on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the Authority and the City at any time prior to such acceptance. Upon the Authority's and the City's acceptance hereof, the Purchase Contract will be binding upon the Authority, the City and the Underwriters. Capitalized terms used in this Purchase Contract and not otherwise defined herein shall have the respective meanings set forth for such terms in the Trust Indenture (defined below).

Section 1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations set forth in this Purchase Contract, the Underwriters agree to purchase from the Authority, and the Authority agrees to sell and deliver to the Underwriters, all (but not less than all) of the $_____ City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") at a purchase price of $_____ (being an amount equal to the principal amount of the Bonds, plus/less a net original issue premium/discount of $_____ and less an Underwriters' discount of $_____). The obligations of the Underwriters to purchase, accept delivery of and pay for the Bonds shall be conditioned on the sale and delivery of all of the Bonds by the Authority to the Underwriters at Closing (as such term is defined herein).

Section 2. Bond Terms; Authorizing Instruments. (a) The Bonds shall be dated their date of delivery and shall mature and bear interest as shown on Exhibit A attached hereto. The Bonds shall be as described in, and shall be issued and secured under, an Indenture of Trust, dated as

of August 1, 2015 (the "Trust Indenture"), by and among the Authority, the City and U.S. Bank National Association, as trustee (the "Trustee"). The Bonds are payable and subject to redemption as provided in the Trust Indenture and as described in the Official Statement.

(b) The Bonds will be issued pursuant to Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584, and are payable from and secured by the Authority's pledge of "Revenues" under and as defined in the Trust Indenture, consisting primarily of Installment Payments to be made by the City to the Authority pursuant to an Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), by and between the Authority and the City.

(c) The net proceeds of the sale of the Bonds will be used: (i) to finance certain capital improvements to the City's electric system (the "Enterprise"); (ii) to refund the Authority's Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"); and (iii) to pay the costs of issuing the Bonds. [UPDATE TO REFLECT INSURANCE, RESERVE FUND AND CAPITALIZED INTEREST AS NECESSARY]

Section 3. Public Offering. The Underwriters agree to make an initial bona fide public offering of all of the Bonds, at not in excess of the initial public offering yields or prices set forth on Exhibit A attached hereto. Following the initial public offering of the Bonds, the offering prices may be changed from time to time by the Underwriters. The City and the Authority acknowledge and agree that: (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction among the City, Authority and the Underwriters; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principal and are not acting as Municipal Advisors (as such term is defined in Section 15B of The Securities Exchange Act of 1934, as amended) to the City or the Authority; (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the City or the Authority with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or is currently providing other services to the City or the Authority on other matters); (iv) the Underwriters have financial interests that may differ from and be adverse to those of the City or the Authority; and (v) the City and Authority have consulted their own legal, financial and other advisors to the extent that they have deemed appropriate.

Section 4. Official Statement; Continuing Disclosure. (a) The Authority has delivered to the Underwriters the Preliminary Official Statement dated _____ __, 2015 (the "Preliminary Official Statement") and will deliver to the Underwriters the final Official Statement dated the date of this Purchase Contract (as amended and supplemented from time to time pursuant to Section 5(i) of this Purchase Contract, the "Official Statement").

(b) The Authority hereby authorizes the use of the Official Statement and the information contained therein by the Underwriters in connection with the public offering and the sale of the Bonds. The Authority consents to the use by the Underwriters prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds. The Underwriters hereby agree that they will not send any confirmation requesting payment for the purchase of any Bonds unless the confirmation is accompanied by or preceded by the delivery of a copy of the Official Statement. The Underwriters agree: (1) to provide the Authority with final pricing information on the Bonds on a timely basis prior to the Closing; and (2) to take any and all

other actions necessary to comply with applicable Securities and Exchange Commission rules and Municipal Securities Rulemaking Board (the "MSRB") rules governing the offering, sale and delivery of the Bonds to ultimate purchasers.

(c) In connection with the issuance of the Bonds, and in order to assist the Underwriters in complying with the provisions of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"), the City will execute a Continuing Disclosure Agreement, dated as of August 1, 2015 (the "Continuing Disclosure Undertaking"), with Willdan Financial Services, as dissemination agent (the "Dissemination Agent"), under which the City will undertake to provide certain financial and operating data as required by Rule 15c2-12. The form of the Continuing Disclosure Undertaking is attached as an appendix to the Preliminary Official Statement.

Section 5. Representations, Warranties and Covenants of the Authority. The Authority hereby represents, warrants and agrees with the Underwriters that:

(a) The Commission of the Authority has taken official action by resolution (the "Authority Resolution") adopted by a majority of the members of the Commission of the Authority at a regular meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the Trust Indenture, the Installment Sale Agreement, the Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), this Purchase Contract (together with the Trust Indenture, the Installment Sale Agreement and the Escrow Agreement, the "Authority Agreements") and the Official Statement, and the taking of any and all such action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated hereby.

(b) The Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "State") and has all necessary power and authority to adopt the Authority Resolution and to enter into and perform its duties under the Authority Agreements.

(c) By all necessary official action, the Authority has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the Bonds and the Authority Agreements, and the consummation by it of all other transactions contemplated by the Authority Resolution, the Authority Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered, the Authority Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the Authority, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the Authority's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement under the caption "THE AUTHORITY" and the information and statements in the Official Statement relating to the Authority under the caption "LITIGATION" do not and will not contain any untrue

statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) As of the date hereof, except as described in the Preliminary Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against, and notice of which has been served on and received by, the Authority or, to the best knowledge of the Authority, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the Authority, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of Authority Agreements or the Bonds, or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, or any other agreement or instrument to which the Authority is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the Authority required for the execution and delivery of this Purchase Contract and the other Authority Agreements or the consummation by the Authority of the transactions contemplated by the Official Statement or the Authority Agreements.

(g) Any certificate signed by any official of the Authority authorized to do so shall be deemed a representation and warranty by the Authority to the Underwriters as to the statements made therein.

(h) The Authority is not in default, and at no time has the Authority defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i) If any event occurs of which the Authority has knowledge between the date of this Purchase Contract and the date of the Closing that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Authority shall notify the Representative and if, in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will cooperate with the Underwriters in causing the Official Statement to be amended or supplemented in a form and in a manner approved by the Representative. All expenses thereby incurred will be paid by the Authority, and the Underwriters will file, or cause to be filed, the amended or supplemented Official Statement with the MSRB's Electronic Municipal Market Access database ("EMMA").

(j) The Authority will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order: (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate; and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions. The Authority will not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(k) The Authority is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of any state or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or any loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, which breach or default has or may have an adverse effect on the ability of the Authority to perform its obligations under the Authority Agreements, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the adoption, execution and delivery of the Authority Agreements, if applicable, and compliance with the provisions on the Authority's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Authority or under the terms of any such law, regulation or instrument, except as may be provided by the Authority Agreements.

(l) Except as set forth in the Official Statement under the caption "CONTINUING DISCLOSURE," the Authority has complied in all material respects with its continuing disclosure undertakings in the past five years.

Section 6. Representations, Warranties and Covenants of the City. The City hereby represents, warrants and agrees with the Underwriters that:

(a) The City Council (the "City Council") of the City has taken official action by Resolution (the "City Resolution") adopted by a majority of the members of the City Council at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the Indenture, the Installment Sale Agreement, the Continuing Disclosure Undertaking, this Purchase Contract (together with the Indenture, the Installment Sale Agreement and the Continuing Disclosure Agreement, the "City Agreements") and the Official Statement and the taking of any and all such action as may be required on the part of the City and carry out, give effect to and consummate the transactions contemplated hereby.

(b) The City is a municipal corporation and general law city duly organized and existing under the laws of the State and has all necessary power and authority to adopt the City Resolution and to enter into and perform its duties under the City Agreements.

(c) By all necessary official action, the City has duly adopted the City Resolution, has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the City Agreements, and the consummation by it of all other transactions contemplated by the City Resolution, the City Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered, the City Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto, as applicable) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy,

insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the City's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement (other than under the caption "THE AUTHORITY" and statements relating to the Authority under the caption "LITIGATION") do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that no representation is made with respect to information relating to DTC (as such term is defined herein) or DTC's book-entry system).

(e) As of the date hereof, except as described in the Preliminary Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against, and notice of which has been served on and received by, the City or, to the best knowledge of the City, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the City, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of City Agreements or the Bonds; or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, or any other agreement or instrument to which the City is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the City required for the execution and delivery of this Purchase Contract and the City Agreements or the consummation by the City of the transactions contemplated by the Official Statement or the City Agreements.

(g) Any certificate signed by any official of the City authorized to do so shall be deemed a representation and warranty by the City to the Underwriters as to the statements made therein.

(h) The City is not in default, and at no time has the City defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i) If any event occurs of which the City has knowledge between the date of this Purchase Contract and the date of the Closing that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Representative and, if in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will cooperate with the Underwriters in causing the Official Statement to be amended or supplemented in a form and in a manner approved by the Representative. All expenses thereby incurred will be paid by the City, and the Underwriters will file, or cause to be filed, the amended or supplemented Official Statement with EMMA.

(j) Except as set forth in the Official Statement under the caption "CONTINUING DISCLOSURE," the City has complied in all material respects with its continuing disclosure undertakings in the past five years.

(k) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order: (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate; and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions. The City will not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(l) The City is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of any state or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or any loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party, which breach or default has or may have an adverse effect on the ability of the City to perform its obligations under the City Agreements, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the adoption, execution and delivery of the City Agreements, if applicable, and compliance with the provisions on the City's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City or under the terms of any such law, regulation or instrument, except as may be provided by the City Agreements.

(m) The financial statements relating to the receipts, expenditures and cash balances of the City as of June 30, 2014 attached as an appendix to the Official Statement fairly represent the receipts, expenditures and cash balances of the City as of such date. Except as disclosed in the Official Statement or otherwise disclosed in writing to the Representative, there has not been any materially adverse change in the financial condition of the City or the Enterprise or in the City's operations or the operations of the Enterprise since June 30, 2014, and there has been no occurrence, circumstance or combination thereof which is reasonably expected to result in any such materially adverse change.

Section 7. The Closing. (a) At 8:00 A.M., Pacific Time, on _____ __, 2015, or on such earlier or later time or date as may be agreed upon by the Representative, the Authority and the City (the "Closing"), the Authority shall deliver or cause to be delivered to the Trustee, the Bonds in definitive form, registered in the name of Cede & Co., as the nominee of The Depository Trust Company, New York, New York ("DTC") (so that the Bonds may be authenticated by the Trustee and credited to the account specified by the Representative under DTC's FAST procedures). Prior to the Closing, the Authority shall deliver, at the offices of Norton Rose Fulbright US LLP ("Bond Counsel") in Los Angeles, California, or such other place as is mutually agreed upon by the Representative, the City and the Authority, the other documents described in this Purchase Contract.

On the date of the Closing, the Underwriters shall pay the purchase price of the Bonds as set forth in Section 1 of this Purchase Contract in immediately available funds to the order of the Trustee.

(b) The Bonds shall be issued in fully registered form and shall be prepared and delivered as one Bond for each maturity registered in the name of a nominee of DTC. It is anticipated that CUSIP identification numbers will be inserted on the Bonds, but neither the failure to provide such numbers nor any error with respect thereto shall constitute a cause for failure or refusal by the Underwriters to accept delivery of the Bonds in accordance with the terms of this Purchase Contract.

Section 8. Conditions to Underwriters' Obligations. The Underwriters have entered into this Purchase Contract in reliance upon the representations and warranties of the Authority and the City contained herein and to be contained in the documents and instruments to be delivered on the date of the Closing, and upon the performance by the Authority and the City of their respective obligations to be performed hereunder and under such documents and instruments to be delivered at or prior to the date of the Closing. The Underwriters' obligations under this Purchase Contract are and shall also be subject to the following conditions:

(a) The representations and warranties of the Authority and the City contained in this Agreement shall be true and correct in all material respects on the date of this Purchase Contract and on and as of the date of the Closing as if made on the date of the Closing.

(b) As of the date of the Closing, the Official Statement shall not have been amended, modified or supplemented, except in any case as may have been agreed to by the Representative.

(c) (i) As of the date of the Closing, the Authority Resolution, the City Resolution, the Authority Agreements and the City Agreements shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by the Authority, the City and the Representative; (ii) the Authority shall perform or have performed all of its obligations required under or specified in the Authority Resolution, the Authority Agreements and this Purchase Contract to be performed at or prior to the date of the Closing; and (iii) the City shall perform or have performed all of its obligations required under or specified in the City Resolution, the City Agreements and this Purchase Contract to be performed at or prior to the date of the Closing.

(d) As of the date of the Closing, all necessary official action of the Authority relating to the Authority Agreements, the Authority Resolution and the Official Statement, and all necessary official action of the City relating to the City Agreements, the City Resolution, and the Official Statement, shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect.

(e) Subsequent to the date of this Purchase Contract, up to and including the date of the Closing, there shall not have occurred any change in the financial affairs of the Authority or the City, or in the operations of the Enterprise, as described in the Official Statement, which in the reasonable professional judgment of the Representative materially impairs the investment quality of the Bonds.

(f) As of or prior to the date of the Closing, the Underwriters shall have received each of the following documents:

(A) Certified copies of the Authority Resolution and the City Resolution.

(B) Duly executed copies of the Authority Agreements and the City Agreements.

(C) The Preliminary Official Statement and the Official Statement, with the Official Statement duly executed on behalf of the Authority and the City.

(D) An approving opinion of Bond Counsel, dated as of the Closing, as to the validity of the Bonds and the exclusion of interest on the Bonds from federal and State income taxation, addressed to the Authority and the City substantially in the form attached as an appendix to the Official Statement, and a reliance letter with respect thereto addressed to the Underwriters and the Trustee.

(E) A supplemental opinion of Bond Counsel, addressed to the Underwriters, to the effect that:

(1) The Purchase Contract has been duly executed and delivered by the Authority and the City and is valid and binding upon the Authority and the City, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles;

(2) The Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Trust Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(3) The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE BONDS" (other than statements relating to DTC or its book-entry system), "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "TAX MATTERS," and in Appendices C and D, insofar as such statements purport to describe certain provisions of the Bonds, or to state legal conclusions and the opinion of Bond Counsel regarding the tax exempt nature of the Bonds for federal and State income tax purposes, present a fair and accurate summary of the provisions thereof.

(F) A defeasance opinion of Bond Counsel relating to the 2007 Bonds, in form and substance satisfactory to Bond Counsel, the Trustee and the Underwriters.

(G) A letter, dated the Closing Date and addressed to the Underwriters, of Norton Rose Fulbright US LLP, Disclosure Counsel, to the effect that Disclosure Counsel is not passing upon and has not undertaken to determine independently or to verify the accuracy or completeness of the statements contained in the Official Statement, and is, therefore, unable to make any representation to the Underwriters in that regard, but on the basis of its participation in conferences with representatives of the City, the City Attorney, the Authority, Bond Counsel, the City's Financial Advisor, representatives of the Underwriters and others, during which conferences the content of the Official Statement and related matters were discussed, and its examination of certain documents, and, in reliance thereon and based on the information made available to it in its role as Disclosure Counsel and its understanding of applicable law, Disclosure Counsel advises the Underwriters as a matter of fact, but not opinion, that no information has come to the attention of the attorneys in the firm working on such matter which has led them to believe that the Official Statement (excluding therefrom the financial and statistical data, forecasts, charts, numbers, estimates, projections, assumptions and expressions of opinion included in the Official Statement, information regarding DTC and its book entry system and the information set forth in Appendices A, F and G, as to all of

which no opinion is expressed) as of its date and as of the Closing contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and advising the Underwriters that, other than reviewing the various certificates and opinions required by this Purchase Contract regarding the Official Statement, Disclosure Counsel has not taken any steps since the date of the Official Statement to verify the accuracy of the statements contained in the Official Statement.

(H) An opinion of the City Attorney, dated as of the Closing addressed to the Authority, the City and the Underwriters, substantially in the form attached hereto as Exhibit E.

(I) An executed Rule 15c2-12 certificate of the Authority and the City, dated as of the date of the Preliminary Official Statement, in the form attached hereto as Exhibit B.

(J) An executed closing certificate of the Authority, dated as of the Closing, in the form attached hereto as Exhibit C.

(K) An executed closing certificate of the City, dated as of the Closing, in the form attached hereto as Exhibit D.

(L) The opinion or opinions of counsel of the Trustee and the Escrow Agent, dated as of the Closing, addressed to the Authority, the City and the Underwriters, in form and substance satisfactory to Bond Counsel and the Representative.

(M) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Trustee to the effect that the Trustee has accepted the duties imposed by the Trust Indenture and is authorized to carry out such duties.

(N) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Escrow Agent to the effect that the Escrow Agent has accepted the duties imposed by the Escrow Agreement and is authorized to carry out such duties.

(O) Evidence of required filings with the California Debt and Investment Advisory Commission.

(P) A copy of the executed Blanket Issuer Letter of Representations by and between the Authority and DTC relating to the book entry system.

(Q) Evidence that the rating or ratings assigned to the Bonds as of the date of the Closing are as set forth in the Official Statement.

(R) A certified copy of the general resolution of the Trustee and the Escrow Agent authorizing the execution and delivery of certain documents by certain officers of the Trustee and the Escrow Agent, which resolution authorizes the execution and delivery of the Trust Indenture and the Escrow Agreement and the authentication and delivery of the Bonds by the Trustee.

(S) An opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, counsel to the Underwriters, addressed to the Underwriters and in form and substance satisfactory to the Representative.

(T) A report of [Digital Assurance Certification LLC] as to compliance by the City and related entities with their respective continuing disclosure undertakings.

(U) A tax arbitrage certificate with respect to the Bonds, in form and substance satisfactory to Bond Counsel and the Representative.

(V) A certificate of the Dissemination Agent to the effect that the Continuing Disclosure Undertaking has been duly executed and delivered by the Dissemination Agent and, subject to due authorization and delivery by the City, is valid and binding upon the Dissemination Agent, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles.

(W) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters or Bond Counsel may reasonably request to evidence compliance by the Authority and the City with legal requirements, the truth and accuracy, as of the date of the Closing, of the representations of the Authority and the City herein contained and of the Official Statement and the due performance or satisfaction by the Authority and the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Authority and the City.

All of the opinions, letters, certificates, instruments and other documents mentioned in this Purchase Contract shall be deemed to be in compliance with the provisions of this Purchase Contract if, but only if, they are in form and substance satisfactory to the Representative. If the Authority and the City are unable to satisfy the conditions to the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds contained in this Purchase Contract, or if the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriters, the Authority nor the City shall be under further obligations hereunder, except that the respective obligations of the Authority, the City and the Underwriters set forth in Section 12 of this Purchase Contract shall continue in full force and effect.

Section 9. Conditions to Authority's and City's Obligations. The performance by the Authority and the City of their respective obligations under this Purchase Contract are conditioned upon: (i) the performance by the Underwriters of their obligations hereunder; and (ii) receipt by the Authority and the City of opinions addressed to the Authority and the City, receipt by the Underwriters of opinions addressed to the Underwriters, and the delivery of certificates being delivered on the date of the Closing by persons and entities other than the Authority and the City.

Section 10. Termination Events. The Underwriters shall have the right to terminate the Underwriters' obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds by notifying the Authority and the City of its election to do so if, after the execution hereof and prior to the Closing, any of the following events occurs:

(A) the marketability of the Bonds or the market price thereof, in the reasonable opinion of the Representative, has been materially and adversely affected by any decision issued by a

court of the United States (including the United States Tax Court) or of the State, by any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Department of the Treasury of the United States, the Intemal Revenue Service, or other governmental agency of the United States, or any governmental agency of the State, or by a tentative decision or announcement by any member of the House Ways and Means Committee, the Senate Finance Committee, or the Conference Committee with respect to contemplated legislation or by legislation enacted by, pending in, or favorably reported to either the House of Representatives or either House of the Legislature of the State, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State by the Governor of the State in an executive communication, affecting the tax status of the Authority or the City, their property or income, their debt or contractual obligations (including the Bonds) or the interest thereon or any tax exemption granted or authorized by the Internal Revenue Code of 1986, as amended;

(B) the United States becomes engaged in hostilities that result in a declaration of war or a national emergency, or any other outbreak of hostilities occurs, or a local, national or international calamity or crisis occurs, financial or otherwise, the effect of such outbreak, calamity or crisis being such as, in the reasonable opinion of the Representative, would affect materially and adversely the ability of the Underwriters to market the Bonds;

(C) there occurs a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States, New York or State authorities;

(D) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission is issued or made to the effect that the issuance, offering or sale of the Bonds is or would be in violation of any provision of the Securities Act of 1933, as then in effect, or of the Securities Exchange Act of 1934, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(E) legislation is enacted by the House of Representatives or the Senate of the Congress of the United States of America, or a decision by a court of the United States of America is rendered, or a ruling or regulation by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter is made or proposed to the effect that the Bonds are not exempt from registration, qualification or other similar requirements of the Securities Act of 1933, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(F) in the reasonable judgment of the Representative, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be materially and adversely affected because additional material restrictions not in force as of the date hereof are imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(G) the Office of the Comptroller of the Currency, The New York Stock Exchange or other national securities exchange, or any governmental authority, imposes, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increases materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, or financial responsibility requirements of the Underwriters;

(H) a general banking moratorium is established by federal, New York or State authorities;

(I) any legislation, ordinance, rule or regulation is introduced in or enacted by any governmental body, department or agency in the State or a decision of a court of competent jurisdiction within the State is rendered, which, in the reasonable opinion of the Representative, after consultation with the Authority and the City, materially adversely affects the market price of the Bonds;

(J) any federal or State court, authority or regulatory body takes action materially and adversely affecting the collection of Revenues under the Trust Indenture or Gross Revenues under the Installment Sale Agreement; or

(K) any rating of the Bonds is downgraded, suspended or withdrawn by a national rating service, which, in the reasonable opinion of the Representative, materially adversely affects the marketability or market price of the Bonds;

(L) an event occurs which in the reasonable opinion of the Representative requires a supplement or amendment to the Official Statement and: (i) the Authority or the City refuses to prepare and furnish such supplement or amendment; or (ii) in the reasonable judgment of the Representative, the occurrence of such event materially and adversely affects the marketability of the Bonds or renders the enforcement of the sale contracts of the Bonds impracticable;

(M) an order, decree or injunction issued by any court of competent jurisdiction, or order, ruling, regulation (final, temporary or proposed), official statement or other form of notice or communication issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental authority having jurisdiction of the subject matter, to the effect that: (i) obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Trust Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended; or (ii) the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(N) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any domestic governmental authority or by any domestic national securities exchange, which are material to the marketability of the Bonds; or

(O) the commencement of any action, suit or proceeding described in Section 5(e) or Section 6(e).

Section 11. Changes in Official Statement. After the Closing, neither the Authority nor the City will adopt any amendment of or supplement to the Official Statement to which the Representative shall reasonably object in writing unless the Authority or its counsel determines that such amendment or supplement is required under applicable law. Within 90 days after the Closing or within 25 days following the "end of the underwriting period" (as such term is defined below), whichever occurs first, if any event relating to or affecting the Bonds, the Enterprise, the Trustee, the City or the Authority shall occur as a result of which it is necessary, in the opinion of the

Representative, to amend or supplement the Official Statement in order to make the Official Statement not misleading in any material respect in the light of the circumstances existing at the time it is delivered to a purchaser, the Authority will forthwith prepare and furnish to the Underwriters an amendment or supplement that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to purchaser, not misleading. The City and the Authority shall cooperate with the Underwriters in the filing by the Underwriters of such amendment or supplement to the Official Statement with the MSRB. As used herein, the term "end of the underwriting period" means the later of such time as: (i) the Authority delivers the Bonds to the Underwriters; or (ii) the Underwriters do not retain, directly or as members of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Notwithstanding the foregoing, unless the Representative gives notice to the contrary, the "end of the underwriting period" shall be the date of the Closing. Any notice delivered pursuant to this provision shall be written notice delivered to the Authority and the City at or prior to the date of the Closing and shall specify a date (other than the date of the Closing) to be deemed the "end of the underwriting period."

Section 12. Payment of Expenses. (a) The Underwriters shall be under no obligation to pay, and the City shall pay the following expenses incident to the performance of the Authority's and the City's obligations hereunder:

(i) the fees and disbursements of Bond Counsel and Disclosure Counsel;

(ii) the cost of printing and delivering the Bonds, the Preliminary Official Statement and the Official Statement (and any amendment or supplement prepared pursuant to Section 11 of this Purchase Contract);

(iii) the fees and disbursements of accountants, advisers and of any other experts or consultants retained by the Authority or the City, including the City Attorney; and

(iv) any other expenses and costs of the Authority and the City incident to the performance of their respective obligations in connection with the authorization, issuance and sale of the Bonds, including out of pocket expenses and regulatory expenses, and any other expenses agreed to by the parties.

(b) The Underwriters shall pay all expenses incurred by it in connection with the public offering and distribution of the Bonds including, but not limited to:

(i) all advertising expenses in connection with the offering of the Bonds; and

(ii) all out-of-pocket disbursements and expenses incurred by the Underwriters in connection with the offering and distribution of the Bonds (including without limitation the fees and expenses of its counsel and the MSRB, CUSIP Bureau, California Debt and Investment Advisory Commission and California Public Securities Association fees, if any), except as provided in clause (a) above.

Section 13. Notices. Any notice or other communication to be given to the Authority or the City under this Purchase Contract may be given by delivering the same in writing to the Authority and the City at the addresses set forth on the first page of this Purchase Contract, and any

notice or other communication to be given to the Underwriters under this Purchase Contract may be given by delivering the same in writing to

Stifel, Nicolaus & Company Incorporated, as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104
Attention: Guillermo Garcia

Section 14. Survival of Representations, Warranties, Agreements. All of the Authority's and the City's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect regardless of: (a) any investigations made by or on behalf of the Underwriters; or (b) delivery of and payment for the Bonds pursuant to this Purchase Contract. The agreements contained in this Section and in Section 12 shall survive any termination of this Purchase Contract.

Section 15. Benefit; No Assignment. This Purchase Contract is made solely for the benefit of the Authority, the City and the Underwriters (including their successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. The rights and obligations created by this Purchase Contract are not subject to assignment by the Underwriters, the Authority or the City without the prior written consent of the other parties hereto.

Section 16. Severability. In the event that any provision of this Purchase Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Purchase Contract.

Section 17. Counterparts. This Purchase Contract may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute the Purchase Contract by signing any such counterpart.

Section 18. Governing Law. This Purchase Contract shall be governed by the laws of the State.

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Section 19. Effectiveness. This Purchase Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the Authority and the City, and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

STIFEL, NICOLAUS & COMPANY
INCORPORATED, as Representative

By: _____
Title: Authorized Officer

Accepted:

CITY OF BANNING

By:_____
City Manager

Time of Execution: _____ Pacific Time

CITY OF BANNING FINANCING AUTHORITY

By:_____
Executive Director

Time of Execution: _____ Pacific Time

EXHIBIT A

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

MATURITY SCHEDULE

Principal Payment Date (June 1)	*Principal*	*Coupon*	*Yield*	*Price*
	$	%	%	

(C) Priced to first optional redemption date of June 1, 20__ at par.

EXHIBIT B

$_____*
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

15c2-12 CERTIFICATE

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the City of Banning (the "City") and the City of Banning Financing Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate on behalf of the City and the Authority, and further hereby certifies and reconfirms on behalf of the City and the Authority as follows:

(1) This Certificate is delivered in connection with the offering and sale of the above captioned bonds (the "Bonds") in order to enable the underwriter of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule").

(2) In connection with the offering and sale of the Bonds, there has been prepared a Preliminary Official Statement, setting forth information concerning the Bonds, the Authority and the City (the "Preliminary Official Statement").

(3) As used herein, "Permitted Omissions" means the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters, all with respect to the Bonds.

(4) The Preliminary Official Statement is, except for the Permitted Omissions, deemed final within the meaning of Rule 15c2-12, and the information therein is accurate and complete except for the Permitted Omissions.

Dated: _____ __, 2015

CITY OF BANNING

By:_____
City Manager

* *Preliminary, subject to change.*

CITY OF BANNING FINANCING AUTHORITY

By:_____
Executive Director

EXHIBIT C

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

CLOSING CERTIFICATE OF THE AUTHORITY

The undersigned hereby certifies and represents that he is the duly appointed and acting representative of the City of Banning Financing Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the Authority as follows:

(i) The representations, warranties and covenants of the Authority contained in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and among the Authority, the City of Banning and Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, are true and correct and in all material respects on and as of the date of the Closing, with the same effect as if made on the date of the Closing.

(ii) The Authority Resolution is in full force and effect at the date of the Closing and has not been amended, modified or supplemented, except as agreed to by the Authority and the underwriters.

(iii) The Authority has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) The statements and descriptions in the Official Statement pertaining to the Authority do not contain any untrue or misleading statement of a material fact and do not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given to such terms in the Purchase Contract.

Dated: _____ __, 2015

CITY OF BANNING FINANCING AUTHORITY

By:_____
Executive Director

EXHIBIT D

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

CLOSING CERTIFICATE OF THE CITY

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the City of Banning (the "City"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the City as follows:

(i) The representations, warranties and covenants of the City contained in the Bond Purchase Contract, dated as of _____ __, 2015 (the "Purchase Contract"), by and among the City, the City of Banning Financing Authority, and Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, are true and correct and in all material respects on and as of the date of the Closing, with the same effect as if made on the date of the Closing.

(ii) The City Resolution is in full force and effect at the date of the Closing and has not been amended, modified or supplemented, except as agreed to by the City and the Underwriters.

(iii) The City has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) Subsequent to the date of the Official Statement and on or prior to the date of this certificate, there has been no adverse change in the condition (financial or otherwise) of the City, whether or not arising in the ordinary course of operations, as described in the Official Statement that would materially and adversely affect the Bonds or the City's performance under the City Agreements.

(v) The Official Statement (other than under the caption "THE AUTHORITY," information pertaining to the Authority under the caption "LITIGATION" and information relating to DTC and its book-entry system) does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given to such terms in the Purchase Contract.

Dated: _____ __, 2015

CITY OF BANNING

By:_____
City Manager

EXHIBIT E

_____ __, 2015

City of Banning Financing Authority
99 East Ramsey Street
Banning, California 92220

Stifel, Nicolaus & Company, Incorporated,
as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104

City of Banning
99 East Ramsey Street
Banning, California 92220

Opinion of City Attorney and Authority Counsel

with reference to

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

Ladies and Gentlemen:

In my capacity as the General Counsel to the City of Banning Financing Authority (the "Authority") and the City Attorney of the City of Banning (the "City"), in connection with the issuance by the Authority of the above-referenced bonds (the "Bonds"), I have examined such documents, certificates and records as I have deemed relevant and necessary as the basis for the opinion set forth herein. Capitalized terms used and not otherwise defined herein shall have the same meanings as assigned to them in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and among Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, the City and the Authority.

Relying on my examination described above and pertinent law and subject to the limitations and qualifications set forth hereinafter, I am of the following opinion:

1. The City is a municipal corporation and general law city organized and validly existing under the laws of the State of California.

2. Resolution No. ___ of the City Council of the City (the "City Resolution") has been duly adopted at a meeting of such City Council that was duly called and held on July __, 2015 pursuant to law, with all required public notice and at which a quorum was present and acting throughout. The City Resolution is in full force and effect and has not been amended or repealed.

3. The City has duly authorized, executed and delivered the City Agreements. Assuming due authorization, execution and delivery by the other parties thereto, as necessary, the

City Agreements constitute legal, valid and binding agreements of the City enforceable against the City in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, debt adjustment, fraudulent conveyance or transfer, moratorium, reorganization or other laws affecting the enforcement of creditors' rights generally and equitable remedies if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and limitations on remedies against public agencies.

4. Except as disclosed in the Official Statement, there is no action, suit or proceeding before or by any court, public board or body pending (with service of process having been accomplished on the City) or, to the best of my knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the City or the titles of its officers to their respective offices; (b) in any way question or affect the validity or enforceability of the City Agreements or the Bonds; (c) find illegal, invalid or unenforceable the City Agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Bonds to which the City is a party; or (d) have a material adverse effect on the ability of the City to make Installment Payments when due.

5. The execution and delivery of the City Agreements and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, trust agreement, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound in a manner which would materially adversely affect the City's performance under the City Agreements.

6. The Authority is a joint exercise of powers authority organized and validly existing under the laws of the State of California.

7. Resolution No. ____ of the Authority (the "Authority Resolution") has been duly adopted at a regular meeting of the Commission of the Authority that was duly called and held on July __, 2015 pursuant to law, with all required public notice and at which a quorum was present and acting throughout. The Authority Resolution is in full force and effect and has not been amended or repealed.

8. The Authority has duly authorized, executed and delivered the Official Statement, and the Authority Agreements. Assuming due authorization, execution and delivery by the other parties thereto, as necessary, the Authority Agreements constitute legal, valid and binding agreements of the Authority enforceable against the Authority in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, debt adjustment, fraudulent conveyance or transfer, moratorium, reorganization or other laws affecting the enforcement of creditors' rights generally and equitable remedies if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and limitations on remedies against public agencies.

9. The execution and delivery by the Authority of the Authority Agreements, the Official Statement and the other instruments contemplated by any of such documents to which the

Authority is a party, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, trust agreement, contract, agreement or other instrument to which the Authority is a party or is otherwise subject or bound in a manner which would materially adversely affect the Authority's performance under the Authority Agreements.

10. There is no action, suit or proceeding before or by any court, public board or body pending (with service of process having been accomplished on the Authority) or, to the best of my knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the Authority or the titles of its officers to their respective offices; (b) in any way question or affect the validity or enforceability of the Authority Agreements or the Bonds; or (c) find illegal, invalid or unenforceable the Authority Agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Bonds to which the Authority is a party.

The opinion is based on such examination of the laws of the State of California as I deemed relevant for the purposes of this opinion. I have not considered the effect, if any, of the laws of any other jurisdiction upon matters covered by this opinion. I have assumed the genuineness of all documents and signatures, presented to me. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in such documents. I express no opinion as to the status of the Bonds or the interest thereon, the Authority Agreements or the City Agreements under any federal securities laws or any state securities or "Blue Sky" law or any federal, state or local tax law. Further, I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained in the Authority Agreements and the City Agreements. Without limiting any of the foregoing, I express no opinion as to any matter other than as expressly set forth above.

I am furnishing this opinion as General Counsel to the Authority and City Attorney to the City. Except for the Authority and the City, no attorney-client relationship has existed or exists between me and the addressees hereof in connection with the Bonds or by virtue of this opinion. This opinion is rendered solely in connection with the financing described herein, and may not be relied upon by you for any other purpose. I disclaim any obligation to update this opinion. This opinion shall not extend to, and may not be used, quoted, referred to, or relied upon by any other person, firm, corporation or other entity without my prior written consent.

Respectfully submitted,

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RESOLUTION NO. 2015-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING AND APPROVING AN INDENTURE OF TRUST, AN INSTALLMENT SALE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, A BOND PURCHASE AGREEMENT, AN ESCROW AGREEMENT, AND A PRELIMINARY OFFICIAL STATEMENT, AND THE TAKING OF CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Banning (the "City") owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, the City of Banning Financing Authority (the "Authority"), is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and the powers of such Authority include the power to issue bonds for any of its corporate purposes; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the Authority desires to issue its Refunding Revenue Bonds (Electric System Project), Series 2015 (the "2015 Bonds") to refund the 2007 Bonds currently outstanding and finance certain capital improvements to the Electric System; and

WHEREAS, the Authority has reviewed the documentation related to the issuance of the 2015 Bonds.

NOW, THEREFORE, the City Council of the City of Banning, California does hereby resolve as follows:

SECTION 1. All of the above recitals are true and correct and the City Council so finds.

SECTION 2. The City hereby approves the Indenture of Trust relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by the Mayor, the City Manager, the Finance Director or any member of this City Council (each, a "Responsible Officer") with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The City hereby approves the Installment Sale Agreement, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. The City hereby approves the Continuing Disclosure Agreement relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City and Disclosure Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 5. The City hereby approves the Bond Purchase Agreement relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 6. The City hereby approves the Escrow Agreement relating to the 2007 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 7. The City hereby approves the Preliminary Official Statement relating to the 2015 Bonds (the "Preliminary Official Statement"), substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City. Each of the Responsible Officers is hereby authorized to execute and deliver a certificate deeming the Preliminary Official Statement final for purposes of SEC Rule 15c2-12. Upon the pricing of the 2015 Bonds, each of the Responsible Officers is hereby authorized to prepare and execute a final Official Statement (the "Official Statement"), substantially the form of the Preliminary Official Statement, with such additions thereto and changes therein as approved by any Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The City hereby authorizes the distribution of the Preliminary Official Statement and the Official Statement by the underwriter in connection with the offering and sale of the 2015 Bonds.

SECTION 8. Each Responsible Officer is hereby authorized and directed to execute and deliver any and all documents and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution including, but not limited to, the arrangement for the insuring of all or any portion of the 2015 Bonds with any municipal bond insurer.

SECTION 9. The City Clerk shall certify to the adoption of this Resolution, which shall be in full force and effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Banning, California, at a regular meeting held on the 14th day of July, 2015.

CITY OF BANNING, CALIFORNIA

_____
Deborah Franklin, Mayor

ATTEST

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM

_____
[_____]
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-74 was duly adopted by the City Council of the City of Banning at a joint meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBITS TO RESOLUTION NO. 2015-74

ARE THE SAME AS THE EXHIBITS

INCLUDED IN RESOLUTION NO. 2015-02FA

AGENDA
SPECIAL MEETING
BANNING CITY COUNCIL

July 14, 2015
3:00 p.m.

Banning Civic Center
Large Conference Room
99 E. Ramsey St.

ADDENDUM

II. CLOSED SESSION

4. d) Real property negotiations pursuant to Government Code § 54956.8 to enable the City Council to consider negotiations with Dr. David M. Birman, HydroResolve, and to give direction to its negotiators the City Attorney and Community Development Director regarding that certain real property commonly known as "Jensen Canyon" at the base of the San Jacinto Mountains, near the City of Cabazon, California.

Date: July 9, 2015
5:30 p.m.

AGENDA
SPECIAL MEETING
BANNING CITY COUNCIL

July 14, 2015
3:00 p.m.

Banning Civic Center
Large Conference Room
99 E. Ramsey St.

I. CALL TO ORDER

- Roll Call – Council Members Miller, Moyer, Peterson, Welch, Mayor Franklin

II. CLOSED SESSION

1. One case of significant exposure to litigation pursuant to Government Code Section 54956.9 (d)(2).

2. One case of potential initiation of litigation matter pursuant to Government Code Section 54956.9 (d)(4).

3. Existing Litigation pursuant to Government Code Section 54956.9 (d)(1): (a) Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council, et al. – Case Nos. RIC 1409829 and RIC 1409037.

4. Real Property Negotiations pursuant to Government Code Section 54956.8 to confer with its real property negotiator, Dean Martin, in regards to:
   a) Letter of Interest to Purchase 1.38 acres of land 300 S. Highland Springs Ave. (APN 419-140-041)
   b) Proposed Verizon Wireless Installation-Repplier Park 201 W. George St. (APN: 540-00-014)
   c) Banning Chamber of Commerce – 60 E. Ramsey

5. Labor Negotiations pursuant to the provisions of Government Code Section 54957.6.
   a) City is represented by City Attorney. Negotiations are with Banning Police Officers Association (BPOA) and Banning Police Management Association (BPMA).
   b) Executive Salary & Benefits – Negotiator – Dean Martin
   (Unrepresented Positions: Police Chief, Community Services Director, Electric Utility Director, Public Works Director, Community Development Director and Administrative Services Director)

6. Personnel Matters pursuant to Government Code Section 54957 with regards to:
   a) Recruitment of City Manager
   b) City Attorney Evaluation

A. Opportunity for Public to Address Closed Session Items.
B. Convene Closed Session

III. ADJOURNMENT

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

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

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

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

AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

July 14, 2015
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

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

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

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

APPOINTMENTS

1. Designation of Voting Delegates and Alternates to the League of California Cities Annual Conf. – Sept. 30 – Oct. 2, 2015, San Jose **1**

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

IV. 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 8
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 – 06/16/15 *(Closed Session)*. 5
2. Approval of Minutes – Special Meeting – 06/16/15 *(Workshop.* 7
3. Approval of Minutes – Special Meeting – 06/23/15 *(Closed Session)*. 15
4. Approval of Minutes – Regular Meeting – 06/23/15. 17
5. Authorization to Enter Into an Enterprise Licensing Agreement with Microsoft and authorizing the Interim City Manager to Execute the Related Enrollment Agreement for a three-year agreement total of $144,690.24. 47
6. Resolution No. 2015-25, Resolution No. 2015-25, Approving Amendments to the Professional Services Agreement with LSA Associates, Inc. for Services Related to the Banning Circulation element and for the Update of the Traffic Fee Component of the Development Fee Program in an amount of $48,000 for a total contact amount of $286,000.00 51
7. Resolution No. 2015-66, Approving an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan in an amount not to exceed $25,000.00. 134
8. Resolution No. 2015-69, Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line "D-2" Stage 1 and Stage 2. 190

- **Open for Public Comments**
- **Make Motion**

V. REPORTS OF OFFICERS

1. Classification Plan Amendments

Staff Report. 212

Recommendation: **That the City Council adopt Resolution No. 2015-70, Amending the Classification and compensation plan and the amending of Part-Time Resolution No. 2015-71 to include new classifications and changes to salary ranges and job descriptions.**

2. Animal Control Services Contract

Staff Report. 248

Recommendation: **That the City Council approve the Agreement to Provide Animal Control Field Services Contract for FY 16 (July 1, 2015 through June 30, 2016).**

3. City Manager Signing Authority

Staff Report. 254

Recommendations: **1) Require a monthly written report to the City Council of the contracts signed under the sole authority of the City Manager; 2) Eliminate the provision within the City's standard professional service Contracts that allow for exceedance of the Council approved contraet amounts; 3) Require City Council approval for contract that are renewed on an annual basis which in the aggregate will exceed $25,000.**

4. Resolution No. 2015-64, Authorizing the Purchase of Two (2) El Dorado National CNG Powered EZ-Rider II Buses from Creative Bus Sales Utilizing the California Association for Coordinated Transportation (CALACT) Competitive Bid Award for a Total of $888,681.06.

Staff Report. 256

Recommendations: **That the City Council adopt Resolution No. 2015-64.**

5. Resolution No. 2015-67, Approving the Increase of Hangar Rents and Access Fees at the Banning Municipal Airport and Amending Resolution No. 2005-44 and Resolution No. 2006-114.

Staff Report. 260

Recommendations: **That the City Council adopt Resolution No. 2015-67.**

6. Resolution No. 2015-68, Approving a Professional Services Agreement with Aspen Environmental Group to Provide Environmental and Permitting Services Related to the Flume.

Staff Report. 280

Recommendations: **That the City Council: 1) adopt Resolution No. 2015-68 Approving a Professional Services Agreement with Aspen Environmental Group of Agoura Hills, CA in the amount of $82,098.00 to Provide Environmental and Permitting Services Related to the Flume; 2) Authorizing the Interim Administrative Services Director to make necessary budget adjustments and appropriations and transfers related to the project; and 3) Authorizing the Interim City Manager to Execute the Professional Services Agreement with Aspen Environmental Group.**

7. Resolution No. 2015-65, Approving the Exit from the San Juan Generating Station.

Staff Report. 362

Recommendation: **That the City Council adopt Resolution No. 2015-65, Approving the Exit from the San Juan Generating Station and authorizing the Electric Utility Director to work with the Southern California Public Power authority ("SCAPPA") to execute and complete any and all required obligations to effect said divestiture.**

8. Resolution No. 2015-72, Declaring that there is a Need for a Parking Authority to Function in the City, Declaring that the City Council Shall Be the Parking Authority, and Designating an Interim Chairman of the Parking Authority.

Staff Report. 652

Recommendation: **That the City Council adopt Resolution No. 2015-72.**

Recess Regular City Council Meeting and CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING PARKING AUTHORITY.

VI. CONSENT ITEM

1. Resolution No. 2015-01 PA, Authorizing the Execution and Delivery of Two Separate Amendments to Joint Exercise of Powers Agreements and Taking Certain Other Actions In Connection Therewith **660**

Adjourn Joint Meeting of the Banning City Council and the Banning Parking Authority and CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY.

VII. CONSENT ITEM

1. Resolution No. 2015-05 SA, Authorizing the Execution and Delivery of Two Separate Amendments to Joint Exercise of Powers Agreement and Taking Certain Other Actions In Connection Therewith **664**

Adjourn Joint Meeting of the Banning City Council and the City Council Sitting In Its Capacity of a Successor Agency and RECONVENE the regular City Council Meeting.

VIII. CONSENT ITEM

1. Resolution No. 2015-73, Authorizing the Execution and Delivery of Two Separate Amendments to Joint Exercise of Powers Agreements and Taking Certain Other Actions In Connection Therewith **678**

Recess Regular City Council Meeting to SCHEDULED MEETINGS of the City of Banning Utility Authority, and a Joint Meeting of the Banning Financing Authority and City Council.

IX. BANNING UTILITY AUTHORITY (BUA)

Call to Order: Chairperson Deborah Franklin
Roll Call: Boardmembers Miller, Moyer, Peterson, Welch, Chairperson Franklin

CONSENT ITEMS:

1. Resolution No. 2015-10 UA, Approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and Annual Membership Dues **692**
2. Resolution No. 2015-12 UA, Approving an Amendment to the Professional Services Agreement with Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study **700**

- **Open for Public Comments**
- **Make Motion**

REPORTS OF OFFICERS

1. Approval of the Attached Resolution Approving the Economic Refunding of the Banning Utility Authority Water Enterprise Revenue Bonds Refunding and Improvement Projects, 2005 Series.

Staff Report. 780

Recommendation: **That the Banning Utility Authority adopt Resolution No. 2015-11UA, Authorizing the Issuance Its Water Enterprise Revenue Bonds, Refunding and Improvement Projeets, 2015 Series in the Aggregate Prineipal Amount Not to Exceed $35,000,000; Approving an Indenture of Trust, An Escrow Agreement, A Bond Purchase Agreement, A Continuing Disclosurc Agreement and a Preliminary Official Statement; and Authorizing Certain Other Actions in Connection Therewith.**

BUA ADJOURNMENT - Next regular meeting: Tuesday, August 25, 2015 at 5:00 p.m., Banning City Hall Council Chambers. *(There will be no meetings on July 28 and August 11, 2015)*

X. BANNING FINANCING AUTHORITY (BFA) –JOINT MEETING WITH CITY COUNCIL

Call to Order: Chairperson Deborah Franklin
Roll Call: Boardmembers Miller, Moyer, Peterson, Welch, Chairperson Franklin

REPORTS OF OFFICERS

1. Approval of the Attached Resolution Approving the Economic Refunding of the Banning Financing Authority Revenue Bonds (Electric System Project, Series 2007.

Staff Report. **966**

Recommendation: **That the Banning Financing Authority adopt Resolution No. 2015-02 FA, Authorizing the Issuance of Note to Exceed $50,000,000 Principal Amount of Its Refunding Revenue Bonds (Electric System Project) Series 2015; Approving an Indenture of Trust, An Installment Sale Agreement, A Bond Purchase Agreement; An Escrow Agreement and A Preliminary Official Statement Related Thereto; and Approving the Taking of Certain Other Actions in Connection Therewith.**

2. Resolution No. 2015-74, Authorizing and Approving an Indenture of Trust, an Installment Sale Agreement, a Continuing Disclosure Agreement, A Bond Purchase Agreement, an Escrow Agreement, and a Preliminary Official Statement, and the Taking of Certain Other Actions In Connection Therewith **1194**

Recommendation: **That the City Council adopt Resolution No. 2015-74.**

BFA ADJOURNMENT - Next regular meeting: Tuesday, August 25, 2015 at 5:00 p.m., Banning City Hall Council Chambers. *(There will be no meetings on July 28 and August 11, 2015)*

RECONVENE BANNING CITY COUNCIL REGULAR MEETING

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

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

XII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(6/2015)*
2. Discussion regarding Animal Control Services *(7/2015)*
3. Discussion regarding change in time for Council Meetings
4. Fee Study
5. Discussion of City Manager authority to give a contract of $25,000.
6. Review Consent Calendar policy.
7. Discussion of vacant properties where people are discarding furniture.
8. Report on Banning Chamber of Commerce Utility Bill Issue

(Note: Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

XIII. 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, 7 a.m. to 5 p.m.

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

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

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

LEAGUE OF CALIFORNIA CITIES

1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Council Action Advised by July 31, 2015

May 29, 2015

TO: Mayors, City Managers and City Clerks

RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 30 – October 2, San Jose

The League's 2015Annual Conference is scheduled for September 30 – October 2 in San Jose. An important part of the Annual Conference is the Annual Business Meeting *(at the General Assembly)*, scheduled for noon on Friday, October 2, at the San Jose Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, September 18, 2015. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.

- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one voter must be present at the

-over-

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.

- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the San Jose Convention Center, will be open at the following times: Wednesday, September 30, 8:00 a.m. – 6:00 p.m.; Thursday, October 1, 7:00 a.m. – 4:00 p.m.; and Friday, October 2, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, September 18. If you have questions, please call Kayla Gibson at (916) 658-8247.

Attachments:

- 2015 Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

Annual Conference Voting Procedures
2015 Annual Conferenee

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.

2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.

3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.

4. **Signing Initiated Resolution Petitions**. Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.

5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.

6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.

7. **Resolving Disputes**. In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.

LEAGUE OF CALIFORNIA CITIES

CITY: _____

2015 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to the League office by Friday, September 18, 2015. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ E-mail _____

Mayor or City Clerk _____ Phone: _____
(circle one) (signature)

Date: _____

Please complete and return by Friday, September 18, 2015

League of California Cities
ATTN: Kayla Gibson
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: kgibson@cacities.org
(916) 658-8247

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/16/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on June 16, 2015 at 2:00 p.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager/Interim Administrative Services Dir.
Marie A. Calderon, City Clerk

CLOSED SESSION

Mayor Franklin said the closed session item is in regards to Personnel Matters pursuant to Government Code §54957: Recruitment of City Manager and Interim City Manager pursuant to

Mayor Franklin opened the closed session item for public comments; there were none.

Meeting went into closed session at 2:02 p.m. and reconvened at 3:05 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 3:05 p.m.

Marie A. Calderon, City Clerk

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/16/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on June 16, 2015 at 3:17 p.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager/Interim Administrative Services Dir.
David J. Aleshire, City Attorney
John McQuown, City Treasurer
Fred Mason, Electric Utility Director
Brian Guillot, Acting Community Development Dir.
Alex Diaz, Police Chief
Heidi Meraz, Community Services Director
Arturo Vela, Acting Public Works Director
Tim Chavez, Battalion Chief
Oliver Mujica, Contract Planner
Michelle Green, Deputy Finance Director
Rita Chapparosa, Deputy Human Resources Director
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – *On Items Not on the Agenda*

Mayor Franklin asked if there were any public comments; there were none.

WORKSHOP REPORTS

Goal Setting and Policy Objectives

Interim City Manager Martin said in regards to the policy goals that Council developed and a fifth goal was added by staff. The four that the Council developed were: 1) Economic Development, 2) Beautification, 3) Effective Communication, 4) Public Health and Safety, and the one that staff added was 5) Administrative Efficiency. Staff then took those five and added some additional verbiage to give more content to the policy goal. For example, Economic Development, the

additional verbiage added is, "Enhance the economic vitality of the community through measures targeted towards redevelopment and business retention, expansion and attraction resulting in increased revenue generation and job creation." This covers all of the main areas that Council felt needed to be covered by economic development when this was originally discussed. The next step that staff did was to add some framework and developed policy objectives. Council can take a look at them and can use them, tweak them, or throw them out and put in what you feel would be appropriate. Under Economic Development staff came up with six policy objectives and he uses the term "policy" because these are designed to be broad and high-level and once you agree on what these policy objectives are staff will come back with a work plan or specific department objectives that are designed to meet your policy objectives and ultimately your policy goals.

Acting City Manager Martin went over the goals and the six policy objectives created as follows:

Goal 1 – Economic Development – Enhance the economic vitality of the community through measures targeted towards redevelopment and business retention, expansion and attraction resulting in increased revenue generation and job creation.

1. Develop methodologies and practices that will facilitate the city's Economic Development programs consistent with the city's existing ordinances.
2. Develop promotional programs that will build a positive image of the city targeted at potential and existing residents and businesses.
3. Develop incentives that will encourage builders and developers to pursue projects within city limits whose business model would create revenue generation and job creation consistent with the city's existing demographics.
4. Make appropriate use of city-owned assets to maximize return on investments.
5. Pursue partnerships in both the public and private sector that benefit the economic development of the city.
6. Leverage City and surrounding area attractions to stimulate economic development.

Acting City Manager Martin said so basically we took your core idea and we just expanded on it and added some context to it. The idea was just to help give some framework to the discussion.

Goal 2 – Beautification – Achieve beautification of the City through major arterial improvements, aggressive code enforcement and promotion of programs that leverage the City's "small town" feel combined with a focus on sustainability and smart growth.

1. Create a welcoming environment at the City's points of entry
2. Maximize the appearance of the City by improving major thoroughfares.
3. Ensure City facilities, including open spaces, reflect positively on the City's image.
4. Maximize City resources to ensure that private properties reflect positively on the City's image.
5. Adopt policies that encourage sustainability and smart growth consistent with state law and federal requirements.

Goal 3 – Effective Communication – Ensure that communication is effectively and regularly used to inform and educate citizens, businesses, employees and regional partners about city programs and initiatives and do so in a manner that will enhance the City's image.

1. Maintain regular and ongoing direct communication with citizens and businesses.
2. Develop collaborative communication strategies building positive relationships with local and regional media.
3. Utilize and encourage use of electronic and social media to promote and enhance the City's image.
4. Communicate regularly with public agencies and other regional partners and collaborate on mutually beneficial activities and programs.

Goal 4 – Public Health & Safety – Create a secure and healthy environment within the City in which our citizens feels safe and which promotes the City as a location of choice for living, working, and playing.

1. Effectively manage the City's water resources to ensure system reliability and regulatory compliance.
2. Provide opportunities for healthier living through city-sponsored programs.
3. Support regional programs that enhance social services for the distressed population.
4. Provide cost effective public safety services to safeguard the community.
5. Facilitate community based programs encouraging safe and secure neighborhoods
6. Promote safe and secure neighborhoods and businesses by encouraging community based programs and vigorous law enforcement.
7. Promote and support programs that improve the quality of life and wellbeing for the City's young adults and senior citizens.

Goal 5 – Administrative Polices – Implement administrative policies, procedures, and best practices which will result in efficient and cost effective management of City resources.

1. Ensure Administrative Policies are current and consistent with state, federal regulations and City's ordinances.
2. Ensure taxpayer dollars are used in a manner which is fiscally responsible and transparent to the citizens.
3. Ensure the City uses state of the practice technology and infrastructure for administration of city programs.
4. Create a working environment that attracts and retains quality employees.
5. Promote professional development and training of the employees to enhance their skill levels.
6. Foster an environment of trust and mutual respect among elected officials and employees.
7. Promote excellence of work product among employees through participation in professional evaluation programs.

There was Council discussion and public comments on the policy objectives to all the goals and there was consensus to the following changes by the City Council:

Goal 1 – Economic Development

1. Develop methodologies and practices that will facilitate the city's Economic Development programs consistent with the city's ordinances.

3. Improve City's competitive position by developing incentives that will encourage builders and developers to pursue projects within city limits whose business model would create revenue generation and job creation.
7. Improve the City's competitive position relative to comparable market.

Goal 2 – Beautification

Achieve beautification of the City through major arterial improvements, aggressive code enforcement and promotion of programs that leverage the City's "small town" feel combined with a focus on sustainability and growth.

1. Create a welcoming environment at the City's freeway frontages and points of entry.
3. Ensure City facilities, including open spaces, reflect positively on the City's image by making them more attractive.
5. Adopt policies that encourage sustainability and growth consistent with state law and federal requirements.
6. Encourage citizen pride and involvement.

Goal 3 – Effective Communication

1. Maintain regular and ongoing direct communication with employees, citizens and businesses.
5. Effective communication with residents to encourage volunteerism and civic engagement.

Goal 4 – Public Health & Safety – Create a secure and healthy environment within the City in which our citizens feel safe and which promotes the City as a location of choice for living, working, and playing.

5. Facilitate community based programs encouraging safe and secure neighborhoods
6. Promote safe and secure neighborhoods and businesses by encouraging community based programs and vigorous law enforcement. *(Combine No. 5 and 6)*
7. Promote and support programs that improve the quality of life and wellbeing for the City's residents.

Goal 5 – Administrative Efficiency and Effectiveness

FY16 Mid-Cycle Budget Overview

Michelle Green, Deputy Finance Director passed out to the Council the FY16 Mid-Cycle Budget Overview explaining that this is a revised Fund Summary Report for all the City-wide funds *(staff report is on file in the City Clerk's Office)*. She said that staff has reviewed Fiscal Year 15 although it is not completed but they have updated it for information throughout the year and revised those numbers, included any adjustments that they included in Mid-Cycle 16 and it shows any structural deficit for 2016 and also shows a revised projected balance for the end of 2016. Keep in mind that we do have an adopted budget for 2016 so staff is in the process of revising the budget that has already been adopted. Also when they did adopt the original Fiscal Year 15/16 budget it was adopted with $130,000 structural deficit in the General Fund. There are some other

funds that she will be going over that do show a structural deficit as well in the revised numbers. The fund balance as shown here is what is called "available fund balances". In the General Fund for instance, the actual fund balance is higher but we do have amounts that are assigned or reserved for other purposes and Council has designated those funds to use for certain things so those amounts are not included in these numbers.

Page 1 – General Fund. Staff did revise the Beginning Fund Balance which is $5.1 million. The new projected structural deficit is $42,000 versus $130,000 so that is a little better than the original projection and the ending fund balance is projected to be a little over $5 million. In some funds we do expect to have a structural deficit and that is completely normal. For example, in capital funds and things like that those are funds that are funded by grants where we do not spend the money. We may receive the money one year and spend it the next year so we do expect structural deficits in many funds. In the operating funds mainly we want to look at and be aware of structural deficits. The Gas Tax Fund (Fund 100) shows that there were some reductions in revenue so that does affect our structural deficit for the year.

Page 2 –

- Water Fund - revenues were reduced for the drought mandate however; we were not able to reduce expenditures by the same amount so it does show a structural deficit.
- Wastewater Fund has a small structural deficit.
- Airport – (Fund 600) has a structural deficit. Basically what happened was that in FY 15 we had an item that was budgeted for $60,000 that we declined to do so we increased the FY 15 balance which now shows $60,000 versus what it would have shown but we re-budgeted another project in FY 16 so between the two years it comes out about the same but it shows a structural deficit for FY 16.
- Electric has a very small structural deficit.

Councilmember Peterson asked why Electric would have any deficit at all.

Electric Director Mason said the main reason is the water because we have a 32% reduction in pumping. They have a $3.14 million budget for electricity and if you take 32% of that off that is about $400,000 so that actually created that deficit. But we know that they are not going to make that 32% so it is actually not going to be $400,000 so there is no structural deficit.

Interim City Manager Martin said that this does not include whatever the ultimate result of our refunding will be so once the refunding occurs it is likely that the debt savings from that will wipe this small deficit.

Page 3 – Main item there is in the Successor Agency and that was basically due to the fact that we had excess cash on hand so the Department of Finance would like us to use that cash to pay some of our debt before asking for additional RPTTF (Redevelopment Property Tax Trust Fund) Funds.

Page 4 – General Fund Finance Overview – Top half is revenues by category and the bottom half is expenditures by department. It shows a four-year history of basic categories so you can see the trends going forward since 2013 through the projection of 2016. In the revenue area the other taxes as you will see includes the Measure J funding so in FY 16 we have not included usage of

the Measure J funds. Based on estimates that could be over a million dollars but we are only including $550,000 dollars of Measure J funds in that amount. In FY 15 we have about $275,000 of Measure J funds that are included in the number so that is why you see the fluctuation.

Interim City Manager Martin said that without Measure J we would have had a $600,000 dollar structural deficit in our General Fund.

Page 4 – (continued) Other areas where you see large variances are:

- Revenue from Other Agencies (usually is grants). Grants are not budgeted ahead of time until they are received so throughout the year the grant revenue will increase.
- Interfund Services & Transfers – This includes for FY 15 the reimbursement of the oil spill and then it drops down to its pretty normal level after that point.

Councilmember Miller asked what the difference is between "structural deficit" and "deficit".

Interim City Manager Martin said that a structural deficit means that you have an imbalance between your current year expenses and your current year revenues. On a go forward basis you haven't definitively identified a way to plug that hole. A deficit might exist temporarily in a fund but you may have ways in the future to cover that deficit so it isn't an on-going concern or it could be a one-time thing also.

Page 4 – (continued) Bottom half of the page is Expenditures by Department and some of the departments are grouped together.

- City Manager/Council/Economic Development - This includes settlement payments so that is why the number spikes up a little bit there. There were some savings due to having interim individuals versus a full-time person. The FY 16 projection assumes a full-time city manager.
- City Attorney - There is a slight spike in costs for FY 15 in the General Fund portion of the legal services. In FY 15 we increased the legal budget by $130,000. In FY 16 we are assuming that those costs will get under control and will resume to normal levels.
- City Clerk/Elections - In FY 15 we had election costs and in FY 16 we do not.
- Fiscal Services – There is an increase because of personnel requests.
- Police and Dispatch – There are some personnel requests. Weed Abatement has been moved under the preview of the police area.
- Fire Services – Increase in the in fire contract. Weed Abatement moved under police area.
- Community Development, Community Services, and Public Works have some staffing changes.

Mayor Franklin said in Community Development it is going up for FY 14/15 but then going down.

Deputy Director Green said that it is going down because what happens when we have existing directors they may be at a higher level salary and when we rehire a second person the next incumbent does not necessarily come in at a higher level so we have salary savings there and there were also some staff changes made that kind of offset that but it does result in savings.

Page 5 – General Fund Financial Overview – This is a graphical representation of the Revenues and Expenditures just discussed. In Revenues three of the areas Interfund Services & Transfers, Property Taxes, and Sales & Use Taxes make up 71% of the General Fund Revenues. On the Expenditure Side Fire and Police together makeup over 67% of the General Fund budget.

Page 6 – General Fund Expenditures by Category – There are five categories: Employee Services (covers salaries and fringe benefits); Services and Supplies (other operating expenditures), City Hall Lease, Interfund Support, and Capital.

- In the Capital area normally is not budgeted because a lot of the capital is grant funded. So as grants come in they are recorded and expenditures are recorded at the same time the grant revenue is recorded and you will see the capital number going up.
- In Employee Services you will notice a large increase. Currently that is 60% of the General Fund budget. We have new positions and higher costs including PERS for safety and that was $250,000 for Safety PERS from our originally projection based on the original numbers provided by CalPERS.

Page 7 – Positions – This is a chart that shows the positions that we are included in the budget, changes so there could be deletions, reclassifications and new positions. Overall Citywide 7.88 **FTE's (Full Time Equivalents)** were added. Left-hand side of the page are positions as they exist originally, right-hand side is where they have been revised in the budget. New positions include a Part-Time Human Resources Technician, an Accounting Specialist in Finance, Police Officers (there was a request for three police officers and in order to mitigate the effect on the General Fund the implementation of the hiring of those offices will be staggered with one at the beginning of the year July 1st, second one coming on approximately mid-year January, and third one coming on the following July – actually next fiscal year), a new Sports Specials in Recreation, Bus Drivers, and Engineering Services Assistant in Electric. The rest of the positions are basically reclassifications of existing positions or replacing a vacant position with a new title making it more advantages for the department. Detailed verbiage from each of the departments is also included in regards to the changes in their staffing levels.

Mayor Franklin asked how many employees would we have if we approval this, total. Deputy Director Green said about 154 approximately.

At this time each of the department heads addressed the Council giving a quick overview of their major program changes in their department. Also the Councilmembers asked various questions of staff in regards to their program changes.

Deputy Director Green said that everything that everyone is talking about here today is already reflected in the budget numbers that the Council has in front of them.

There was some further dialogue between the Councilmembers and staff in regards to the five-day work week, and the Measure J calculations.

Deputy Finance Director Green continued her presentation.

Page 26 – Capital Improvement Projects (CIP) – This is an overview of Capital Improvement Projects and this does not include projects that are currently in progress. These are projects from 2016 forward. It is an overview by Fund that shows the amount of projects that are being planned. There was some discussion regarding the Airport projects.

Acting Director Vela said that they revise the Airport Capital Improvement Plan every year so when they do it this year they are going to thin out all those projects and you probably won't even see a project next year or the following year. They are going to limit those until the Airport Fund has enough money to meet the match for certain projects.

Mayor Franklin said since we have talked about Chromium 6 are we looking at worst-case scenario in our planning for that in this budget.

Acting Director Vela said so far what they have budgeted in here is to start with the dynamic low-profiling so they are going to do the analytical first and once they do that, then they will start budgeting. For next year when they do the CIP he thinks they will have a better idea of exactly of what they are going to be required to do.

Deputy Director Green said anything that was presented today will be in the final budget that will be presented at the June 23rd Council Meeting. Interim City Manager Dean said that staff action request will also be presented at that time.

ADJOURNMENT

By common consent the meeting adjourned at 5:09 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

06/23/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on June 23, 2015 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager/Interim Administrative Services Dir.
Lona N. Laymon, Assistant City Attorney
Brian Guillot, Acting Community Development Director
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

CLOSED SESSION

Assistant City Attorney Laymon said that there are six items for closed session: 1) two cases of significant exposure to litigation pursuant to Government Code Section 54956.9 (d)(2); 2) existing litigation pursuant to Government Code Section 54956.9 (d)(1): (a) Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council, et al. – Case Nos. RIC 1409829 and RIC 1409037; 3) real property negotiations pursuant to Government Code Section 54956.8 to confer with its real property negotiator, Interim City Manager Dean Martin, in regards to Fire Memories Museum – 5261 W. Wilson (APN: 408-134-009); 4) labor negotiations pursuant to the provisions of Government Code Section 54957.6 and City is represented by City Attorney and negotiations are with Banning Police Officers Association (BPOA), and in regards to Executive Salary & Benefits – Negotiator – Interim City Manager Dean Martin (Unrepresented Positions: Police Chief, Community Services Director, Electric Utility Director, Public Works Director, Community Development Director and Administrative Services Director); 5) Public Employee Appointment (double listed and qualifies for dual listings under the Brown Act) pursuant to Government Code to consider or appoint an employee to the position of City Manager and Interim City Manager which is also authorized pursuant to Government Code § 54957.6 regarding labor negotiations, continuing to discuss the filling of the unrepresented positon(s) of City Manager and Interim City Manager (Councilmembers Moyer and Welch serving as negotiators and Ad Hoc Committee); and 6) Public Employee Appointment pursuant to Government Code § 54957 to consider authorizing the Interim City Manager to execute employment contracts for the Positions of Community Development Director and Public Works Director/City Engineer.

Mayor Franklin opened the closed session items for public comments; there were none.

Meeting went into closed session at 4:03 p.m. and recessed at 5:01 p.m. and reconvened at 8:26 p.m. with no reportable action taken.

ADJOURNMENT

By common consent the meeting adjourned at 8:59 p.m.

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Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/23/15
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the Banning City Council, the Banning Utility Authority and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on June 23, 2015, at 5:12 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Dean Martin, Interim City Manager, Interim Administrative Services Dir.
Lona N. Laymon, Assistant City Attorney
Alex Diaz, Police Chief
Arturo Vela, Acting Public Works Director
Fred Mason, Electric Utility Director
Brian Guillot, Acting Community Development Director
Oliver Mujica, Contract Planner
Heidi Meraz, Community Services Director
Rita Chapparosa, Deputy Human Resources Director
Michelle Green, Deputy Finance Director
Tim Chavez, Battalion Chief
Phil Holder, Lieutenant
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

The invocation was given by Pastor Tate Crenshaw, Life Point Church. Councilmember Moyer led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

Assistant City Attorney Laymon said that the Council met in closed session on six items per the revised agenda posted yesterday and there was no reportable action. The Council will reconvene at the end of this meeting on two items on the closed session in regards to Item No.4 b) Executive Salary and Benefits, and Item. No. 6, Public Employee Appointment.

PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Jan Spann addressed the Council in regards to the Banning Community Fund. She said the Banning Community Fund was founded in 2014 after they were the Centennial Committee and were left with a $50,000 dollar excess. They invested that money with the Riverside Community Foundation and now they have approximately $60,000. They will be having a benefit this Saturday, June 27th from 5 to 8 p.m. with three hours of free play at the Museum of Pinball, a ticket to the raffle for the incredible gift basket, a silent auction, and refreshments. This is something different because not only do you get to promote the Banning Community Fund which will be an endowment fund for local non-profits but you also get to promote a new enterprise in the city of Banning, The Museum of Pinball. Mr. Weeks is the founder and there are hundreds of pinball machines and all of them will be open for three hours of free play. He has an event coming up and the tickets are $200 but tickets for this event are $30.00. You can get tickets at the door or go online to www.banningcommunityfund.org.

Carl Douglas addressed the Council in regards to the State BBQ Championship that was held by the Stagecoach Days Association on June 20th. A few Councilmembers were able to attend and they really appreciated that. On behalf of the Stagecoach Days Association they would like to thank the City for all of their contributions to the event and their in-kind services that made the First Annual Stagecoach Days Kansas City Barbecue Association (KCBA) and State BBQ Competition a success. The Association would also like to thank the Parks and Recreation Division and Heidi Meraz for facilitating all of the different organizations in the city to kind of help put on their event. They had 29 professional teams participating in an event that was showcased through websites all over the web. He thanked Carl Szoyka from the City that went out and made sure that the facilities were nice and clean and signs were put up and thanked Rick Diaz and the Electric workers especially from IBEW 47 who helped resolve some electrical issues and also West Coast Electric came out and helped on some smaller issues so the City could concentrate on the bigger problem. He thanked all of those that came out and volunteered their time or donated to the event and those were Chief Alex Diaz, Rotary Club, The Key Club, Banning High School Youth Program, the Citizen Patrols, California Youth Authority, Stagecoach Days Association volunteers, Alpha Delta Pi girls from UCR, Home Depot, Walmart, and Albertsons. Those in the competition were competing for $10,000 dollars in cash and they brought competitive barbecuing from Arizona, Nevada, New Mexico, and all over Southern California.

Inge Schuler thanked the City staff for changing the number system on the agenda packets that is now easier to read. She also announced that one of our graduating seniors was No. 2 in the Top 10 graduating class, Arianna Torres, received a $500 dollar scholarship from the ACLU of Southern California, Desert Chapter. They award three $500 dollar scholarships each year to graduating seniors. The applicants have to write an essay about the first ten amendments or the actual document of the Constitution. It is a free response type essay and they received 9 applicants this year with good essays which are graded on the same scale as the AP test. Arianna Torres She will be attending UC San Diego and her plan is to go in pharmacology but we all know that can change. Ms. Schuler also said that we need to take a look in our community in regards to Assembly Bill 551 which deals with Urban Agriculture and we may want to promote that. Also, she has been mentioning for many years but hasn't mentioned it to this Council that we want to participate in the California Mills Act which protects historical

buildings and really provides for an incentive for the owners of these buildings to maintain them in the historical class type (residential or commercial building) and stop tearing them down.

Maggie Scott addressed the Council with her concerns that she has brought up before in regards to the home located on Nicolet and Almond Way. She has spoken to Code Enforcement and was told that the fire department would be taking care of that but it has been about nine months and she would like something to be done; it is a fire hazard. They are now putting things out in the street so she thinks something needs to be done as soon as possible. She doesn't know who is dropping the ball whether it is the owner of the property or whoever is supposed to take care of the City code. It is getting discouraging to see all of this stuff on the corner and you pass it every day; it looks like a dump. She asked that someone please let her know what is going on with that because nine months is a long time to keep looking at trash, old sofas, etc. and she doesn't want another nine months to go by. She would also like to know what has happened with the Hathaway Project and whether they are going to do anything about that street or not. Someone was going to go down and look at the street to see if it needs to be paved and would like someone to contact her about what is going on. On Hathaway where the warehouse was supposed to have been built the fence is falling down again. When the wind blows the tumbleweeds fly up the street. It is located right across from Nicolet on Hathaway so if someone could contact the owner of that property to put the fence back up it would be appreciated.

Clarence Taylor, Gilman Street addressed the Council stating his purpose for approaching the Council is that they presented some information pertaining to the Banning Public Library District and he doesn't think that it is on the agenda this evening. He wanted to bring to the attention of the Council that three months ago when they approached Riverside County Board of Supervisors and Ashley's group what they did was to listen to their legal counsel, Priamos and he is the one that basically steer's them as to what the legality of their job is. He has two articles from the Press Enterprise and both of them say "Grand Jury report slams County Counsel" so when you are talking to the County Counsel as to what they are doing right or wrong, or if the City of Banning needs to step up and maybe make it a City library he doesn't know but hopefully this will go to a federal level and that whole Board of Supervisors including Priamos will end up in prison. He knows that the Council doesn't want to step on toes because at the City level the next step is the County level so you don't want to step on Ashley's toes so-to-speak but being that this is hopefully televised the citizens will be able to see what side you are on.

Frank Burgess, P. O. Box 54 addressed the Council stating that he would like to know when they will have a report from the attorney in regards to the library and Code 1780 and the action that the Board of Supervisors took as Mr. Taylor just mentioned and also what has been in the newspaper the last two days of the criticism by the Grand Jury. He said that he spoke to the Grand Jury today just to let them know that they were in support of them trying to find things out in regards to the County counsel telling the Supervisors and Supervisor Ashley of what they want to hear. This is a dangerous thing whether it is the Supervisor's attorneys or the City's attorneys, tell them what is legal and not what it is you want to hear. He asked Mayor Franklin about the report from the City Attorney on the library.

Mayor Franklin said that they will complete public comments and then they will have a report.

Mr. Burgess said let's get some action taken for our library before it turns to mud and we don't have a library. Whether your realize this or not the very first evening of the meeting back last month he believes the three appointees by the Board of Supervisors put the Director on administrative leave and on June 10th they terminated him. They also have gone out and spent $10,000 dollars for landscaping to take out some grass and put in some desert and these three people are going to destroy the library and quite honestly all they have to do is to be asked to resign; they were not legally appointed. The Board of Supervisors should apologize to the City for not turning it over to them and the City apologize to the library for not taking action and action needs to be taken right away.

Alex Diaz, Police Chief made a couple of announcements: 1) This Friday, June 26th at 7:00 p.m. at the Banning Community Center Gym they will be holding their second BPAL Movie Night and they will be showing "The SpongeBob Movie" so if you are available, please come down and join them. They will have free refreshments; first come, first served. They hope to have this every other Friday so it is just something extra for our youth and families to come out and enjoy. 2) Reminder that on Friday, July 17th at 5:00 p.m. at the Banning High School Gymnasium they will be having their 5th Annual Cops vs. Clergy Basketball Game. The cost is $5.00 per ticket and it goes to a good cause and that cause is to purchase backpacks for Banning Unified School District students.

Mayor Franklin closed public comments.

Assistant City Attorney Laymon said that they have looked at both sides of the Library District appointment issue without expending a substantial amount of additional legal research time and resources. At this time they do not see this Special District appointment issue as something having an impact on the rights of the obligations of the City itself. The Library District is an entirely separate entity from the City and no district seats are appointed by the City itself. It would appear therefore that the Library District appointment process is outside of the City's subject matter jurisdiction.

CORRESPONDENCE – None

CONSENT ITEMS

Mayor Franklin said that there was a request to pull Consent Items 4, 7, 9 and 10 for discussion.

1. Approval of Minutes – Special Meeting – 05/26/15 *(Workshop)*

Recommendation: That the minutes of the Special Meeting of May 26, 2015 be approved.

2. Approval of Minutes – Special Meeting – 06/09/15 *(Closed Session)*

Recommendation: That the minutes of the Special Meeting of June 9, 2015 be approved.

3. Approval of Minutes – Regular Meeting – 06/09/15

Recommendation: That the minutes of the Regular Meeting of June 9, 2015 be approved.

5. Approval of Accounts Payable and Payroll Warrants for Month of April 2015

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

6. Accept Notice of Completion for Project No. 2014-04EL, Demolition of Building at 215 E. Barbour Street

Recommendation: That the City Council accept the Project 2014-04EL, Demotion of Building at 215 E. Barbour Street, as complete and direct the City Clerk to record the Notice of Completion.

8. Resolution No. 2015-57, Approving the First Amendment to the Rancho San Gorgonio Environmental Services Agreement Between the City of Banning and PlaceWorks (Formerly Known as The Planning Center | DC & E).

Recommendation: That the City Council adopt Resolution No. 2015-57, approving the First Amendment to the Rancho San Gorgonio Environmental Services Agreement with PlaceWorks for additional professional services related to the preparation of the Environmental Impact Report for the Rancho San Gorgonio Specific Plan as provided in the Schedule of Performance for Fiscal Year 2016.

11. Approve Contract between the Banning Unified School District and the City of Banning for Assignment of a School Resource Officer (SRO) at Banning High School and Nicolet Middle School for the 2015-16 School Year.

Recommendation: That the City Council approves entering into a contract between the Banning Unified School District and the City of Banning which will provide a School Resource Officer (SRO) at Banning High School and Nicolet Middle School during the school year.

12. Resolution No. 2015-61, Authorizing the Purchase of Two (2) 2016 Ford Fusion Sedans through National Auto Fleet Group Under the National Joint Powers Alliance (NJPA) Contract in the amount of $43,356.00.

Recommendation: That the City Council adopt Resolution No. 2015-61, authorizing the purchase of two (2) Ford Fusion Sedans through the National Auto Fleet Group in an amount not to exceed $43,356.00 under the NJPA Contract #102811.

Motion Moyer/Peterson to approve Consent Items 1, 2, 3, 5, 6, 8, 11 and 12.

Mayor Franklin opened the item for public comments.

Inge Schuler said that in regards to Consent Item 8 we are looking at amendments here and we are looking at the group that is providing services, the Romo Planning Group. On page 194 you have two persons who are going to be serving as Interim Associate Planner and that would be

Oliver Mujica and then a backup Interim Associate Planner who would be Marie Gilliam. If we have any questions on this issue, do we go through Brian Guillot to contract these people or do we contract them directly or is the initial contract person Brian Guillot.

Mayor Franklin said it is Brian Guillot.

Motion carried, all in favor.

4. Report of Investments for May 2015

There were no specific questions from the Council on this item.

Motion Moyer/Miller to approve Consent Item No. 4 to receive and file the monthly Report of Investment. Mayor Franklin opened the item for public comment; there was none. **Motion carried, all in favor.**

7. Resolution No. 2015-53, Approving the Consumer Price Index (CPI) Increase for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2015/16.

Councilmember Miller said it disturbs him that the City entered into the agreement with Waste Management in 1993 and we have been continuing that agreement since then without ever getting any other bids and we have a cost of living increase (CPI) built in and to just automatically have a CPI increase without having any alternate bids for 18 years seems ridiculous and he thinks that they should have bids on this rather than automatically just going on with this and have a CPI.

There was much Council and staff dialogue in regards to the long-term contract, CPI increases, going out for bid, responsibility of outreach and education on Assembly Bills 939 and 341, and the low franchise percentage that the City receives.

Mayor Franklin opened the item for public comment.

Clara Vera, Public Sector Representative with Waste Management addressed the Council that she is the City's new representative and also the representative for the Banning Unified School District and is looking to bring refreshed programs and ideas to the city.

Mayor Franklin asked if she could address where their rates compare to the other competitors.

Ms. Vera said that every city is designed, like our senior rate we have here, is designed specifically for each city. They offer services like community cleanups, sharps, bulky item cleanups, so they do incorporate those rates based on the additional services you receive. In regards to the rates, as she mentioned every city is designed for their rates and the City of Banning has a really outstanding rate for the services you receive. If you would like for her to put a report together, she would be more than happy to and have it available as an action item.

Councilmember Peterson said that he conducted his own poll and he called people in Perris, Hemet, Cherry Valley, etc. and has to admit that out of the competitive refuse collectors that Waste Management in the city of Banning, at the time he did his study, was the lowest rate and that was probably six months ago. Most people are averaging between $22, $24 and $25 dollars a month for the refuse service and we are still down around the $20.00 dollar mark.

Councilmember Miller said that on the agenda they have a proposal to spend $50,000 dollars for WRCOG to inform people of recycling and does Waste Management duplicate what WRCOG does and does WRCOG do something that Waste Management doesn't do and is it necessary for the City to have WRCOG get $50,000.

Ms. Vera said in her opinion she really has not had the opportunity yet to have reviewed WRCOG's material so she doesn't feel inclined to answer that question right now.

Councilmember Miller asked Ms. Vera if it would be possible for her to come back to the Council with an analysis of that. Ms. Vera said that she would be more than happy to do that.

There was some further discussion by the Council of what they would like to see included in the report from Ms. Vera.

Frank Burgess addressed the Council in regards to the franchise fee and said the 21% includes the City of Banning doing all of the billing and collecting so when you are saying you are getting 21% you have a labor cost there, number one. Number two, unless it has changed the revenue that you do not collect from the deadbeats that is subtracted from your 21%. In regards to Mr. Moyer's remarks if you put this out for bid, he will guarantee that Frank Burgess will bid on it because he attempted to bid on it when the rates were $14.00/$15.00 dollars. You need to read the agreement you have with Waste Management and why the City Council in the 1990's gave Waste Management a 10 year contact when there was only 3 years left to go he doesn't understand it but that is what the then City Council did. He also asked if the City is getting the credit it deserves for its recycling percentage that you are supposed to come up with for the State of California.

Rick Pippenger said that sometime back he was talking to staff about cardboard because the business where he used to work created a tremendous amount of cardboard and he asked if they could get a recycling dumpster just for the cardboard and the City said yes but it will cost you. So I am going to feed them cardboard but it is going to cost him to feed them; that makes no sense.

Mayor Franklin closed the item for public comment.

Mayor Franklin asked Director Vela if he needed to have this action taken tonight or is there a problem with continuing it.

Director Vela said the agreement says that once Waste Management formally notifies us that they are requesting a CPI increase the City does have a timeline to adhere to implement the CPI increase.

There were further comments by the Council in regards to waiting to act on this item until they get a comparison from Waste Management as to what is being provided.

Motion Miller to postpone this item to the next meeting and hopefully Ms. Vera can come baek and with a statement as to what her company does as compared to WRCOG and then we can make a better decision as to whether or not to proceed with both WRCOG and whether or not we need to proceed with asking for bids.

Mayor Franklin wanted to make it clear that when we are talking about Item No. 7 which is the CPI specifically for the collection, transportation and disposal of solid waste which is not the recycling pieces of it.

Councilmember Miller said that is a separate item but the two are tied together and if we wait what he would like to see again is what is the comparison of what WRCOG does and we do because those two amounts of money are tied together. Secondly, would be possible for Director Vela to give us a list of the costs and percentages of the local cities so that we can see whether or not Waste Management is giving us a good deal. Director Vela said that he could do that.

Mayor Franklin asked the Assistant City Attomey if she know if there is any adverse impact to continue this to the next meeting.

Assistant City Attomey Laymon said she is not aware of any and actually she was just going through the agreement and as it is right now this is their long form for professional services which wouldn't necessarily address that kind of detail so without more information she is not directly aware of any adverse impact. To the extent the contract says that they get an automatic yearly CPI increase they are entitled to that even without City Council action.

Director Vela said he is not sure the wording says automatic and he thinks it is still to the approval of the City Council.

Councilmember Miller said that he has mentioned over and over again that everything we do seems to be a crisis and we need to get out of that habit. This is not a crisis and we should proceed in a reasonable manner to get the best deal for the City.

Mayor Franklin asked Councilmember Miller if he was willing to amend his motion to change the word "postpone" to "continuation" to the next meeting.

Councilmember Miller said that is what he meant.

Councilmember Moyer said asked if the representative from Waste Management could give them any idea if there will be any ramifications.

Ms. Vera said she wanted to clarify that Waste Management is separate than WRCOG. As Director Vela mentioned this is a standard CPI increase and it doesn't have anything to do with a lot of the questions that are being asked.

Mayor Franklin said that there has been a motion to continue the item to the next City Council meeting. **First motion died for a lack of a second.**

Motion Peterson/Welch to approve Consent Item No. 7, to adopt Resolution No. 2015-53, Approving the Consumer Price Index ("CPI") Increase for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2015/16, as set forth in the City of Banning's Franchise Agreement with Waste Management of the Inland Empire. Motion carried, with Conncilmember Miller voting no.

9. Resolution No. 2015-58, Approving the Second Amendment to the Professional Services Agreement with J.H. Douglas and Associates Related to the Banning Housing Element in the amount of $20,000.

Councilmember Peterson said his concern is that during the housing approval process over the years he thinks that there were mistakes made on behalf of Mr. Douglas and it took time away, etc. and he really doesn't understand why we are going to award him this contract of $5,000 a year basically just to tell us of any changes in the housing element. Doesn't staff go to conferences or workshops or get emails from the industry telling you that change is coming down from the State, etc.? Do we really need someone for $5,000 a year to send us an email or to tell us there is going to be a change in the housing element? Did we do an RFP; maybe we could get it cheaper than $5,000 a year or we could subscribe to some association and get the same material.

Director Guillot said that there is no one on staff with the housing experience of Mr. Douglas. He is familiar with the citizen's request for the city of Banning and he is familiar with Council's concerns. He has decades of experience with the Housing and Community Development Department with the State of California and knows the ins and outs. Director Guillot said it would be remise on his part to try to represent the City in this arena and that is the purpose. The whole purpose of adding this amendment is to go back and take another look at the Housing Element and if you look at the scope of services they may, based on Council's decisions, meet with the public again. If you look at page 135, Exhibit A-1 – Scope of Services, his purpose is to help with those housing element programs. It was quite apparent during the Housing Element Update that Council and the citizens were not pleased with how that process went.

There was further Council and staff dialogue in regards to the amendment of this contract, and the services that will be provided to the City, Mr. Douglas being the most qualified, and doing what we can now before the next cycle starts. There were further comments in doing what we can now before the next housing cycle starts.

Director Guillot referred Council to page 126 of the packet under Fiscal Data stating that hopefully he made it clear that we are looking at $5,000 per year for four years or $20,000 total. However there was a typographical error actually in the contract that was listed as an exhibit so if you turn to page 138, Exhibit D-1 – Schedule of Performance No. 2 should state "June 30, 2019" and not "June 30, 2016" so if the Council would choose to approve this resolution he would ask that it be amended to reflect that change.

Mayor Franklin opened the item for public comment.

Inge Schuler commended the Council for putting the change that we desire on a front burner because we need to get this done once and for all because the compromise that we had with the affordable housing overlay caused a lot of resentment and we need to address that issue very quickly. She made the Council aware of the State Supreme Court decision of last week which gave cities and counties quite a bit more influence in deciding what they want in their housing elements and it was very much opposed by the Building Industry Association which was sort of a good thing to hear but we should be aware of that particular decision so that we can implement that very quickly into our changes as well.

Mayor Franklin closed the item for public comment.

Motion Moyer/Welch to approve Consent Item No. 9 to adopt Resolution No. 2015-58, approving the Second Amendment to the Professional Services Agreement with J.H. Douglas and Associates in the amount of $20,000.00 for additional professional services related to the Banning Housing Element and change Exhibit D-1 to read "June 30, 2019". Motion carried, all in favor.

10. Resolution No. 2015-59, Approving the Third Party Amendment to the Contract Services Agreement Between the City of Banning and Romo Planning Group, Inc. for Temporary Planning Services to include additional compensation in the amount not to exceed $150,400.00.

Councilmember Moyer said he wonders why we are doing this when we have an annual budget that we are going to be looking at that includes maybe going to a full-time employee and therefore at least clouding exactly what this contract would entail and he would actually like the Council to put this off and continue it until such time as we determine whether we are actually going to go with a full-time planner as it is proposed in the budget.

There was further Council and staff dialogue in regards to possible issues in postponing this item, looking at a full-time employee, the need for an assistant planner in the department, the contract planner services being provided now, and this contract going to on an "as needed basis" for a year.

Councilmember Miller said that Section 1 of the resolution it says, "The Council approves Amendment No. 3 for additional funding in the amount of $150,000" and it seems to him based upon our discussion that it should be changed for additional funding "not to exceed $150,000 depending upon on need".

Assistant City Attorney said she is looking up the scope of services, Exhibit A-1, and which is stamped page 193 and that is the standard on-call services provision and it says that each task will be indicated in writing beforehand and they will essentially have a project task that will be assigned as on-call so it is written as it stands right now to be "on-call".

There was some further Council and staff discussion in regards to the "not to exceed" language and the tasks involved, and the need to have a temporary employee.

Councilmember Miller said to him the problem is that it specifies that in Section 1 of the resolution and to him the resolution is the legal statement. We can simply change Section 1, instead of saying "the amount of $150,000.00" to say, "in the amount not to exceed $150,000.00" so we can change it if we do get a full-time employee. Assistant City Attorney Laymon said she would agree with that.

Mayor Franklin opened the item for public comment; there was none.

Motion Miller/Peterson to approve Consent Item No. 10 to adopt Resolution No. 2015-59, Approving the Third Party Amendment to the Contract Services Agreement Between the City of Banning and Romo Planning Group, Inc. for Temporary Planning Services to include additional compensation with the change to Section 1 of the Resolution that states funding in the amount "not to exceed" exceed $150,400.00. Mayor Franklin opened the item for public comment; there was none. **Motion carried, with Councilmembers Moyer and Franklin voting no.**

JOINT MEETING

Mayor Franklin recessed the regular City Council meeting and called to order a joint meeting of the Banning City Council, the Banning Utility Authority and the City Council Sitting In Its Capacity of a Successor Agency.

REPORTS

1. Adoption of Resolutions Related to the Revised Budget Plan for Fiscal Year 2015-16 for the City of Banning, Banning Utility Authority, and Successor Agency and Adoption of the GANN Limit.
   (Staff Report – Michelle Green, Deputy Finance Director)

Deputy Director Green said that she will be giving an overview of the Mid-Cycle Fiscal Year 16 Budget and there have been several discussions on various parts of this budget. At this time she started her power-point presentation (Exhibit "A" attached) and explained the information provided in regards to the General Fund and she also provided a small overview of some various groups of funds and where they will end up after any revisions that have been made to the Mid-Cycle budget and those include the Water Funds, Wastewater Funds, Reclaimed Water Funds, Electric Funds, Special Revenue Funds, Capital Improvement Funds, Enterprise Funds, Internal Service Funds, Successor Agency, and Successor Agency Funds. She said in the General Fund as far as going forward in regards to Future Challenges we have many and this is not an exhaustive list. We have increasing costs with PERS and estimates at this time tell us that our Miscellaneous Unit cost will go up almost 2% next year while safety will probably go up over 6%. In regards to best use of mining tax revenues pending litigation and the eventual mine close out we are using very conservative estimates on the Measure J revenues and have to plan for the future. We also have aging City assets and deferred maintenance because in the past those things were put off as a way to cut costs. We do have reserves that we are working on building up to

cover those items to hopefully address those issues. The most challenging as a City is how we allocate our scarce resources to meet the need for improved City services. As public servants we want to provide new services and enhance existing services to the public and it is very difficult to do so when you have limited resources so to that end staff has included in this budget process a new procedure and has incorporated into the budget document the integration of the Council Policy Goals and Objectives.

Council thanked Michelle Green and Dean Martin and staff who have all done a very good job in listening to what the Council had to say and incorporating everything that they could into this budget. There was further Council and staff dialogue in regards to the three new police officers and when they will be starting, collection of money from the Robertson's mine that is partially included in this budget and half going into reserves, this budget reflecting a lot of what had been heard in the focus group meetings, and that this budget is a living document so there will be possible changes as the City's needs change.

Mayor Franklin commended the public for participating in the community meetings, the surveys, and for giving a lot of input because that is where the Council started and also commended the Council for working together extensively on their goals and objectives and to staff for following up them. This was a good community effort where everybody worked together to see where we would like our city to go in the future.

Mayor Franklin opened the item for public comment; there was none.

Motion Welch/Moyer to approve the following resolutions: a) That the City Council adopt Resolution No. 2015-62, Adopting the Annual Budget for the Fiscal Period July 1, 2015 through June 30, 2016, Adopting the Five Year Capital Improvement Program, and Making Appropriations to Meet Expenses Approved Therein, Approving Budgetary Policies and Recommendations; b) That the Banning Utility Authority adopt Resolution No. 2015-09 UA, Adopting the Revised Budget Plan for the Fiscal Period July 1, 2015 through June 30, 2016, Adopting the Five Year Capital Improvement Program, and Making Appropriations to Meet Expenses Approved Therein; c) That the Successor Agency Board adopt Resolution No. 2015-04 SA, Adopting the Revised Budget Plan for the Fiscal Period July 1, 2015 through June 30, 2016, Adopting the Five Year Capital Improvement Program, and Making Appropriations to Meet Expenses Approved Therein; and d) That the City Council adopt Resolution No. 2015-63, Establishing an Appropriations Limit for the Fiscal Year 2015-16, Pursuant to Article XIIIB of the California Constitution. Motion carried, all in favor.

Mayor Franklin adjourned the joint meetings and reconvened the regular City Council Meeting.

REPORTS OF OFFICERS

Mayor Franklin said there has been a request to move Item No. 8 forward.

8. Resolution No. 2015-47, A Resolution of the City Council of the City of Banning, California approving an Extension to November 24, 2015 for Design Review No. 10-702 for the Village at Paseo San Gorgonio Project subject to the original conditions thereto

and further subject to City Attorney's Approval of Documentation executed and delivered by JMA Village LLC to the City Attorney on or before July 15, 2015 (i) Confirming Commencement of Construction on or before August 31, 2015, and (ii) Modifying the other Construction Commencement Dates under the Amended PSA (as defined below), Confirming the Maturity Date of the Note as August 31, 2015, and Related Requirements. (Staff Report – Lona N. Laymon, Assistant City Attorney)

Councilmember Peterson left the dais at this time because of a conflict of interest.

Assistant City Attorney Laymon gave the staff report on this item stating that this is a continued item from the last regular Council meeting. At the last meeting the Council was provided with a recommendation to extend the Design Review for this project to a date of November 24, 2015. The Council chose rather than to just outwardly extend the Design Review they wanted a date certain or to put into place some form of mechanism to get a date certain for an actual commencement of project construction. Staff has brought back a proposal to extend the design review but make the Design Review conditional upon the developer commencing construction by August 31, 2015 which was the date raised by the Council at its last regular meeting. She made a correction/suggestion to the staff report and the recommendation. In the agenda it says, "...that the Design Review extension would be to November 24, 2015." We could, if so desired by the Council amend that to make that date for the Design Review deadline coterminous with the building start date of August 31, 2015. So basically although the description and the recommendation looks very long it is actually a very simple proposal. It would be that we extend the Design Review period to August 31st and that would also be subject to the developer agreeing by July 15th to an agreement subject to their office's review and approval that would extend them starting actual construction by August 31st. We would also want to put into place because there has been some dispute as between the parties about the actual maturity date of a note regarding this project. We would also tie the August 31, 2015 Maturity Date for the Note to this new "second amendment" essentially to the project agreements.

Councilmember Miller made a motion to change the proposal and he has two suggestions: 1) Resolution No. 2015-47, A Resolution of the City Council of the City of Banning, California, approving an Extension to August 31, 2015 to correspond to the contractually required final date for the start of construction; and 2) to add to the end of this resolution, "If all the conditions listed are not met satisfactorily by August 31st, the Council directs the City Attorney to start default proceedings on September l, 2015."

Assistant City Attorney Laymon said as she is understanding it we would change the November 24, 2015 date to August 31, 2015; and adding (iii) to authorize the City Attorney's office to commence default proceedings upon the Note if the Note is not paid by August 31, 2015.

Councilmember Miller said that he would prefer, "...if all the conditions are not met" instead of just simply "...the Note" because there are two conditions. The Note has to be paid and construction has to be started.

Assistant City Attorney Laymon said that with respect to the Note they can commence default proceedings with respect to the Note if it is not paid. However, a Note or a Recorded Deed of

Trust, the Note essentially, only secures one issue and the one issue that it secures is payment. So while the failure to commence construction by August 31st may not trigger their ability to foreclose upon the Note, it may trigger their ability to seek other legal remedies such as there is a Right of Reverter under the Professional Services Agreement or a Breach of Contract.

Councilmember Miller said that is what he is looking for and could the Assistant City Attorney give us at this time a legal statement that would include both of those requirements.

Assistant City Attorney Laymon said that she definitely thinks that they can make something very broad like that. **If as of September 1, 2015 if all the conditions have not been satisfied pursuant to Council's action tonight, then the City Attorney's office would be authorized to take all available legal actions and seek all available legal remedies.**

Councilmember Miller amended his motion in regards to his second suggestion to include the language that was put forward by Assistant City Attorney Laymon. Motion seconded by Councilmember Moyer. Mayor Franklin opened the item for public comment; there was none. **Motion carried.**

At this time Councilmember Peterson returned to the dais.

1. Resolution No. 2015-48, Approving the Fire Services Protection Agreement with Riverside County Fire Department/CAL FIRE for Up to Three Years.

2. Resolution No. 2015-52, Approving a Contract for Continued Funding of Fire Engine 20 between Banning, Beaumont and Riverside County Fire.
   (Staff Report – Tim Chavez, Battalion Chief)

Chief Chavez addressed the Council regarding the three-year renewal of the fire protection services contract with CAL FIRE/Riverside County Fire. He said it is kind of encompassed in two Resolutions 2015-48 and Resolution No. 2015-52 which also includes the sharing, splitting three ways Engine 20 which sits at Highland Springs and Ramsey. Also, to note, these costs were included in the budget presentation given by Deputy Finance Director Green. Since September 1, 1998 the City of Banning has contracted with Riverside County Fire Department for fire services and staff recommendation is to approve the two resolutions.

Councilmember Peterson asked who owns the trucks and the equipment and do we share that with Beaumont. Chief Chavez said the City of Banning owns Engine 20 and all the equipment that is on it. The personnel costs are split three ways with Riverside County, the City of Beaumont and the City of Banning but they do not pay for the engine. He added that Engine 20 even though it is split three ways costs run 77% of its calls in the city of Banning. Also, Station 89 and all the equipment belong to the City of Banning as well.

Mayor Franklin added that the actual structure of Station 20 belongs to the State of California.

Councilmember Peterson asked how much the increase is. Chief Chavez said that it is an estimated amount of almost $300,000.00 for the first year however, keep in mind that the estimate that is provided is just that and it is based on full-staffing on both engines and based on

everybody being top step in the State system out of five steps and it also has a couple of wild cards thrown in for costs. Out of the last seven years five of those have come in under the estimate.

There was further Council and staff dialogue in regards to the two resolutions, the costs being split, and the possibility of having a separate paramedic truck.

Mayor Franklin opened the item for public comment; there was none.

Motion Welch/Moyer that the City Council adopt Resolution No. 2015-48, Approving the Fire Services Protection, Fire Prevention and Rescue Medieal Services Agreement with Riverside County Fire Department/CAL FIRE for up to three years. Motion carried, all in favor.

Motion Moyer/Welch that the City Council adopt Resolution No. 2015-52, Approving the contract for continued split funding of Fire Engine 20 as listed in the Banning Strategic Plan. Motion carried, all in favor.

3. Street Sweeper Purchase or Repair Options
(Staff Report – Art Vela, Acting Director of Public Works)

Acting Director Vela gave the staff report on this item as contained in the agenda packet giving some background information and also went over the available options.

Councilmember Miller said he was surprised that this diesel engine has 58,000 miles on it and typically a diesel that runs the road goes 2 million miles. It seems to him that that is a little strange.

Acting Director Vela said that there are two different diesel motors on this unit. There is the main diesel engine that runs the chasse and there is a second diesel motor which is the auxiliary motor which powers the components of the street sweeper. If you are referring to the motor on the chasse, you are correct; it did not have a lot of miles on it. He did a little bit of research and all the manufacturers that he spoke to and local agencies that have street sweepers told him that the life expectancy for a street sweeper is anywhere between 7 and 10 years. Also he looked at what our maintenance costs have been on the existing vehicle and for the first half of the vehicle's life which is about 7 years we spent about $70,000 in labor and materials for general maintenance and repairs on the unit. The second 7 years of its life we have spent about $110,000 so they would expect that if it continued to be in service that those costs would continue to increase.

Councilmember Peterson said that the 58,000 miles on that particular vehicle is like the break-in period. He doesn't understand the maintenance costs on the unit of almost $200,000 dollars over its lifetime so far.

Acting Director Vela said over a 14-year period it has been about $180,000. A majority of the repairs has been on the sweeper component fixing the hopper, the arms, the brooms and stuff like that and some repair costs to the chasse itself.

There was more dialogue between Council and staff in regards to fixing the original sweeper, CARB compliance, getting data on other types of sweepers, maintenance data on sweepers, maintenance records and track record on a Elgin or any other brand of sweeper, purchasing policy in regards in going out for bids, use of AQMD funds for the purchase of a sweeper, piggy-backing on other where other cities have purchased sweepers, and also don't purchase a demo model if we buy a new sweeper.

Mayor Franklin opened the item for public comments; there were none.

Motion Miller/Peterson that the City Council approve Option 4 the purchase of a new street sweeper. Motion carried, all in favor.

Mayor Franklin said that the motion was with the understanding that staff come back to the Council with the options of units to look at for purchase.

4. Resolution No. 2015-55, Approving a Professional Services Agreement with Western Riverside Council of Governments for Residential and Commercial Diversion Services.

Motion Moyer/Peterson to continue this item to a future date so that the Council ean have a comparison with Waste Management. Mayor Franklin opened the item for public comment; there were none. **Motion carried, all in favor.**

5. Resolution No. 2015-56, Approving a Professional Services Agreement with V2C Group, Inc. for the Design of Improvements at Roosevelt Williams Park.
(Staff Report – Art Vela, Acting Director of Public Works)

Acting Director Vela gave the staff report on this item as contained in the agenda packet.

Councilmember Miller said the design review is close to a $100,000 dollars; how much will the actual construction cost. Also, do we have the funds?

Acting Director Vela said that they estimated that it will come in anywhere from $1.5 million and $2 million. The project has been identified in the CRA bonds or the ROPS. The construction funds have not been formally approved by the Successor Agency but that will be taken on at their next approval cycle but the funds for the design have been approved

Councilmember Miller asked when would the estimate, the actual funds for construction, become available because he is concerned that if there is a delay in getting construction funds, we will have to go back into some redesign and would there be a problem.

Acting Director Vela said once they get to about 90% completion is when we get a better idea of what the construction costs will be and by about the 90% completion of the plans we have good idea of quantities and estimates. He said in regards to redesign he doesn't expect many changes

coming that would affect the plans. He said that the renewed NPDES permit has been the biggest change to the development of the plans and that permit and those requirement are relatively new so he doesn't seen those changing anytime soon.

There was further Council and staff dialogue in regards to the prior landscape improvements plans being usable, has the Parks and Recreation Commission seen the design and did they have any concerns, this being a multipurpose use, and time frame for completion.

Mayor Franklin opened the item for public comment.

Bill Dickson addressed the Council stating that his concern is that they are looking at one of our very small parks and the $95,000 dollars is just amazing especially when so much of this work was done before and when you start looking at $1.5 million to do the work that just seems like an awful lot to go through and redo some of the designs that were done in 2009-2011 so he would like to see who did this originally.

Mayor Franklin closed the item for public comment.

Mayor Franklin asked in regards to the cost of the bid do you have anything else and also how well this meets up with the Parks Master Plan that was put together a few years ago.

Acting Director Vela said that he will confirm and make sure that this design reflects what was approved in the Master Plan.

Motion Miller/Moyer that the City Council: 1) Adopt Resolution No. 2015-56, Awarding a Professional Serviees Agreement with V2C Group, Inc. of Riverside, CA in the amount of $95,592.00; 2) Authorizing the Administrative Services Director to make necessary hudget adjustments and appropriations and transfers related to the project; and 3) Authorize the Interim City Manager to execute the Professional Services Agreement with V2C Group, Inc. Motion carried, all in favor.

7. Resolution No. 2015-60, Consideration of a Contract Services Agreement for Building & Safety Services.
(Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot gave the staff report as contained in the agenda packet and displayed a chart showing Charles Abbott's proposed fee services and Willdan's existing contract.

The Council thanked Acting Director Guillot for an excellent report.

Ron Grider, Director of Charles Abbott Associates addressed the Council stating that they have been in business for 30 years and look forward to the opportunity to serve the City of Banning.

Mayor Franklin opened the item for public comment; there was none.

Motion Welch/Miller that the City Council: 1) Adopt Resolution No. 2015-60, Approving a Contract Services Agreement with Charles Ahhott Associates, Inc. to provide Building &

Safety Services in the amount not to exceed a fee of 65% of the fees paid for the first $15,000, 55% of the fees paid in the amounts from $15,001 to $30,000, and 50% of the fees paid in the amounts over $30,001; and 2) Authorize the Interim City Manager to execute the Contract Services Agreement with Charles Abbott Associates, Inc. in the form that is approved by the City Attorney. Motion carried, all in favor.

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

Councilmember Peterson –

- He requested of the Interim City Manager that perhaps at the next meeting he could publically report on the Chamber of Commerce. It has been a year since the controversy came about with the Chamber in regards to the utility bill and he would like a public report as far as have payment arrangements been made or what is going on so the public has an idea.

Mayor Franklin –

- A Water Regional Alliance Meeting will be held tomorrow night June 24th at 6:00 p.m. in the Council Chambers and it is open to the public.

City Committee Reports - None
Report by City Attorney – Nothing to report at this time.

Report by Acting City Manager –

- Beginning on the 14th of September city hall operating hours will be returning to five days a week being open Monday through Friday from 8 a.m. to 5 p.m. Written notices will be getting out as we get closer to that date.
- We will begin sending out notices to all of our utility users about the Chromium 6 issue. The City has received official notification from the State that we are in violation and therefore we are required to provide notices to our citizens.
- The position for Planning Commissioner is open and if you would like to apply or know of anyone who is interested in applying you have until July 23, 2015 at 5:00 p.m.

Councilmember Welch asked the Acting City Manager to comment on what he said in regards to the water.

Acting Director Vela said that what Interim City Manager was referring to was specifically to Chromium 6. So as we expected we are in exceedance of the new Chromium 6 MCL so the State requires that we notify all of our customers that we are in exceedance of a primary drinking water standard so that is the process that will start.

Councilmember Welch said that people are really interested in helping with our water conservation. We had talked about them getting a benchmark at some point in time to measure their effectiveness and we talked about mid-2013 and have we been able to do anything in that direction.

Interim City Manager Martin said that staff is still looking at that and still pulling together cost estimates to do that but it is going to take a minimum of 6 to 8 weeks to get it done and

implemented. He has since learned within the past week that the information is available to our citizens but they have to go to their account on-line and it will show them the last three years usage and they can do that right now. He can put information on the City's website to that effect and try to get an insert into the utility billing to make them aware of that but staff is still going to work on getting something in place that will have it actually show on their billing statement.

Mayor Franklin said to follow-up in regards to water one of the things that they are talking about with the Water Alliance tomorrow is that there is a company called iEfficient that is doing a lot of the advertising about where we are with water and conservation so we can talk about whether or not we want to participate on a regional basis with what they are doing so if there is anything that seems to fit into what we need to do to educate our residents, that will come back to the Council.

Councilmember Miller said very often it is helpful to have on the website just a thermometer or something showing what percentage the whole city is doing.

Acting Director Vela said he thinks that is something that could be added to the Water Division link. He said that they just uploaded their data to the State website as require by the State's mandate and we have already seen a reduction in our total potable water production that is nearing the 30% range.

ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(6/2015)*
2. Discussion regarding Animal Control Services *(7/2015)*
3. Discussion regarding change in time for Council Meetings
4. Fee Study
5. Discussion on how to handle/address upcoming Assembly Bills
6. Discussion of City Manager authority to give a contract of $25,000.
7. Review Consent Calendar policy.
8. Discussion of vacant properties where people are discarding furniture.

(Note: Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

Mayor Franklin said that in regards to Pending Item No. 5 we do have a governmental 2+2 committee (Mayor Franklin and Councilmember Welch) and she wanted to know if it was okay by the Council to move that item to that committee to be able to bring items back to the Council and then we can take it off Pending Items. **There was Council consensus to move that to the 2+2 committee and those items would be brought back to the Council for approval.**

Mayor Franklin said that the Council would reconvene back to closed session.

Assistant City Attorney Laymon said the two closed session items that the Council is reconvening on are: 4. Labor Negotiations: b) Executive Salary and Benefits, and Item 6.) Public Employee Appointment. Also public comment had been taken on those earlier.

ADJOURNMENT

By common consent the meeting adjourned at 8:19 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.

City of Banning
MidCycle FY16
Budget Overview

June 23, 2015

Agenda

- MidCycle Budget Review process
- Review of General Fund – Revenue and Expenditure Adjustments
- General Fund Status
- Review of Other Funds' Results
- Work plan related to Council Goals
- Recommendation
- Questions

MidCycle Budget Review Process

- Two-Year Budget (FY15 & FY16) adopted June 2014
- Second year of the two-year budget
- Final results of FY14 audit – revised available balances
- Revised revenue and expenditure estimates based on new or more relevant information
- Incorporated Council Goals

General Fund - Revenues

MidCycle Adjustments:

Property Tax	$ 287,296
Sales Tax	2,100
Transient Occupancy Tax (TOT)	80,000
Measure J Mining Tax	550,000
Electric Admin Service Charge	(40,000)
All Other Revenues	105,314
Total Adjustments to Revenues	$ 984,710

General Fund - Expenditures

MidCycle Adjustments:

Police/Dispatch/Code Enf/Fire	$ 641,196
Community Services	121,319
Fiscal Services/TV Government Access	88,366
Public Works	48,364
City Administration*	23,700
Building & Safety/Planning	(25,967)
Total Adjustments to Expenditures	$ 896,978

General Fund - Status

FY16 Adopted Budget Surplus/(Deficit)	$ (130,367)
ADD: Increase in Revenues	984,710
SUBTRACT: Increase in Expenditures	(896,978)
Net MidCycle Adjustments	87,732
Revised FY16 Budget Surplus/(Deficit)	$ (42,635)

Water Funds

Water Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
660 – Water Operations	8,686,398	(813,338)	7,873,060
661 – Water Capital Facilities	1,456,915	49,660	1,506,575
663 – BUA Water Capital Project	1,552,119	(297,100)	1,255,019
669 – BUA - Water Debt Service	82,265	(1,100)	81,165
Combined Fund Balance >>>	**11,777,697**	**(1,061,878)**	**10,715,819**

Wastewater Funds

Wastewater Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
680 – Wastewater	1,253,791	(39,197)	1,214,594
681 – Wastewater Capital Facility	9,792,434	(217,640)	9,574,794
683 – BUA Wastewater Capital Project	2,729,903	(98,700)	2,631,203
685 – State Revolving Loan	774,335	1,507	775,842
689 – BUA Wastewater Debt Service	90,056	500	90,556
Combined Fund Balance >>>	**14,640,519**	**(353,530)**	**14,286,989**

Reclaimed Water Funds

Reclaimed Water Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
662 – Irrigation Water	7,147	(2,500)	4,647
682 – Wastewater Tertiary	2,577,935	(2,132,500)	445,435
Combined Fund Balance >>>	2,585,082	(2,135,000)	450,082

Electric Funds

Electric Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
670 - Operations	11,337,359	(25,327)	11,312,032
672 - Rate Stability	6,252,685	10,000	6,262,685
673 - Electric Improvement	4,627,081	15,141	4,642,222
674 - Electric Bond Project Fund	1,460,410	(294,650)	1,165,760
675 - Public Benefit Fund	475,892	(617)	475,275
678 - Electric Debt Service Fund	298,157	200	298,357
Combined Fund Balance >>>	24,451,584	(295,253)	24,156,331

Special Revenue Funds

- Includes funds that are restricted in use. Examples include:
  - Gas Tax
  - Measure A
  - Grants
  - Development impact funds

- Total Adjusted Revenues $3,114,584
- Total Adjusted Expenditures $3,229,577

Capital Improvement Funds

- Includes funds that are restricted in use.
  - i.e. Development impact funds, major capital projects

- Total Adjusted Revenues $ 6,705
- Total Adjusted Expenditures $ 0

Enterprise Funds

- Includes funds that are considered to be like a business:
  - Airport
  - Transit
  - Refuse

- Total Adjusted Revenues $5,272,625
- Total Adjusted Expenditures $5,277,794

Internal Service Funds

- Include funds that provide services to other City operations. These include:
  - Risk Management (worker's compensation, general liability and legal svcs)
  - Fleet
  - Information Services
  - Utility Billing Services

- Total Adjusted Revenues $6,264,497
- Total Adjusted Expenditures $6,149,000

Successor Agency

Overview

- Successor Agency approves ROPS every 6 months
- Oversight Board approves ROPS
- Department of Finance approves ROPS
- Last ROPS approved was ROPS 15-16 A

Successor Agency Funds

Successor Agency Funds	Available resources @ 6/30/2015	Revised Projected YTD Gain(loss)	Revised Projected balance @ 7/1/2016
805 – Redev Oblign Retirement Fund	106,099	1,530,256	1,636,355
810 – Successor Housing Agency	37,753	50	37,803
830 – Debt Service Fund	178,675	152,387	331,062
850 – Successor Agency	1,535,225	(1,483,322)	51,903
855 – Tax Allocation Bonds -2007	5,695,601	(64,719)	5,630,882
856 – Tax Allocation Bonds-2003	276,197	32,974	309,171
857 – Low/Mod Tax Alloc Bonds-2003	472,912	900	473,812
Combined Fund Balance >>>	**8,302,462**	**168,526**	**8,470,988**

Future Challenges

General Fund

- Increasing costs with PERS.
- Best use of mining tax revenues given pending litigation and eventual mine closeout.
- Aging city assets and deferred maintenance.
- Allocation of scarce General Fund resources to meet need for improved city services.

Council Policy Goals and Objectives

- Community focus group meetings
- Survey results compiled
- Council defined Goals
- Council and staff collaborated on expanded definitions of goals and on policy objectives
- Staff developed activities (work plan) to meet Council's desired goals and objectives

Recommendation

- Approve the resolutions amending the estimated revenues and appropriations for the Fiscal Year 2015/2016 budget for the City of Banning, Banning Utility Authority and Successor Agency and adopting the GANN Limit

Questions

~

Further Discussion

CITY COUNCIL AGENDA
CONSENT ITEM

Date: **July 14, 2015**

TO: **City Council**

FROM: **Dean Martin, Interim City Manager**

SUBJECT: **Authorization to enter into an Enterprise Licensing Agreement with Microsoft**

RECOMMENDATION: "That the City Council authorizes entering into an Enterprise Licensing Agreement with Microsoft and authorizes the Interim City Manager to execute the related enrollment agreement".

JUSTIFICATION: The City executed a five-year licensing agreement with Microsoft for fiscal years 2011 through 2015. That agreement will expire on July 1, 2015 and it is time to execute a new agreement if the City wishes to continue using Microsoft software products. Among other benefits, the agreement will keep the City in compliance with all current licensing requirements.

BACKGROUND & ANALYSIS: The City uses and intends to continue using Microsoft software products as its standard configuration on its Application Servers and desktop computer environment. Microsoft offers an enterprise (or citywide) software licensing agreement. Entering into to this type of an agreement has several benefits. Some of those benefits include:

- Lower cost of software in the future
- Free upgrades on all software covered by agreement
- Ensures compliance with all licensing requirements
- Will facilitate standardization of software throughout the City
- Allows City to implement new Microsoft applications at a reduced rate
- Licensing costs spread over three years versus a lump sum payment
- Employee Purchase Program Discount on packaged software, including Microsoft Office, and reference software
- Training vouchers for Training at Certified Technical Training Centers
- Problem Resolution Support

Microsoft has entered into a master agreement with the County of Riverside. All cities and counties in the State are allowed to piggyback on this agreement by executing a Microsoft Enterprise Enrollment form. The City participated in the previous five-year agreement in fiscal years 11 through 15. Staff is recommending that the City piggyback on this agreement for another three-year agreement, for fiscal years 16 through 18.

FISCAL DATA: This is a three-year agreement totaling $144,690.24. The contract calls for three annual payments of $48,230.08 (copy of quote attached as Attachment 1). The prior contract was for five-years at $192,983.20, or $38,596.64 per year. Funds are currently available in the Information Services budget to pay the first annual installment. No additional appropriation is necessary.

RECOMMENDED/APPROVED BY:

Dean Martin
Interim City Manager/
Interim Administrative Services Director

CompuCom - software quote

Quoted by Michael Hawkins, CompuCom 7171 Forest Lane Dallas, TX 75230
Phone 858-527-8293 Michael.Hawkins2@compucom.com

Please fax your POs to Client Assistance Center at 800-366-9994. You may call 800-400-9852, option 2, to check status on orders.

	Quoted to:	City of Banning Eric Brown eric.brown@ci.banning.ca.us (951) 922-3133		
Date Issued	*6/18/2015*	Microsoft EA Renewal Quote with O365 G3		
		Important: Please provide the email address of the recipient designated to receive a CompuCom "order confirmation"		
Quantity	*Part #*	*Description*	*Unit Price*	*Ext. Price*
		enterprise products		
165	7R2-00001	Off365PlanG3FromSA ShrdSvr ALNG SubsVL MVL PerUsr	$ 150.96	$ 24,908.40
165	U5J-00004	ECALBridgeO365 ALNG SA MVL Pltfrm UsrCAL	$ 25.42	$ 4,194.30
176	CW2-00307	WinEntforSA ALNG (SA) MVL Pltfrm	$ 29.19	$ 5,137.44
		additional products		
1	312-02257	Exchange Server Standard (SA)	$ 105.67	$ 105.67
1	H30-00238	Project Professional w/1 ProjectSvr CAL (SA)	$ 162.62	$ 162.62
5	H21-00591	Project Server CAL (SA) User CAL	$ 28.97	$ 144.85
1	H22-00475	Project Server (SA)	$ 846.26	$ 846.26
35	359-00792	SQL CAL (SA) Device CAL	$ 31.19	$ 1,091.65
7	228-04433	SQL Server Standard Server (SA)	$ 133.98	$ 937.86
1	H04-00268	Sharepoint Server (SA)	$ 1,015.54	$ 1,015.54
4	P73-05898	WinSvrStd ALNG (SA) 2Proc	$ 131.76	$ 527.04
1	P71-07282	WinSvrDataCtr ALNG (SA) 2Proc	$ 919.64	$ 919.64
3	P71-07281	WinSvrDataCtr ALNG SASU MVL WinSvrStd 2Proc (Step Up)	$ 1,838.27	$ 5,514.81
		Subscriptions		$ -
50	4ZF-00033	VDA ALNG SubsVL MVL Pltfrm PerDvc	$ 54.48	$ 2,724.00
				$ -
		Please type "electronic software delivery" on your PO		
	Product-total			$ 48,230.08
	Sub-Total			$ 48,230.08
0	Tax	ESD - nontaxable		$ -
	Shipping			No Charge
	Total	**Annual Payment Total**		**$ 48,230.08**
		3 Year Total		$ 144,690.24

Pass-Through Warranty and Other Rights. As a reseller, end-user warranties and liabilities (with respect to any third party hardware and software products provided by CompuCom) shall be provided as a pass-through from the manufacturer of such products. All software products are subject to the license agreement of the applicable software supplier, as provided with the software packaging or in the software at time of shipment.

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CITY COUNCIL MEETING
CONSENT

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-25, "Approving Amendments to the Professional Services Agreement with LSA Associates, Inc. for Serviees related to the Banning Circulation Element and for the Update of the Traffic Fee Component of the Development Fee Program"**

RECOMMENDATION: Adopt Resolution No. 2015-25:

I. Approving an Amendment to the Professional Services Agreement with LSA Associates, Inc. in an amount of $8,000.00 for services rendered related to the update of the Circulation Element.

II. Approving an Amendment to the Professional Services Agreement with LSA Associates, Inc. in an amount of $40,000.00 for additional services related to the update of the Traffic Fee Component of the Development Fee Program.

III. Authorizing the Administrative Services Director to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with LSA Associates, Inc. for a total contract amount not to exceed $286,000.00.

IV. Authorizing the City Manager to execute contract documents.

JUSTIFICATION: The approval of these services is necessary in order to disburse payment related to services already rendered and to complete the update of the Traffic Fee Component of the Development Fee Program.

BACKGROUND: On August 23, 2011, City Council approved Resolution No. 2011-76 awarding a Professional Services Agreement ("PSA") to LSA Associates, Inc. for (1) the preparation of an environmental impact report for the Banning Circulation Element General Plan Amendment and for (2) updating the traffic fee component of the Development Fee Program. The scope of work was to be completed for an amount of $238,000.00. The services to be provided were in response to the Pardee Homes Development project and, therefore; were funded by the developer. The original agreement approved under this resolution is attached as Exhibit "A".

Circulation Element General Plan Amendment

The first task of the PSA included the Banning Circulation Element General Plan Amendment (GPA No. 13-2501) and was budgeted at $193,000.00. The scope was completed and approved by City Council on March 26, 2013 under Resolution No. 2013-34. During the completion of this task the scope of work was expanded to include a revision to the Level of Service ("LOS") for roadway

City Council on March 26, 2013 under Resolution No. 2013-34. During the completion of this task the scope of work was expanded to include a revision to the Level of Service ("LOS") for roadway operating conditions from LOS "C" to LOS "D" and removing an identified interchange improvement at I-10/Highland Home Road from the Circulation Element. The additional work was completed at a cost of $8,000.00 as shown in the proposal dated February 13, 2013 and attached as Exhibit "B". In order to compensate LSA Associates, Inc. for the additional services, staff is seeking approval of an amendment to the original PSA in the amount of $8,000.00. To date, total expenses related to services provided amount to $246,000.00.

Development Fee Program

The second task of the PSA included an update to the traffic fee component of the City's development fee program. A $45,000.00 budget, of the total $238,000.00 PSA, was included for this task. At this point the second task has not been completed. The original scope of work identified for this project was completed by LSA Associates, Inc. including: coordination with staff; identification of study area; identification of intersection needs for the future; existing traffic conditions and intersection deficiencies; estimation of costs; identification of future new traffic; development of traffic fee for future new traffic; preparation of traffic analysis report; and related meeting attendance.

During the preparation of the update to the traffic fee component, staff identified the requirement for additional analyses that were not included in the original scope of work. The additional items include the following: figures to identify typical major and secondary highways cross sections; adjustments to buildout volume development; determination of right-of-way requirements; queuing analysis estimates; and right-of-way acquisition estimates. As part of Resolution No. 2015-25 staff is requesting an amendment to the original PSA for the additional service related to the Development Fee Program in the amount of $40,000.00. The proposal for related additional services is attached as Exhibit "C" and is dated October 2, 2014.

As mentioned, City Council approved the original contract with LSA Associates, Inc. in the amount of $238,000.00. If approved, the requested two part amendment will increase the contract by a total of $48,000.00, to a total contract amount of $286,000.00. Pardee Homes has recently deposited additional funds to cover the additional services.

FISCAL DATA: Professional services provided by LSA Associates, Inc. in regard to the abovementioned services will be fully funded by deposits received by Pardee Homes. Staff requests that all existing and future funds collected by the developer for these services be appropriated to an expenditure account determined by the Administrative Services Director in order to be utilized for these services.

SIGNATURES ON NEXT PAGE

RECOMMENDED BY:

Art Vela,
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim Administrative Services
Director/Interim City Manager

Attachments:

1.) Attachment 1: Exhibit "A"-Professional Services Agreement approved under Resolution No. 2011-76.
2.) Attachment 2: Exhibit "B"- Proposal dated February 13, 2013 for professional services related to the Banning Circulation Element Update
3.) Attachment 3: Exhibit "C"- Proposal dated October 2, 2014 for professional services related to the Development Fee Program.

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RESOLUTION NO. 2015-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENT WITH LSA ASSOCIATES, INC. FOR SERVICES RELATED TO THE BANNING CIRCULATION ELEMENT AND FOR THE UPDATE OF THE TRAFFIC FEE COMPONENT OF THE DEVELOPMENT FEE PROGRAM

WHEREAS, on August 23, 2011, City Council approved Resolution No. 2011-76 awarding an agreement to LSA Associates, Inc. for: (1) the preparation of an environmental impact report for the Banning Circulation Element General Plan Amendment and for (2) updating the traffic fee component of the Development Fee Program in the amount of $238,000.00 attached as Exhibit "A"; and

WHEREAS, the Banning Circulation Element General Plan Amendment (GPA No. 13-2501) budget portion of the original agreement was for an amount of $193,000.00 and related services were completed and approved by Council on March 26, 2013 under Resolution No. 2013-34; and

WHEREAS, in order to complete services related to the Circulation Element, additional work and funding was required in the amount of $8,000.00 including changing the level of service ("LOS") for roadway operating conditions from LOS "C" to LOS "D" and removing one designated interchange improvement at I-10/Highland Home Road as described in the proposal attached as Exhibit "B"; and

WHEREAS, during the preparation of the update to the traffic fee component, staff identified the requirement for additional analyses that were not included in the original scope of work such as: figures to identify typical major and secondary highway cross sections; adjustments to buildout volume development; determination of right-of-way requirements; queuing analysis estimates; and right-of-way acquisition estimates. The additional work will cost $40,000.00 as shown in the proposal attached as Exhibit "C"

WHEREAS, as part of this resolution staff is requesting the approval of the two part amendment which will increase the total contract amount by $48,000.00 for a total contract amount of $286,000.00; and

WHEREAS, on May 13, 2015 Pardee Homes submitted a check to the City of Banning in the amount of $55,062.00 to cover the additional services as described in this report and to date has provided deposits specifically related to this project in an amount of $289,785.46; and

WHEREAS, staff request that all existing and future funds collected by the developer for these services be appropriated to an expenditure account determined by the Administrative Services Director to be utilized for these services.

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

SECTION 1. The City Council adopt Resolution No. 2015-25, "Approving Amendments to the Professional Services Agreement with LSA Associates, Inc. for Services related to the Banning Circulation Element and for the Update of the Traffic Fee Component of the Development Fee Program"

SECTION 2. The City Council approves an amendment to the Professional Services Agreement with LSA Associates, Inc. in amount of $8,000.00 for services rendered related to the update of the Banning Circulation Element.

SECTION 3. The City Council approves an amendment to the Professional Services Agreement with LSA Associates, Inc. in an amount of $40,000.00 for additional services related to the update of the Traffic Fee Component of the Development Fee Program.

SECTION 4. The Administrative Services Director is authorized to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with LSA Associates, Inc. for a total contract amount not to exceed $286,000.00 and appropriate all funds deposited by Pardee Homes for the purpose of funding said professional services.

SECTION 5. The City Manager is authorized to execute contract documents referred to herein.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, 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. 2015-25 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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ATTACHMENT 1

EXHIBIT "A"
PROFESSIONAL SERVICES AGREEEMNT APPROVED UNDER RESOLUTION NO. 2011-76

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(160)

CONTRACT SERVICES AGREEMENT

FOR PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT AND UPDATE THE TRAFFIC FEE COMPONENT OF THE DEVELOPMENT FEE PROGRAM

By and Between

THE CITY OF BANNING,
A MUNICIPAL CORPORATION

and

LSA ASSOCIATES, INC.

AGREEMENT FOR CONTRACT SERVICES FOR PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT AND UPDATE THE TRAFFIC FEE COMPONENT OF THE DEVELOPMENT FEE PROGRAM
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
LSA ASSOCIATES, INC.

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 1st day of September, 2011 by and between the City of Banning, a municipal corporation ("City") and LSA Associates, Inc., ("Consultant" or "Contractor"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties". (The term Consultant includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement,

Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 **Prevailing Wages.**

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the

Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Two Hundred Thirty Eight Thousand Dollars (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commenee the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) speeified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conelusive upon the parties to this Agreement. In no event shall Consultant bc entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in conneetion therewith:

Pritam Deshmukh	Senior Transportation Engineer
(Name)	(Title)
Les Card, P.E.	Principal/Chief Executive Officer
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to ineur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrenee or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed] _____ Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3. .

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years

duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally aecepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, eopy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have aceess to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrecs that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the projcct being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thercto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documcnts and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of

uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant sball not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant sball promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue sball lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising ont of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

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. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions 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.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 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.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of __N/A__ ($__N/A__) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performanee of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Offieer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed eommunicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 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.

9.6 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.

[SIGNATURES ON FOLLOWING PAGE]

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

Andrew J. Takata, City Manager

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Lona N. Laymon, Assistant City Attorney

CONSULTANT:

LSA ASSOCIATES, INC.

By: _____
Name: LES CARD
Title: CEO

By: _____
Name: JAMES BAUM
Title: CFO

Address: 20 Executive Park, Suite 200
Irvine, CA 92614

Two signatures are required if a corporation.

NOTE: CONSULTANT'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 DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On 9/26, 2011 before me, Teresita Dela Cruz personally appeared Les Card, proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose names(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Teresita De La Cruz

TERESITA DE LA CRUZ
Commission # 1845766
Notary Public - California
Orange County
My Comm. Expires May 20, 2013

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On 9/26 2011 before me, Teresita DeLaCruz personally appeared James Baum, proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose names(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

TERESITA DE LA CRUZ
Commission # 1845766
Notary Public - California
Orange County
My Comm. Expires May 20, 2013

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

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_____
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- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. Preparation of Environmental Impact Report for Banning Circulation Element General Plan Amendment:

Task 1: Project Initiation/Kickoff Meeting

Project initiation tasks include collection of data relevant to the project and development of the Project Description. A project kickoff meeting will be undertaken at the outset of the work effort. The meeting will be held with City staff to obtain relevant Project Description information; establish the project objectives; identify key issues to be addressed in the EIR; explore community concerns regarding the project; obtain the City's significance thresholds for the EIR analysis; and obtain the City's mailing list for environmental documents.

The project kickoff meeting will include a preliminary discussion of project alternatives and the manner in which cumulative impacts will be addressed in the environmental document. Consultant will identify key critical path team decisions that are necessary to meet the EIR schedule.

Task 2: Project Management and Attendance at Meetings

This task represents an active project management role and includes attendance at various project meetings and coordination with agencies and interested parties. This task includes notifying City staff of problems as they are encountered and working expeditiously to resolve them. Important elements of this task will be to maintain the project schedule, oversee the budget, and coordinate efforts with the City and other team members.

The budget anticipates attendance by one or two team members provided by the Consultant at a total of five meetings. Consultant anticipates attending one project kickoff meeting, two meetings related to the independent preparation of the EIR, and one meeting at each of the public hearings before the City Planning Commission and City Council. Attendance at meetings over the maximum identified above or attendance of additional technical specialists at community meetings/public hearings will be on a time-and-materials basis, with the client's written approval.

Task 3: Initial Study/Notice of Preparation and Scoping Meeting

Consultant will prepare an Initial Study (IS) in accordance with CEQA Guidelines Section 15063 in order to identify effects determined not to be significant and explain the rationale for determining that potentially significant effects would not be significant. Because the City will be proceeding with preparation of an EIR, the IS will be

streamlined and focused. The purpose of the IS will be to allow the City to focus the EIR on the potentially significant impacts of the proposed GPA.

Consultant will prepare and transmit to the City a draft Notice of Preparation (NOP) per Section 15082 of the State CEQA Guidelines. Consultant will revise the IS and NOP consistent with the City's comments and finalize both for public review. Up to 25 copies of the NOP with the IS will be provided to the public agencies on the City's mailing list via certified mail. A total of 75 copies of the NOP will be reproduced and copies submitted to the State Clearinghouse and the City's distribution list for environmental documents. Consultant will also provide the NOP and IS electronically to the State Clearinghouse and the City (for uploading to its website, if determined appropriate). The City will be responsible for all public noticing, including news publications.

Scoping Meeting. Scoping meetings are not required under CEQA, but are typically conducted by the Lead Agency during the 30-day NOP public review period in order to solicit public input on a project. Consultant will attend a public scoping meeting to be held by the City during the 30-day NOP public review period. It is anticipated that City staff will introduce the proposed GPA and Consultant will discuss the EIR process and solicit written public input regarding CEQA-related topics to be addressed in the EIR. Consultant's staff will sign in attendees and take notes regarding the issues raised by the public. It is anticipated that the Consultant's Project Manager and Assistant Project Manager will attend the scoping meeting.

Task 4: Preparation of Technical Studies

4.1 Air Quality Study and Climate Change Analysis

The proposed project is located in the City of Banning, which is part of the South Coast Air Basin (Basin). Air quality in this area is administered by the South Coast Air Quality Management District (SCAQMD). Consultant will conduct an Air Quality Study that will be consistent with all applicable procedures and requirements, including the SCAQMD *CEQA Air Quality Handbook* guidelines.

Consultant will prepare the baseline and project setting for the proposed project, which is based on the existing condition and current General Plan condition for the Banning area. Because there is no construction associated with the proposed project, no construction emissions and localized significance threshold (LST) impact analysis will be included.

Because the proposed Circulation Element Update will affect the vehicular volumes along major arterials within the City, potential air quality impacts would occur. The following project-related operational impacts will be conducted: project-related mobile source

emissions that have regional effects will be calculated with the URBEMIS2007 model or EMFAC2007 model with the vehicle miles traveled (VMT) changes; the carbon monoxide (CO) hot spot analysis will be conducted with the CALINE4 model and peak-hour turn volumes at up to 15 of the most affected intersections in the City.

Consultant will include the discussion and analysis of the project-related GHGs and their potential effects on global climate change, including recent regulatory updates from the California Air Resources Board (ARB), SCAQMD, or other pertinent public agencies. Emissions of carbon dioxide (CO_2), a key GHG identified in Assembly Bill (AB) 32, and other major GHGs such as methane (CH_4) and nitrous oxide (N_2O) from direct and indirect project-related sources will be calculated using the VMT changes and EMFAC2007 model.

4.2 Noise Impact Study

Consultant will conduct a Noise Impact Study that will be consistent with all applicable procedures and requirements. Consultant will review the applicable noise and land use compatibility criteria by the City and evaluate the existing and future traffic noise levels for up to 15 roadway segments along major arterials as a result of the proposed Circulation Element Update. Noise impacts from vehicular traffic will be assessed using the United States Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108, December 1978) to address potential noise impact from the Circulation Element Update. Model input data needed include average daily traffic volumes, day/night percentages of autos, medium and heavy trucks, vehicle speeds, ground attenuation factors, and roadway widths. Baseline information will be based on the existing condition and current General Plan conditions in the City. Noise mitigation measures will be identified in the noise impact study, if required.

4.3 Traffic Study

The Traffic Study will include two separate studies; the first one will analyze the traffic impacts associated with the change in LOS policy while the second one will analyze the impacts associated with change in circulation system due to the removal of Highland Home Road/I-10 interchange.

4.3.1 Traffic Study for Changing LOS Policy

The first study will include an analysis of the traffic conditions for the future General Plan Build-Out scenario. The following tasks are to provide a traffic analysis for changing the existing policy for acceptable LOS criteria from LOS C to LOS D.

> **Coordination with City Staff.** Before beginning the Traffic Study, Consultant will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as specific analysis methodologies, assumptions, etc.) related to the Circulation Element. Consultant will analyze the intersections listed in the City's previous General Plan. This will be confirmed

with the City during the coordination process. Based on coordination and meetings, refinements to this scope of work and budget may be made to meet the objectives of the project.

Intersection Improvement Recommendations for LOS D Criteria. The General Plan Build-Out traffic conditions have been analyzed for LOS C criteria in the adopted General Plan. Consultant will use these traffic volumes and results for a.m. and p.m. peak-hour traffic conditions to develop improvements that will mitigate deficient locations in the circulation system to the proposed acceptable LOS D.

Comparison between Proposed Improvements for LOS C and LOS D Criteria. The results of the adopted General Plan Build-Out traffic conditions will be compared to the General Plan Build-Out traffic conditions with LOS D criteria to identify the reduced mitigation measures between the two General Plans (adopted LOS C and proposed LOS D). These changes will be summarized in the Traffic Study.

Development of Graphics and Conceptual Drawings. Consultant will prepare graphics showing the proposed lane configuration for LOS C and LOS D and a comparison graphic showing the difference between the two LOS criteria. Consultant will also prepare conceptual plans for proposed mitigations at up to five locations (developed in coordination with the City) that show a comparison between the improvements required for LOS C versus LOS D. Consultant will use aerials to develop the base that includes the existing lane configuration. Proposed mitigations such as the addition of a through lane or a turn lane will be overlaid on this base.

Preparation of Traffic Study. A technical study will be prepared discussing the adopted (LOS C) and proposed (LOS D) General Plan Build-Out conditions. Identification of intersection deficiencies and improvements required to mitigate them in the General Plan Build-Out conditions for the proposed acceptable LOS (D) will be provided. The changes in mitigation measures between the adopted and proposed General Plan will be summarized in the report. A physical description of the eliminated improvements will also be included. A copy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, Consultant will meet with City staff to discuss the report and to receive comments. Consultant will then modify the draft report to address the comments and submit the final Traffic Study for incorporation into the overall environmental document.

Meeting Attendance. For the purpose of this scope of work, it is anticipated that members of Consultant's staff will attend one team meeting related to preparation of the Traffic Study.

4.3.2 Traffic Analysis For Removal of I-10/Highland Home Road Interchange

The second study will include an analysis of the traffic conditions in the following scenarios:

1. General Plan Build-Out conditions with I-10/Highland Home Road interchange with LOS C and LOS D criteria
2. General Plan Build-Out conditions without I-10/Highland Home Road interchange with LOS C and LOS D criteria

The following tasks are to providc a complete Traffic Study for identifying the impacts of modifying the circulation system (I-10/Highland Home Road interchange) in the adopted General Plan.

Coordination with City Staff. Before beginning the Traffic Study, Consultant will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as defining study area, specific analysis methodologies, assumptions, etc.) relatcd to the Traffic Study. For the purposes of this analysis, Consultant will analyze up to 15 intersections in the vicinity of the I-10/Highland Home Road interchange. These intersections will be identified in coordination with the City. Based on coordination and meetings, refinements to this scope of work and budget may be made to meet the objectives of the project.

General Plan Build-Out Forecast Traffic Volumes. Based on the meeting discussed above, Consultant and City staff will confirm tbe circulation network area, whicb includes roadway segments and intersections. General Plan Build-Out traffic volumes for the intersections will be developed based on the City's General Plan model developed by Urban Crossroads in consultation with the City. Since no land use changes are proposed, the land uses from the adopted General Plan will be used for the proposed General Plan Build-Out scenarios.

Traffic forecast volumes for the General Plan Build-Out scenario will be developed for tbe following two scenarios:

1. With 1-10/Highland Home Road Interchange
2. Without I-10/Highland Home Interchange

There are two options for developing the General Plan Build-Out intersection traffic volumes; the first one is to use available data wherever possible and request the remaining data from Urban Crossroads. Since the intersections for this Traffic Study will be finalized in consultation with the City, the availability of data for the first option cannot be quantified. Also, the underlying assumptions for the traffic modeling for different scenarios are not known since it was conducted by Urban Crossroads. The second one is to request new data for all alternatives with identical underlying assumptions.

The first option will reduce the amount of effort by using the interseetion volume data for General Plan Build-Out conditions from the Butterfield Specific Plan for the Traffic Study. Urban Crossroads had developed volumes for the General Plan Build-Out condition for Alternatives 1 and 2 (listed above) for the Butterfield Specific Plan Traffic Study. It should be noted that there have been updates to the traffic model since the data for the Butterfield Specific Plan was obtained from Urban Crossroads. Hence, the second option of obtaining new forecast volumes for the General Plan Build-Out conditions for the above scenarios from Urban Crossroads will result in consistency between the altematives (1–3) listed above. For the most consistent analysis, the second option will be utilized unless otherwise agreed upon by the City and Consultant. The raw traffic model output will be postprocessed to develop intersection turning movement volumes according to methodologies approved by the City.

RivTAM. The existing traffic model that was used for the development of forecast volumes for the previous Traffic Study for the Circulation Element was the Pass Area Model developed by Urban Crossroads. This model was developed based on the previous version of the Riverside County Traffic Analysis Model (RivTAM). Since then, the County has revised/updated the model and converted the modeling platform from Tranplan to TransCAD. The new version of RivTAM was recently validated and released for use by jurisdictions within the County. Since most of the jurisdictions/cities will be using this traffic model as their basis for developing the forecast volumes for future scenarios, the City of Banning may opt to use this new tool to develop forecast volume for the City's General Plan Build-Out scenario. It should be noted that the RivTAM model may require network and land use refinement within the City's Sphere of Influence to generate better forecast volumes. If the City decides to use the new RivTAM model for the General Plan Build-Out conditions, refinements to this scope of work and budget may be needed to include the additional work effort.

General Plan Build-Out Traffic Condition – With I-10/Highland Home Road Interchange. Traffic conditions for the General Plan Build-Out scenario with the I-10/Highland Home Road interchange will be analyzed in the Traffic Study.

General Plan Build-Out a.m. and p.m. peak-hour traffic conditions and LOS will be assessed for the intersections identified for examination.

Intersection Improvements for LOS C and LOS D Criteria. The results of the General Plan Build-Out conditions with the I-10/Highland Home Road interchange will then be compared to the LOS C and D criteria, and improvements will be proposed to mitigate the defieient locations for each LOS criteria.

General Plan Build-Out Traffie Condition – Without I-10/Highland Home Road Interchange. Traffic conditions for the General Plan Build-Out scenario without the I-10/Highland Home Road interchange will be analyzed in the traffic analysis. General Plan Build-Out a.m. and p.m. peak-hour traffic conditions and LOS will be assessed for the intersections identified for examination.

Intersection Improvements for LOS C and LOS D Criteria. The results of the General Plan Build-Out conditions without the I-10/Highland Home Road interchange will then be compared to the LOS C and D criteria, and improvements will be proposed to mitigate the deficient locations for each LOS criteria.

Compare Proposed Mitigation Measures between Alternatives. The proposed mitigation improvements for the alternatives, Without 10/Highland Home Road Interchange and With 10/Highland Home Road Overcrossing, will be compared to the With 10/Highland Home Road Interchange scenario for both LOS C and LOS D criteria.

Comparison betwecn Proposed Improvements for With Interchange and Without Interchange for hoth LOS C and LOS D Criteria. The results of the General Plan Build-Out Conditions Without the I-10/Highland Home Road Interchange will be compared to the General Plan Build-Out Conditions With the I-10/Highland Home Road Interchange to identify the changes in proposed mitigation measures between the two alternatives for LOS C and LOS D criteria.

Preparation of Traffic Study. A technical study will be prepared discussing the traffic impact of the proposed modifications to the circulation system (I-10/Highland Home Road interchange) in General Plan Build-Out conditions. Identification of intersection deficiencies and improvements required to mitigate them in the General Plan Build-Out conditions will be summarized. A copy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, representatives of Consultant will meet with City staff to discuss the report and to receive comments. Consultant will then modify the draft report to address the comments and submit the final Traffic Study for incorporation into the overall environmental document.

Meeting Attendance. For the purpose of this scope of work, it is anticipated that members of Consultant's Transportation staff will attend up to two team meetings related to preparation of the Traffic Study.

Task 5: Screencheck Draft EIR

Consultant will prepare a Screencheck Draft EIR for review by the City in accordance with the requirements of CEQA and the State CEQA Guidelines. Consultant anticipates that a focused EIR can be prepared for the GPA and anticipates addressing the following environmental topics: Traffic/Circulation, Air Quality, GHG Emissions, Noise, Cultural Resources, and Land Use Impacts. The primary focus of the Screencheck Draft EIR will be to analyze the potential change in environmental conditions resulting from the removal of a previously identified interchange improvement. A key component of the Screencheck Draft EIR will be the identification of mitigation measures and strategies to be implemented in association with the GPA.

The document will contain all applicable environmental components required by CEQA, including Introduction, Background, Project Description/Characteristics/Phasing and Discretionary Approvals; Setting, Impacts (Project and Cumulative), Mitigation, and Level of Significance; and mandatory CEQA topics (e.g., Growth Inducement), Alternatives, Lists of References, Persons Consulted, and EIR Preparers. The Screencheck Draft EIR will be submitted without the Executive Summary and Mitigation Monitoring and Reporting Program (MMRP). The Executive Summary and MMRP will be provided with the preprint Draft EIR submittal once the level of environmental impacts is agreed upon with the City and the mitigation measure language is close to being finalized.

An electronic copy of the Screencheck Draft EIR will be submitted for review by the City staff. City staff will reconcile any discrepancies between internal staff comments prior to forwarding one consolidated set of comments to Consultant. City comments (one coordinated review set) will be incorporated into the Screencheck Draft EIR as described below.

Consultant's technical approach and specific analysis approach to each of the environmental topics is described below. Consultant anticipates that a focused EIR addressing traffic/circulation, air quality, GHG emissions, noise, cultural resources, and land use impacts can be prepared for the GPA. Should other environmental issues of concern arise in response to the Notice of Preparation/Initial Study, the scope of work may need to be expanded.

Significance Criteria and Impact Analysis
The significance criteria will be decided upon by the City based on current community or industry standards, including but not limited to the State CEQA Guidelines, local standards, State and federal regulation (e.g., United States Environmental Protection Agency [EPA], SCAQMD, Department of Toxic Substances [if needed], clean water legislation, and other regulations) and consistency with City, State, and local land use planning documents. Consultant will elicit input from the City for the thresholds of significance.

The technical approach for completion of the Screencheck Draft EIR is to combine the project impacts and mitigation measures in the same section and discuss potential project effects in two categories: (1) less than significant impacts, and (2) potentially significant impacts. Mitigation measures shall be prescribed when feasible to reduce impacts. Standard City mitigation measures will be used as applicable and if available.

In addition to the topics described below, the Screencheck Draft EIR will include a short explanation of environmental effects found not to be significant. It is anticipated that the proposed GPA would not result in adverse impacts related to the following: Aesthetics, Agriculture and Forestry Resources, Biological Resources, Geology and Soils, Hazards and hazardous Materials, Hydrology and Water Quality, Mineral Resources, Population and Housing, Public Services, Recreation and Utilities and Service Systems.

Air Quality
Consultant will prepare an Air Quality Study, including a discussion on GHG, on which the findings of the Air Quality section of the Screencheck Draft EIR will be based. Once the Air Quality Study is approved by the City, it will be summarized in the Screencheck Draft EIR, and mitigation measures will be proposed as necessary.

Cultural/Paleontological Resources
The proposed GPA is required to conduct Native American consultation as required under SB 18. SB 18 requires local governments to consult with tribal groups when a project requires a General Plan or Specific Plan Amendment (Burton 2004). The regulations apply to all General Plan/Specific Plan updates and amendments proposed on or after March 1, 2005.

The purpose of the consultation is to identify and preserve specified places, features, and objects located within the City's or the County's jurisdiction that have a unique and significant meaning to California Native Americans. Actions performed may include all or any combination of the following: contacting the Native American Heritage Commission (NAHC) for a search of the Sacred Lands

File and a list of Native American tribes to be invited to consult on the project; preparing a letter to each identified tribe that will be sent via certified mail; contacting the identified tribes by phone to solicit their involvement and record any information the tribe wishes to provide; and preparing notices to the tribes 10 days before any public hearings regarding the project.

The documentation related to the Native American Consultation will be the basis for the findings in the Cultural Resources Section of the Screencheck Draft EIR. All details of Native American Consultation under SB 18 will be included in an Appendix to the EIR.

Greenhouse Gas Emissions
A discussion of GHGs and their potential effects on global climate change will be included in the technical Air Quality Study, on which the findings of the GHG section of the Screencheck Draft EIR will be based. The project's compliance with applicable plans and policies will be discussed. If necessary, mitigation measures will be identified to ensure that both short-term and long-term GHG impacts will be reduced to the extent possible.

Land Use and Planning
This section will include an analysis of the proposed GPA in comparison to the conditions of the existing General Plan. A thorough analysis of the project's consistency with applicable General Plan Objectives and Policies will be included in the EIR.

Noise
Consultant will to prepare a Noise Impact Study on which the findings of the noise section of the Screencheck Draft EIR will be based. Once the Noise Impact Study is approved by the City, the findings and any necessary mitigation measures will be summarized in the Screencheck Draft EIR.

Alternatives
Consultant, in conjunction with City staff, will identify a reasonable range of alternatives to the proposed GPA. Preliminarily, the alternatives could include the No Project Alternative (existing General Plan conditions) and a project alternative with a freeway overpass in lieu of the existing planned interchange. A maximum of three project alternatives or alternative sites will be evaluated consistent with State CEQA Guidelines Section 15126.6.

Once the alternatives have been selected, Consultant will prepare a qualitative analysis of the environmental effects of each alternative. In particular, differences in traffic, parking, and noise impacts between alternative projects will be

documented and quantified. The Alternatives section will include a statement identifying the environmentally superior alternative.

Cumulative Impacts
State CEQA Guidelines Section 15130 requires that an EIR evaluate potential environmental impacts that are individually limited but cumulatively significant. These impacts can result from the proposed project alone or together with other projects. The analysis of cumulative effects will address the potential impacts associated with the proposed project in conjunction with other off-site, permitted, under construction, or probable future projects in the project vicinity. This analysis will rely on a list of cumulative projects to be provided by the City.

Growth-Inducing Impacts
The potential growth-inducing impacts of the proposed project will be evaluated. CEQA considers a project to be growth-inducing if it would foster economic or population growth. Examples of projects that typically would have growth-inducing impacts include extensions or expansions of infrastructure beyond that needed to serve project-specific demand and development of industrial parks in undeveloped or sparsely developed areas.

Other CEQA-Mandated Sections
Consultant will prepare the appropriate conclusions to fulfill CEQA requirements by providing an assessment of several additional mandatory impact categories, including:

- Unavoidable significant environmental impacts
- Significant irreversible environmental changes
- Effects found not to be significant

Task 6: Draft EIR
After receiving comments from City staff on the Screencheck EIR, Consultant will make necessary revisions to the document, including completion of the Executive Summary impact table and the draft MMRP. Consultant will provide an electronic preprint version of the Draft EIR to City staff for a limited final review prior to printing the Draft EIR. The purpose of this review will be to review the entire document with all appendices, technical reports, and the MMRP, and to verify that the City is satisfied with the Draft EIR.

Prior to completion of the Draft EIR, Consultant will work with the City to prepare a draft Notice of Completion (NOC) for City review and signature and a draft public Notice of Availability (NOA) of the Draft EIR. The City will be responsible for coordinating noticing requirements with news publieations. Reproduction and distribution of the NOC

and Draft EIR to the State Clearinghouse, Responsible Agencies, and NOA to interested parties will be completed by Consultant. In order to reduce reproduction and distribution, copies of the Draft EIR and appendices will primarily be provided on CD-ROM as a PDF file. Consultant will distribute 5 bard copies and 10 electronic copies of the Draft EIR for the City in addition to the 15 copies of tbe Draft EIR required to be sent to the State Clearinghouse, which will be produced on CD-ROM as a PDF accompanied by 15 hard copies of the Executive Summary. In addition, Consultant will distribute one hard copy of the Draft EIR and appendices to the local library for public review.

Task 7: Final EIR

The Final EIR will consist of the Draft EIR and technical appendices, Response to Comments, an Errata document containing any modifications that may be needed to the Draft EIR document, Resolutions, Findings, and the Statement of Overriding Considerations (if necessary) related to the proposed project. The City will be responsible for preparation of the Resolutions, Findings, and the Statement of Overriding Considerations (if necessary).

Response to Comments. During the public review period, the Consultant will prepare responses to comments on the Draft EIR as received. Once the comments have been reviewed and prior to preparing the responses, a strategy for the response document will be presented and discussed with the City. Althougb the focus of the responses will be those comments that are truly subject to CEQA review, Consultant will also endeavor to answer all questions in an informative manner.

Providing a budget estimate for responding to comments on the Draft EIR is extremely difficult because it is impossible to predict the volume and nature of the comments. This agreement lists the tasks to be completed and the conditions of the scope of work. These conditions are the basis for the budget estimate. They are based on Consultant's knowledge of the project and projections of the volume and nature of the comments received. Significant new analysis is not included in this task. Consultant has allocated 50 hours of professional staff time plus 18 hours of word processing time to organize, prepare, and compile the Response to Comments document.

Mitigation Monitoring and Reporting Program. As part of the Final EIR, Consultant will prepare a Final MMRP pursuant to California Public Resources Code Section 21081.6. The MMRP is intended to ensure compliance with mitigation measures through project completion and any monitoring that may be required after project completion. The monitoring program will contain an inventory of mitigation measures, timing for implementation (e.g., prior to

issuance of grading permits), the responsible staff or agency assigned to monitor the condition, and a compliance/noncompliance statement. The approved final MMRP will be attached to the City's resolutions for consideration by the Planning Commission and City Council.

B. Traffic Fee Component of the Development Fee Program

Task 1: Coordination with City Staff

Before beginning the process of updating the fee program, Consultant will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as concurrence on new intersections, specific analysis methodologies, assumptions, etc.) related to the fee program. For the purposes of this update, Consultant will add the intersections identified in the next task to the existing list in the Development Fee Program. Based on coordination and meetings, refinements to this scope of work and budget may be necessary to meet the objectives of the fee program update.

Task 2: Identification of Study Area

Consultant has identified a list of intersections from the Butterfield Specific Plan Traffic Impact Analysis (BSPTIA) that will be added to the list of intersections in the Development Fee Program. These intersections require improvements in the General Plan Build-Out condition and are not part of any other existing fee or financing program. The intersections include:

1. Highland Springs Avenue/Brookside Avenue
2. Highland Springs Avenue/16th Street-Cougar Way
3. Highland Springs Avenue/F Street
4. Highland Springs Avenue/Starlight Avenue
5. Highland Home Road/Northern Loop
6. Highland Home Road/Beaumont Road
7. Highland Home Road/F Street
8. Highland Home Road/D Street
9. Highland Home Road/Wilson Street
10. Highland Home Road/Ramsey Street
11. Sunset Avenue/Wilson Street
12. Sunset Avenue/Ramsey Street
13. Sunrise Avenue/Wilson Street
14. 16th Street/Wilson Street
15. 8th Street/I-10 Westbound Ramps
16. 8th Street/I-10 Eastbound Ramps
17. 4th Street/Wilson Street
18. San Gorgonio Avenue/Wilson Street

Task 3: Identification of Intersection Needs in the Future (General Plan Build Out)
Traffic conditions for the General Plan Build-Out scenario for the a.m. and p.m. peak hours were analyzed in the BSPTIA. The results of the General Plan Build-Out condition were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system in the BSPTIA. Consultant will use the improvements identified in the BSPTIA for the General Plan Build-Out condition for the proposed update to the Development Fee Program. These improvements include lane additions consistent with the General Plan roadway designations and possible signalization (or modification) to achieve a satisfactory LOS D condition.

Task 4: Existing Traffic Conditions and Intersection Deficiencies
Existing weekday a.m. and p.m. peak-hour conditions and LOS were assessed for the study intersections in the BSPTIA. The results of the existing conditions were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system. Since fees on new development cannot be imposed to remedy existing deficiencies in infrastructure, Consultant will identify existing deficiencies at the study intersections based on the analysis for the existing conditions. The difference between the deficiencies in the circulation system in existing and General Plan Build-Out condition will be identified. The cost for mitigating the existing deficiencies will not be included in the Development Fee Program.

Task 5: Estimation of Costs for Future (General Plan Build Out) Intersection Needs
Consultant will develop cost estimates for the proposed improvements that mitigate the deficient locations in the circulation system in the General Plan Build-Out condition using the San Bernardino Associated Governments (SANBAG) Congestion Management Plan (CMP) Appendix G, Preliminary Construction Cost Estimates for Congestion Management Plan. The total traffic improvement costs will be developed by adding cost estimates of individual intersections for both physical improvements and signalization over the larger affected area.

Task 6: Identification of Future (General Plan Build Out) New Traffic
Consultant will identify future projected land development by type: residential, commercial, and industrial, based on the General Plan Build-Out projections for these categories. The type and total number of categories will be identical to the ones listed in Figure 36 of the Development Fee Program. The growth in land uses projected in the City's General Plan between existing and General Plan Build-Out condition will then be converted into daily traffic estimates using Institute of Transportation Engineers (ITE) trip generation rates consistent with the existing traffic fee program. Consultant will use the same trip adjustment rates listed in Figure 36 in the existing Development Fee Program. Consultant will summarize the conversion rates and trips generated by each type of land use based on the projected quantities in a table format. It should be noted that

the recommended intersection improvements are based on impacts determined from peak-hour traffic conditions. Use of daily traffic forecasts for trip fee determination can affect the overall nexus of the fee program because the improvements were determined based on intersection LOS analysis for peak-hour traffic volumes. Consultant is proposing a method consistent with current practice. This method may affect the nexus and/or stakeholder tolerance to the revised fee update.

Task 7: Development of Traffie Fee for Future (General Plan Build Out) New Traffie

Consultatn will establish a relationship between the new (projected) development and the total cost associated with the recommended improvements within the City of Banning. Based on this relationship, the total cost of improvements, including signalization and physieal improvements, will be divided by the total new daily trips generated by proposed land uses to calculate the "per-trip" fee similar to the one included in the current traffic fee component of the Development Fee Program.

Task 8: Preparation of Traffic Analysis Report

A technical study will be prepared discussing the relationship between the future land uses for the General Plan Build-Out condition and the cost of improvement to mitigate the circulation system to conform to City's standards. The establishment of a "per-trip" fee for the future land uses adopted in the General Plan will be summarized in the report. A eopy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, representatives of Consultant will meet with City staff to discuss the report and to receive comments. Consultant will then modify the draft report to address the comments and submit the final study report to the City.

Task 9: Meeting Attendance

Consultant's Transportation staff will attend up to four team meetings related to preparation of the technical traffie analysis.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

Preparation of Environmental Impact Report for Banning Circulation Element General Plan Amendment:

A. Draft Notice of Preparation (NOP) per Section 15082 of CEQA guidelines.

B. Meeting minutes.

C. Initial Study (IS) in accordance with CEQA guidelines Section 15063.

D. 25 copies of the NOP to be provided to public agencies on City's mailing list.

E. 75 copies of the NOP to be provided to the State Clearinghouse.

F. Electronic copy of NOP and IS.

G. Air Quality Study and Climate Change Analysis.

H. Noise Impact Study.

I. Traffic Study for Changing LOS Policy.

J. Traffic Analysis for Removal of I-10/Highland Home Interchange.

K. Sereencheek Draft EIR.

L. Draft EIR.

M. Draft Notice of Completion related to Draft EIR.

N. Draft Public Notice of Availability of Draft EIR.

O. One (1) hardcopy of EIR to the public library for review.

P. Five (5) hardcopies and Ten (10) electronic CD-ROM copies of Draft EIR for City.

Q. Fifteen (15) CD-ROM Draft EIR copies to Clearinghouse.

R. Final Mitigation Monitoring and Reporting Program (MMRP)

Traffic Fee Component of the Development Fee Program:

A. Analysis on identification area including an updated list of intersections to be added to the Development Fee Program.

B. Analysis and identification needs for future (General Plan Build Out) including lane additions and possible signalization or modifications.

C. Analysis and comparison of existing traffic conditions and intersection deficiencies.

D. Estimated costs for future intersection needs.

E. Identification of future (General Plan Build Out) new traffic.

F. Future traffic fees and formulas.

G. Traffic Analysis Report.

H. Meeting minutes.

III. **In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**

Monthly status reports.

IV. **All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

V. **Consultant will utilize the following personnel to accomplish the Services:**

A. Pritam Deshmukh, Senior Transportation Engineer

B. Les Card, P.E., Principal Chief Executive Officer

C. Designated personal approved by the City.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

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EXHIBIT "C"
COMPENSATION

I. Consultant shall perform the following tasks:

TASK: PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT	RATE	TIME (estimated hours)	SUB-BUDGET
Task A: Project Initiation/Kickoff Meeting	$140	25	$ 3,500
Task B: Project Management and Attendance at Meetings	$160	53	$ 8,500
Task C: Initial Study/NOP/Seoping Meeting	$140	93	$ 13,000
Task D: Air Quality Study and Climate Change Analysis	$130	62	$ 8,000
Task E: Noise Impact Study	$130	54	$ 7,000
Task F: Traffic Study	$175	417	$ 73,000
Task G: Screencheck Draft EIR	$120	383	$46,000
Task H: Draft EIR	$120	113	$ 13,500
Task I: Final EIR	$120	79	$9,500
Task J: Reimbursables	N/A	N/A	$11,000

TASK: TRAFFIC REE COMPONENT OF THE DEVELOPMENT FEE PROGRAM	RATE[1]	TIME (estimated hours)	SUB-BUDGET
Task 1: Coordination with City	$145	14	$ 2,000
Task 2: Identification of Study Area	$120	15	$ 1,800
Task 3: Identification of Intersection Needs	$120	15	$ 1,800
Task 4: Existing Traffic Conditions	$120	15	$ 1,800
Task 5: Estimation of Costs for Future Intersection Needs	$120	75	$ 9,000
Task 6: Identification of Future New Traffic	$120	75	$ 9,000
Task 7: Development of Traffic Fee for Future	$120	50	$ 6,000
Task 8: Preparation of Traffic Analysis Report	$125	44	$ 5,500
Task 9: Meeting Attendance	$180	45	$ 8,100

II. **Payments will be made based upon the satisfactory completion of the task.**

III. **Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**

VI. **The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. **The total compensation for the Services shall not exceed $238,000.00, as provided in Section 2.1 of this Agreement.**

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. **Consultant shall perform all services timely in accordanee with the following schedule:**

TASK: PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR BANNING CIRCULATION ELEMENT GENERAL PLAN AMENDMENT	DAYS TO PERFORM	DEADLINE DATE
Task A: Project Initiation/Kickoff Meeting	3 weeks from Notice to Proceed (NTP)	7/22/11
Task B: Project Management and Attendance at Meetings	Ongoing	TBD
Task C: Initial Study/NOP/Scoping Meeting	10 weeks	9/9/11
Task D: Air Quality Study and Climate Change Analysis	6 weeks	10/14/11
Task E: Noise Impact Study	6 weeks	10/14/11
Task F: Traffic Study	8 weeks	10/28/11
Task G: Screencheck Draft EIR	18 weeks	11/11/11
Task H: Draft EIR (includes 45-day review)	10 weeks	1/20/12
Task I: Final EIR	4 weeks	2/17/12
Task J: Reimbursables	N/A	N/A

TASK: TRAFFIC REE COMPONENT OF THE DEVELOPMENT FEE PROGRAM	DAYS TO PERFORM	DEADLINE DATE
Task 1: Coordination with City	Ongoing	N/A
Task 2: Identification of Study Area	3 days	9/21/11
Task 3: Identification of Intersection Needs	3 days	9/26/11
Task 4: Existing Traffic Conditions	3 days	9/29/11
Task 5: Estimation of Costs for Future Intersection Needs	2 weeks	10/13/11
Task 6: Identification of Future New Traffic	2 weeks	10/27/11
Task 7: Development of Traffic Fee for Future	1 week	11/4/11
Task 8: Preparation of Traffic Analysis Report	1 week	11/11/11
Task 9: Meeting Attendance	Ongoing	N/A

II. Consnltant shall deliver the following tangible work products to the City by the following dates.

Preparation of Environmental Impact Report for Banning Circulation Element General Plan Amendment:

A. Draft Notice of Preparation (NOP) per Section 15082 of CEQA guidelines, September of 2011.

B. Meeting minutes, TBD.

C. Initial Study (IS) in accordance with CEQA guidelines Section 15063, September of 2011.

D. 25 copies of the NOP to be provided to public agencies on City's mailing list, September of 2011.

E. 75 copies of the NOP to be provided to the State Clearinghouse, September of 2011..

F. Electronic copy of NOP and IS, September of 2011

G. Air Quality Study and Climate Change Analysis, October of 2011.

H. Noise Impact Study, October of 2011.

I. Traffic Study for Changing LOS Policy, October of 2011.

J. Traffic Analysis for Removal of I-10/Highland Home Interchange, October of 2011.

K. Screencheck Draft EIR, November of 2011.

L. Draft EIR, January of 2012.

M. Draft Notice of Completion related to Draft EIR, January of 2012.

N. Draft Public Notice of Availability of Draft EIR, January of 2012.

O. One (1) hardcopy of EIR to the public library for review, January of 2012.

P. Five (5) hardcopies and Ten (10) electronic CD-ROM copies of Draft EIR for City, January of 2012.

Q. Fifteen (15) CD-ROM Draft EIR copies to Clearinghouse, January of 2012.

R. Final Mitigation Monitoring and Reporting Program (MMRP), February of 2012.

Traffic Fee Component of the Development Fee Program:

A. Analysis on identification area including an updated list of intersections to be added to the Development Fee Program.

B. Analysis and identification needs for future (General Plan Build Out) including lane additions and possible signalization or modifications, September 2011.

C. Analysis and comparison of existing traffic conditions and intersection deficiencies, September 2011.

D. Estimated costs for future intersection needs, October of 2011.

E. Identification of future (General Plan Build Out) new traffic, October of 2011.

F. Future traffic fees and formulas, November of 2011.

G. Traffic Analysis Report, November of 2011.

H. Meeting minutes, Ongoing/TBD.

III. **The Contract Officer may approve extensions for performance of the services in accordance with Seetion 3.2.**

ATTACHMENT 2

EXHIBIT "B"
LSA ASSOCIATES, INC. PROPOSAL DATED FEBRUARY 13, 2013 FOR SERVICES RELATED TO THE BANNING CIRCULATION ELEMENT UPDATE

LSA ASSOCIATES, INC.
20 EXECUTIVE PARK, SUITE 200
IRVINE, CALIFORNIA 92614

949.553.0666 TEL
949.553.8076 FAX

BERKELEY
CARLSBAD
FORT COLLINS

FRESNO
PALM SPRINGS
PT. RICHMOND

RIVERSIDE
ROCKLIN
SAN LUIS OBISPO

February 13, 2013

Mr. Duane Burk
Public Works Director
99 E. Ramsey Street
Banning, CA 92220

Subject: Professional Services Proposal: Update the City of Banning Circulation Element

Dear Mr. Burk:

LSA Associates, Inc. (LSA) is pleased to submit this proposal to provide professional services for updating the existing Circulation Element for the City of Banning (City).

Background

The City of Banning is proposing to amend the General Plan Circulation Element. The proposed General Plan Amendment (GPA) includes a change to the acceptable Level of Service (LOS) for roadway operating conditions from LOS "C" to LOS "D". Additionally, the City is proposing to remove one designated interchange improvement at the Interstate 10 (I-10) from the Proposed General Plan Street System identified in Exhibit III-6 in the Circulation Element.

In order to provide the appropriate documentation in accordance with the California Environmental Quality Act (CEQA), LSA has prepared and circulated the Draft Environmental Impact Report (EIR) for the changes listed above.

Update Circulation Element

LSA will review the Circulation Element for the City of Banning and update it based on the proposed change in LOS and removal of designated interchange improvement at I-10/Highland Home Road. Additionally, LSA will clean up the Circulation Element section by removing outdated and irrelevant information. Also, LSA will review the Land Use section of the City's General Plan to identify and address inconsistencies between the Land Use section and the Circulation Element. LSA will submit a draft redline/strikeout word document to the City for review. Based on comments from the City, LSA will finalize the Circulation Element section and submit it to the City.

Based on this work plan, a budget of $8,000 will be required. This amount will be billed on an hourly basis, consistent with the attached schedule of billing rates and provisions. This amount will not be exceeded without your prior authorization. LSA is prepared to initiate this work effort upon your authorization to proceed.

Thank you for the opportunity to submit this proposal to provide professional services to the City of Banning. LSA looks forward to continuing a successful working relationship with the City.

Sincerely,

LSA ASSOCIATES, INC.

Pritam Deshmukh, P.E., T.E.
Senior Transportation Engineer

Attachment: Schedule of Standard Contract Provisions and Billing Rates

SCHEDULE OF STANDARD CONTRACT PROVISIONS AND BILLING RATES

FEES FOR PROFESSIONAL SERVICES

Fixed-Fee Contracts

If a fixed-fee proposal, the professional services described in the Scope of Services Section of the attached proposal shall be provided for the fixed fee noted in the proposal. All other professional services are considered extra services. Extra services shall be provided on a time and expenses basis at the same rates specified for hourly contracts, unless other arrangements are made in advance.

Hourly Contracts

If an hourly plus expenses proposal, the professional services described in the Scope of Services Section of the attached proposal shall be provided on a time and materials basis at current hourly rates. These rates are as shown on a Rate Schedule that is attached, or can be made available. Hourly rates are subject to review at least annually on or about August 1 of each year, and may be adjusted to reflect changing labor costs, at our discretion, at that time. (A schedule can be made available upon request.)

Direct costs (including cost of subconsultants) shall be reimbursed at cost plus ten percent, unless other arrangements are made in advance, and are not included in the hourly fee for professional services.

The total estimated amount of time and expenses noted in the proposal will serve as a control on the services to be provided. The specified amount will not be exceeded without prior approval of the client.

INVOICING

Monthly invoices shall be submitted for progress payment based on work completed to date. Clients requesting changes to LSA's standard invoice may be billed for the time to develop the invoice and monthly administration of the billing.

PAYMENT OF ACCOUNTS

Terms are net 30 days. LSA offers a one percent discount on invoices paid within 30 days of the invoice date. A service charge of 1.5 percent of the invoice amount (18 percent annual rate) may be applied to all accounts not paid within 30 days of invoice date. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the client.

STANDARD OF CARE

Services provided by LSA under this Agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

INDEMNIFICATION

Client and consultant each agree to indemnify and hold the other harmless and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, and expenses are caused by the indemnifying party's negligent acts, errors, or omissions.

ELECTRONIC FILE DATA CHANGES

Copies of documents that may be relied upon by client are limited to the printed copies (also known as hard copies) that are signed or sealed by LSA. Files in electronic media format or text, data, graphic, or other types that are furnished by LSA to client are only for convenience of client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, LSA makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those of LSA at the beginning of the assignment.

FORCE MAJEURE

Neither party shall be deemed in default of this Agreement to the extent that any delay in performance of its obligation results from any cause beyond its reasonable control and without its negligence.

LITIGATION

In the event that either party brings action under the proposal for the breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs whether or not such action is prosecuted to judgment.

NOTICES

Any notice or demand desired or required to be given hereunder shall be in writing, and shall be deemed given when personally delivered or deposited in the mail, postage prepaid, sent certified or registered, and addressed to the parties as set forth in the proposal or to such other address as either party shall have previously designated by such notice. Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

TERMINATION OF CONTRACT

Client may terminate this agreement with seven days prior notice to LSA for convenience or cause. Consultant may terminate this Agreement for convenience or cause with seven days prior written notice to client. Failure of client to make payments when due shall be cause for suspension of services, or ultimately termination of the contract, unless and until LSA has been paid in full all amounts due for services, expenses, and other related charges.

If this Schedule of Standard Contract Provisions is attached to a proposal, said proposal shall be considered revoked if acceptance is not received within 90 days of the date thereof, unless otherwise specified in the proposal.

HOURLY BILLING RATES EFFECTIVE JANUARY 2013

Job Classification							Hourly Rate Range[1,2]
Planning	**Environmental**	**Transportation**	**Air/Noise**	**Cultural Resources**	**Biology**	**GIS**	
Principal	Principal	Principal	Principal	Principal	Principal	Principal	$125–300
Associate	Associate	Associate	Associate	Associate	Associate	Associate	$90–195
Senior Planner	Senior Environmental Planner	Senior Transportation Planner/Engineer	Senior Air Quality/ Noise Specialist	Senior Cultural Resources Manager	Senior Biologist/Botanist/ Wildlife Biologist/ Ecologist/Soil Scientist/ Herpetologist/Arborist	Senior GIS Specialist	$70–170
Planner	Environmental Planner	Transportation Planner/Engineer	Air Quality/Noise Specialist	Cultural Resources Manager	Biologist/Botanist/ Wildlife Biologist/ Ecologist/Soil Scientist/ Herpetologist/Arborist	GIS Specialist	$65–125
Assistant Planner	Assistant Environmental Planner	Assistant Transportation Planner/Engineer	Air Quality/Noise Analyst	Cultural Resources Analyst	Assistant Biologist/ Botanist/Wildlife Biologist/Ecologist/Soil Scientist/Herpetologist/ Arborist	Assistant GIS Specialist	$50–100
Field Services							
Senior Field Crew/Field Crew							$50–85
Office Services							
Research Assistant/Technician							$30–55
Graphics							$90–115
Office Assistant							$45–95
Word Processing/Technical Editing							$75–100

1 The hourly rate for work involving actual expenses in court, giving depositions or similar expert testimony, will be billed at $400 per hour regardless of job classifications.

2 Hourly rates are subject to review at least annually. on or about August 1 of each year, and may be adjusted to reflect changing labor costs at LSA's discretion at that time.

LSA IN-HOUSE DIRECT EXPENSES
JANUARY 2013

			Unit Cost
Reproduction	(8.5 x 11)	B/W	$.07 per page
Reproduction	(8.5 x 11)	Color	$.40 per page
Reproduction	(11 x 17)	B/W	$.10 per page
Reproduction	(11 x 17)	Color	$.75 per page
CD Production			$5.00 per CD
Plotting			$3.75 per sf
Mileage On Road			$.565 per mile
Mileage Off-Road			$.715 per mile
GPS Unit			$75.00 per day
Total Station Surveying Instrument			$50.00 per day
Level (Laser or Optical)			$25.00 per day
Laser Rangefinder			$25.00 per day
Sound Meter			$75.00 per day
Aerial Photo			Cost
Boat Rental			$50.00/day
Water Quality Meter			$25.00/day

ATTACHMENT 3

EXHIBIT "C"
PROPOSAL DATED OCTOBER 2, 2014 FOR SERVICES RELATED TO THE DEVELOPMENT FEE PROGRAM

LSA

LSA ASSOCIATES, INC.
1500 IOWA AVENUE, SUITE 200
RIVERSIDE, CALIFORNIA 92507

951.781.9310 TEL
951.781.4277 FAX

OTHER OFFICES:
IRVINE
PT. RICHMOND
SAN LUIS OBISPO
PALM SPRINGS
FORT COLLINS
BERKELEY
ROCKLIN
SOUTH SAN FRANCISCO
CARLSBAD
FRESNO

October 2, 2014

Mr. Duane Burk
Director of Public Works
City of Banning
99 E. Ramsey Street
Banning, California 92220

Subject: Update of Traffic Fee Component of the Development Fee Program, City of Banning - Contract Amendment Request (LSA Project No. COB1101A)

Dear Duane:

LSA Associates, Inc. (LSA) is under contract with the City of Banning (City) to update the traffic fee component of the Development Fee Program (DIF) for the City. LSA's initial scope of work for preparation of this update was based on the attached proposal dated March 2nd, 2011 (Attachment A). LSA requested a budget of $45,000 for the preparation of the update to the fee program based on the scope of work shown in Attachment A.

During the preparation of the update LSA identified the requirement for some additional analysis for calculation of the updated fees. These new analyses were presented and discussed with the City on September 9th, 2014. Based on consultation with the City, it was determined that these additional analyses needs to be included in the study. Thus, LSA has prepared this contract amendment request for completion of the fee program analysis.

Background:

In December 2010, LSA submitted a Traffic Impact Analysis (TIA) for the Butterfield Specific Plan to the City of Banning (City). The project consisted of approximately 1,543 acres of residential uses, parks, open space, schools, golf course, and commercial uses. At the time, the study was submitted, the City's General Plan Circulation Element considered Level of Service C as the upper limit of satisfactory operations at intersections. A subsequent traffic impact analysis for the Banning General Plan Amendment Change in Level of Service Policy was prepared by LSA in September 2012 because the City proposed to change its existing policy for acceptable LOS criteria from LOS C to LOS D for all intersections within the City. The benefits of changing the Citywide LOS standard from LOS C to LOS D were to be consistent with the City of Beaumont along the common border of Highland Springs Avenue, reduce the Capital Improvement Cost and physical impact for improving an intersection to acceptable LOS per City's General Plan policy which would result in lower traffic impact fees. In September 2012, LSA submitted a traffic impact analysis for the Re-designation of Highland Home Road at Interstate 10 From an Interchange to an Overcrossing to the City. This study proposed to eliminate the interchange at Interstate 10 and Highland Home Road and maintain an overcrossing. The results of the TIA recommended that the overcrossing would result in fewer circulation improvements, less right-of-way acquisition, and lower construction costs.

The current DIF Program does not include physical improvements required at intersections to maintain acceptable level of service (LOS) according to the City's General Plan policy in the General Plan Build-out conditions. The current Fee program only addresses proposed traffic control upgrade (signalization) at several locations in the City. Subsequent to the preparation of the General Plan Policy updates, the City determined the need for updating the traffic fee component of the DIF so that a comprehensive traffic mitigation fee could be obtained by the City for all new developments. LSA is currently under contract to prepare an update to the traffic fee component of the development fee that will include physical improvements, additional signalization needs, and additional intersection locations in the traffic fee component of the Development Fee Program for the City of Banning.

Following are the out of scope tasks, as briefly discussed earlier that were not included in the original scope and budget for the update to the development fee program:

Additional Tasks Completed:

Task 1: Figures to identify Typical Major and Secondary Highways Cross Sections

LSA and City staff had a meeting on May 21st, 2013, to finalize the initial scope of work and begin work on the update to the fee program. It was determined in this meeting that a few typical roadway cross-section diagrams as proposed in the General Plan etc. needs to be overlaid on existing roadway configurations to identify the level of detail that the fee program analysis will include. Based on discussions in this meeting LSA created some sample figures that were subsequently presented to the City on September 30th, 2013.

To create these figures, LSA created the attached overall citywide figure (Attachment B) based on the updated General Plan circulation system showing the roadway classification that was superimposed on existing aerial images. This figure was used to identify major roads as included in the City's General Plan circulation system based on the following four categories: Collector Highway, Secondary Highway, Major Highway and Urban Arterial Highway. Subsequently, three maps were created that consisted of focused aerial views of specific road segments. Each map was laid out in a side-by-side view showing the existing condition of a selected road segment next to the proposed condition of the same selected road segment. An example of these maps is attached (Attachment C). These figures were presented to the City on the September 30th meeting to determine whether the fee program will include only improvements to intersections within the City or also include roadway segment improvements. This was an additional analysis conducted to finalize the actual detail that the fee program analysis needs to include. This task involved an additional cost of approximately $8,000.

Task 2: Adjustments to Buildout Volume Development

As stated previously, LSA submitted a TIA for the re-designation of Highland Home Road from an interchange to an overcrossing. However, the volume development for the buildout analysis did not include all of the intersections that were analyzed in the updated fee program study. Additionally, LSA identified some issues in distribution and assignment of traffic from the Butterfield Specific Plan due to removal of the northerly connection with Brookside Avenue. Therefore, volumes were developed at intersections not included in the re-designation of Highland Home Road overcrossing TIA and volumes were readjusted for intersections adjacent to the Butterfield Specific Plan due to removal of the northerly connection. This task involved an additional cost of approximately $4,000.

Task 2: Determination of Right-of-Way requirements

Upon completion of Tasks 1 through 8 as identified in the original scope of work, LSA identified the requirement of additional analysis that needs to included in the evaluation for the update to the fee program. The original scope of work only included costs for physical improvements at intersections and did not include costs for right-of-way acquisitions. Additionally, the scope included calculation of costs for physical improvements at study intersections based on the cost estimates include in Appendix G of the SANBAG CMP. These cost estimates are significantly old estimates and requires inclusion of inflation factors to calculate current construction costs. Identification of right-of-way required for intersection improvements were based on the following tasks:

Task 2A: Queuing Analysis Estimates

A queuing analysis was conducted at each study intersection to determine the approximate length that will be necessary for the recommended circulation improvements at the study intersections. This included right-of-way requirements for left-turns, transitions for additional through lanes, and right-turn lanes. The queuing analysis was conducted based on traffic analysis conducted for the City of Banning General Plan Circulation Element, the Butterfield Specific Plan TIA and the updates to the City's General Plan. Attachment D shows the queuing results at all analysis intersections. This task involved an additional cost of approximately $4,000.

Task 2B: Right-Of-Way Acquisition Estimates

Upon completion of Task 2A, right-of-way acquisition estimates were calculated at each intersection, which included the total right-of-way required (Square Feet) and if any takings of land/buildings may be necessary to construct any of the circulation improvements. This was prepared based on identification of improvements proposed at each study intersections, which was superimposed on existing aerial imagery. The table included as Attachment E summarizes the findings of right-of-way requirements. This task involved an additional cost of approximately $10,000.

Task 3: Example Right-Of-Way Figures/Meeting

Subsequently LSA prepared a few example figures (Attachment F) to illustrate the methodology of determining right-of-way requirements, which show roadway classifications, the beginning of transition lanes, length of lanes, and transition across intersections. As mentioned earlier, these example figures were presented to the City on September 9th, 2014. The objective of this meeting was to finalize whether right-of-way acquisition costs should be included in the updated fee program and if so which right-of way acquisitions does the City deemed feasible as well as the associated costs for the same. This task involved an additional cost of approximately $6,000.

Additional Tasks Pending:

As mentioned earlier, LSA presented the fee program analysis based on the original scope of work to the City on September 9th, 2014. Additionally, LSA reported the findings based on the additional analysis that was prepared and recommended inclusion of those into the updated fee program. Based on discussions at this meeting following are the outstanding tasks that needs to be completed for preparation of fee program update:

Task 4: Determination of right-of-way acquisitious and associated costs

LSA and City staff will discuss and identify which of the recommended intersections improvements and associated right-of-way acquisitions are feasible. Subsequently, hased on consultation with City staff, costs associated with these right-of-way acquisitions will be determined and included in the calculation of updated fees. This task will require and additional cost $4,000.

Task 5: Application on Inflation Costs to SANBAG CMP Cost Estimates

As discussed earlier, the original scope of work only included calculation of cost estimates hased on the SANBAG CMP Preliminary Cost Estimates as listed in Appendix G. These cost estimates should be updated since they do not reflect current construction costs. LSA recommends application of an appropriate inflation factor to update these cost estimates. It is anticipated that this task will require and additional cost of $4,000.

CONCLUSION

Based on the additional task items identified ahove, we request a hudget augment of $40,000 to accomplish the scope of work included in Tasks 1-5. Because of this amendment, the total budget for the preparation of the update to the fee program would be $85,000.

Thank you for your consideration of this request. If you have any questions or would like additional information, please call me at (951) 781-9310.

Sincerely,

LSA ASSOCIATES, INC.

A. Mukherjee

Ambarish Mukherjee, AICP, EIT
Associate

Attachments:
Attachment A: Proposal to Update the Traffic Fee Component of the Development Fee Program for the City of Banning dated March 2, 2011
Attachment B: Citywide General Plan Circulation System With Roadway Classification
Attachment C: Comparison of Existing and Proposed Right-of-Way at Study Intersections/Segments
Attachment D: Queuing Analysis for determination of Turn-Pocket Lengths and Transition Lanes
Attachment E: Right-of-Way Determination Tahle
Attachment F: Example Intersection Geometry and Right-of-Way Requirements With Implementation of Proposed Improvements

ATTACHMENT A:

Proposal to Update the Traffic Fee Component of the Development Fee Program for the City of Banning dated March 2, 2011

LSA

LSA ASSOCIATES, INC.
20 EXECUTIVE PARK, SUITE 200
IRVINE, CALIFORNIA 92614

949.553.0666 TEL
949.553.8076 FAX

BERKELEY
CARLSBAD
FORT COLLINS

FRESNO
PALM SPRINGS
POINT RICHMOND

RIVERSIDE
ROCKLIN
SAN LUIS OBISPO
SOUTH SAN FRANCISCO

March 2, 2011

Mr. Mike Taylor
Pardee Homes
10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024

Subject: Proposal to Update the Traffic Fee Component of the Development Fee Program for the City of Banning

Dear Mike:

LSA Associates, Inc. (LSA) is pleased to present this professional services proposal to update the traffic fee component of the Development Fee Program for the City of Banning (City). The current Development Fee Program does not consider physical improvements required at intersections to maintain acceptable level of service (LOS) standards (consistent with the City's General Plan policy) in the General Plan Build-Out condition, but only addresses proposed traffic control upgrades (signalization) at several locations in the City. LSA has prepared a scope and budget to include physical improvements, additional signalization needs, and additional intersection locations in the traffic fee component of the Development Fee Program for the City of Banning. It should be noted that the update to the traffic fee component of the Development Fee Program will be conducted subsequent to the General Plan Amendment for changing the LOS policy from LOS C to LOS D and removal of the Highland Home Road/I-10 interchange.

Task 1: Coordination with City Staff

Before beginning the process of updating the fee program, LSA will coordinate with representatives of the City Planning and/or Public Works Departments to discuss issues (such as concurrence on new intersections, specific analysis methodologies, assumptions, etc.) related to the fee program. For the purposes of this update, LSA will add the intersections identified in the next task to the existing list in the Development Fee Program. Based on coordination and meetings, refinements to this scope of work and budget may be necessary to meet the objectives of the fee program update.

Task 2: Identification of Study Area

LSA has identified a list of intersections from the Butterfield Specific Plan Traffic Impact Analysis (BSPTIA) that will be added to the list of intersections in the Development Fee Program. These intersections require improvements in the General Plan Build-Out condition and are not part of any other existing fee or financing program. The intersections include:

1. Highland Springs Avenue/Brookside Avenue
2. Highland Springs Avenue/16th Street-Cougar Way

3. Highland Springs Avenue/F Street
4. Highland Springs Avenue/Starlight Avenue
5. Highland Home Road/Northern Loop
6. Highland Home Road/Beaumont Road
7. Highland Home Road/F Street
8. Highland Home Road/D Street
9. Highland Home Road/Wilson Street
10. Highland Home Road/Ramsey Street
11. Sunset Avenue/Wilson Street
12. Sunset Avenue/Ramsey Street
13. Sunrise Avenue/Wilson Street
14. 16th Street/Wilson Street
15. 8th Street/I-10 Westbound Ramps
16. 8th Street/I-10 Eastbound Ramps
17. 4th Street/Wilson Street
18. San Gorgonio Avenue/Wilson Street

Task 3: Identification of Intersection Needs in the Future (General Plan Build Out)

Traffic conditions for the General Plan Build-Out scenario for the a.m. and p.m. peak hours were analyzed in the BSPTIA. Also, the results of the General Plan Build-Out condition were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system in the BSPTIA. LSA will use the improvements identified in the BSPTIA for the General Plan Build-Out condition for the proposed update to the Development Fee Program. These improvements include lane additions consistent with the General Plan roadway designations and possible signalization (or modification) to achieve a satisfactory LOS D condition.

Task 4: Existing Traffic Conditions and Intersection Deficiencies

Existing weekday a.m. and p.m. peak-hour conditions and LOS were assessed for the study intersections in the BSPTIA. The results of the existing conditions were compared to the City's LOS criteria (LOS D), and improvements were proposed to mitigate the deficient locations in the circulation system. Since fees on new development cannot be imposed to remedy existing deficiencies in infrastructure, LSA will identify existing deficiencies at the study intersections based on the analysis for the existing conditions. The difference between the deficiencies in the circulation system in existing and General Plan Build-Out condition will be identified. The cost for mitigating the existing deficiencies will not be included in the Development Fee Program.

Task 5: Estimation of Costs for Fnture (General Plan Build Out) Intersection Needs

LSA will develop cost estimates for the proposed improvements that mitigate the deficient locations in the circulation system in the General Plan Build-Out condition using the San Bernardino Associated Governments (SANBAG) Congestion Management Plan (CMP) Appendix G, Preliminary Construction Cost Estimates for Congestion Management Plan. The total traffic improvement costs will be developed by adding cost estimates of individual intersections for both physical improvements and signalization over the larger affected area.

Task 6: Identification of Fnture (General Plan Build Out) New Traffic

LSA will identify future projected land development by type: residential, commercial, and industrial, based on the General Plan Build-Out projections for these categories. The type and total number of categories will be identical to the ones listed in Figure 36 (attached) of the Development Fee Program. The growth in land uses projected in the City's General Plan between existing and General Plan Build-Out condition will then be converted into daily traffic estimates using Institute of Transportation Engineers (ITE) trip generation rates consistent with the existing traffic fee program. LSA will use the same trip adjustment rates listed in Figure 36 (attached) in the existing Development Fee Program. LSA will summarize the conversion rates and trips generated by each type of land use based on the projected quantities in a table format. It should be noted that the recommended intersection improvements are based on impacts determined from peak-hour traffic conditions. Use of daily traffic forecasts for trip fee determination can affect the overall nexus of the fee program because the improvements were determined based on intersection LOS analysis for peak-hour traffic volumes. LSA is proposing a method consistent with current practice. This method may affect the nexus and/or stakeholder tolerance to the revised fee update.

Task 7: Development of Traffic Fee for Future (General Plan Build Out) New Traffic

LSA will establish a relationship between the new (projected) development and the total cost associated with the recommended improvements within the City of Banning. Based on this relationship, the total cost of improvements, including signalization and physical improvements, will be divided by the total new daily trips generated by proposed land uses to calculate the "per-trip" fee similar to the one included in the current traffic fee component of the Development Fee Program.

Task 8: Preparation of Traffic Analysis Report

A technical study will be prepared discussing the relationship between the future land uses for the General Plan Build-Out condition and the cost of improvement to mitigate the circulation system to conform to City's standards. The establishment of a "per-trip" fee for the future land uses adopted in the General Plan will be summarized in the report. A copy of the draft report will then be submitted to the City for review and comment.

Upon completion of the City's review, representatives of LSA will meet with City staff to discuss the report and to receive comments. LSA will then modify the draft report to address the comments and submit the final study report to the City.

Task 9: Meeting Attendance

For the purpose of this scope of work, it is anticipated that members of LSA's Transportation staff will attend up to four team meeting related to preparation of the technical traffic analysis.

Traffic Study Budget Estimate and Schedule

Based on this scope of work, a budget of $45,000 is required. This amount will be billed on an hourly basis consistent with the attached rates and provisions. This amount will not be exceeded without your prior authorization.

LSA is prepared to initiate this work effort immediately. A draft traffic study will be submitted to your office for review within 6 weeks after authorization to proceed, as evidenced by the signature of an authorized agent.

Sincerely,

LSA ASSOCIATES, INC.

Les Card, P.E.
Principal/Chief Executive Officer

Figure 36: Average Weekday Vehicle Trip Factors and Pass-By Adjustments

Residential and Nonresidential Demand Indicators	Residential	Commercial/ Shopping Ctrs	Other Nonresidential
Average Weekday Vehicle Trip Ends Per Unit			
Single Family-Detached	9.57		
Townhouse/Duplex	5.86		
Multifamily	6.59		
Mobile Home/Other	4.99		
Avg Weekday Vehicle Trip Ends Per 1,000 Sq Ft			
820 Com / Shop Ctr 50,000 SF or less		86.56	
820 Com / Shop Ctr 50,001-100,000 SF		67.91	
820 Com / Shop Ctr 100,001-200,000 SF		53.28	
820 Com / Shop Ctr over 200,000 SF		41.80	
710 Office / Inst 25,000 SF or less			18.35
710 Office / Inst 25,001-50,000 SF			15.65
710 Office / Inst 50,001-100,000 SF			13.34
720 Medical-Dental Office			36.13
610 Hospital			17.57
770 Business Park			12.76
110 Light Industrial			6.97
140 Manufacturing			3.82
150 Warehousing			4.96
520 Elementary School			14.49
Other Nonreisdential			
320 Lodging (per room)			9.11
565 Day Care (per student)			4.48
620 Nursing Home (per bed)			2.37
Trip Adjustment Factors			
Residential	50%		
Com / Shop Ctr 50,000 SF or less		26%	
Com / Shop Ctr 50,001-100,000 SF		29%	
Com / Shop Ctr 100,001-200,000 SF		32%	
Com / Shop Ctr over 200,000 SF		35%	
All Other Nonresidential			50%

Source: ITE Trip Generation, 7th Edition, 2003

CAPITAL FACILITY PLAN

The traffic control capital improvements included in the development impact fee methodology is based on capacity improvements identified by a study prepared for the City by Whipple, Kinsell, and Company (1992).

ATTACHMENT B:

Citywide General Plan Circulation System With Roadway Classification

Legend
Collector Highway 66' ROW
Secondary Highway 80' ROW
Major Highway 100' ROW
Urban Arterial Highway 144' ROW
CONCOMBER ROAD
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ATTACHMENT C:

Comparison of Existing and Proposed Right-of-Way at Study Intersections/Segments

EXISTING CONDITIONS
BARBOUR STREET
SAN GORGONIO AVENUE
WESTWARD AVENUE
REGIONAL MAP
Map Locations
PROPOSED CONDITIONS
BARBOUR STREET
SAN GORGONIO AVENUE
WESTWARD AVENUE
Street Cross Sections
MAJOR HIGHWAY
SECONDARY HIGHWAY

ATTACHMENT D:

Queuing Analysis for determination of Turn-Pocket Lengths and Transition Lanes

Attachment D - Queuing Analysis for determination of Turn-Pocket Lengths and Transition Lanes

Intersection	95th Percentile Queue Lengths (feet)																						
	A.M. Peak Hour												P.M. Peak Hour										
	NBL	NBT	NBR	SBL	SBT	SBR	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR	EBL	EBT	EBR	WBL	WBT	WBR
1. Highland Springs Avenue/Brookside Avenue	400	225	-	-	525	525	50	-	550	-	-	-	450	575	-	-	850	850	225	-	950	-	-	-
2. Highland Springs Avenue/16th Street-Cougar Way	400	400	-	-	350	350	75	-	75	-	-	-	650	650	-	-	1,325	1,325	500	-	500	-	-	-
3. Highland Springs Avenue/F Street	-	550	275	150	625	-	-	-	-	850	-	425	-	575	1,250	500	600	-	-	-	-	875	-	500
4. Highland Springs Avenue/Oak Valley Parkway-B Street	275	350	350	50	700	700	25	150	700	850	850	850	550	775	775	100	775	775	225	450	975	900	900	900
5. Highland Springs Avenue/Starlight Avenue-A Street	200	450	125	75	500	375	75	125	625	475	375	375	225	1,375	200	150	900	275	425	450	350	475	475	475
6. Highland Springs Avenue/Wilson Street	125	350	175	250	675	100	150	275	275	525	200	175	50	925	500	525	550	50	425	675	675	275	375	925
7. Highland Springs Avenue/Ramsey Street	175	66	2	105	454	36	114	126	-	254	82	-	7	55	8	6	36	11	17	18	14	19	19	19
8. Highland Springs Avenue/I-10 Westbound Ramps	361	172	-	-	498	303	-	-	-	204	-	51	2	17	20	21	22	2	17	27	27	11	15	37
9. Highland Springs Avenue/I-10 Eastbound Ramps	-	384	86	294	122	-	332	-	51	-	-	-	201	417	33	167	295	41	220	254	-	270	370	-
10. Highland Springs Avenue/San Lakes Boulevard	125	625	50	175	375	-	75	75	50	100	175	475	225	625	275	350	725	-	75	825	300	650	550	475
11. Highland Springs Avenue/Potrero Boulevard	350	425	-	-	325	125	350	-	75	-	-	-	225	325	-	-	475	350	350	-	200	-	-	-
12. C Street-Apex Avenue/Wilson Street	-	-	-	475	-	475	175	325	325	-	675	675	-	-	-	525	-	525	150	775	775	-	1,050	1,050
13. Highland Home Road/Northern Loop	25	-	-	-	-	-	-	-	25	-	-	-	25	-	-	-	-	-	-	-	25	-	-	-
14. Highland Home Road/Bamgont Road-C St	-	150	50	375	375	-	-	-	-	775	-	775	-	300	350	225	225	-	-	-	-	675	-	675
15. Highland Home Road/F Street	125	175	-	-	700	375	175	-	450	-	-	-	350	650	-	-	825	275	1,000	-	325	-	-	-
16. Highland Home Road/D Street	200	100	-	-	1,050	1,050	475	-	475	-	-	-	350	575	-	-	875	875	400	-	400	-	-	-
17. Highland Home Road/Wilson Street	200	200	50	325	300	300	125	375	375	200	525	125	800	450	325	300	300	400	150	1,225	1,225	75	675	600
18. Highland Home Road/Ramsey Street	50	50	50	200	75	125	25	200	200	25	100	75	50	125	125	275	100	100	275	350	350	75	400	575
19. Highland Home Road/San Lakes Boulevard--Westward Avenue	125	25	25	75	175	175	50	75	75	-	175	175	225	50	50	150	375	375	150	450	450	50	700	700
20. Sunset Avenue/Wilson Street	175	175	50	125	525	125	250	425	275	50	250	50	450	575	50	225	525	350	500	525	175	175	900	175
21. Sunset Avenue/Ramsey Street	175	125	75	100	450	50	25	125	325	75	75	75	150	475	100	125	325	150	150	400	175	300	400	400
22. Sunset Avenue/I-10 Westbound Ramps	450	150	-	-	375	-	-	-	-	475	475	475	250	525	-	-	225	-	-	-	-	325	325	325
23. Sunset Avenue/I-10 Eastbound Ramps	-	475	475	325	75	-	150	150	375	-	-	-	-	525	525	175	175	-	400	400	675	-	-	-
24. Sunset Avenue/Lincoln Street	50	175	175	75	150	150	250	50	50	25	50	75	200	150	150	125	325	350	275	275	275	50	425	125
25. Sunset Avenue/Westward Avenue	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26. Sunrise Avenue/Wilson Street	75	75	75	100	100	100	150	150	150	-	50	50	325	325	325	75	75	75	350	350	350	50	400	400
27. 16th St/Wilson Street	75	-	75	-	-	-	-	75	75	50	25	-	175	-	175	-	-	-	-	200	200	25	250	-
28. 8th St/Wilson Street	100	50	50	125	175	175	-	300	25	25	125	25	275	225	225	175	200	200	50	500	-	25	675	50
29. 8th St/Ramsey Street	50	100	400	50	250	250	-	100	125	300	50	50	250	175	525	25	175	175	75	300	325	275	200	200
30. 8th St/I-10 Westbound Ramps	300	75	-	-	175	625	-	-	-	225	225	225	275	275	-	-	325	400	-	-	-	575	-	575
31. 8th St/I-10 Eastbound Ramps	-	350	350	200	25	-	300	-	300	-	-	-	-	700	700	175	75	-	275	650	300	-	-	-
32. 8th Street/Lincoln Street	25	500	500	500	175	175	75	175	175	25	50	750	175	700	700	575	425	425	550	525	525	75	1,025	675
33. 4th St/Wilson Street	25	25	-	275	275	275	400	400	400	175	175	175	150	150	100	175	175	175	550	550	550	900	900	900
34. San Gorgonio Avenue/Wilson Street	25	50	50	375	375	375	50	425	425	200	200	200	150	150	100	175	175	175	550	550	550	850	850	850
35. Hargrave Street/Ramsey Street	125	375	350	25	575	25	50	100	75	450	100	25	1,025	1,250	425	50	925	50	75	200	150	1,175	200	75
36. Hargrave Street/I-10 Westbound Ramps	300	225	-	-	400	-	-	-	-	75	75	-	825	800	-	-	650	-	-	-	-	825	825	-
37. Hargrave Street/I-10 Eastbound Ramps	-	450	150	425	125	-	600	600	-	-	-	-	-	975	450	475	700	700	900	900	-	-	-	-
38. Hargrave Street/Lincoln Street	25	125	125	575	125	50	150	175	75	-	75	-	275	125	125	450	100	1,525	675	275	100	75	200	-
39. Fields Road/I-10 Westbound Ramps	-	25	50	275	350	-	-	-	-	100	100	25	-	50	225	1,075	1,100	-	-	-	-	600	600	300

Notes:
The 95th-percentile queue is defined to be the queue length that has only a 5-percent probability of being exceeded during the analysis time period.
Queue lengths assume a vehicle length of 25 feet.

ATTACHMENT E:

Right-of-Way Determination Table

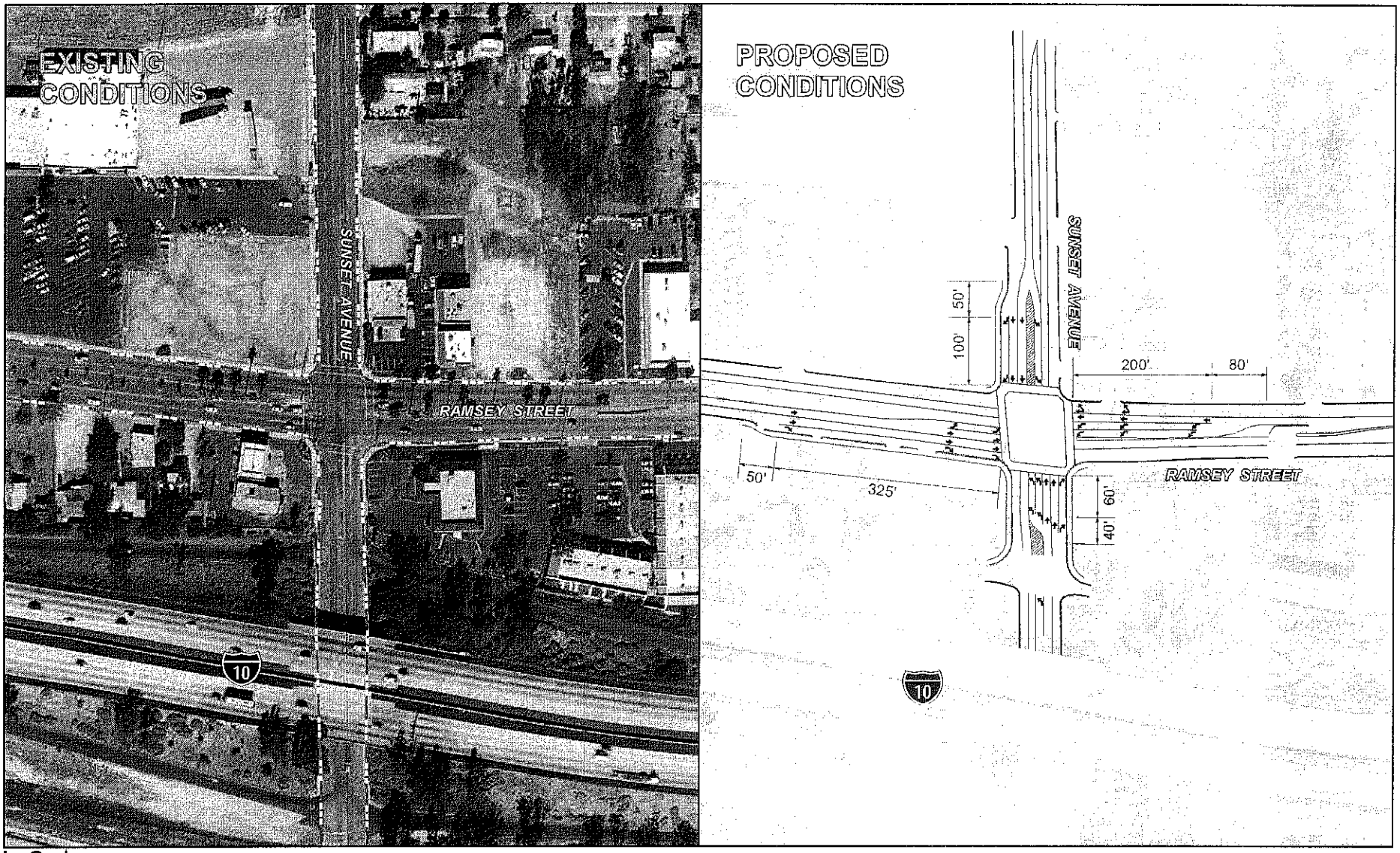
Attachment E - Right-of-Way Determination

	Intersection	Improvements Needed to Mitigate Existing Deficiencies	General Plan Buildout Circulation Improvements	Completed Improvements	TUMF Program Improvements	Signalization Covered Through Existing Development Fee Program (Traffic Control)	DIF Program Improvements	Total Improvement Cost (For DIF Only)	Total Right of Way Required (Square Feet)	Land (Square Feet)	Buildings (Type/Location)
1 .	Highland Springs Avenue/Brookside Avenue		Install a traffic signal. Add a NBL, NBT, SBT, EBL.		NBT, SBT		Install a traffic signal. Add NBL, EBL.	$395,000	7,500	7,500	-
2 .	Highland Springs Avenue/16th Street-Cougar Way		Install a traffic signal.				Install a traffic signal.	$210,000	-	-	-
3 .	Highland Springs Avenue/F Street		Install a traffic signal. Add a NBR with overlap, 2 SBL, WBR with overlap.		SBL		Install a traffic signal. Add a NBR with overlap, SBL, WBR with overlap.	$396,450	28,500	28,500	-
4 .	Highland Springs Avenue/Oak Valley Parkway-B Street		Add NBL, NBT, SBT.		NBT, SBT		Add a NBL	$187,250	3,800	3,800	-
5 .	Highland Springs Avenue/Starlight Avenue -A Street		Install a traffic signal. Add NBL, NBT, NBR, SBL, SBT, SBR, EBL, EBR with overlap, WBL.		NBT,SBL, SBT,		Install a traffic signal. Add NBL, NBR, SBR, EBL, EBR with overlap, WBL.	$578,430	22,700	19,300; Taking of land may be required for NBL, SBR and EBR. Removal of west leg median for EBL.	-
6 .	Highland Springs Avenue/Wilson Street		Install a traffic signal. Add a 2 NBT, SBL, SBR, WBL, overlap to WBR.	Install a traffic signal.	2 NBT,		Add a SBL, SBR, WBL, overlap to WBR.	$290,750	9,600	9600; Taking of land may be required for WBL.	-
7 .	Highland Springs Avenue/Ramsey Street	Optimize & coordinate with Highland Springs Ave./I-10 EB & WB Ramps.	Add NBL, NBT, SBL, SBT, WBL.		NBT, SBT		Add NBL, SBL, WBL.	$326,250	9,105	9,105; Taking of land may be required for NBL, SBL, WBL. Removal of east leg median for WBL.	-
8 .	Highland Springs Avenue/I-10 Westbound Ramps	Optimize and coordinate with Highland Springs/I-10 EB Ramps & Highland Springs/8th Street-Ramsey St.	Convert SBR to Free SBR, WBR.		Convert SBR to Free SBR, WBR.					-	-
9 .	Highland Springs Avenue/I-10 Eastbound Ramps		Add EBL		Add EBL					-	-
10 .	Highland Springs Avenue/San Lukas Boulevard		Install a traffic signal. Add NBR, SBL, 2 WBL, Re-stripe WBL to WBT.	Install a traffic signal.	SBL		Add NBR, 2 WBL. Re-stripe WBL to WBT.	$250,750	19,800	- 19,800; Taking of land may be required for NBR, 2 WBL. Removal of east leg median for 2 WBL	-
11 .	Highland Springs Avenue/Potrero Boulevard		Install a traffic signal.				Install a traffic signal.	$250,000	-	-	-
12 .	C Street-Apex Avenue/Wilson Street		Install a traffic signal. Add EBL, EBT, WBT.				Install a traffic signal. Add EBL, EBT, WBT.	$489,540	37,500	37,500	West Leg/SW Quad-Remove 15 mobile homes, East Leg/SE Quad-Remove 3 SFR.
13 .	Highland Home Road/Northern Loop									-	-
14 .	Highland Home Road/Beaumont Road-G St		Install a traffic signal. Add NBR with overlap.				Install a traffic signal. Add NBR with overlap.	$288,988	3,600	3,600	-
15 .	Highland Home Road/F Street		Install a traffic signal. Add 2 NBL, SBR, EBL.				Install a traffic signal. Add 2 NBL, SBR, EBL.	$504,480	15,300	15,300	-
16 .	Highland Home Road/D Street		Install a traffic signal. Add NBL, NBT.				Install a traffic signal. Add NBL, NBT.	$406,020	20,700	20,700	-
17 .	Highland Home Road/Wilson Street		Install a traffic signal. Add NBT, 2 SBL, SBT, SBR, WBR with overlap.			Install a traffic signal.	Add NBT, 2 SBL, SBT, SBR, WBR with overlap.	$483,870	24,300	24,300; Removal of existing median for NBL. Taking of land may be required for NBT. Removal of existing storm basin for SBL, SBT, SBR, Taking of land may be required for WBR.	-
18 .	Highland Home Road/Ramsey Street		Install a traffic signal. NBL, NBT, SBL, SBT, Overlap to WBR.			Install a traffic signal.	Add NBL, NBT, SBL, SBT, Overlap to WBR.	$457,770	43,200	Taking of land may be required for NBL, NBT.	-
19 .	Highland Home Road/San Lukas Boulevard--Westward Avenue		Install a traffic signal. Add NBL, SBL, EBL, EBT, WBT.		WBT	Install a traffic signal.	Add NBL, SBL, EBL, EBT.	$301,020	17,400	17400; Taking of land may be required for EBL.	East Leg/SE Quad-Removal of vacated SFR,
20 .	Sunset Avenue/Wilson Street		Install a traffic signal. Add 2 NBL, Re-stripe NBR-NBT,NBR, SBL, SBT, SBR with overlap, EBL, EBT,WBL, WBT, WBR with overlap	NBL, SBL, SBT, EBL,WBL		Install a traffic signal.	Add NBL, Re-stripe NBR-NBT, NBR, SBR with overlap, EBT,WBT, WBR with overlap	$459,720	60,600	60,600; Taking of land may be required for NBL, EBT	West-Leg/SW Quad-Removal of 12 mobile homes, East-Leg/SE Quad-Removal of 6 SFR
21 .	Sunset Avenue/Ramsey Street		Add NBL, NBR, SBR, EBR, WBL.				Add WBL, NBR, SBR, EBR, WBL.	$342,180	15,300	15,300; Taking of land may be required for NBL, NBR, EBR. Removal of existing median for WBL.	-
22 .	Sunset Avenue/I-10 Westbound Ramps		Install a traffic signal. Add free SBR.		Install a traffic signal. Add free SBR.					-	-
23 .	Sunset Avenue/I-10 Eastbound Ramps		Install a traffic signal. Add 2 EBL, SBL.		Install a traffic signal. Add 2 EBL, SBL.					-	-
24 .	Sunset Avenue/Lincoln Street		Install a traffic signal. Add NBL, NBT, SBL, SBT, 2 EBL, EBT, WBL, WBT, WBR.		EBL, EBT.	Install a traffic signal.	Add NBL, NBT, SBL, SBT, WBL, WBT, WBR.	$494,160	77,100	77,100;	South Leg/SW Quad-Realignment of Existing Channel
25 .	Sunset Avenue/Westward Avenue									-	-
26 .	Sunrise Avenue/Wilson Street		Install a traffic signal. Add EBTL, convert WBR to WBTR.	EBTL, WBTR			Install a traffic signal.	$250,000		-	-
27 .	16th St/Wilson Street		Install a traffic signal.				Install a traffic signal.	$250,000		-	-
28 .	8th St/Wilson Street		Install a traffic signal. Add NBL, SBL, WBR.			Install a traffic signal.	Add NBL, SBL, WBR.	$134,995	8,700	8,700; Taking of land may be required for NBL, WBL.	-
29 .	8th St/Ramsey Street		Add NBL. Re-stripe EBR-EBT, EBR, WBL.				Add NBL. Re-stripe EBR-EBT, EBR, WBL.	$316,830	28,200	28,200; Taking of land may be required for NBL, EBR, and WBL.	-
30 .	8th St/I-10 Westbound Ramps		Install a traffic signal. Add 2 NBL, NBT, SBT.		NBL		Install a traffic signal. Add NBL, NBT, SBT.	$489,540	37,500	37,500; Taking of land may be required for NBL, NBT, SBT	-
31 .	8th St/I-10 Eastbound Ramps	Install a traffic signal.	Add NBT, SBL, SBT.		SBL		Add NBT, SBT.	$275,790	33,600	33,600;Taking of land may be required for NBT, SBT	-
32 .	8th Street/Lincoln Street		Install a traffic signal. Add NBL, 2 SBL, SBT, 2 EBL, EBT, WBL, WBT.			Install a traffic signal.	Add NBL, 2 SBL, SBT, 2 EBL, EBT, WBL, WBT.	$685,560	71,100	71,100; Taking of land may be required for WBT	-
33 .	8th St/Nixon Street		Install a traffic signal.				Install a traffic signal.	$250,000		-	-
34 .	San Gorgonio Avenue/Wilson Street		Install a traffic signal. Add EBL, EBT, WBTL.			Install a traffic signal.	Add EBL, EBT, WBTL.	$239,940	37,500	37,500; Taking of land may be required for EBT, WBTL	West Leg/SW Quad-12 SFR & 2 City of Banning Community Services Buildings may need to be removed to add EBT, EBL, WBTL.
35 .	Hargrave Street/Ramsey Street		Add NBL, NBT, overlap to NBR, SBL, SBT, SBR, EBL, EBT, WBL, WBT.				Add NBL, NBT, NBR to NBR with Overlap, SBL, SBT, SBR, EBL, EBT, WBL, WBT.	$831,450	81,000	81,000; Taking of land may be required for SBL, SBT, SBR, EBL, EBT, WBL, and WBT	South Leg/SW Quad-Remove Car Station, South Leg-SE Quad-Remove Gas Station/Fast-Food Restaurant
36 .	Hargrave Street/I-10 Westbound Ramps		Install a traffic signal. Add 2 NBL, NBT, Free SBR, WBL, free WBR.				Install a traffic signal. Add 2 NBL, NBT, Free SBR, WBL, Free WBR.	$624,970	36,000	36,000;Taking of land may be required for 2 NBL, NBT, Free SBR, WBL, Free WBR	-
37 .	Hargrave Street/I-10 Eastbound Ramps		Install a traffic signal. Add NBT, NBR, SBL, SBT, EBL, Free EBR.				Install a traffic signal. Add NBT, NBR, SBL, SBT, EBL, Free EBR.	$422,820	48,600	48,600; Taking of land may be required for NBT, NBR, SBL, SBT, EBL, Free EBR	-
38 .	Hargrave Street/Lincoln Street		Install a traffic signal. Add NBL, NBT, 2 SBL, SBT, SBR with overlap, EBL, EBT, EBR, WBL, WBT, Free WBR.		Add NBL, SBL.	Install a traffic signal.	Add NBT, SBL, SBT, SBR with overlap, EBL, EBT, EBR, WBL, WBT, Free WBR.	$726,630	86,100	86,100; Taking of land may be required for NBT, SBL, SBT, SBR with overlap, EBL, EBT, EBR, WBL, WBT, Free WBR	South Leg/SE Quad-Removal of 5 SFR, north leg/NW Quad-Removal of 2 SFR, north leg/NE Quad-Removal of 2 SFR, East leg/North East Quad-Removal of 1 Warehouse building, East Leg/South East Quad-Removal of 4 warehouse buildings/7 1 SFR
39 .	Pardee Road/I-10 Westbound Ramps		Install a traffic signal. Add SBTR and stripe WBL. Re-stripe SBLTR-SBTL.				Install a traffic signal. Add SBTR and WBL. Re-stripe SBLTR-SBTL.	$333,520	20,700	20,700; Taking of land may be required for SBTR and WBL	-

Note: NBL = Northbound Left-turn lane, NBT = Northbound Through Lane, NBTR= Northbound Through-Right, NBR = Northbound Right-turn Lane, etc.

ATTACHMENT F:

Example Intersection Geometry and Right-of-Way Requirements With Implementation of Proposed Improvements



LSA

N

0 100 200

Feet

Existing

Proposed

Existing Lane

Proposed Lane

SOURCE: Google Earth, 2013

I:\COB1101\Reports\Traffic\fig1_RamseySunset.mxd (6/13/2014)

FIGURE 1

Banning Fee Program
Traffic Study

Ramsey Street and Sunset Avenue

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Brian Guillot, Acting Community Development Director**

SUBJECT: **Economic Development**
Resolution No. 2015-66, "Approving an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan"

RECOMMENDATION: That the City Council:

I. Adopt Resolution No. 2015-66 (Attachment 1) approving an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan in the amount not to exceed, Twenty-five Thousand Dollars ($25,000.00).

JUSTIFICATION: Section 21674 of the Public Utilities Code sets forth the powers and duties of the Airport Land Use Commission. At this time, Countywide Policies for Zone D maximum densities/intensities of the Riverside County Airport Land Use Compatibility Plan for Banning Municipal Airport restrict a finding of compatibility by the Commission for assembly uses (those with higher occupancies) around the airport, more specifically Zone D (see Attachment 2).

BACKGROUND: On October 14, 2004, the Riverside County Airport Land Use Commission adopted the Airport Land Use Compatibility Plan in accordance with their authority. The plan includes baseline densities/intensities for both residential and other land uses. Since the time that the plan was adopted in 2004, the California Airport Land Use Planning Handbook (2011) makes provision for allowing increased densities. The Airport Land Use Commission has approved amendments to other airport compatibility plans such as French Valley Airport that make their plans more accommodating to development, while still maintaining the standards that ensure public safety.

In order to encourage and facilitate economic development around the airport in the City of Banning and in particular Zone D of the Airport Land Use Compatibility Plan, staff requested that the plan be amended to allow increased densities/intensities. The Riverside County Airport Land Use Commission (ALUC) staff is willing to bring an amendment forward to the commission; however, they do not have sufficient staff to complete the environmental

documents. The agreement makes provision for ALUC to hire a consultant to complete the environmental documents (see Attachment 3).

A staff report from ALUC dated October 9, 2014, for a project in the City of Banning is included in Attachment 4. The report identifies the major issues related to this proposal and helps further explain the need to amend the Airport Land Use Compatibility Plan in order to make the project compatible. The project has been continued by ALUC until these issues may be resolved. It is hoped that after the compatibility plan is amended, the applicant will be able to revise the project design in order for ALUC to make a finding of compatibility.

FISCAL DATA: The cost to provide the environmental services for this amendment is estimated to be in the amount not to exceed $25,000.00. Provision for this project is made in the 2015/2016 Budget account number 001-2800-441-33-11.

RECOMMENDED BY:

Brian Guillot
Acting Community Development Director

APPROVED BY:

Dean Martin
Interim City Manager
Interim Administrative Services Director

ATTACHMENTS:

1. Resolution No. 2015-66
2. Compatibility Map and Table 2A Densities/Intensities
3. Standard ALUC Agreement with cover letter dated December 22, 2013
4. Staff Report from ALUC dated October 9, 2014 (Museum of Pinball)

Attachment 1

(Resolution No. 2015-66)

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RESOLUTION NO. 2015-66

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT WITH THE RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION (ALUC) FOR THE AMENDMENT OF THE BANNING MUNICIPAL AIRPORT LAND USE COMPATIBILITY PLAN

WHEREAS, on October 14, 2004, the Riverside County Airport Land Use Commission adopted the Banning Municipal Airport Land Use Compatibility Plan in accordance with their authority; and

WHEREAS, the Airport Compatibility Plan includes baseline densities/intensities for both residential and other land uses that may act as a constraint on economic development; and

WHEREAS, the City Council desires to encourage and facilitate economic development adjacent to Banning Municipal Airport; and

WHEREAS, the Riverside County Airport Land Use Commission is willing to consider amending the plan to increase the maximum densities and intensities in accordance with the California Airport Land Use Planning Handbook subject to certain conditions;

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

SECTION 1. The Council approves an Agreement with the Riverside County Airport Land Use Commission (ALUC) for the Amendment of the Banning Municipal Airport Land Use Compatibility Plan in the amount not to exceed, Twenty-five Thousand Dollars ($25,000.00).

SECTION 2. The Interim City Manager is authorized to execute an Agreement with Riverside County Airport Land Use Commission in a form approved by the City Attorney.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, Mayor
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

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

ATTEST:

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-66 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015.

AYES:

NOES:

ABSENT:

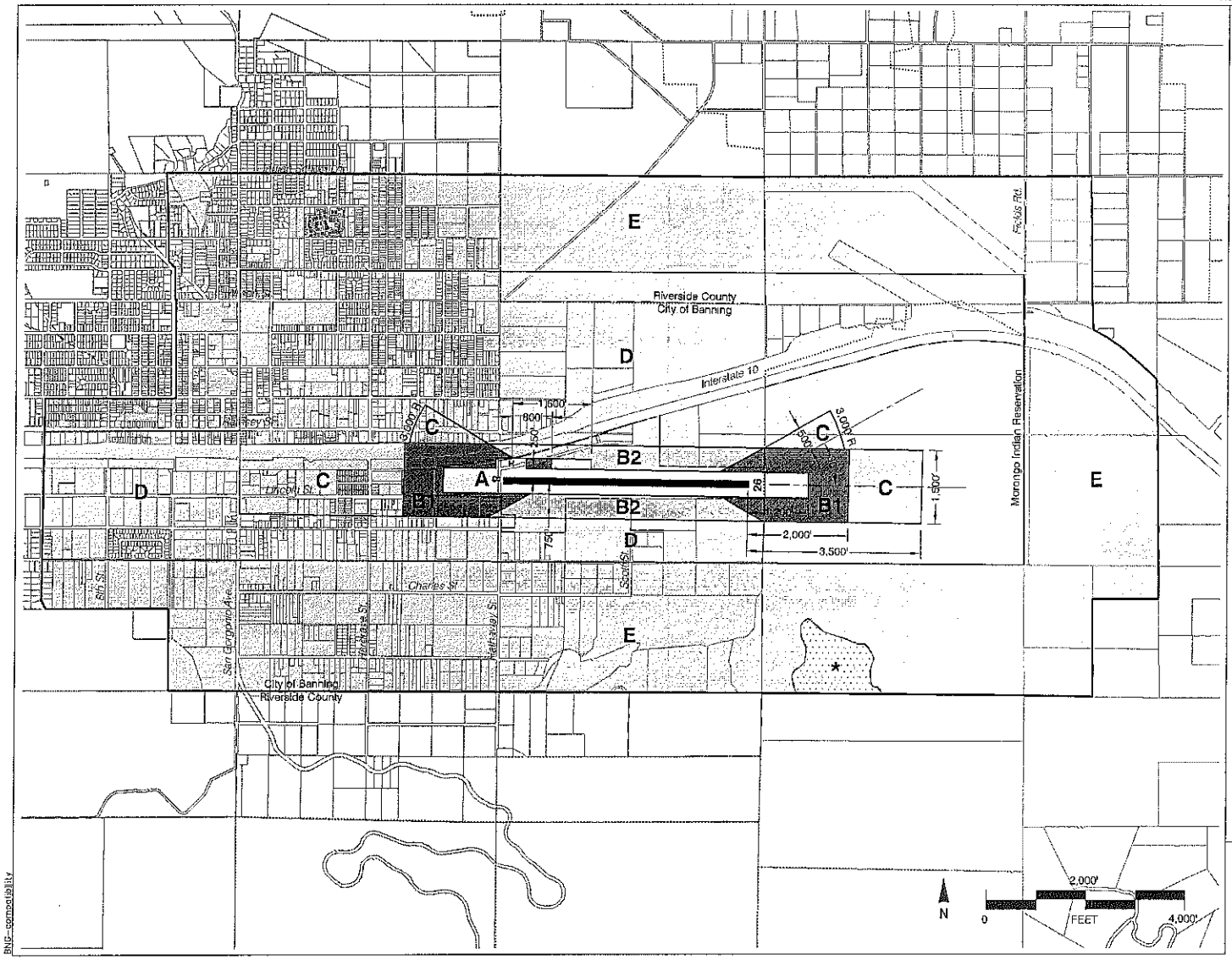
ABSTAIN:

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

Attachment 2

(Compatibility Map)

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Legend

Compatibility Zones

- Airport Influence Area Boundary
- Zone A
- Zone B1
- Zone B2
- Zone C
- Zone D
- Zone E
- Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
Airport Land Use Commission

Riverside County
Airport Land Use Compatibility Plan
Policy Document

(Adopted October 2004)

Map BN-1

Compatibility Map

Banning Municipal Airport

BNP-compatibility

Zone	Locations	Maximum Densities / Intensities: Residential (d.u./ac) [1]	Other Uses (people/ac) [2]: Average [6]	Single Acre [7]	with Bonus [8]	Req'd Open Land [3]	Additional Criteria: Prohibited Uses [4]	Other Development Conditions [5]
A	Runway Protection Zone and within Building Restriction Line	0	0	0	0	All Remaining	› All structures except ones with location set by aeronautical function › Assemblages of people › Objects exceeding FAR Part 77 height limits › Storage of hazardous materials › Hazards to flight [9]	› Avigation easement dedication
B1	Inner Approach/ Departure Zone	0.05 (average parcel size ≥20.0 ac.)	25	50	65	30%	› Children's schools, day care centers, libraries › Hospitals, nursing homes › Places of worship › Bldgs with >2 aboveground habitable floors › Highly noise-sensitive outdoor nonresidential uses [10] › Aboveground bulk storage of hazardous materials [11] › Critical community infrastructure facilities [12] › Hazards to flight [9]	› Locate structures maximum distance from extended runway centerline › Minimum NLR of 25 dB in residences (including mobile homes) and office buildings [13] › Airspace review required for objects >35 feet tall [14] › Avigation easement dedication
B2	Adjacent to Runway	0.1 (average parcel size ≥10.0 ac.)	100	200	260	No Req't	Same as Zone B1	› Locate structures maximum distance from runway › Minimum NLR of 25 dB in residences (including mobile homes) and office buildings [13] › Airspace review required for objects >35 feet tall [14] › Avigation easement dedication
C	Extended Approach/ Departure Zone	0.2 (average parcel size ≥5.0 ac.)	75	150	195	20%	› Children's schools, day care centers, libraries › Hospitals, nursing homes › Bldgs with >3 aboveground habitable floors › Highly noise-sensitive outdoor nonresidential uses [10] › Hazards to flight [9]	› Minimum NLR of 20 dB in residences (including mobile homes) and office buildings [13] › Airspace review required for objects >70 feet tall [15] › Deed notice required
D	Primary Traffic Patterns and Runway Buffer Area	**(1)** ≤0.2 (average parcel size ≥5.0 ac.) *or* [16] **(2)** ≥5.0 (average parcel size ≤0.2 ac.)	100	300	390	10%	› Highly noise-sensitive outdoor nonresidential uses [10] › Hazards to flight [9]	› Airspace review required for objects >70 feet tall [15] › Children's schools, hospitals, nursing homes discouraged [17] › Deed notice required
E	Other Airport Environs	No Limit	No Limit [18]			No Req't	› Hazards to flight [9]	› Airspace review required for objects >100 feet tall [15] › Major spectator-oriented sports stadiums, amphitheaters, concert halls discouraged beneath principal flight tracks [18]
*	Height Review Overlay	Same as Underlying Compatibility Zone				Not Applicable	Same as Underlying Compatibility Zone	› Airspace review required for objects >35 feet tall [14] › Avigation easement dedication

See Chapter 3 for airport-specific additions or exceptions to these policies

Table 2A

Basic Compatibility Criteria

Attachment 3

(Standard ALUC Agreement with cover letter dated December 22, 2013)

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AIRPORT LAND USE COMMISSION
RIVERSIDE COUNTY

RECEIVED
DEC 30 2013

December 22, 2013

CHAIR
Simon Housman
Rancho Mirage

VICE CHAIRMAN
Rod Ballance
Riverside

COMMISSIONERS

Arthur Butler
Riverside

Glen Holmes
Hemet

John Lyon
Riverside

Greg Pettis
Cathedral City

Richard Stewart
Moreno Valley

STAFF

Director
Ed Cooper

John Guerin
Russell Brady
Barbara Santos

County Administrative Center
4080 Lemon St, 14th Floor
Riverside, CA 92501
(951) 955-5132

www.rcaluc.org

Ms. Zai Abu Bakar, Community Development Director
Mr. Duane Burk, Public Works Director
City of Banning
99 East Ramsey Street
Banning, CA 92220

RE: Banning Municipal ALUCP Amendment Agreement

Dear Ms. Abu Bakar and Mr. Burk:

Thank you for meeting with Airport Land Use Commission (ALUC) staff recently to express your interest in moving forward with modifications to the Banning Municipal ALUCP ahead of ALUC's currently scheduled time frame.

We understand and appreciate the city's concerns. While the proposed amendment may not resolve all problems immediately, the Scope of Services outlined in the attached agreement should provide a significant improvement in potential economic activity compatible with the airport. Please review the Scope of Services carefully for what the modification can, and cannot, achieve.

Attached are three (3) original copies of the agreement for the ALUCP amendment for your review, approval, and City Council execution. Please make sure all three (3) copies are signed and returned. After County Board of Supervisors approval, we will return one (1) fully executed copy to you.

If there are any concerns or questions regarding the agreement, please contact myself, John Guerin, Principal Planner, or Russell Brady, ALUC Planner, at (951) 955-5132. If textual changes are desired, please e-mail us the concerns as well as day/time availability when we can quickly conference call to keep this project on track.

Sincerely,
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

Edward C. Cooper, Director

FUNDING AGREEMENT BY AND BETWEEN RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION AND CITY OF BANNING FOR PREPARATION OF AN INITIAL STUDY AND NEGATIVE DECLARATION IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FOR AMENDMENT OF BANNING MUNICIPAL AIRPORT LAND USE COMPATIBILITY PLAN, ADOPTED 2004

This Agreement is entered into on this ____th day of _____, 2014, by and between the Riverside County Airport Land Use Commission ("RCALUC") and the City of Banning ("CITY") for the provision of certain services required to be performed in connection with an amendment of the Banning Municipal Airport Land Use Compatibility Plan, adopted in 2004 ("THE 2004 PLAN") located within the jurisdictional boundaries of the CITY. The RCALUC and City are sometimes hereinafter referred to individually as "Party" and collectively as the "PARTIES."

RECITALS

A. The Banning Municipal Airport is located within the jurisdictional boundaries of the CITY and provides general aviation services to the CITY and benefits to the residents in the surrounding area.

B. The CITY seeks to amend the 2004 PLAN to address permissible intensities of nonresidential uses (only) in Airport Compatibility Zone D.

C. The CITY has requested RCALUC to perform all services necessary in order to amend the 2004 PLAN as proposed. These services generally consist of the preparation of an Initial Study and Negative Declaration to analyze the impacts associated with the proposed amendment to the 2004 PLAN, followed by adoption of the amendment by the RCALUC, hereinafter referred to as "PROJECT." The Scope of Services for the project is more specifically listed in Exhibit "A" attached hereto and made a part of this agreement as fully set forth herein. The location of the PROJECT is shown in Exhibit "B" attached hereto and made a part of this Agreement as if fully set forth herein.

D. The CITY agrees to fund the PROJECT and acknowledges that RCALUC will take the lead role in the development and implementation of the PROJECT and coordination of the services necessary to complete the PROJECT.

E. The PARTIES desire to define herein the terms and conditions under which said PROJECT is to be administered, prepared, coordinated, managed and financed.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the PARTIES hereto agree as follows:

1. The total estimated cost of the PROJECT is $25,000. The amount excludes any legal challenges to the PROJECT or any aspects thereof.

2. The City agrees to fund the PROJECT in an amount not to exceed $25,000.

3. The City agrees to deposit with RCALUC, prior to the start of any work on the PROJECT, $25,000 (100%) of the estimated cost of the PROJECT.

4. RCALUC shall provide all services as described in Exhibit "A" attached hereto and made a part of this Agreement as if fully set forth herein.

5. If unused funds remain upon completion of the PROJECT, RCALUC agrees to issue the City a refund of any unused amounts within ninety (90) days following the adoption of the proposed amendment to the 2004 PLAN and posting of the Notice of Determination at the Office of the County Assessor-Clerk-Recorder.

6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by all parties and no oral understanding or agreement not incorporated herein shall be binding on each PARTY hereto.

7. The PARTIES shall retain or cause to be retained for audit for a period of three (3) years from the date of final payment, all records and accounts relating to PROJECT.

8. This Agreement and the exhibits herein contain the entire Agreement between the PARTIES, and are intended by the PARTIES to completely state the Agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any PARTY in relation thereto, not expressly set forth in this Agreement, is null and void.

9. This Agreement may be executed in one or more counterparts and when a counterpart shall have been signed by each party hereto, each shall be deemed an original, but all of which constitute one and the same instrument.

10. This Agreement shall be terminated three (3) months after the filing of a Notice of Determination for the PROJECT or upon mutual agreement of the parties.

11. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other address as the PARTIES may designate:

To RCALUC:
Riverside County Airport Land Use Commission
Riverside County Administrative Center
Attention: Ed Cooper, Director
4080 Lemon Street, 14th Floor
Riverside, CA 92501
Phone: (951) 955-5132
Fax: (951) 955-5177

To City of Banning:
City of Banning
Attention: City Manager
99 E. Ramsey Street
Banning, CA 92220
Phone: (951) 922-3101
Fax: (951) 922-3112

[SIGNATURES ON NEXT PAGE]

APPROVALS

RCALUC Approvals:

RECOMMENDED FOR APPROVAL:

_____ Dated:_____

ED COOPER
RCALUC, Director

APPROVED AS TO FORM:

_____ Dated:_____

ANNA W. WANG
Deputy County Counsel

APPROVAL BY THE BOARD OF SUPERVISORS

_____ Dated:_____

JOHN J. BENOIT
Chairman, Riverside County Board of Supervisors

ATTEST:

_____ Dated:_____

KECIA HARPER-IHEM

[SIGNATURES CONTINUED ON NEXT PAGE]

CITY OF BANNING Approvals:

APPROVED BY:

_____ Dated:_____

City Manager
City of Banning

APPROVED AS TO FORM:

_____ Dated:_____

DAVID J. ALESHIRE
Aleshire & Wynder, LLP
City Attorney
City of Banning

ATTEST:

_____ Dated:_____

MARIE CALDERON
City Clerk, City of Banning

EXHIBIT A • SCOPE OF SERVICES

A. PROJECT SCOPE

The Scope of Services covered under this agreement will propose to make limited revisions to the Banning Municipal Airport Land Use Compatibility Plan (ALUCP) by the Riverside County Airport Land Use Commission (RCALUC). More specifically, services covered by this agreement include:

1. RCALUC will act as the Lead Agency for the purposes of the California Environmental Quality Act (hereinafter "CEQA") in carrying out the services necessary to develop and implement the PROJECT.
2. RCALUC will analyze the environmental impacts of the proposed adoption of an amendment to the 2004 PLAN addressing permissible intensities of nonresidential uses in Airport Compatibility Zone D within the PROJECT area.
3. RCALUC staff will propose to amend the 2004 Banning Municipal Airport ALUCP to increase maximum average and single-acre intensities within Compatibility Zone D exclusively; including all text and figure updates as necessary to the ALUCP;
4. RCALUC staff will prepare Initial Study/Negative Declaration programmatically analyzing the impacts of the proposed revision to the Banning Municipal ALUCP;
5. RCALUC staff will prepare a staff report, presentation, and any other materials to present the proposed amendment to the Banning Municipal Airport ALUCP and associated Initial Study/Negative Declaration for adoption by the RCALUC;
6. RCALUC shall conduct a public hearing for the proposed amendment to the 2004 PLAN; and
7. City of Banning staff will provide GIS based data including General Plan, Zoning, current land use, and any other pertinent information upon request by ALUC staff as necessary to support analysis and document preparation.

The Scope of Services under this agreement does **NOT** include any of the following:

1. Modify residential densities within ANY ALUCP Compatibility Zone.

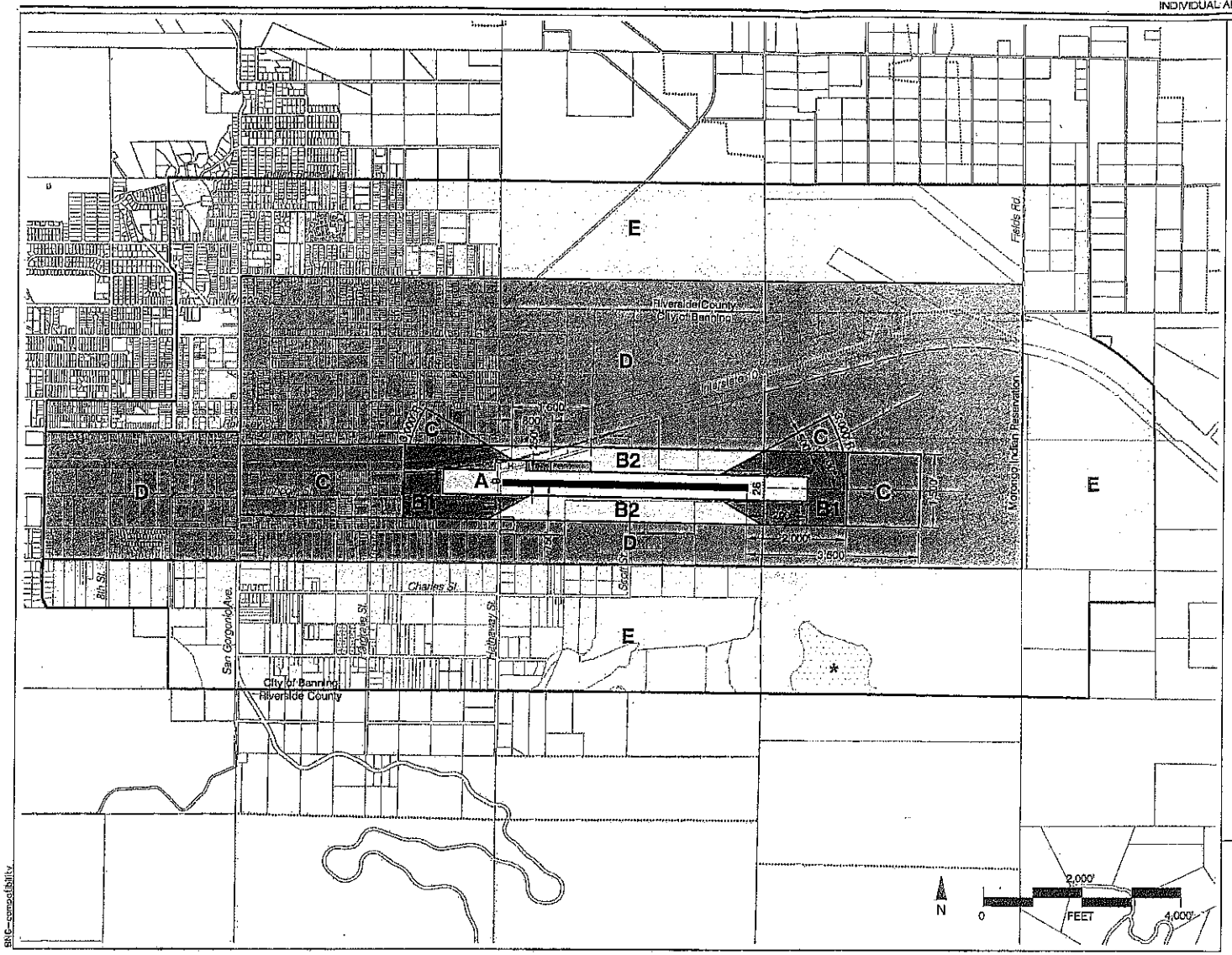
2. Modify non-residential intensities in any ALUCP Compatibility Zone other than Compatibility Zone D.
3. Update any Compatibility Zone boundaries of the Banning Municipal ALUCP.
4. Revise or update any other policies applicable to the Banning Municipal ALUCP.

   A comprehensive update of the entire Banning Municipal ALUCP pursuant to the current Airport Master Plan will be undertaken at a later time at the discretion of the RCALUC and its staff and based on available future resources and budget.
5. Any legal defense (or such costs) of the Plan amendments should good faith negotiations with potential opponents fail.
6. Any work not specifically called out under RCALUC tasks above.

B. PROJECT TIMEFRAME

Completion of the tasks listed in the Scope of Services is expected to take between three (3) months and four (4) months to complete; this contract is structured to complete the work within the required timeframes.

EXHIBIT "B"



Legend

Compatibility Zones

- Airport Influence Area Boundary
- Zone A
- Zone B1
- Zone B2
- Zone C
- Zone D
- Zone E
- Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
Airport Land Use Commission

Riverside County
Airport Land Use Compatibility Plan
Policy Document

(Adopted October 2004)

Map BN-1

Compatibility Map

Banning Municipal Airport

BNC-compatibility

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Attachment 4

(Staff Report from ALUC dated October 9, 2014, Museum of Pinball)

COUNTY OF RIVERSIDE
AIRPORT LAND USE COMMISSION

STAFF REPORT

AGENDA ITEM:	**2.2** ~~3.4~~
HEARING DATE:	**October 9, 2014 (Continued from** September 11, 2014)
CASE NUMBER:	ZAP1018BA14 – Museum of Pinball, Inc., John Weeks (Representative: Ramon Aoanan)
APPROVING JURISDICTION:	City of Banning
JURISDICTION CASE NO:	CUP-14-8005 (Conditional Use Permit)

MAJOR ISSUES: The proposed use is calculated by staff hased on the Building Code Method to accommodate potentially 1,343 and 1,767 people each within Buildings A South and B, respectively, which each would exceed the normal Compatihility Zone D single-acre criteria of 300 people and the maximum 390 with risk reduction bonus. However, based on the Parking Space Method, the total site occupancy would he 1,084 people, assuming that the truck/RV parking spaces are not occupied by tour huses. An occupancy of approximately 400-500 people per building is requested by the applicant to accommodate special and other events and would represent a peak or worst-casc scenario.

The 2004 Banning Airport Land Use Compatibility Plan (ALUCP) does not inclade any Additional Compatibility Policies addressing non-residential intensities. Therefore, the provisions of Table 2A in the Countywide Policies section of the Riverside County Airport Land Use Compatibility Plan are applicable. More recent plans (2007 French Valley, 2008 Chino, and 2010-11 Perris Valley) provide for non-residential average intensities of up to 150 persons per acre and single-acre intensities of up to 450 persons in Zone D. The City of Banning is on record as requesting such an amendment to the Banning ALUCP. However, given that staff's resources must be devoted to the March ALUCP and EIR at this time, additional consultant time would be needed to prepare the required CEQA analysis of such an amendment.

In response to a request by City staff, ALUC prepared an agreement whereby the City would pay the cost of preparing the CEQA analysis for the amendment. The proposed project was designed based on the understanding that the amendment would be expedited and moved forward; however, the City Council ultimately declined to fund the expedition of the amendment.

The 2011 Airport Land Use Planning Handbook published by the California Division of Aeronautics recommends average intensity limits of 200 to 300 persons per acre and single-acre inteusity limits of 800 to 1,200 persons for properties in the Traffic Pattern Zones around suburban airports. These provisions have been discussed with the applicant and City staff, aad the project proponent has indicated a willingness to underwrite the cost of the amendment nceded

to resolve the intensity issue affecting this project.

Input from the Commission regarding its willingness to consider these higher intensities (or alternative intensity levels beyond those utilized in the French Valley, Chino, and Perris Valley Plans) would be helpful in providing direction to staff as to how to proceed with project review and the potential Plan amendment.

RECOMMENDATION: ***Staff recommends the project be CONTINUED off-calendar until the Banning Airport Land Use Compatibility Plan Zone D non-residential criteria are updated.*** ~~**Staff must recommend a finding of INCONSISTENCY for the Conditional Use Permit, based on the proposed project exceeding single-acre non-residential intensity criteria for Compatibility Zone D.**~~

PROJECT DESCRIPTION: CUP-14-8005 would allow for the conversion of a former manufacturing facility into a pinball museum and arcade. Two existing buildings totaling 83,436 square feet would be converted into the museum/arcade and would include exhibit/assembly area, restaurant, bars, seating areas, lounges, offices, and educational/vocational areas. A third existing building totaling 34,220 square feet would be maintained for warehouse/storage and office uses. The applicant also proposes to provide for RV camping (42 spaces) and amenities such as a jogging path, swimming pool, and tennis courts. The site consists of approximately 18.17 acres net (19.76 acres gross).

PROJECT LOCATION: The site is located easterly of Hathaway Street, northerly of Westward Avenue, southerly of Lincoln Street, and bisected by Barbour Street, in the City of Banning, approximately 690 feet southerly of Runway 8-26 at Banning Municipal Airport.

LAND USE PLAN: 2004 Banning Municipal Airport Land Use Compatibility Plan

a. Airport Influence Area:	Banning Municipal Airport
b. Land Use Policy:	Zones B2 and D
c. Noise Levels:	Partially within 55-60 CNEL, remaining below 55 CNEL from aircraft noise

BACKGROUND:

Non-Residential Average Intensity: The site is located within Airport Compatibility Zones B2 and D, with all of the existing buildings and other proposed uses located in Compatibility Zone D and only a portion of a parking lot located within Compatibility Zone B2. Since no uses are proposed within Compatibility Zone B2, intensity of the proposed project shall be compared solely to the Compatibility Zone D criteria. Non-residential intensity in Airport Compatibility Zone D is restricted to an average intensity of 100 people per acre. The "Building Code Method" for calculating intensity utilizes "minimum floor area per occupant" criteria from the Building Code as a

factor in projecting intensity. Pursuant to Appendix C, Table C-1, of the Riverside County Airport Land Use Compatibility Plan, the following intensities were utilized for the project:

- office/business areas – 1 person/100 square feet with potential for 50% reduction;
- assembly/exhibit areas – 1 person/15 square feet;
- assembly/seating/restaurant/bar areas – 1 person/15 square feet;
- educational/vocational areas – 1 person/50 square feet;
- storage areas/mechanical equipment – 1 person/300 square feet;
- warehouse areas – 1 person/500 square feet.

Based on the site plan provided, the building areas would total an occupancy of 3,742 people. The non-building uses would consist of the RV parking (42 total RV spaces) and the tennis courts. It is assumed that the tennis courts would be used by those utilizing the RV camping, so the tennis courts are not considered to attract additional people. Assuming an occupancy of 4 people for each RV parking space would result in a total of 168 people, which would result in a total site occupancy of 3,910 people. Based on the approximate 19.33 gross acres located in Zone D, this total site occupancy would result in an average intensity of 202 people per acre, which would be inconsistent with the Zone D average acre criterion of 100.

Although the 50% reduction is not typically applied for assembly type uses, with a 50% reduction also applied to assembly/exhibit, assembly/seating/restaurant/bar, and educational/vocational areas, the total building occupancy would be reduced to 1,907 people. This would reduce the overall site occupancy to 2,075 people and an average intensity of 107 people, which would also be inconsistent with the Zone D average acre criterion of 100 (although it would be consistent with the higher average intensity allowance of 150 persons per acre authorized in Compatibility Plans adopted since 2007).

An alternative calculation for intensity is based on the number of parking spaces provided for a project. A total of 362 standard and handicapped parking spaces, 48 truck/RV parking spaces, and 42 RV camping spaces are shown on the site plan. Assuming an occupancy of 2 persons per vehicle for standard parking spaces and 4 persons per truck/RV space, this would equate to a total of 1,084 people for the entire site. Utilizing the gross acreage located in Zone D as previously noted, this would result in an average intensity of 56 people, which would be consistent with the Zone D average acre criterion of 100. However, total occupancy would be higher if this destination facility becomes sufficiently popular to attract tour buses that would park in the truck/RV parking spaces.

Non-Residential Single-Acre Intensity: As previously noted, the existing buildings and proposed outdoor recreational areas are located within Airport Compatibility Zone D, with only a portion of a parking lot located within Airport Compatibility Zone B2. Non-residential intensity in Airport Compatibility Zone D is restricted to 300 people in any given single acre. The most intense single-acre within Zone D would consist of the southern portion of Building A or Building B. Pursuant to the Building Code calculations presented above, the southern portion of Building A would result in a total occupancy of 1,343 people and Building B would result in a total occupancy of 1,767 people,

both of which would be inconsistent with the Zone D single-acre criterion of 300. Even with a 50% reduction for the assembly type uses (which is not typically allowed), the southern portion of Building A would result in a total occupancy of 674 people and Building B would result in a total occupancy of 898 people, which would also be inconsistent with the Zone D single-acre criterion of 300.

Upon discussion with the applicant to determine whether the projected level of occupancy pursuant to the Building Code is accurate with their planned use of the facility, the applicant indicated that a limitation of 300 or less people within the southern portion of Building A or Building B would not be acceptable.

Risk-Reduction Design Bonus: A bonus of up to 1.3 times the Zone D single-acre criteria of 300 for a maximum allowable intensity of 390 could be granted at the authority of the City of Banning based on the type and amount of risk reduction measures incorporated. The buildings are all limited to single-story. Based on the site images provided by the applicant, most of the buildings, in particular Buildings A South and Building B do contain a low amount of windows. The buildings' construction type is unknown by staff, but do not appear to be primarily concrete tilt up design based on site images. Based on aerial images, the roofs for each of the buildings do not include skylights. The applicant has indicated that for Building B, an additional two emergency exits are provided beyond the three required by code. Building A South includes three emergency exits, which is the minimum required by Code. Other potential bonus design measures related to fire sprinkler and strength of the roof are unknown. In summary, the project includes three of the recommended seven risk reduction design measures. However, the project as currently designed exceeds the maximum allowable single-acre intensity of 390 with a full 30 percent bonus.

Infill Potential: Higher intensity criteria may be considered if the surrounding land uses are similar to or more intense than the proposed project. To qualify for consideration, at least 65% of the project site's perimeter must be surrounded by uses similar to or more intense than the proposed project, and the project site must be less than 20 acres in area. If qualified, a higher average intensity level - the lesser of either the equivalent intensity to surrounding land uses or double the normally allowable intensity - may be consistent. The properties immediately surrounding the project site consist of low intensity residential, airport hangars, low intensity industrial, and vacant land that would not be similar or more intense than the proposed project. As such, the project would not qualify for consideration of infill higher intensity criteria.

Prohibited and Discouraged Uses: The applicant does not propose any uses prohibited or discouraged in Zone B2 (Children's schools, day care centers, libraries, hospitals, nursing homes, places of worship, buildings with more than 2 aboveground habitable floors, highly noise-sensitive outdoor non-residential uses, aboveground bulk storage of hazardous materials, critical community infrastructure facilities, and hazards to flight) or Zone D (highly noise-sensitive outdoor non-residential uses and hazards to flight). However, as noted above, the proposed usage exceeds Zone D intensity limitations.

Open Area Requirements: Compatibility Zone D requires a minimum of 10% open area. Compatibility Zone B2 does not require any provision of open area. Approximately 17.77 acres (net) of the project is located within Compatibility Zone D, which would require a minimum of 1.77 acres of open area required. The project includes two large parking areas that appear to be free of any obstructions greater than 4 feet in height. At the time of writing of this staff report, it has yet to be confirmed by the applicant whether with potential parking area lighting this open area might be reduced. Assuming no obstructions would be included, these parking areas total 3.6 acres, which provides more than double the minimum open space required.

Noise: The property lies partially within the area that would be subject to average exterior noise levels of 55-60 CNEL under ultimate airport development conditions, with the remainder located in areas subject to average exterior noise levels less than 55 CNEL. The portion located within the 55-60 CNEL area is proposed for parking and none of the remaining facility would be subject to aircraft noise levels in excess of 55 CNEL. Therefore, no special measures to mitigate aircraft-generated noise are required.

PART 77: The applicant has indicated that no additional height will be added to the existing buildings nor will any new structures will be added. As such, review by the Federal Aviation Administration Obstruction Evaluation Service is not required.

Other Special Conditions: Countywide Policy 3.3.6 allows the Commission to find a normally incompatible use to be acceptable "because of terrain, specific location, or other extraordinary factors or circumstances related to the site." In such a situation, the Commission would need to make findings that the land use would not create a safety hazard nor expose people to excessive noise. In some cases, projects that did not quite meet the exacting standards for consideration as infill have been judged consistent through use of Policy 3.3.6. Staff has not identified any site-specific factors such as terrain, specific location, or other extraordinary factors that exist to consider the normally incompatible use to be acceptable pursuant to Policy 3.3.6.

Handbook/Potential Amendment: The City of Banning has requested that ALUC amend the Banning ALUCP to allow for increased nonresidential intensities in Zone D. However, the City declined to pay the cost of the necessary CEQA study to advance the timing for consideration of this amendment. The California Airport Land Use Planning Handbook (2011) recommends allowing for single-acre intensities of 800 to 1,200 persons in the Traffic Pattern Zone around suburban airports. While strict use of the Building Code Method would still indicate inconsistency, acceptance of the Parking Space Method with a limit on use of tour buses would indicate probable compliance with this considerably more lenient standard. Therefore, it is quite possible that the Commission could find a similar proposal to be consistent with a future amended Banning ALUCP. However, staff must base its recommendation on the adopted Plan. A potential alternative for Commission consideration would be to "take no action" in light of the Handbook's recommendations, but such a procedure may not be appropriate, given that the Commission is not currently engaged in amending the Banning ALUCP.

CONDITIONS (in the event that the Commission chooses to determine the project Consistent):

1. Any outdoor lighting that is installed shall be hooded or shielded so as to prevent either the spillage of lumens or reflection into the sky.

2. The following uses shall be prohibited:
   (a) Any use which would direct a steady light or flashing light of red, white, green, or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at an airport, other than an FAA-approved navigational signal light or visual approach slope indicator.

   (b) Any use which would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight final approach towards a landing at an airport.

   (c) Any use which would generate smoke or water vapor or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area, including landscaping utilizing water features, trash transfer stations that are open on one or more sides, recycling centers containing putrescible wastes, construction and demolition debris facilities, and incinerators.

   (d) Any use which would generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation.

   (e) Highly noise-sensitive outdoor non-residential uses or hazards to flight

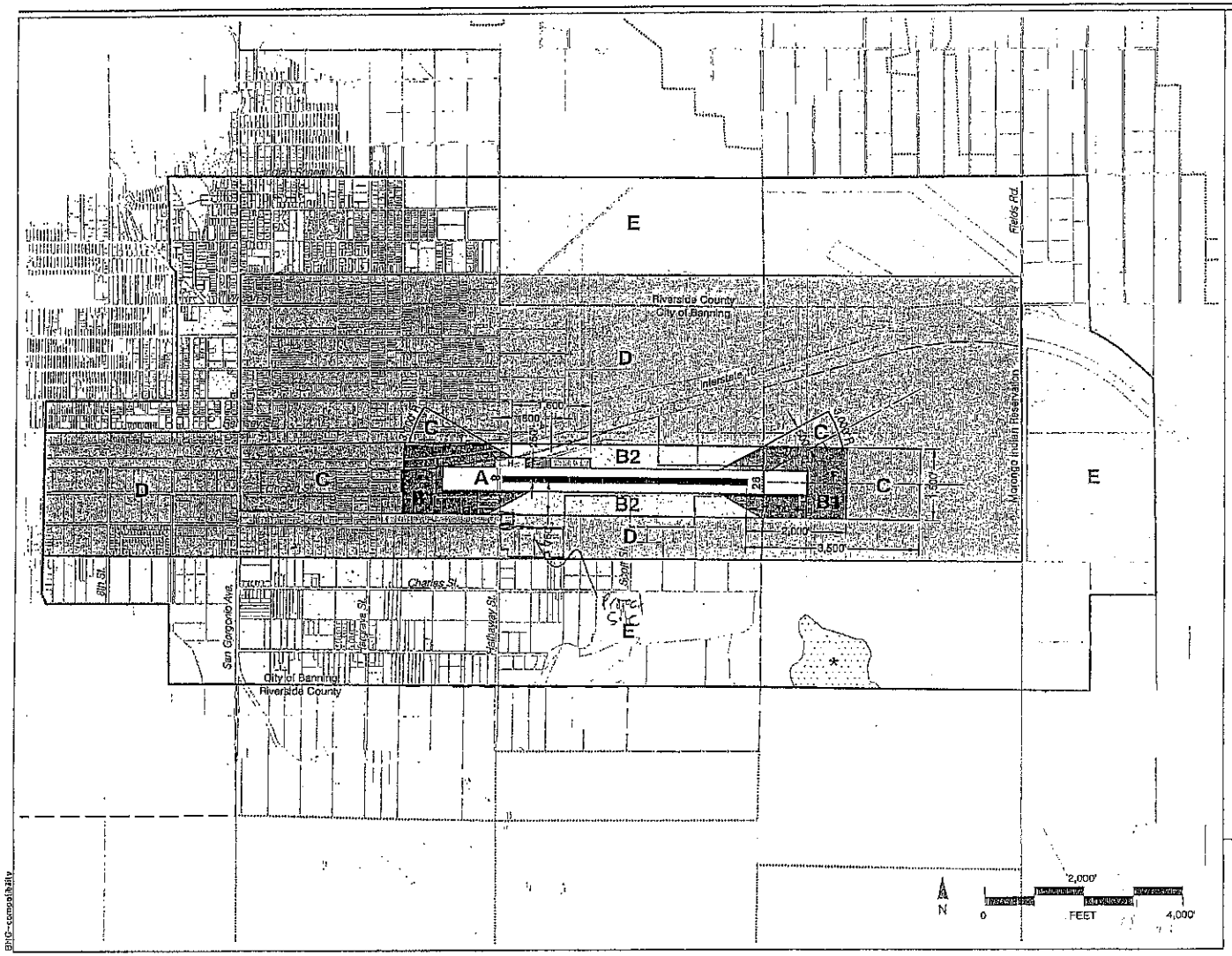
3. The attached notice shall be provided to all potential purchasers of the property, and shall be recorded as a deed notice.

4. Any new retention basins on the site shall be designed so as to provide for a maximum 48-hour detention period following the conclusion of the storm event for the design storm (may be less, but not more), and to remain totally dry between rainfalls. Vegetation in and around the retention basin(s) that would provide food or cover for bird species that would be incompatible with airport operations shall not be utilized in project landscaping.

Y:\AIRPORT CASE FILES\Banning\ZAP1018BA14\ZAP1018BA14octsr.doc

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. Business & Professions Code Section 11010 (b)(13)(A)



Legend

Compatibility Zones

- Airport Influence Area Boundary
- Zone A
- Zone B1
- Zone B2
- Zone C
- Zone D
- Zone E
- Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
Airport Land Use Commission

Riverside County
Airport Land Use Compatibility Plan
Policy Document

(Adopted October 2004)

Map BN-1

Compatibility Map

Banning Municipal Airport



PINBALL MADNESS

700 S. HATHAWAY ST. BANNING, CA 92220

CLIENT:

JOHN WICKS

VICINITY MAP

NOT TO SCALE

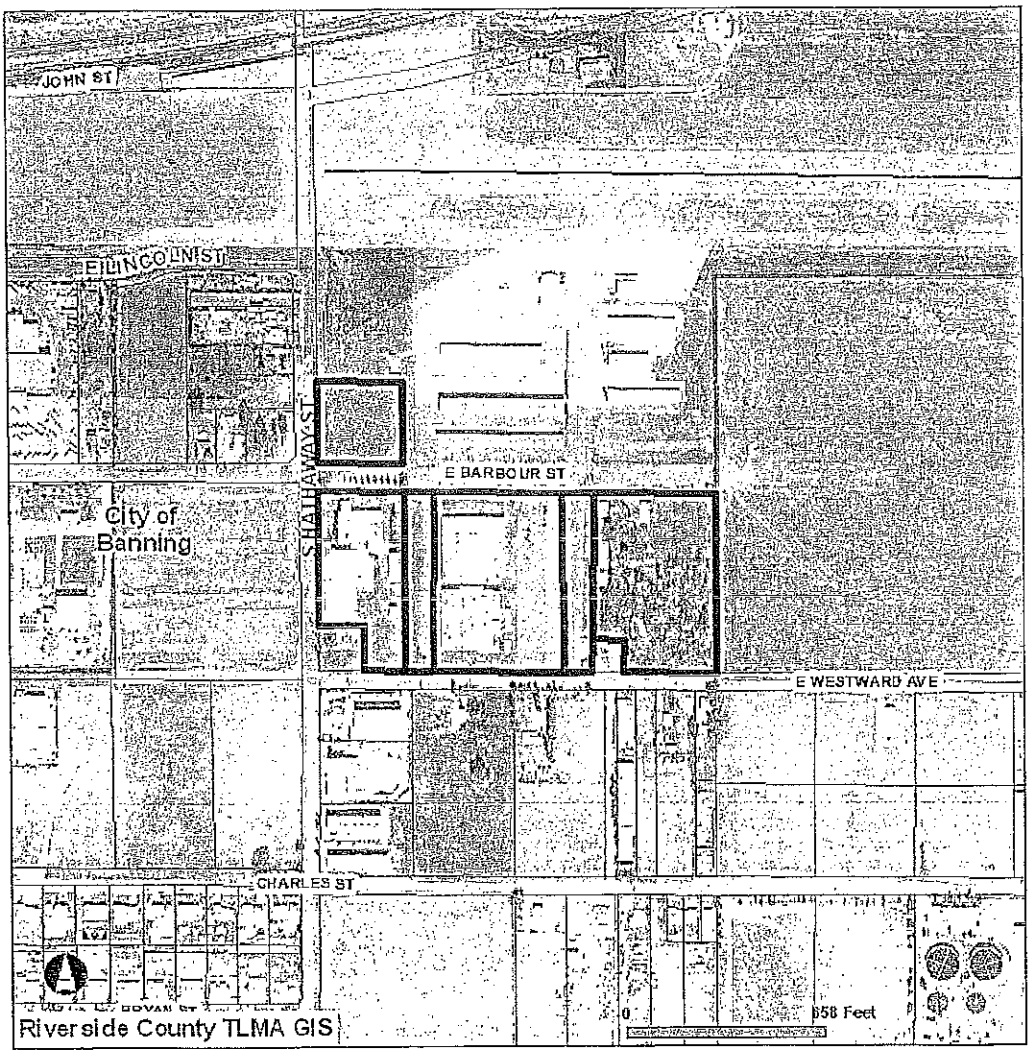
RAMON AOANAN AIA

Architect

P.C.Corrections

2413 LA CRESCENTA AVE.
ALHAMBRA, CA 91803
Tel. 510.432.4066
FAX 323.729.6043

RIVERSIDE COUNTY GIS



Selected parcel(s):

532-130-003 532-130-004 532-130-006 532-130-007 532-130-014 532-130-015

AIRPORTS

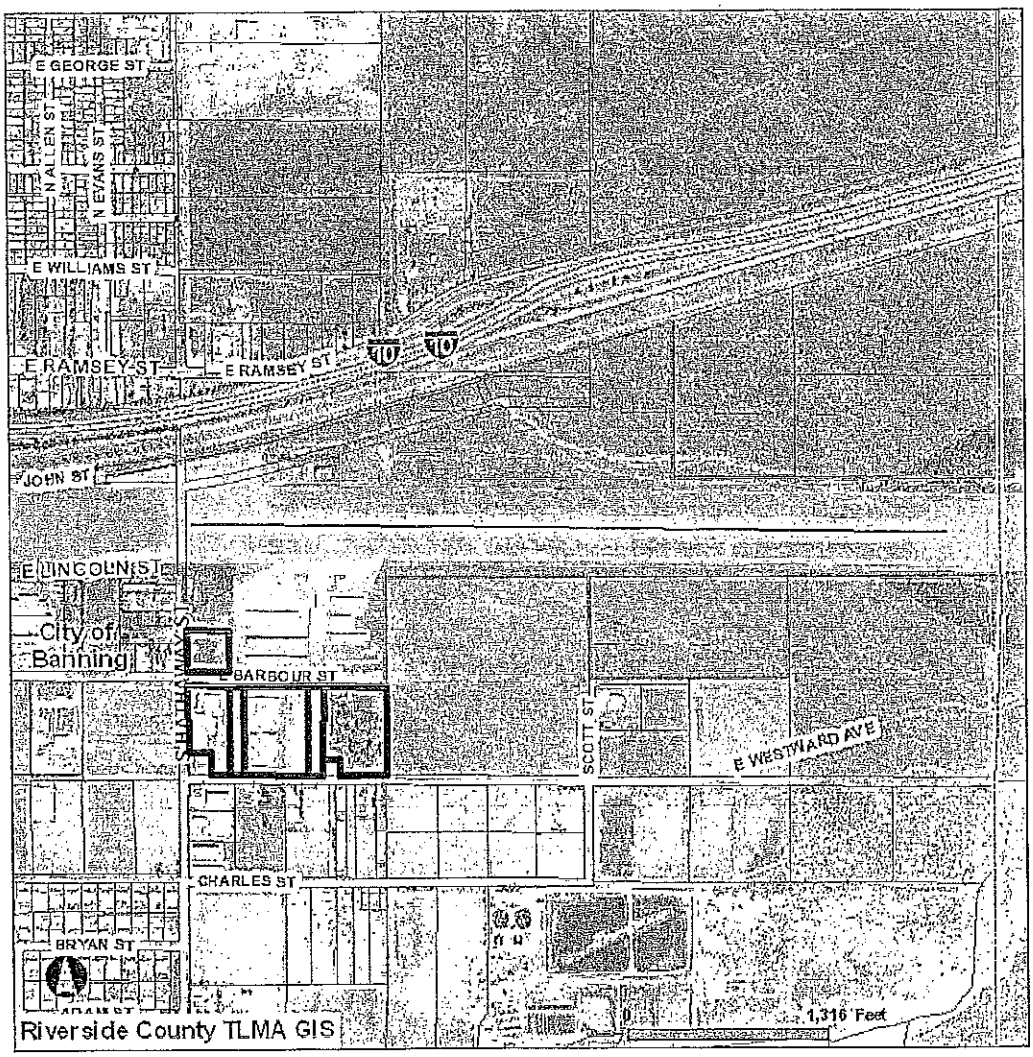
SELECTED PARCEL	INTERSTATES	HIGHWAYS	PARCELS
AIRPORT RUNWAYS	AIRPORT INFLUENCE AREAS	AIRPORT BOUNDARIES	COMPATIBILTY ZONE A
COMPATIBILTY ZONE B1	COMPATIBILTY ZONE B2	COMPATIBILTY ZONE C	COMPATIBILTY ZONE D
COMPATIBILTY ZONE E			

IMPORTANT
Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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Version 131127

RIVERSIDE COUNTY GIS



Selected parcel(s):

532-130-003 532-130-004 532-130-006 532-130-007 532-130-014 532-130-015

AIRPORTS

SELECTED PARCEL	INTERSTATES	HIGHWAYS	PARCELS
AIRPORT RUNWAYS	AIRPORT INFLUENCE AREAS	AIRPORT BOUNDARIES	COMPATIBILTY ZONE A
COMPATIBILTY ZONE B1	COMPATIBILTY ZONE B2	COMPATIBILTY ZONE C	COMPATIBILTY ZONE D
COMPATIBILTY ZONE E			

IMPORTANT
Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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Version 131127

RIVERSIDE COUNTY GIS



Selected parcel(s):

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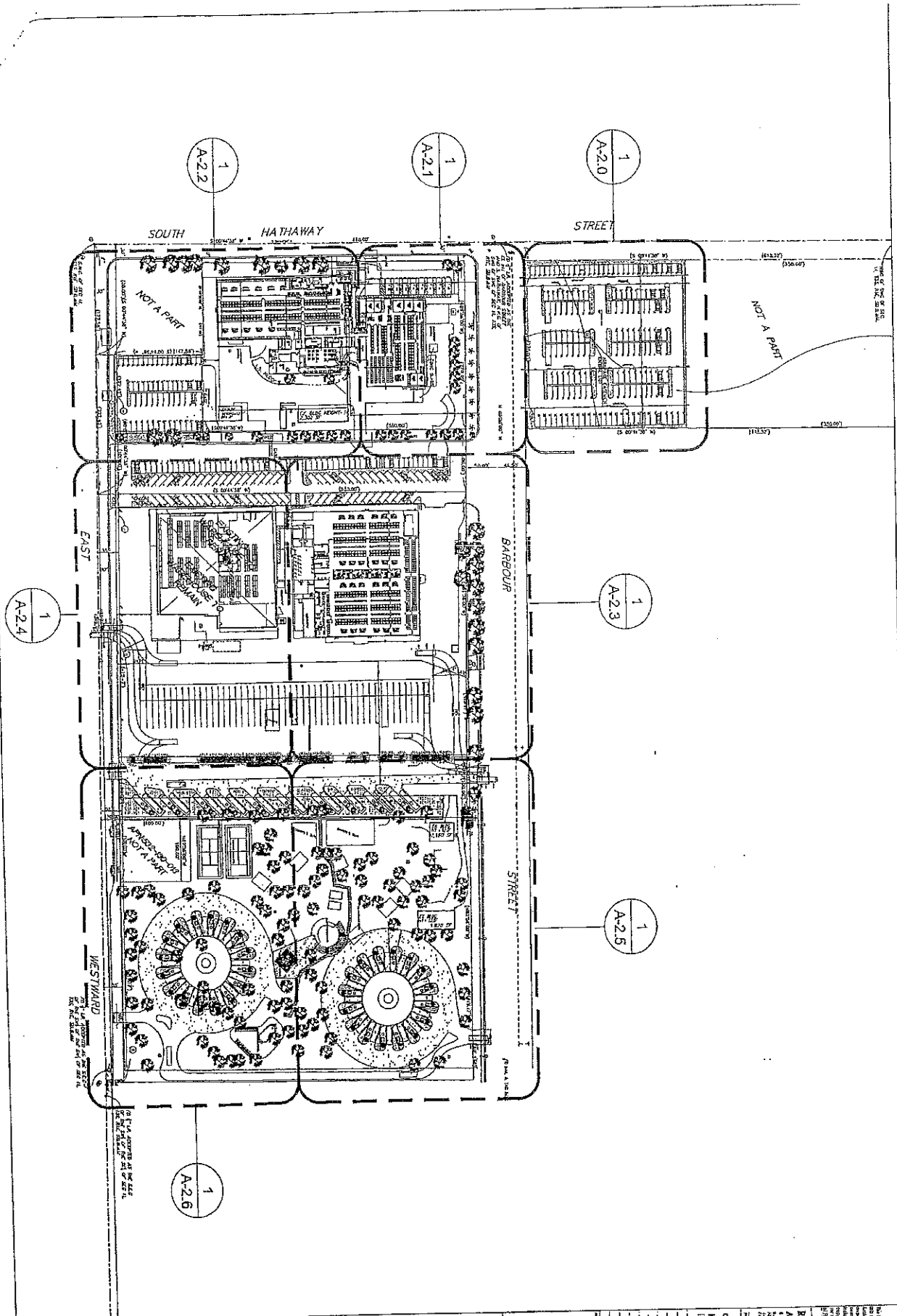
LEGEND

SELECTED PARCEL | INTERSTATES | HIGHWAYS | PARCELS | CITY

IMPORTANT
Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

OVERALL SITE PLAN

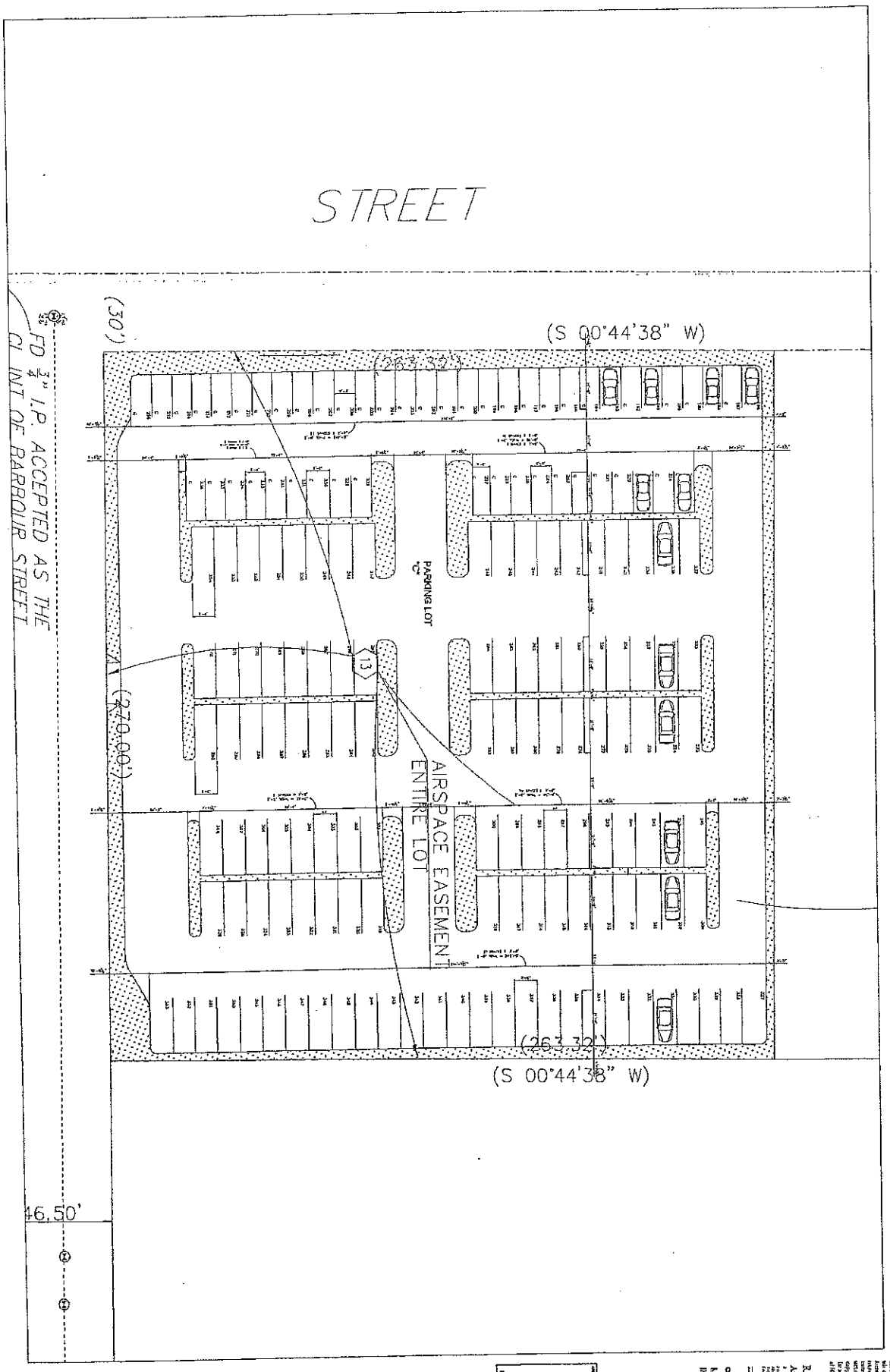
NOT FOR CONSTRUCTION

RAMON AOANAN
Architect

CLIENT:
MUSEUM OF PINBALL, INC.

project number 0001
date JULY 30, 2014

A 1.0



MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 1

NOT FOR CONSTRUCTION

CLIENT:
MUSEUM OF PINBALL, INC.

RAMON AGAMAN
Architect

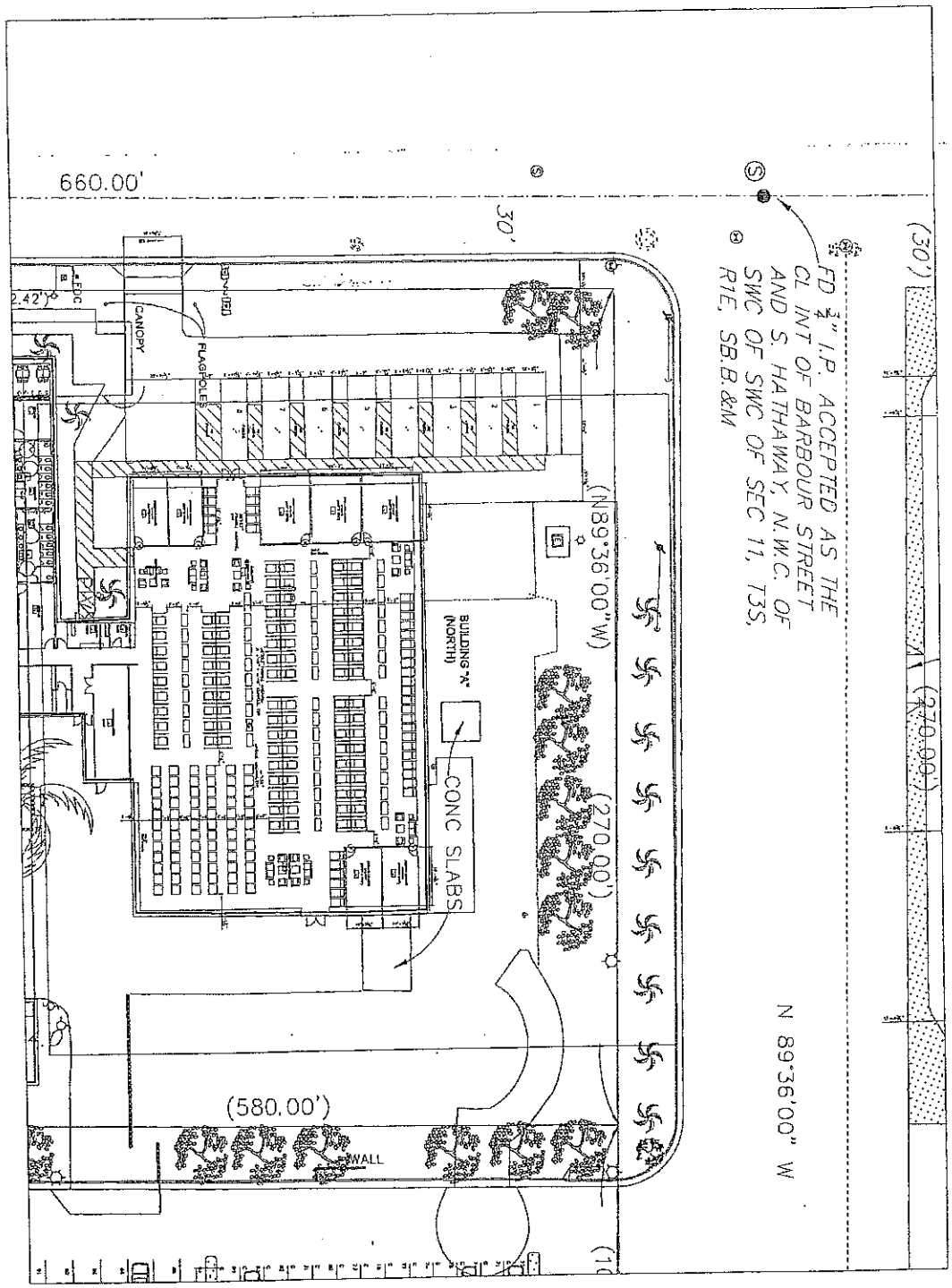
project number
0001

date
JULY 30, 2014

scale
1/16" = 1'-0"

A-2.0

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MUSEUM OF PINBALL

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drawing title

SITE PLAN 2

NOT FOR CONSTRUCTION

RAMON ADAMAN

Architect

CLIENT:

MUSEUM OF PINBALL, INC.

project number 0001

date JULY 30, 2014

A-2.1

MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 3

NOT FOR CONSTRUCTION

OWNER:
MUSEUM OF PINBALL INC.

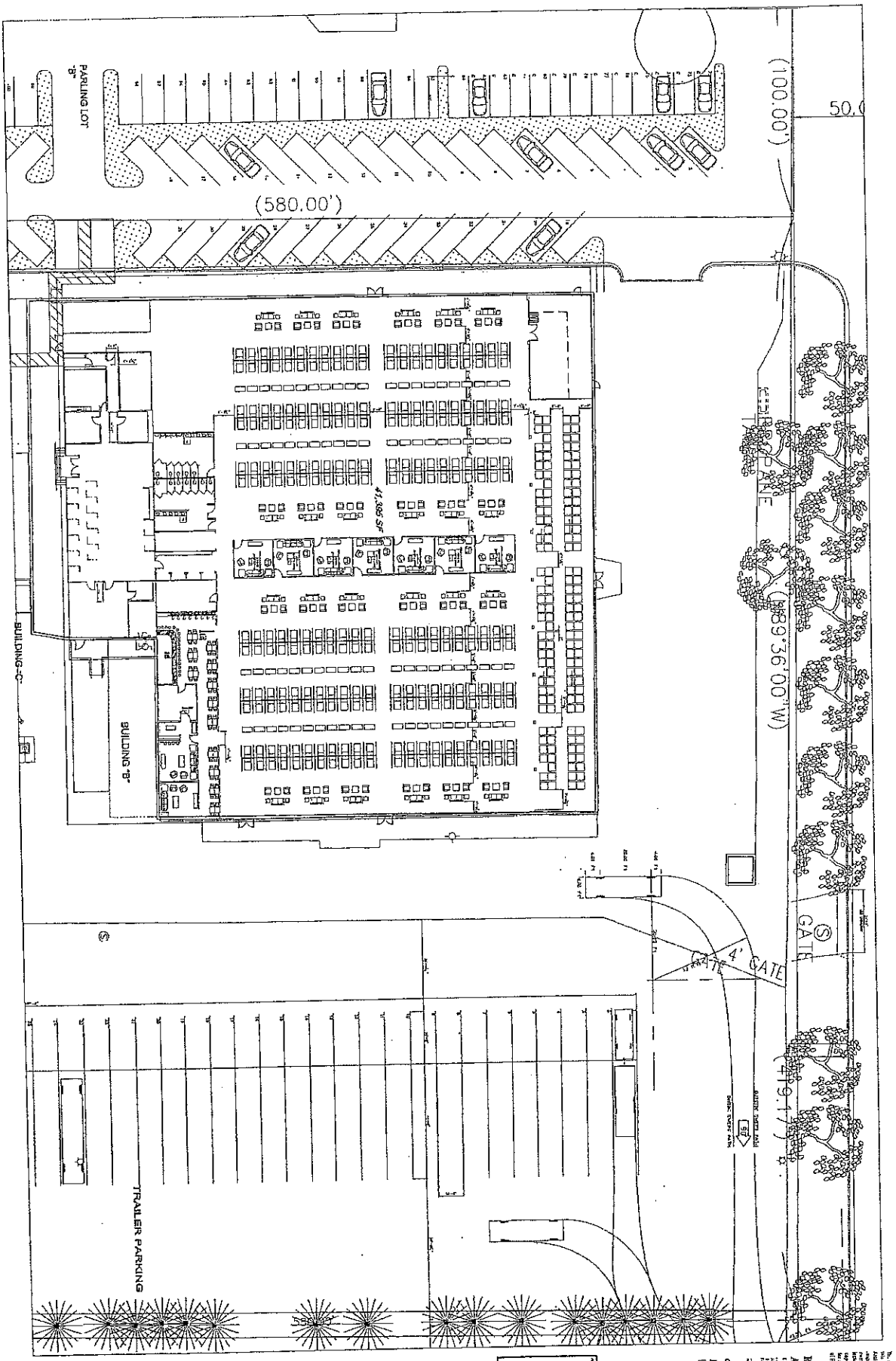
RAMON AOANAN
Architect

project number
0001

date
JULY 30, 2014

scale
1/16" = 1'-0"

A-2.2



MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

SITE PLAN 4

NOT FOR CONSTRUCTION

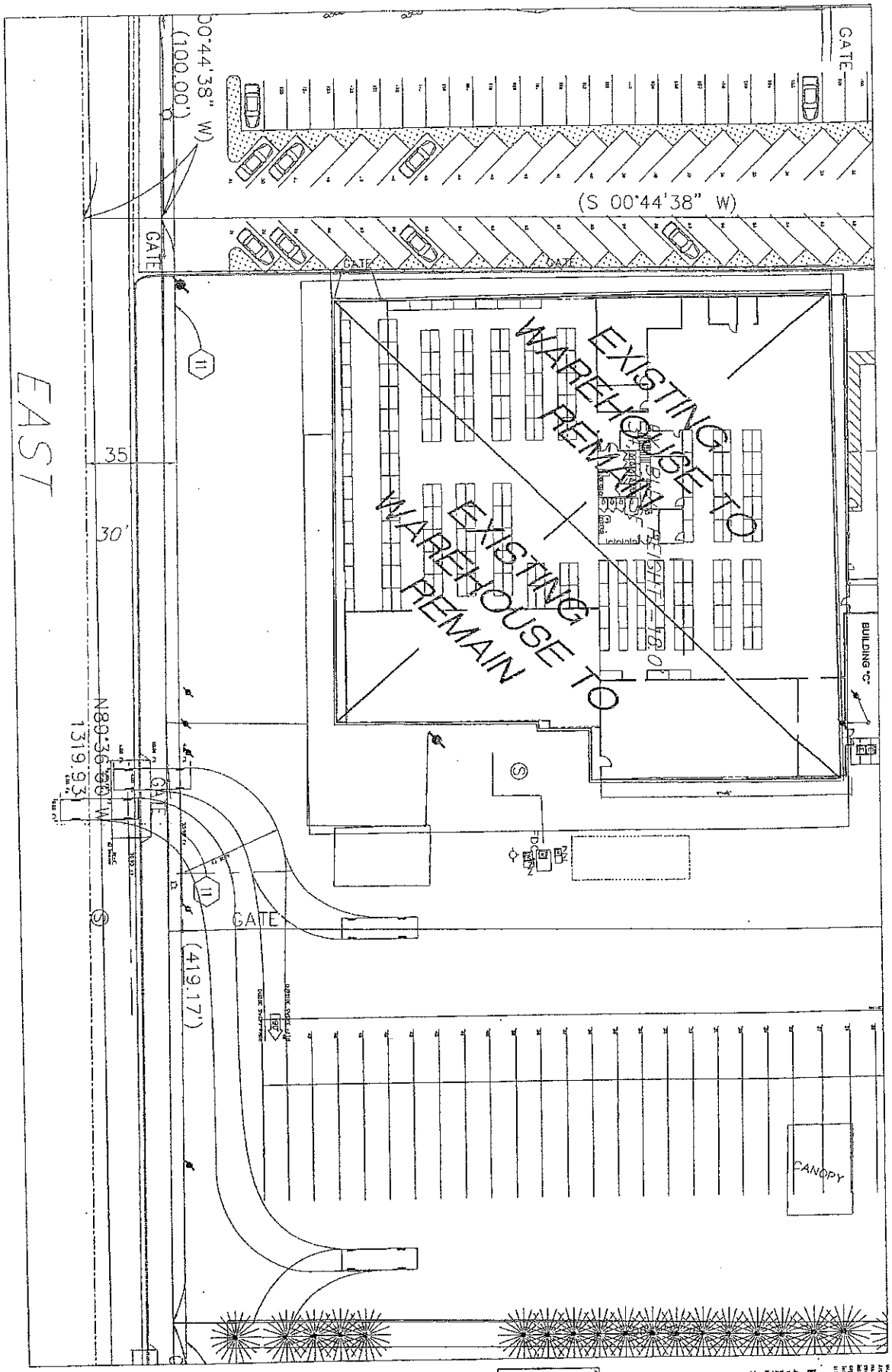
RAMON ADANAN
Architect

CLIENT:
MUSEUM OF PINBALL INC.

project number
0000
JULY 30, 2014

1/16" = 1'-0"

A-2.3



MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 5

NOT FOR CONSTRUCTION

RAMON AGANAN
Architect

CLIENT:
MUSEUM OF PINBALL
LLC.

project number
0001

date
JULY 30, 2014

A-2.4

MUSEUM OF PINBALL

700 S. HATHAWAY ST. BANNING, CA 92220

drawing title

SITE PLAN 6

NOT FOR CONSTRUCTION

CLIENT:
MUSEUM OF PINBALL, INC.

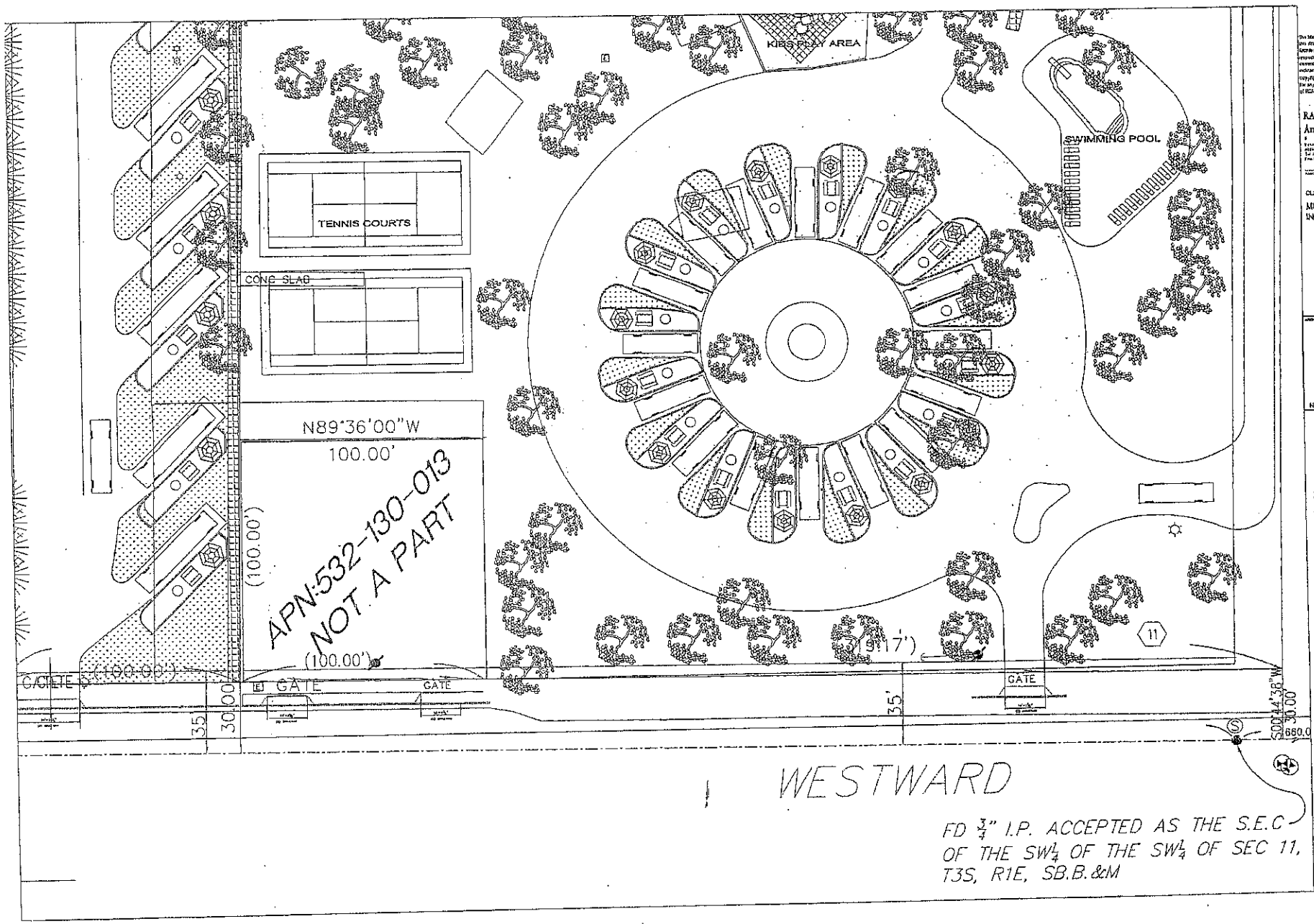
RAMON AGANAN
Architect

project number
1003

date
JULY 30, 2014

scale
1/16" = 1'-0"

A-2.5



RAMON AOANAN
Architect

CLIENT:
MUSEUM OF PINBALL, INC.

NOT FOR CONSTRUCTION

MUSEUM OF PINBALL
700 S. HATHAWAY ST., BANNING, CA 92220

SITE PLAN 7

scale
1/16" = 1'-0"

project number
0001
date
JULY 30, 2014

A-2.6

700 S. HATHAWAY ST
BANNING, CA 92220

CITY OF BANNING ZONING CODE REQUIREMENTS:
USE CLASSIFICATION: BILLIARD PARLORS/POOL HALLS
CONDITIONAL USE REQUIRED IN AIRPORT INDUSTRIAL LOCATION

2013 CALIFORNIA BUILDING CODE

CITY OF BANNING ZONING CODE REQUIREMENTS

ZONING AREA DESIGNATION	ZONE USE DESIGNATION	USE OCCUPANCY REQUIREMENT
AIRPORT INDUSTRIAL	MUSEUM / INDOOR RECREATION CENTER	CONDITIONAL USE REQUIRED
AIRPORT INDUSTRIAL	OUTDOOR COMMERCIAL RECREATION	CONDITIONAL USE REQUIRED

COMMERCIAL AND INDUSTRIAL PARKING REQUIREMENTS

TABLE 17.28.040	REQUIRED	PROVIDED	REMARKS
HV PARKS	ONE (1) SPACE FOR EACH RECREATIONAL VEHICLE SPACE		
VIDEO ARCADES	ONE (1) SPACE PER 500 SF OF ENCLOSED SPACE – ONE SPACE PER 3 PERSONS AT MAXIMUM CAPACITY		VARIANCE REQUIRED
INDUSTRIAL MANUFACTURING	OVER 20,000 SF, 20 SPACES + ONE SPACE PER 2,000 SF PER PORTION OVER 20,000 SF		
RESTAURANTS, CAFES, BARS	ONE SPACE FOR EACH 30 SF OF PUBLIC SEATING AREA + ONE SPACE FOR EACH 500 SF OF ALL OTHER GROSS FLOOR AREA, WITH A MINIMUM OF 10 SPACES		VARIANCE REQUIRED
GENERAL OFFICES	FOR UP TO 2,000 SF OF GROSS FLOOR AREA, ONE SPACE PER EACH 500 SF. FOR 2,001 TO 1,500 SF OF GROSS FLOOR AREA, ONE SPACE FOR EACH 300 SF		
TOTAL	2% OF TOTAL REQUIRED PARKING (2 CAR SPACES WITH 2 VAN PARKING)	200 SPACES	

NOTES: 1) 10% OF TOTAL PARKING SPACES MAY BE COMPACTS (8'-0" W X 18'-0" LONG)
2) ACCESSIBLE PARKING REQUIREMENTS ARE ESTABLISHED BY THE 2013 CALIFORNIA BUILDING CODE

PLUMBING FIXTURE REQUIREMENTS PER 2010 CALIFORNIA PLUMBING CODE

ZONING AREA DESIGNATION	ZONE USE DESIGNATION	USE OCCUPANCY REQUIREMENT
AIRPORT INDUSTRIAL	MUSEUM / INDOOR RECREATION CENTER	CONDITIONAL USE REQUIRED
AIRPORT INDUSTRIAL	OUTDOOR COMMERCIAL RECREATION	CONDITIONAL USE REQUIRED

(5) LOAD OCCUPANCY CALCULATION
1/32" = 1'-0"

RIVERSIDE COUNTY AIRPORT LANDUSE COMMISSION REQUIREMENTS

LOCATION	TOTAL (GROSS) AREA	OCCUPANT LOAD	ALLOWABLE INTENSITY OCCUPANCY IN A 218' X 218' AREA (NT BONUS)	NET AREA (SF)	NOTES 1 (EXTRA EXITING)	NOTES 2 (LANDSCAPE/OPEN SPACE PROVISION)
BUILDING "A" SOUTH	13,644 SF	504	340 OCCUPANTS	164 OCCUPANTS ABOVE REQUIREMENT		
BUILDING "A" NORTH	29,587 SF	423	259 OCCUPANTS	423 OCCUPANTS OVER REQUIREMENT		
BUILDING "B"	43,399 SF	434	300 OCCUPANTS	434 OCCUPANTS OVER REQUIREMENT		
BUILDING "C"	34,220 SF	68	160 OCCUPANTS	- 232 OCCUPANTS BELOW REQUIREMENT		
				TOTAL OCCUPANT LOAD		

EXITING REQUIREMENTS PER 2011 CALIFORNIA BUILDING CODE

LOCATION	TOTAL (GROSS) AREA	OCCUPANT LOAD	MAXIMUM TRAVEL DISTANCE REQUIREMENT	ACTUAL MAXIMUM TRAVEL DISTANCE PROVIDED	EXITS (REQUIRED)	EXITS (PROVIDED)
BUILDING "A" SOUTH	13,644 SF	504	250' - 0"		1	3
BUILDING "A" NORTH	29,181 SF	423	250' - 0"		1	4
BUILDING "B"	43,399 SF	434	250' - 0"		2	4
BUILDING "C"	34,220 SF	68	400' - 0"		2	2

BUILDING "A" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
NORTH BUILDING	1A ,--- SF	ASSEMBLY EXHIBIT GALLERY AND MUSEUM	4 324 SF (PINBALL MACHINES)	4,01 1 SF	30 NET	111
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS		2,996 SF	15 NET	101
		MECHANICAL EQUIPMENT AREAS		440 SF	300 GROSS	2
				TOTAL OCCUPANT LOAD		324

BUILDING "A" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
SOUTH BUILDING	29,3W SF	ASSEMBLY EXHIT GALLERY AND MUSEUM	6,183 SF (PINBALL MACHINES)	13,861 SF	30 NET	464
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (HEALTH FOOD RESTAURANT)		3,414 SF	15 NET	143
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (BARS SEATING AREAS)		1,132 SF	15 NET	74
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (PRIVATE PLAY AREAS)		1,650 SF	30 NET	55
		EDUCATIONAL/VOCATIONAL ROOM AREAS (PINBALL REPAIR INSTRUCTION AND AERONAUTICAL AREAS)		600 SF	60 NET	10
		BUSINESS AREAS		497 SF	100 NET	5
		REST ROOMS		1,366 SF	0	0
		MECHANICAL EQUIPMENT & STORAGE AREAS		630 SF	300 GROSS	3
				TOTAL OCCUPANT LOAD		859

BUILDING "B" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
SINGLE BUILDING	43,399 SF	ASSEMBLY EXHIT GALLERY AND MUSEUM	7,824 SF (PINBALL MACHINES)	22,440 SF	30 NET	750
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (BARS SEATING AREAS)		1,050 SF	15 NET	70
		ASSEMBLY UNCONCENTRATED TABLES AND CHAIRS (PRIVATE LOUNGE AREAS)		1,043 SF	30 NET	35
		BUSINESS AREAS		4,470 SF	100 NET	5
		REST ROOMS		847 SF	0	0
		MECHANICAL EQUIPMENT & STORAGE AREAS		1,728 SF	300 GROSS	6
				TOTAL OCCUPANT LOAD		856

BUILDING "C" OCCUPANCY LOAD CALCULATION

LOCATION	TOTAL (GROSS) AREA	FUNCTION OF SPACE	NET OCCUPANCY AREAS (SF)	NET AREA (SF)	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
SINGLE BUILDING	34,220 SF	WAREHOUSES		13,917 SF	300 GROSS	47
		BUSINESS AREAS		1,729 SF	100 NET	18
		REST ROOMS		442 SF	0	0
		MECHANICAL EQUIPMENT & STORAGE AREAS		632 SF	300 GROSS	4
				TOTAL OCCUPANT LOAD		69

177

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RAMON AOANAN
Architect
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[illegible]
Tel: [illegible]
Fax: [illegible]

CLIENT:
MUSEUM OF PINBALL, INC.

ARCHITECT'S SEAL

NOT FOR CONSTRUCTION

MUSEUM OF PINBALL
700 S. HATHAWAY ST. BANNING, CA 92220
drawing title
OCCUPANCY & EXIT ANALYSIS

scale
NOT TO SCALE

project number
0001
date
JULY 30, 2014

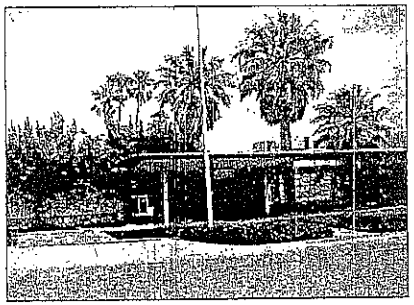
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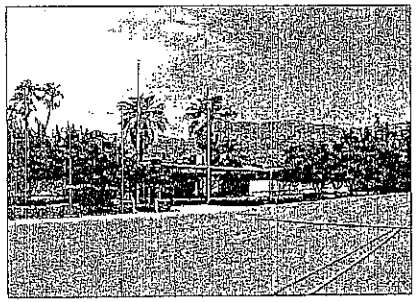
RAMON AOANAN
Architect
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CLIENT:
MUSEUM OF PINBALL, INC.

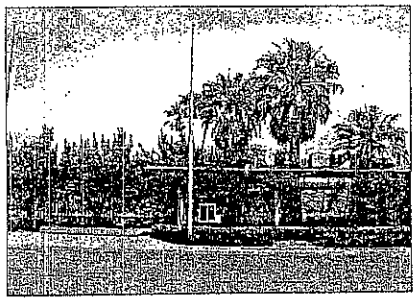
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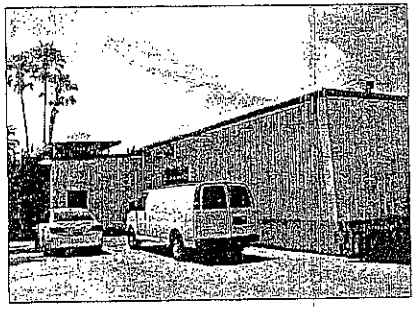
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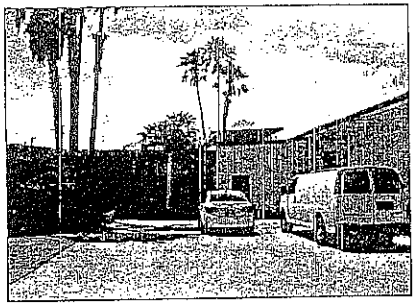
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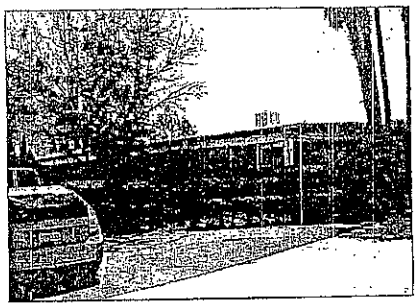
BUILDING A FRONT - 3



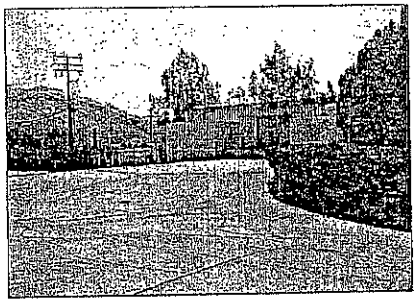
BUILDING A REAR - 1



BUILDING A REAR - 2



BUILDING A REAR - 3



BUILDING A REAR - 4

MUSEUM OF PINBALL
700 S. HATHAWAY ST. BANNING, CA 92220

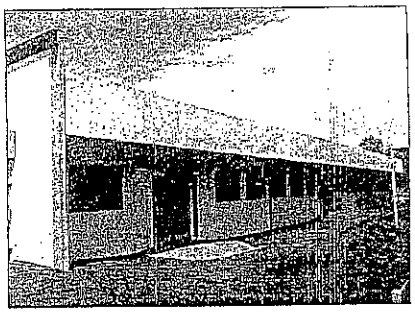
drawing title
BUILDING-A PHOTOS

scale
NOT TO SCALE

project number
0001

date
JULY 30, 2014

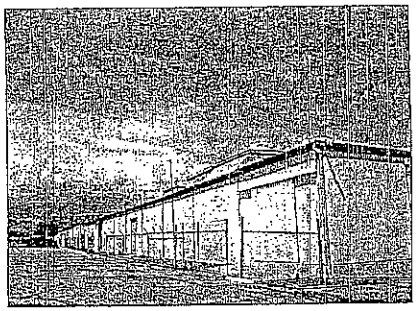
P 1.0



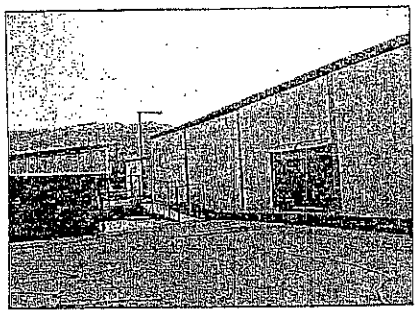
BUILDING B FRONT - 1



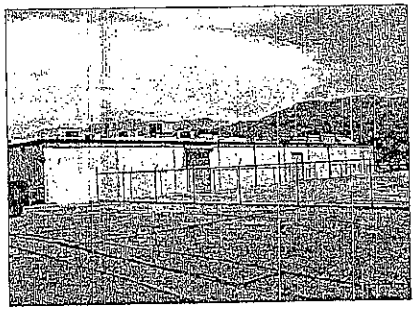
BUILDING B & C FRONT - 2



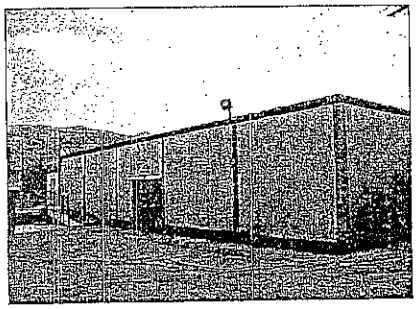
BUILDING B & C REAR - 1



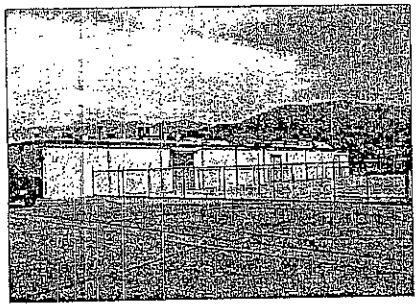
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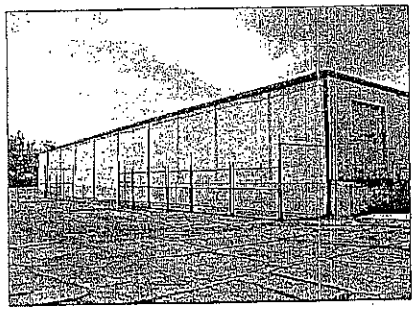
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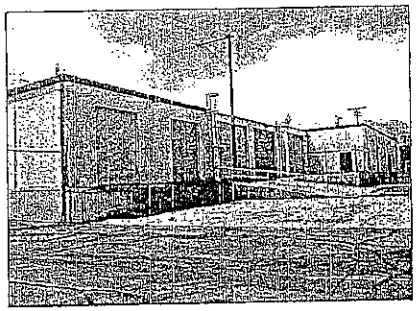
BUILDING B REAR - 2



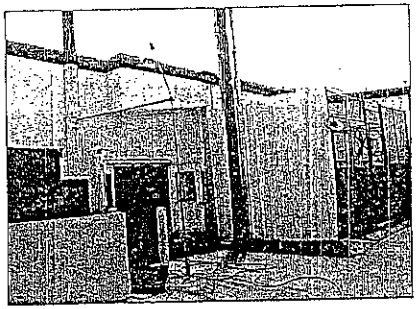
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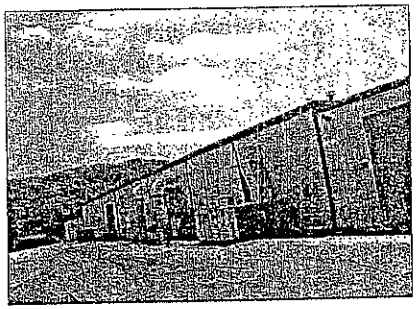
BUILDING B REAR - 5



BUILDING B REAR - 6



BUILDING B REAR - 7



BUILDING B REAR - 8

This drawing and design represented herein and the concept of purpose by RAMON AGANAN Architect (RCA) as the architect solely has respect to title, project and RCA shall retain all common law, statutory and other reserved rights including copyright, and they shall not be used by others for any other purpose without written permission of RCA

RAMON AGANAN
Architect
[redacted]

CLIENT:
MUSEUM OF PINBALL, INC.

NOT FOR CONSTRUCTION

MUSEUM OF PINBALL
700 S. HATHAWAY ST. BANNING, CA 92220

drawing title
BUILDING-B PHOTOS

scale
NOT TO SCALE

project number
0001

date
JULY 30, 2014

P 2.0

MUSEUM OF PINBALL

EXHIBIT "A"

Proposed Land Use Land Use *Project call for re-use of these buildings for the following:*

1. *Pinball Machine Museum and Arcade.*
   Supporting this use are a restaurant, private lounge areas and a bar and seating areas.
   Designated as Building A North , Building A South and Building B on drawings.
2. *Warehouse*
   Designated as Building C on drawings.
3. *Glamping (Glamour Camping)*

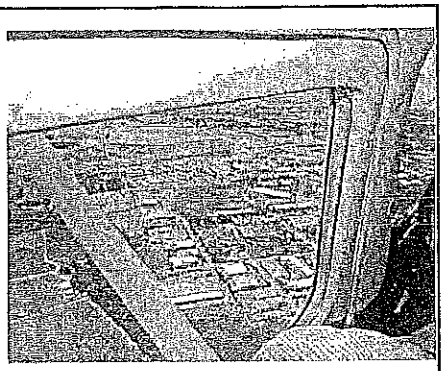
About a 3rd of the total acreage of the property will be used for overnight recreational camping facility with facilities provided for swimming, tennis, physical fitness routines like walking, running, barbecue, and other outdoor activities. Existing bathroom and shower facilities will be maintained and a new fitness center will be installed within the exiting structures

Hours of Use - Friday and Saturday 10 AM to 2 AM
Sunday thru Thursday 10 AM to 9PM

Site/Use Summary							
Building/Use	Area/Amount	App's Occ Rate (1 per)	App's Occ	Verification of App's Occ	ALUC's Occ Rate (1 per)	ALUC's Occ	ALUC's Occ w assembly 50% reduction
Buildings							
Building A North							
Assembly/Exhibit Gallery	6,014	30	311	200	15	401	200
Assembly/Unconcentrated tables and chairs	2,856	15	191	190	15	190	95
Mech Equip	440	300	2	1	300	1	1
subtotal	*9,310*		*504*	*392*		*593*	*297*
Building A South							
Assembly/Exhibit Gallery	13,917	30	464	464	15	928	464
Assembly/Unconcentrated tables and chairs (restaurant)	2,916	15	195	194	15	194	97
Assembly/Unconcentrated tables and chairs (bars/seating areas)	1,132	15	76	75	15	75	38
Assembly/Unconcentrated tables and chairs (priv. play areas)	1,856	30	62	62	15	124	62
Educational/Vocational	866	50	18	17	50	17	9
Business Areas	497	100	5	5	200	2	2
Restrooms	1,398	0	0	0	0	0	0
Mech Equip	632	300	3	2	300	2	2
subtotal	*23,214*		*823*	*820*		*1343*	*674*
Building B							
Assembly/Exhibit Gallery	22,485	30	750	750	15	1,499	750
Assembly/Unconcentrated tables and chairs (bars/seating areas)	1,959	15	76	131	15	131	65
Assembly/Unconcentrated tables and chairs (priv. play areas)	1,642	30	55	55	15	109	55
Business Areas	4,479	100	5	45	200	22	22
Restrooms	947	0	0	0	0	0	0
Mech Equip	1,728	300	3	6	300	6	6
subtotal	*33,240*		*889*	*985*		*1767*	*898*
Building C							
Warehouse	13,917	500	47	28	500	28	28
Business Areas	1,739	100	18	17	200	9	9
Restrooms	662	0	0	0	0	0	0
Mech Equip	632	300	3	2	300	2	2
subtotal	*16,950*		*68*	*47*		*39*	*39*
		Building Total	2,284	2,245		3,742	1,907
Non-Building Uses							
RV Camping Spots							
West	10				0.25	40	40
Northeast	16				0.25	64	64
Southeast	16				0.25	64	64
subtotal						*168*	168
Other							
Tennis Courts	2					0	0
subtotal						*0*	*0*
		Non-Building Total	0	0		168	168
		Site Total	*2,284*	*2,245*		*3,910*	*2,075*

Nature of Risk

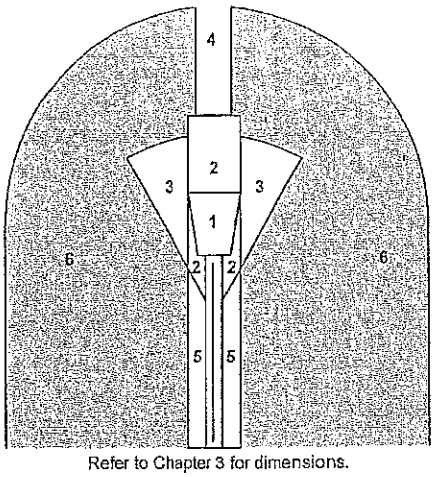
- Normal Maneuvers
  - Aircraft within a regular traffic pattern and pattern entry routes
- Altitude
  - Ranging from 1,000 to 1,500 feet above runway
- Common Accident Types
  - Arrival: Pattern accidents in proximity of airport
  - Departure: Emergency landings
- Risk Level
  - Low
  - Percentage of near-runway accidents in this zone: 18% - 29% (percentage is high because of large area encompassed)



IN TRAFFIC PATTERN

Basic Compatibility Policies

- Normally Allow
  - Residential uses (however, noise and overflight impacts should be considered where ambient noise levels are low)
- Limit
  - Children's schools, large day care centers, hospitals, and nursing homes
  - Processing and storage of bulk quantities of highly hazardous materials
- Avoid
  - Outdoor stadiums and similar uses with very high intensities
- Prohibit
  - None



Refer to Chapter 3 for dimensions.

	Maximum Residential Densities	Maximum Nonresidential Intensities	Maximum Single Acre
	Average number of dwelling units per gross acre	Average number of people per gross acre	4x the Average number of people per gross acre
Rural	No Limit – See Note A	150 – 200	600 – 800
Suburban	No Limit – See Note A	200 – 300	800 – 1,200
Urban	No Limit – See Note A	No Limit – See Note B	No Limit – See Note B
Dense Urban	No Limit – See Note A	No Limit – See Note B	No Limit – See Note B

Note A: Noise and overflight should be considered.
Note B: Large stadiums and similar uses should be avoided.

FIGURE 4G

Safety Zone 6 – Traffic Pattern Zone

NOTICE OF PUBLIC HEARING
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

A PUBLIC HEARING has been scheduled before the Riverside County Airport Land Use Commission (ALUC) to consider the application described below.

Any person may submit written comments to the ALUC before the hearing or may appear and be heard in support of or opposition to the project at the time of hearing. The proposed project application may be viewed at the Riverside County Administrative Center, 4080 Lemon Street, 14th Floor, Riverside, California 92501, Monday through Thursday from 8:00 a.m. to 5:00 p.m., except Labor Day (September 1), and by prescheduled appointment on Friday, September 5 from 8:30 a.m. to 5:00 p.m.

PLACE OF HEARING: Riverside County Administration Center
4080 Lemon St., 1st Floor Hearing Room
Riverside, California

DATE OF HEARING: September 11, 2014

TIME OF HEARING: 9:00 A.M.

CASE DESCRIPTION:

ZAP1018BA14 – Museum of Pinball, Inc. (Representative: Ramon Aoanan) – City of Banning Case No. 14-8005 (Conditional Use Permit). The Conditional Use Permit would allow for the conversion of a former manufacturing facility into a pinball machine museum and arcade. Two existing buildings totaling 83,436 square feet would be converted into the museum/arcade and would include exhibit/assembly area, restaurant, bars, and seating areas, lounges, offices, and educational/vocational areas. A third existing building totaling 34,220 square feet would be maintained for warehouse/storage and office uses. The applicant also proposes to provide for RV (42 spaces) camping areas and amenities such as a jogging path, swimming pool and tennis courts. The site consists of approximately 18.17 acres net (19.76 acres gross) located easterly of Hathaway Street, northerly of Westward Avenue, and southerly of Lincoln Street, and bisected by Barbour Street, in the City of Banning. (Airport Compatibility Zones D and B2 of the Banning Municipal Airport Influence Area).

FURTHER INFORMATION: Contact Russell Brady at (951) 955-0549 or John Guerin at (951) 955-0982. The ALUC holds hearings for local discretionary permits within the Airport Influence Areas, reviewing for aeronautical safety, noise and obstructions. All other concerns should be addressed to Mr. Brian Guillot of the City of Banning Community Development Department, at (951) 922-3152.

Banning Development LLC
11041 Gold Star Lane
Santa Ana, CA 92705

Deutch Co Electronic
3850 Industrial Ave
Hemet, CA 9254S

City of Banning
P.O. Box 998
Banning, CA 92220

Paul J. Heilig
8S1S Arjons Dr. Ste K
San Oiego, CA 92126

John C. Tamulonis
461 Hathaway St.
Banning, CA 92220

Leonard Harold Peterson
2908 Via Hidalgo
San Clemente, CA 92673

Credi Union California
701 N. Brand Blvd.
Glendale, CA 91203

Keith Turner
2247 El Capitan Or.
Riverside, CA 92506

Cal Oaks Partners
620 Camno Oelos Mares #206
San Clemente, CA 92673

Resident
700 S. Hathaway St.
Banning, CA 92220

Resident
700 S. Hathaway St.
Banning, CA 92220

SPSSM Investments V111LP
1487 Barbour St
Banning, CA 92220

Demissie Belete
1S22 Lincoln
Banning CA 92220

Darling Industrial LLC
820 Hathaway St.
Banning, CA 92220

Ray Quintero
200 S. Hathaway St.
Banning, CA 92220

Stephen Stypinksi
200 S. Hathaway St.
Banning, CA 92220

Olivia Ann Holmes
200 S. Hathaway St.
Banning, CA 92220

Easy Peel™ Labels
Use Avery® Template 5160®
Feed Paper
Bend along line to expose Pop-up Edge™
AVERY® 5160®

532-130-005
HARVEY ISRAELS
621 N GRANADA AVE
ALHAMBRA CA. 91801

532-130-008
4525 A MACARTHUR BL
NEWPORT BEACH CA. 92660

532-130-012
CITY OF BANNING
P O BOX 998
BANNING CA. 92220

532-130-013
CITY OF BANNING
P O BOX 998
BANNING CA. 92220

532-160-003
DAVID W LAW
PATRICIA CHRISTEEN LAW
P O BOX 956
BANNING CA. 92220

532-160-005
EXCEL PROP MANAGEMENT
SERVICES
9034 W SUNSET BLV
WEST HOLLYWOOD CA. 90069

532-160-006
LENARD O GREEN
1469 ADAM
BANNING CA. 92220

532-160-007
ZENNER PERFORMANCE METERS
INC
P O BOX 256
BANNING CA. 92220

532-160-008
DIANA L TUCKER
461 W AVE L
CALIMESA CA. 92320

532-160-009
DIANA L TUCKER
461 W AVE L
CALIMESA CA. 92320

532-160-012
DARLING INDUSTRIAL
19181 VIA DEL CABALLO
YORBA LINDA CA. 92886

532-160-013
STEPHANIE DOMINGUEZ
22965 VISTA GRANDE WAY
GRAND TERRACE CA. 92313

532-180-043
CHARLES BANNING
43980 MAHLON VAIL RD 2404
TEMECULA CA. 92592

541-290-010
PAUL J HEILIG
8515 ARJONS DR STE K
SAN DIEGO CA. 92126

541-290-015
JOHN C TAMULONIS
CAROL L TAMULONIS
461 S HATHAWAY ST
BANNING CA. 92220

541-290-016
JOHN C TAMULONIS
CAROL L TAMULONIS
461 S HATHAWAY ST
BANNING, CA. 92220

541-290-017
LEONARD HAROLD PETERSON
ALYCE FRANCES PETERSON
2908 VIA HIDALGO
SAN CLEMENTE CA. 92673

541-290-018
LUIS ROBERT ZAMBRANA
BERTHA ZAMBRANA
1698 PANTHER LN
BEAUMONT CA. 92223

541-290-019
KEITH TURNER
2247 EL CAPITAN DR
RIVERSIDE CA. 92506

541-330-002
CAL OAKS PARTNERS
629 CAMNO DELOS MARES 206
SAN CLEMENTE CA. 92673

543-090-008
DOUGLAS D FINNIE
ADELHEID F FINNIE
10410 LIVE OAK AVE
BEAUMONT CA. 92223

JOHN WEEKS
P.O. BOX 517
BANNING, CA 92262

RAMON AOANAN
2413 LA CRESCENTA AVE.
ALHAMBRA CA 91803

JOHN WEEKS
P.O. BOX 517
BANNING CA 92262

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2413 LA CRESCENTA AVE.
ALHAMBRA CA 91803

PLANNING DEPT.
CITY OF BANNING
99 E. RAMSEY ST.
P.O. BOX 998
BANNING CA 92220

PLANNING DEPT.
CITY OF BANNING
99 E. RAMSEY ST.
P.O. BOX 998
~~BANN~~ BANNING CA
92220

PLANNING DEPT
CITY OF BANNING
99 E. RAMSEY ST.
BANNING CA 92220

PLANNING DEPT
CITY OF BANNING
99 E. RAMSEY ST.
P.O. BOX 998
BANNING CA 92220

ALYCE & LEONARD PETERSON
481 S. HATHAWAY ST.
BANNING, CA 92262

PAUL J. HELIG
1521 E. BARBOUR ST.
BANNING CA 92262

APPLICATION FOR MAJOR LAND USE ACTION REVIEW
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

ALUC Identification No. ZAP1018BA14

PROJECT PROPONENT (TO BE COMPLETED BY APPLICANT)

Date of Application: JULY 30, 2014

Property Owner: JOHN WIEKS - MUSEUM OF PINBALL, INC. Phone Number: 562-274-3254

Mailing Address: P.O. BOX 517
BANNING, CA 92262

Agent (if any): RAMON AOANAN, ARCHITECT Phone Number: 510-432-4066

Mailing Address: 2413 LA CRESCENTA AVE.
ALHAMBRA, CA 91803

PROJECT LOCATION (TO BE COMPLETED BY APPLICANT)

Attach an accurately scaled map showing the relationship of the project site to the airport boundary and runways

Street Address: 700 S. HATHAWAY ST.
BANNING, CA 92220

Assessor's Parcel No(s): 532-130-003, 004, 006, 007, 014 & 15 Parcel Size: 18.08 ACRES

Subdivision Name: N.A. Zoning Classification: AIRPORT INDUSTRIAL

Lot Number: N.A.

PROJECT DESCRIPTION (TO BE COMPLETED BY APPLICANT)

If applicable, attach a detailed site plan showing ground elevations, the location of structures, open spaces and water bodies, and the heights of structures and trees; include additional project description data as needed

Existing Land Use (describe): ① MANUFACTURING OF AIRPLANE PARTS & OTHER INDUSTRIAL PRODUCTS.
② RECREATIONAL PARK

Proposed Land Use (describe): SEE EXIBIT "A"

For Residential Uses — Number of Parcels or Units on Site (exclude secondary units): N.A.

For Other Land Uses (See Appendix C) — Hours of Use: FRIDAYS & SATURDAYS: 10 AM TO 2AM; SUNDAY THRU THURSDAY = 10 AM TO 9 AM

Number of People on Site — Maximum Number: 389 OCCUPANTS

Method of Calculation: 2013 CA BLDG. CODE OCCUPANCY REQMTS.

Height Data — Height above Ground or Tallest Object (including antennas and trees): 20 FT. ft.

Highest Elevation (above sea level) of Any Object or Terrain on Site: 2,211 FT. ft.

Flight Hazards — Does the project involve any characteristics which could create electrical interference, confusing lights, glare, smoke, or other electrical or visual hazards to aircraft flight? ☐ Yes ☒ No

If yes, describe

CA 14-8005

REFERRING AGENCY (APPLICANT OR JURISDICTION TO COMPLETE)			
Date Received	8/6/2014	Type of Project	
Agency Name	CITY OF BANNING PLANNING DEPT.	☐	General Plan Amendment
		☐	Zoning Amendment or Variance
Staff Contact	HOLLY STUART	☐	Subdivision Approval
Phone Number	(951) 922-3190	☒	Use Permit
Agency's Project No.	C.U.P.14-9005	☐	Public Facility
		☐	Other

A. NOTICE: Failure of an applicant to submit complete or adequate information pursuant to Sections 65940 to 65948 inclusive, of the California Government Code, MAY constitute grounds for disapproval of actions, regulations, or permits.

B. SUBMISSION PACKAGE:

ALUC REVIEW

1. . . . . Completed Application Form
1. . . . . Project Site Plan – Folded (8-1/2 x 14 max.)
1. . . . . Elevations of Buildings - Folded
1 Each . 8 ½ x 11 reduced copy of the above
1. . . . . 8 ½ x 11 reduced copy showing project in relationship to airport.
1 Set Floor plans for non-residential projects
4 Sets. . Gummed address labels of the Owner and representative *(See Proponent)*.
1 Set. . Gummed address labels of all property owners within a 300' radius of the project site. If more than 100 property owners are involved, please provide pre-stamped envelopes (size #10), with ALUC return address.
4 Sets. . Gummed address labels of the referring agency (City or County).
1. . . . . Check for Fee (See Item "C" below)

STAFF REVIEW (Consult with ALUC staff planner as to whether project qualifies)

1 . . . . . Completed Application Form
1 . . . . . Project Site Plans – Folded (8-1/2 x 14 max.)
1 . . . . . Elevations of Buildings - Folded
1 . . . . . 8 ½ x 11 Vicinity Map
1 Set . Gummed address labels of the Owner and representative *(See Proponent)*.
1 Set . Gummed address labels of the referring agency.
1 . . . . .Check for review–See Below

MUSEUM OF PINBALL

EXHIBIT "A"

Proposed Land Use Land Use *Project call for re-use of these buildings for the following:*

1. *Pinball Machine Museum and Arcade.*
   Supporting this use are a restaurant, private lounge areas and a bar and seating areas.
   Designated as Building A North , Building A South and Building B on drawings.
2. *Warehouse*
   Designated as Building C on drawings.
3. *Glamping (Glamour Camping)*

About a 3rd of the total acreage of the property will be used for overnight recreational camping facility with facilities provided for swimming, tennis, physical fitness routines like walking, running, barbecue, and other outdoor activities. Existing bathroom and shower facilities will be maintained and a new fitness center will be installed within the exiting structures

Hours of Use - Friday and Saturday 10 AM to 2 AM
Sunday thru Thursday 10 AM to 9PM

CITY COUNCIL MEETING
CONSENT ITEM

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-69, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line 'D-2' Stage 1 and Stage 2"**

RECOMMENDATION: Adopt Resolution No. 2015-69, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line 'D-2' Stage 1 and Stage 2."

JUSTIFICATION: The Riverside County Flood Control and Water Conservation District ("District") proposes to construct flood control facilities within the City of Banning in order to improve flood protection and drainage. The Cooperative Agreement between the District and the City of Banning is necessary in order to grant the District the necessary rights to construct, inspect, operate and maintain the project.

BACKGROUND: The proposed project includes the construction of 5,300 lineal feet of an underground storm drain system along Hargrave Street from Ramsey Street to Indian School Lane, 700 lineal feet of an underground storm drain system located on Theodore Street between Florida Street and Hargrave Street and related appurtenances such as connector pipes and catch basins. An aerial photograph of the project is attached as Exhibit "A". Currently a storm drain system does not exist within the project limits. The project will mitigate flooding at the intersection of Ramsey Street and Hargrave Street during a large storm event as well as provide flood protection to some of the adjacent properties. The storm drain system has been sized for the 100-year rainfall event and can convey nearly 500 cubic feet per second of storm water. The chosen alignment minimizes conflicts with existing utilities and preserves the city's infrastructure to the maximum extent practicable, while still achieving the project goals.

The District will pay the costs associated with the construction of the storm drain system and appurtenances and estimates that the cost of construction will be approximately $3,000,000.00.

The Cooperative Agreement, attached as Exhibit "B", between the District and the City of Banning grants the District the necessary rights to construct, inspect, operate and maintain the project; identifies facilities to be maintained by the District and which facilities are to be maintained by the City; and requires the City to relocate existing water lines within the District's project limits.

On March 24, 2015 the Banning Utility Authority approved Resolution No. 2015-04 UA, "Approving a Professional Services Agreement with Land Engineering Consultants, Inc. for Water Main Replacement Design at Various Locations." As part of the professional services agreement the consultant is designing the relocation of water mains within the District's project limits. Staff anticipates the relocation of the water mains will be completed prior to the commencement of the District's project. The water main relocation project is part of the approved 2015/2016 Fiscal Year budget.

FISCAL DATA: The District shall pay all costs associated with the construction, inspection, operation and maintenance associated with the District's flood control facilities as explained in the Cooperative Agreement. The City shall be responsible for the future maintenance and operation of those specific flood control facilities identified in the Cooperative Agreement.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVEIWED/APPROVED BY:

Dean Martin
Interim Administrative Services
Director/Interim City Manager

RESOLUTION NO. 2015-69

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE COOPERATIVE AGREEMENT WITH THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT FOR STORM DRAIN LINE "D-2" STAGE 1 AND STAGE 2

WHEREAS, the Riverside County Flood Control and Water Conservation District ("District") proposes to construct a storm drain system within the City of Banning right-of-way; and

WHEREAS, the proposed project includes the construction of 5,300 lineal feet of an underground storm drain system along Hargrave Street from Ramsey Street to Indian School Lane, 700 lineal feet of an underground storm drain system located on Theodore Street between Florida Street and Hargrave Street and related appurtenances such as connector pipes and catch basins as shown in Exhibit "A"; and

WHEREAS, the purpose of the project will mitigate flooding at the intersection of Ramsey Street and Hargrave Street during a large storm event as well as provide flood protection to some of the adjacent properties; and

WHEREAS, a Cooperative Agreement between the District and the City of Banning is necessary in order to grant the District the necessary rights to construct, inspect, operate and maintain the project; and

WHEREAS, the Cooperative Agreement, attached as Exhibit "B", between the District and the City of Banning grants the District the necessary rights to construct, inspect, operate and maintain the project; identifies facilities to be maintained by the District and which facilities are to be maintained by the City; and requires the City to relocate existing water lines within the District's project limits.

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

SECTION 1. The City Council adopts Resolution No. 2015-69, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line "D-2" Stage 1 and Stage 2" and authorizes the mayor to sign said Cooperative Agreement.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, 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. 2015-69 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

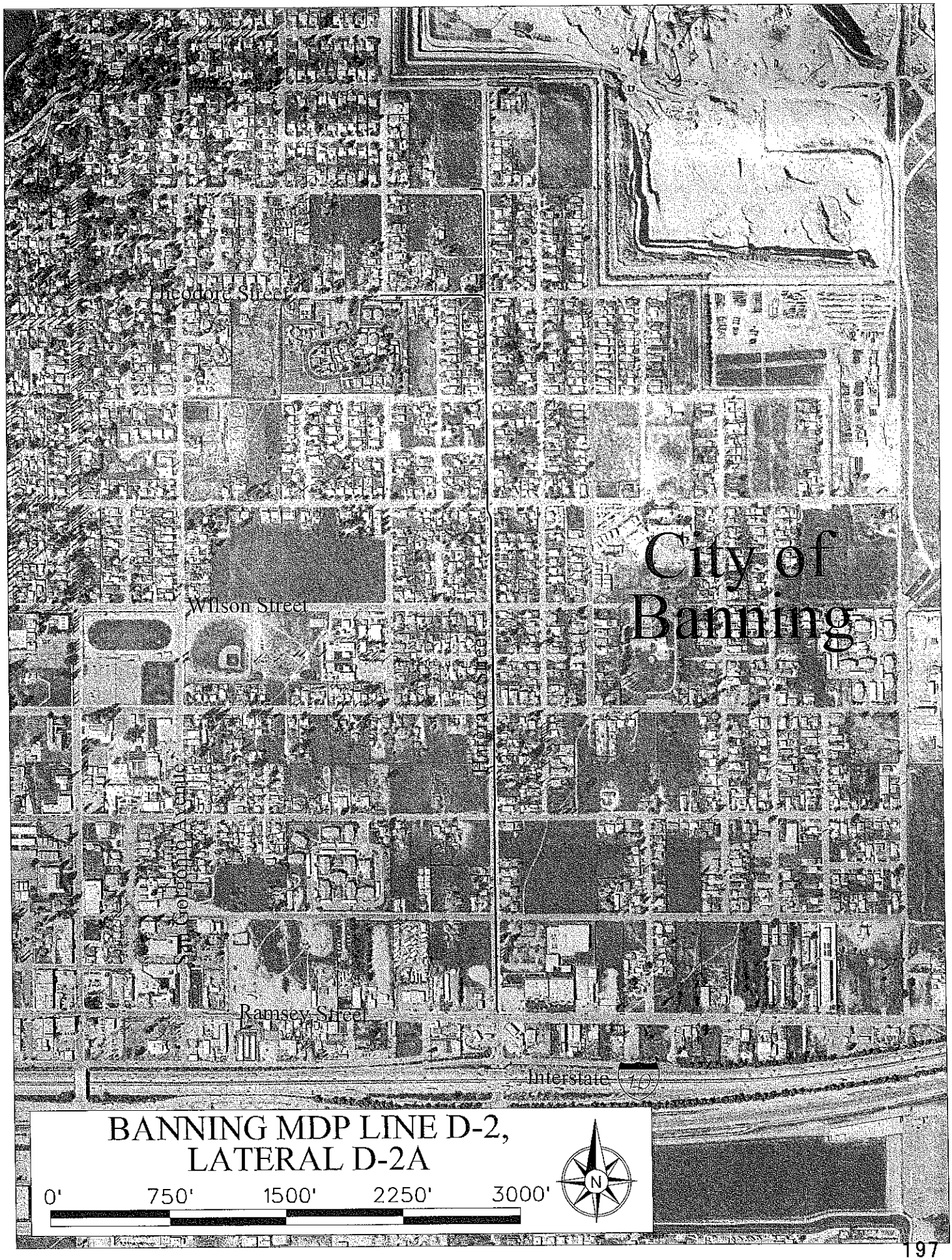
ABSTAIN:

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

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ATTACHMENT "1"

EXHIBIT "A"
AERIAL PHOTO OF PROJECT LIMITS


Theodore Street
Wilson Street
City of Banning
Ramsey Street
Interstate 10
BANNING MDP LINE D-2,
LATERAL D-2A
0'
750'
1500'
2250'
3000'
N

ATTACHMENT "2"

EXHIBIT "B"
ATTACHED COOPERATIVE AGREEMENT
LINE "D"

COOPERATIVE AGREEMENT

Banning Master Drainage Plan Line D-2, Stages 1 and 2 and
Banning Master Drainage Plan Lateral D-2A, Stage 1
(Project Nos. 5-0-00169 and 5-0-00172)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF BANNING, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to construct certain flood control facilities in order to provide improved flood protection and drainage to the interseetion of Ramsey Street and Hargrave Street, located within the City of Banning; and

B. The flood control facilities, all as shown on DISTRICT Drawing Nos. 5-223 and 5-225, respectively, consist of the following:

(i) approximately 600 lineal feet of underground storm drain system extending from Hargrave Street to Williams Street, hereinafter called "LINE D-2 STAGE 1", as shown in concept in blue on Exhibit "A", attached hereto and made a part hereof; and

(ii) approximately 4,700 lineal feet of underground storm drain system extending from Williams Street to Indian School Lane and along a portion of Indian School Lane, hereinafter called "LINE D-2 STAGE 2", as shown in concept in red on Exhibit "A".

Together, LINE D-2 STAGE 1 and LINE D-2 STAGE 2 are hereinafter called "DISTRICT DRAINAGE FACILITIES"; and

C. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of:

(i) approximately 700 lineal feet of underground storm drain system located in Theodore Street between Florida Street and Hargrave Street, hereinafter called "LATERAL D-2A", as shown in concept in green on Exhibit "A"; and

(ii) certain catch basins, connector pipes and storm drains that are thirty-six inches (36") or less in diameter located within CITY held easements or rights of way, hereinafter ealled "APPURTENANCES".

Together, LATERAL D-2A and APPURTENANCES are hereinafter called "CITY DRAINAGE FACILITIES". Together, DISTRICT DRAINAGE FACILITIES and CITY DRAINAGE FACILITIES are hereinafter called "PROJECT"; and

D. Within the project footprint, CITY owns, operates and maintains existing waterlines and related appurtenances that are located within CITY-held easements or rights of way, hereinafter called "CITY WATERLINES"; and

E. DISTRICT is willing to (i) prepare plans and specifications for PROJECT in accordance with applicable DISTRICT and CITY standards, (ii) advertise, award and administer a public works construction contract for PROJECT, (iii) inspect the construction of PROJECT, (iv) fund all costs for the design, construction and inspection of PROJECT as set forth herein, and (v) upon completion of PROJECT construction, assume ownership, operation and maintenance responsibility of DISTRICT DRAINAGE FACILITIES; and

F. CITY is willing to (i) review and approve plans and specifications for PROJECT, (ii) grant DISTRICT the right to construct PROJECT within CITY rights of way, (iii) plan, design and carry out the relocation of all interfering and affected portions of CITY WATERLINES at CITY's sole cost and expense, (iv) inspect construction of PROJECT, and

(v) upon completion of PROJECT construction, assume ownership, operation and maintenance responsibility of CITY DRAINAGE FACILITIES; and

G. It is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

H. The purpose of this Agreement is to memorialize the understandings by and among CITY and DISTRICT with respect to the funding, construction, inspection, ownership, operation and maintenance of PROJECT.

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION I

DISTRICT shall:

1. Pursuant to the California Environmental Quality Act (CEQA), act as the Lead Agency and assume responsibility for the preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.

2. Prepare, at its sole cost and expense, construction plans and specification documents for PROJECT in accordance with applicable DISTRICT and CITY standards and submit to CITY for review and approval prior to advertising a public works construction contract for PROJECT.

3. Obtain all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT.

4. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or agreements required by any federal or state resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT.

5. Advertise, award and administer a public works contract for the construction of PROJECT.

6. Provide CITY with written notice that DISTRICT has awarded a construction contract for PROJECT.

7. Notify CITY in writing at least twenty (20) days prior to the start of construction of PROJECT.

8. Construct, or cause to be constructed, PROJECT pursuant to a DISTRICT administered public works contract in accordance with DISTRICT and CITY approved plans and specifications and pay all costs associated therewith.

9. Inspect the construction of PROJECT.

10. [THIS SECTION INTENTIONALLY LEFT BLANK]

11. Not permit any change to or modification of CITY approved PROJECT plans and specifications that would result in change of function or maintainability of CITY DRAINAGE FACILITIES without the prior written permission and consent of CITY.

12. Within two (2) weeks of completing PROJECT construction, provide CITY with written notice that PROJECT construction is substantially complete and request CITY to conduct a final inspection of PROJECT.

13. Provide CITY with a copy of the Notice of Completion upon completion of PROJECT construction and settlement of any outstanding claims.

14. Provide CITY with a duplicate copy of 'Record Drawing' plans for PROJECT following DISTRICT'S acceptance of PROJECT construction as being complete.

SECTION II

CITY shall:

1. Act as a Responsible Agency under CEQA and take all neeessary and appropriate action to comply with CEQA.

2. Review and approve PROJECT plans and specifications at its sole cost and expense prior to DISTRICT advertising PROJECT for construction bids.

3. Grant DISTRICT, by execution of this Agreement, all rights to construct, inspect operate and maintain PROJECT within CITY rights of way.

4. Issue a no fee encroachment permit to DISTRICT'S contraetor(s) to construct PROJECT within CITY rights of way.

5. Plan, design and carry out the relocation of any interfering or affected portions of CITY WATERLINES at its sole cost and expense, to be completed prior to the start of construction of LINE D-2, STAGE 2 and no later than March 31, 2016.

6. Inspect construction of PROJECT at its sole cost and expense, as set forth in Section III.1.

7. Upon receipt of DISTRICT'S written notice that PROJECT construction is substantially complete, as set forth in Section I.12, conduct a final inspection of PROJECT.

8. Accept ownership and sole responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES upon (i) receipt of DISTRICT'S Notice of Completion, as set forth in Section I.13, and (ii) receipt of a duplicate copy of 'Record Drawing' plans for PROJECT, as set forth in Section I.14.

9. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way, which must be performed at such time(s) that the finished grade along and

above the underground portions of DISTRICT DRAINAGE FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no eost to DISTRICT.

SECTION III

It is further mutually agreed:

1. CITY DRAINAGE FACILITIES shall, at all times, remain sole ownership and exclusive responsibility of CITY. Nothing herein shall be construed as ereating any obligation or responsibility on the part of DISTRICT to operate, maintain or warranty CITY DRAINAGE FACILITIES.

2. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT and shall not be deemed complete until approved and accepted as complete by DISTRICT.

3. Except as otherwise provided herein, DISTRICT shall not be responsible for any additional street repairs or improvements not shown in IMPROVEMENT PLANS and not as a result of PROJECT construction.

4. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT'S (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including but not limited to (i) property damage, (ii) bodily injury or death, (iii) payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever.

5. CITY shall indemnify, defend, save and hold harmless DISTRICT and County of Riverside (including their respective officers, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY'S (including its officers, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including but not limited to (i) property damage, (ii) bodily injury or death, (iii) payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever.

6. [THIS SECTION INTENTIONALLY LEFT BLANK]

7. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right or action based upon the provisions of this Agreement.

8. The parties hereto each pledge to cooperate in regard to the operation and maintenance of their respective facilities as set forth herein and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facilities.

9. Any and all notices sent or required to be sent to the parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Engineering Services Section

CITY OF BANNING
99 East Ramsey Street
Banning, CA 92220
Attn: Art Vela

10. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

11. This Agreement is to be construed in accordance with the laws of the State of California.

12. The parties hereto shall not assign this Agreement without the written consent of the other parties.

13. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

14. This Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

15. Any waiver by DISTRICT or by CITY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other

breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner ehanging the terms hereof or estopping DISTRICT or CITY from enforcement hereof.

16. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral and written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

//

//

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

_____
(to be filled in by the Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By _____
NEAL R. KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

Cooperative Agreement
Banning MDP Line D-2, Stage 1 and 2; Lateral D-2A, Stage 1
Project Nos. 5-0-00169 and 5-0-00172
06/01/15
LMD:bad

CITY OF BANNING

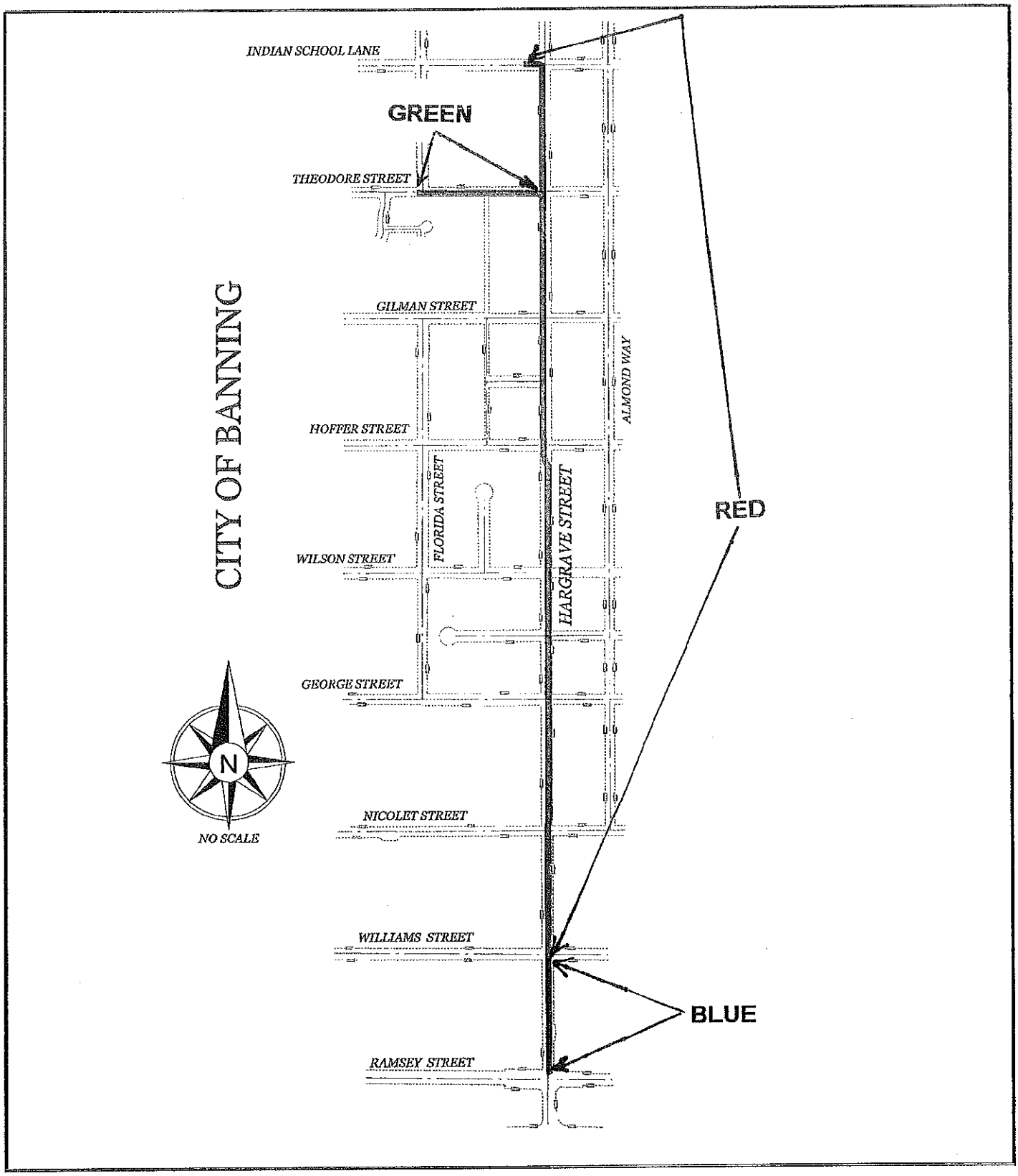
By _____
DEBORAH FRANKLIN
Mayor

APPROVED AS TO FORM:

By _____
DAVID ALESHIRE
City Attorney

Cooperative Agreement
Banning MDP Line D-2, Stage 1 and 2; Lateral D-2A, Stage 1
Project Nos. 5-0-00169 and 5-0-00172
06/01/15
LMD:bad

EXHIBIT A



COOPERATIVE AGREEMENT

Banning Master Drainage Plan
Line D-2 (stage 1), Line D-2 (stage 2), Line D-2A (stage 1)

Project Nos. 5-0-00169 and 5-0-00172

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CITY COUNCIL AGENDA
REPORT OF OFFICERS

DATE: **July 14, 2015**

TO: **Mayor and City Council**

FROM: **Rita Chapparosa, Deputy Human Resources Director**

SUBJECT: Classification Plan Amendments

RECOMMENDATION: Adopt Resolution No. 2015-70, Amending the Classification and Compensation Plan and Resolution No. 2015-71, Amending the Class Plan for Part-Time Employees to include new classifications and changes to salary ranges and job descriptions.

JUSTIFICATION: The City Council approved the City of Banning Classification and Compensation Plan on January 25, 2005. Periodically the plan is amended to reflect changes in the organizational structure. Maintenance of the plan is a dynamic process in which Human Resources works with operating departments to develop classifications which reflect the current needs of the department in their efforts to deliver quality services to residents. City Personnel Rules require that the City Council approve all changes to the City's Classification Plan.

The amendment of the Classification Plan and Part-Time Classification Plan changes are part of the recently approved fiscal year 2016 mid-cycle budget and staff's request through their Program Worksheets reflected on the June 23, 2015 Council Agenda and through the Budget Committee meetings.

Staff is requesting that the City Council approve the new or changed positions and salary ranges listed on the attached Resolutions under the class plan amendment and the part-time class plan amendment.

FISCAL DATA: The fiscal impact is reflected in the recently adopted fiscal year 2016 mid-cycle budget.

Recommended By:

Rita Chapparosa Director
Deputy Human Resources Director

Approved By

Dean Martin
Interim City Manager

Attachments: Resolution No. 2015-70, Classification Plan Amendment for City Employees
Resolution No. 2015-71, Classification Plan for Part-Time City Employees

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RESOLUTION 2015-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING THE CLASSIFICATION & COMPENSATION PLAN FOR THE CITY OF BANNING

WHEREAS, it is necessary to amend the City's Classification Plan from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise;

WHEREAS, the classification and compensation plan has been updated to reflect changes in salary ranges per the recently approved fiscal year 2016 mid-cycle budget;

WHEREAS, changes to job descriptions, job titles and/or pay ranges require Council approval.

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

SECTION 1: That the City Council approve the following classifications and salary ranges as incorporated in the attached classification and compensation plan – Schedule "A" (Exhibit "A"):

Accounting Specialist– Salary Range 53
Executive Assistant/Deputy City Clerk – Salary Range 57
Management Analyst – Salary Range 68
Public Works Director/City Engineer – Salary Range 100
Purchasing Manager – Salary Range 77
Senior Planner – Salary Range 79
Transit Field Supervisor – Salary Range 59

SECTION 2: That the City Council approve the job description for Accounting Specialist (Job Code 1136), Executive Assistant/Deputy City Clerk (Job Code 1606), Management Analyst (Job Code 1601), Public Works Director/City Engineer (Job Code 4400), and Transit Field Supervisor (Job Code 3360) as attached in Exhibit "B".

PASSED, APPROVED, AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, 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. 2015-70 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

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

EXHIBIT "A"

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Schedule "A"

CITY OF BANNING
CLASSIFICATION & COMPENSATION PLAN
REVISED JULY 14, 2015
RESOLUTION NO. 2015-70 (AMENDING RESOLUTION NO. 2014-44)

MATRIX BY CLASS SERIES/JOB CODE

Class Series/Occupational Job Group	Job Code	Classification/Position	Salary Range	Bargaining Unit
1000 – CITY ADMINISTRATION SERIES				
City Administration Group	1010	City Manager	113	Council Contract
	1020	City Clerk/Executive Assistant	57	Elected
	1606	Executive Assistant/Deputy City Clerk	57	Conf/Gen
Financial Services Group	1105	Administrative Services Director/Deputy City Manager	101	Contract
	1115	Deputy Finance Director	87	Mgmt/Conf
	1160	Purchasing Manager	77	SBPEA
	5028	Utility Financial Analyst	76	SBPEA
	1125	Accountant II	59	IBEW-G
	1140	Accountant	54	IBEW-G
	1136	Accounting Specialist	53	IBEW-G
	1130	Financial Services Specialist	47	IBEW-G
Human Resources Group	1215	Deputy Hnman Resources Director	83	Mgmt/Conf
	1230	Human Resources Technician	54	Conf/Gen
Utility Billing Group	1340	Senior Utility Billing Rep	48	IBEW-G
	1350	Utility Billing Representative	43	IBEW-G
	1340	Lead Field Service Representative	55	IBEW-U
	1325	Field Service Representative	51	IBEW-U
Information/Cable Systems Group	1410	Information Technology Coordinator	59	IBEW-G
	1416	Police Information Technology Technician	59	IBEW-G
	1415	Information Technology/Media Technician	57	IBEW-G
	1510	Cable Services Specialist	44	IBEW-G

Schedule "A"

1				
Office Support Group	**1610**	**Executive Secretary**	**53**	**IBEW-G**
	1601	**Management Analyst**	**68**	**SBPEA**
	1620	**Office Specialist**	**44**	**IBEW-G**
	1630	**Receptionist**	**31**	**IBEW-G**

2000 – POLICE SERIES

Police Group	**2010**	**Police Chief**	**100**	**Contract**
	2025	**Police Lieutenant**	**87**	**Police Mgmt**
	2030A	**Police Staff/Master Sergeant**	**78**	**POA**
	2040	**Police Corporal**	**71**	**POA**
	2050	**Police Officer**	**67**	**POA**
	2060	**Police Recruit/Trainee**	**N/A**	**At-Will**
Police Support Group	**2143**	**Lead Public Safety Dispatcher**	**56**	**IBEW-G**
	2110	**Public Safety Dispatcher**	**52**	**IBEW-G**
	2151	**Police Assistant II**	**48**	**IBEW-G**
	2152	**Police Assistant I**	**44**	**IBEW-G**

3000-COMMUNITY DEVELOPMENT SERIES

Community Development Group	**3010**	**Community Development Director**	**92**	**Contract**
	3026	**Development Project Coordinator**	**58**	**IBEW-G**
	3050	**Senior Planner**	**79**	**SBPEA**
	3020	**Associate Planner**	**68**	**SBPEA**
	3015	**Assistant Planner**	**63**	**SBPEA**
Economic Development Group	**3110**	**Economic Development Director**	**92**	**Contract**
Development Services Group	**3210**	**Development Services Manager (Building Official)**	**84**	**SBPEA**
	3215	**Senior Building Inspector**	**67**	**IBEW-G**
	3230	**Code Compliance Officer**	**58**	**IBEW-G**
	3240	**Building Permit Specialist**	**55**	**IBEW-G**

3300-COMMUNITY SERVICES GROUP

Community Services Group	**3310**	**Community Services Director**	**86**	**Contract**
	3360	**Transit Field Supervisor**	**59**	**IBEW-G**
	3325	**Recreation Coordinator**	**51**	**IBEW-G**
	3328	**Program Coordinator**	**43**	**IBEW-G**
	3350	**Lead Bus Driver/Trainer**	**55**	**IBEW-G**
	3340	**Bus Driver**	**47**	**IBEW-G**

4000-PUBLIC WORKS SERIES

Public Works Management Group	4400	Public Works Director/City Engineer	100	Contract
Streets/Parks Group	4210	Public Works Superintendent	78	SBPEA
	4230	Work Release Crew Leader	47	IBEW-G
	4240	Senior Maintenance Worker	50	IBEW-G
	4250	Maintenance Worker	45	IBEW-G
	4260	Motor Sweeper Operator	50	IBEW-G
Engineering Group	4300	City Engineer	85	SBPEA
	4350	Senior Civil Engineer	82	SBPEA
	4320	Associate Civil Engineer	76	SBPEA
	4325	Assistant Civil Engineer	68	SBPEA
	4330	Public Works Inspector	62	IBEW-G
	4340	Engineering Services Assistant	48	IBEW-G
General Maintenance and Support Group	4420	Fleet Maintenance Mechanic	53	IBEW-G
	4430	Building Maintenance Specialist	49	IBEW-G
	4441	Community Center Caretaker	36	IBEW-G
	4450	Warehouse Services Specialist	52	IBEW-G
Water/Wastewater Group	4115	Water/Wastewater Superintendent	78	SBPEA
	4130	Water Crew Supervisor	60	IBEW-U
	4140	Water Services Worker	52	IBEW-U
	4155	Wastewater Collection System Supervisor	60	IBEW-U
	4145	Wastewater Collection System Technician	52	IBEW-U
	4132	Water Valve Flushing Crew Lead	56	IBEW-U
	4133	Water Construction Crew Lead	56	IBEW-U
	4131	Water Meter Crew Lead	56	IBEW-U

5000 ELECTRIC UTILITIES SERIES

Electric Services & Operations Group	5001	Electric Utility Director	100	Contract
	5021	Power Resource & Revenue Administrator	85	SBPEA
	5025	Associate Electrical Engineer	76	SBPEA
	5028	Utility Financial Analyst	76	SBPEA
	5029	Senior Electric Service Planner	79	IBEW-U7
	5030	Electric Service Planner	77	IBEW-U
	5050	Public Benefits Coordinator	55	IBEW-U

Schedule "A"

	5055	Utility Services Assistant	48	IBEW-U
	5110	Electric Operations & Maintenance Manager	85	SBPEA
	5120	Powerline Crew Supervisor	79	IBEW-U
	5130	Powerline Technician	75	IBEW-U
	5140	Powerline Apprentice	67/ 73	IBEW-U
	5150	Electric Services Worker	52	IBEW-U
	5161	Snbstation Test Technician	75	IBEW-U
	5160	Electric Meter Test Technician	75	IBEW-U
	5170	Apprentice Electric Meter Test Technician	67 / 73	IBEW-U

EXHIBIT "B"

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CITY OF BANNING, CALIFORNIA

Accounting Specialist

Job Code: 1136

FLSA **[ ] Exempt** **[X] Non-Exempt**

JOB DEFINITION: Under general supervision, performs routine to moderately complex technical and specialized duties in the preparation, processing and maintenance of the City-wide payroll and related records; general ledger accounting, accounts payable, purchase requisitions, business licenses and performs related duties as assigned.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Depending on the area of the assignment, duties may include, but are not limited to the following:

Reviews and processes payroll action forms and resolves discrepancies with Human Resources; ensures employees are correctly set up in the payroll system; verifies, audits, edits and processes biweekly employee payroll in accordance with City policies and procedures and labor contract agreement provisions; generates reports and verifies accurate reporting of changes in pay, payroll status, benefits, taxes and other deductions, as well as retroactive pay adjustments and terminations; verifies and edits attendance and work hours data entered by departments; works with departments to resolve reporting problems and errors; enters work hours, leaves taken, overtime and account codes for employees with labor distribution and for part-time employees; processes adjustments to individual employee pay to correct errors; processes employee payroll deductions, benefits elections and tax changes; monitors eligibility dates and initiates set up of annual enrollments/increases and floating holiday accruals. Processes and data enters special payroll transactions, such as wage assignments, liens, and child support payments; makes payroll system adjustments to ensure appropriate payroll tax treatment of retroactive and other special wages; generates and checks preliminary and final payroll reports and registers; runs leave accrual processes; generates paychecks; processes void and reissued paychecks; ensures timely and accurate posting of payroll to the financial accounting system and generates electronic bank deposits; generates and distributes a variety of system reports and ensures appropriate documentation for audit purposes. Posts deduction and benefit amounts to subsidiary ledger accounts; prepares payment authorizations for vendors; generates EFT transfers for tax deposits; reconciles quarterly tax reports to the general ledger; prepares and submits quarterly tax returns and media files for transmission; reconciles payroll liability accounts, resolves discrepancies and posts adjusting journal entries; responsible for required maintenance of payroll software. Answers department and employee questions regarding payroll and benefits deductions by explaining requirements, policies and procedures; responds to requests for salary verification. Researches and remains current on Federal and State payroll tax law changes, pension, benefits and other applicable regulations affecting payroll. Maintains required files and records; researches transaction history to verify payroll totals, accruals and audit questions. Performs user testing of system updates. Attends a variety of meetings, training sessions and seminars as required. May oversee the work of temporary employees assigned to work area. Assists the Finance Department with procurement needs. Reviews purchase requisitions for compliance with City policy before issuing purchase orders. Pays department bills and reports purchasing updates. Insures money is taken from correct accounts. Monitors the budget for purchase orders. Prepares cash flow for Finance Director. Prepares sales and property taxes and conducts audits. Reconciles and oversees Department inventory. Processes vendor payments and researches and reconciles vendor discrepancies. Prepares and enters journal entries for general ledger. Examines, analyzes, researches and reconciles general ledger accounts and statements. Audits invoices, corrects mistakes and extends tax consequences. Reconciles and files invoice statements. Assists vendors with collecting outstanding or unpaid invoices. Posts fiscal agent report data and balances to general ledger.

(continued on reverse side)

CITY OF BANNING, CALIFORNIA

Accounting Specialist

Job Code: 1136

Issues business licenses to companies conducting business in the City of Banning. Enters business licenses payments into computer system, prints licenses and renewals, prepares copies for inspectors and files and maintains information. Prepares a variety of financial support documents. Performs related duties and responsibilities as assigned.

KNOWLEDGE AND SKILLS:

- Federal, State and City laws, regulations, rules and guidelines applicable to timekeeping, payroll preparation and pay reporting.
- Methods, practices, documents and terminology used in processing payroll transactions and in payroll recordkeeping.
- The City's payroll system and associated practices and procedures for processing payroll information and interpreting input and output data.
- Payroll and deductions policies, practices and procedures, including garnishment and employment verification.
- Records management and file maintenance procedures.
- Standard office practices and procedures.
- Principles and practices of quality customer service and sound business communication.
- Operate a computer using word processing, spreadsheet and accounting system applications; operate a calculator and other standard office equipment.
- Organize, set priorities and exercise sound judgment within established guidelines.
- Interpret, apply and reach sound decisions in accordance with City rules, policies and department procedures.
- Make calculations and tabulations and review payroll and related documents and information with speed and accuracy.
- Understand and follow written and verbal instructions.
- Learn and apply new information.
- Schedule, organize, analyze and complete work in accordance with established guidelines.
- Prepare clear and accurate payroll records and reports.
- Prepare and maintain accurate and complete specialized records and files.
- Communicate clearly and effectively, both orally and in writing, and work cooperatively with employees, customers, the general public, vendors, co-workers, department representatives, supervisors, management and others encountered in the course of work.
- Exercise tact and diplomacy in dealing with sensitive, complex and confidential payroll issues and situations.
- Maintain complete confidentiality of sensitive employee information.
- City's and the Department's policies and procedures.
- Accounts payable, payroll, purchasing and general ledger procedures.
- Financial reporting guidelines and procedures.
- Reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules,
- Regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in operating a personal computer utilizing a variety of software applications.

(continued on reverse side)

CITY OF BANNING, CALIFORNIA

Accounting Specialist

Job Code: 1136

MINIMUM QUALIFICATIONS: Three years of progressively responsible experience in payroll, tax and insurance deductions, accounts payable, purchasing, and customer service. Experience in municipal payroll operations is desirable. An Associate's degree with major coursework in accounting, bookkeeping or a closely related field. A Bachelor's degree is preferred.

ADDITIONAL REQUIREMENTS: Must have and maintain a valid California Class C Driver's License. May be required to work outside the traditional work schedule

CITY OF BANNING, CALIFORNIA

Executive Assistant/Deputy City Clerk

Job Code: 1606

FLSA [ ] Exempt [X] Non-Exempt

JOB DEFINITION: To perform a variety of highly responsible and complex secretarial and administrative support duties to the City Manager, City Clerk and elected official or designee handling administrative details and coordination of day-to-day office operations; may supervise clerical staff; and to do related work as required.

DISTINGUISHING CHARACTERISTICS: The Executive Assistant position is distinguished from other administrative support classes by the higher degree of independent judgment required; a thorough knowledge of divisional, department and City-wide procedures and policies; and the ability to choose among a number of alternatives in performing a variety of complex assignments without instruction and in scheduling and completing work. Incumbents routinely handle highly confidential and sensitive information; may serve as staff support on internal and external committees, may have budget preparation and administration responsibility; and may represent the City and/or City executive/elected officials as required.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Depending on the area of the assignment, duties may include, but are not limited to, the following:

Perform a wide variety of responsible, complex and confidential duties for designated individuals at the Division Head level. Interpret and apply divisional policies and procedures in response to inquiries and make appropriate referrals. Review, log, prioritize and route correspondence. Take and transcribe dictation from rough draft, shorthand notes or recordings. Respond independently to letters and general correspondence of a routine nature. Maintain appointment schedules, daily calendars and make travel arrangements. Assist in agenda preparation, gather information and contact meeting participants. Research public records, and provide information to the public and staff members concerning City Council actions, laws, ordinances, codes, procedures and projects; independently compose responses to requests for information. Performs follow-up activities resulting from Council meetings, including transcribing and distributing minutes, ensuring that resolutions and ordinances are in proper format. Assist the City Clerk in the administration and conduct of municipal elections. Gather, organize and prepare information for routine reports. Recommend organizational or procedural changes affecting administrative support activities. Compile and maintain complex and extensive records for a department. Maintain a variety of files and records of information. Maintain manuals and update resource materials. May serve as secretary and/or administrative staff to a board or commission, preparing the agenda and taking minutes of meetings. Assist in the assigning, supervision and participation in the work of the administrative support section of an assigned department or division. Review work upon completion for conformance to divisional requirements.

REPRESENTATIVE DUTIES: (continued)

Participate in the preparation and administration of Department budget.

Perform specialized projects, including collecting, compiling and summarizing information obtained.

Serve on various internal and external committees; represent the City and/or City executive/elected official as required.

Assist in developing, analyzing and evaluating policy and procedures.

Coordinate activities, events and correspondence involving all City departments/department heads.

May select, train, supervise and evaluate subordinates.

KNOWLEDGE AND ABILITIES:

- Knowledge of English usage, spelling, grammar and punctuation.
- Knowledge of modern office methods and standard office equipment usage.
- Knowledge of computer software, including word processing applications, at an advanced level.
- Knowledge of reception and telephone techniques.
- Knowledge of principles and practices of classifying, indexing, processing, retrieving and controlling a large volume of records.
- Knowledge of principles of supervision and training.
- Knowledge of modern office administration practices and procedures.
- Knowledge of principles and practices of effective business communication.
- Knowledge of rules and procedures governing the notice and conduct of public meetings.
- Knowledge of record keeping, account maintenance and purchasing practices and procedures.
- Knowledge of City boards and committees.
- Knowledge of organization, procedures, ordinances and rules applicable to department to which assigned.
- Knowledge of procedures and operating details of municipal government; City-wide policies and procedures.
- Knowledge of research techniques, sources and availability of information.
- Knowledge of report writing and presentation.
- Knowledge of communications/media services and resources.
- Knowledge of employment selection practices and principles.
- Ability to plan, organize and carry out secretarial work to meet deadlines.
- Ability to receive highly sensitive information and maintain confidentiality.
- Ability to understand and carry out oral and written directions.

CITY OF BANNING, CALIFORNIA

Executive Assistant/Deputy City Clerk

Job Code: 1606

KNOWLEDGE AND ABILITIES: (continued)

- Ability to operate office equipment, a personal computer and utilize various software and/or new technology.
- Ability to communicate clearly and concisely, both orally and in writing.
- Ability to maintain division head's working calendar and schedule appointments and meetings.
- Ability to establish and maintain cooperative working relationships with those contacted in the course of work.
- Ability to assist in compiling and maintaining complex records and preparing technical reports for a division.
- Ability to work independently in the absence of a supervisor.
- May exercise the ability to plan, organize and supervise the work of other clerical staff.
- Ability to perform relatively complex arithmetic and statistical calculations and computations rapidly and accurately.
- Ability to interpret and apply administrative and divisional rules, policies and procedures.
- Ability to analyze situations carefully and adopt effective courses of action.
- Ability to assist in developing, analyzing and evaluating policies and procedures.
- Ability to compose correspondence and business letters from brief instructions.
- Ability to interpret and apply administrative and departmental rules, policies an procedures.
- Ability to compose correspondence independently.
- Ability to compile and maintain complex and extensive records and files for a department.
- Ability to represent the department using good judgment, poise, tact and diplomacy.
- May exercise the ability to supervise, train, and evaluate subordinates.
- Ability to establish and maintain professional effective working relationships with diverse groups and individuals.

MINIMUM QUALIFICATIONS: A high school diploma or GED supplemented by specialized administrative support/business related courses and five (5) years of experience performing increasingly complex and highly responsible office and administrative support work, of which at least (2) two years involved administrative support work for one or more managers. An Associate's Degree is preferred. Municipal/public sector government experience is highly desirable. Ability to obtain certification as a Certified Municipal Clerk (CMC) after two years.

ADDITIONAL REQUIREMENTS: Demonstrated proficiency at an advanced level in Word and/or Excel. Possession of a valid California driver's license.

CITY OF BANNING, CALIFORNIA

Management Analyst

Job Code: 1601

FLSA **[x] Exempt** **[ ] Non-Exempt**

JOB DEFINITION: Under general direction of the Director, performs professional administrative, technical and analytical analysis in the administration and management of a department in conducting specific and comprehensive analysis of wide range of City policies involving organization procedures, finance and services; and to provide guidance on various City policies, procedures, goals and objectives. Supervises activities of assigned personnel. May supervise or oversee staff under the division or programs.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Manages and administers departmental contract operations, including procurement, invoice processing, evaluation of proposals and negotiations. Works with the department to prepare grant proposals and applications; monitors grant implementation for budgetary and operation compliance to grant stipulations. Ensures fiscal compliance of all contracts and grants; ensures compliance with appropriate Federal, State, County and Local regulations. Develops formal and informal bids, RFQs and RFPs, ensuring that all applicable legal and contractual provisions are included; directs and participates in the solicitation, evaluation and award of RFPs; participates in pre-bid briefings. Performs budget preparation, analysis and administration; analyze and report on the budget status for various activities related to assigned staff, programs and projects. Develops and reviews project/services scope of work with managers to ensure clarity of work and contracting requirements. Research and analyze information; prepare agenda reports and administrative documents for the department. Provides executive level administrative support to the E Director and supervisors as needed. Supervises and trains subordinates, as required.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

Knowledge of: Grant proposal writing, application and monitoring techniques, policies and procedures; contract preparation and negotiation techniques; proper contract format; legal language used in contracts; working knowledge of governmental regulations regarding contracted services and competitive bidding process; county, state and federal government general administrative structures and processes; principles of business and public administration; accounting and budgetary controls, basic analysis and research techniques; computer applications pertaining to procurement and business requirements; principles and practices of management and supervision; principles and practices of budget administration; the City's and the Department's policies and procedures; file and records management principles; research methods and procedures.

CITY OF BANNING, CALIFORNIA

Management Analyst

Job Code: 1601

Skill in: Reading, understanding, interpreting and applying relevant city, county, state and federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives; assessing and prioritizing multiple tasks, projects and/or demands; working within deadlines to complete projects and assignments; assessing, analyzing, identifying and implementing solutions to complex problems; establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning; operating a personal computer utilizing a variety of software applications, including Microsoft Excel and Word.

MINIMUM QUALIFICATIONS: Bachelor's degree in business or public administration. Three years of experience in preparing and processing state and federal contracts, purchases of service contracts, preparation of grant applications and conducting competitive bids, formulating policy and procedures, and negotiating contracts. Supervisory experience desired.

ADDITIONAL REQUIREMENTS: A valid California driver's license. May be required to work outside the traditional work schedule.

CITY OF BANNING, CALIFORNIA

Public Works Director/City Engineer

Job Code: 4400

FLSA **[x] Exempt** **[ ] Non-Exempt**

JOB DEFINITION: Under policy direction, directs, oversees, plans, organizes and administers water, wastewater, engineering, streets, parks, fleet and airport division operations.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Establishes and maintains direction and regulation over Public Works Divisions including the,water, wastewater, engineering, streets, parks, fleet and airport divisions and services in accordance with operational and environmental protection measures and Federal, state and regional regulatory requirements. Provides professional assistance and information to the City Council and City management staff on City operations associated with Public Works. Develops and implements the Capital Improvement Program (CIP). Interprets and enforces Public Works Department policies and procedures. Acts as liaison with other City departments and other government agencies such as Department of Transportation, Riverside County Transportation Commission and Riverside County Economic Development Agency. Manages Banning Municipal Airport operation. Manages the waste management franchise contract and address solid waste related issues.

Develops financial plans including loans and grants to pay for infrastructures. Reviews and/or approves assigned staff plans, specifications and cost estimates for each public works operation. Monitors the acquisition, allocation or use of resources needed for successful service delivery or project completion. Researches, reviews, investigates and reports services, problems or conditions affecting the safe and convenient use of City water systems, streets, parks, vehicles and equipment and airport. Prepares reports of conditions and results of Public Works operations for the City. Oversees budgetary and expenditures for the Public Works Departments and Divisions.

Manages the buying, selling and trading operations within the Public Works Department. Provides short term and long term utilities and public works capital improvement planning for the City. Attends meetings and presentations. Oversees, monitors and directs office operations of assigned staff. Prioritizes and assigns special projects. Interviews prospective employees. Hires and/or recommends hiring. Develops, identifies and implements new employee and on-going staff training. Assigns, tracks and reviews work assignments and progress. Reviews and approves the formal performance evaluation of assigned department staff. Develops and implements disciplinary actions for assigned staff. Prepares reports, memos and correspondence.

Performs other duties as assigned or required.

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CITY OF BANNING, CALIFORNIA

Public Works Director/City Engineer

Job Code: 4400

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of water, wastewater, street, engineering, parks, fleet and airport management and operations practices and principles.
- Knowledge of management and/or supervision principles.
- Knowledge of finance and budget principles.
- Knowledge of file and report management techniques.
- Knowledge of research methods and procedures.
- Knowledge of engineering principles and methods.
- Knowledge of trends and practices in public improvement projects.

- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

MINIMUM QUALIFICATIONS: A Bachelor's degree in Civil Engineering or related field **AND** ten (10) years of public works, water, wastewater or engineering experience that includes five (5) years of management and/or supervision. Must possess registration in California as a Professional Civil Engineer at time of appointment.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license. Depending on the needs of the City, the incumbent in this classification may be required to obtain and maintain additional licenses or certifications. May be required to work outside the traditional work schedule.

CITY OF BANNING, CALIFORNIA

Transit Field Supervisor

Job Code: 3360

FLSA [ ] Exempt [x] Non-Exempt

JOB DEFINITION: Under the direction of the Community Services Director. Supervises the City's Bus Driver's, ensuring efficient and courteous service. Responsibilities include; planning, assigning and directing work; appraising performance; rewarding employees; addressing complaints and resolving problems. Operates passenger coach over specified or demand responsive routes to transport people to and from their destination in a safe, courteous and timely manner.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Monitors the daily performance/operation of fixed routes, including efficiency, system safety and on time performance; makes recommendations for adjustments. Develops routes for detours and special events. Monitors motor coaches on the road and determines location of bus stops, zones, and amenities. Researches service and makes recommendations. Supervises and monitors operator performance including on-board ride checks and overall compliance with rules, regulations and safety requirements. Trains new and experienced Bus Drivers and other City personnel in all areas of coach operation, including vehicles, equipment, and procedures. Conducts classroom training on coach operation and transit procedures, rules, and regulations. Conducts individual or group retraining for employees as needed. Maintains various training records for internal use and for the California DMV training verification. Assists operators with passenger relations. Investigates customer complaints and acts as liaison for the Agency with the general public and public works/safety personnel. Responds to, investigates and submits reports on accidents, incidents and claims involving Agency vehicles and personnel. Maintains, monitors, and analyzes logs and records relative to coach operator efficiency and performance such as attendance, on time, and disciplinary records. Evaluates and documents work performance and counsels subordinates, recommending and implementing disciplinary actions as required. Acts as an emergency responder for natural and man-made disasters that involve public mass transit services. Assists the dispatch office, providing dispatch relief for meetings, breaks or other duties. Enforces and rates on a scale the safety performance including rules and regulations compliance and implements corrective action. Directly supervises Coach Operators in the Operations Department. Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws.

Performs other duties as assigned or required.

KNOWLEDGE and ABILITIES:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures
- Knowledge of transit operations and applicable laws and regulations.
- Knowledge of union contracts, rule books and progressive disciplinary procedures.
- Knowledge of basic accident investigation procedures.
- Knowledge of two-way radio functions.

- Ability to prepare reports.
- Ability to handle pressure or emergency situations.
- Ability to establish and maintain effective working relationships with a variety of individuals, departments, outside agencies and the employees' labor union.
- Ability to read and interpret documents such as safety rules, operating and maintenance instructions, and procedure manuals.
- Ability to write routine reports and correspondence.
- Ability to effectively present information and respond to questions from groups of managers, employees, customers and the general public.
- Ability to apply common sense understanding to carry out instructions furnished in written, oral, or diagram form.
- Ability to deal with problems involving several concrete variables in standardized and very unique situations.

MINIMUM QUALIFICATIONS: A high school diploma or GED AND three (5) years of experience in the operation passenger buses and a minimum of two years relevant supervisory experience; or an equivalent combination of education and experience.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a Class B California driver license with air brake and passenger endorsements and a valid Medical Examiner's Certificate. Must be twenty-one (21) years of age at time of hire. Must pass background investigation and successfully complete periodic physical examinations as required by federal transportation regulations. Must have, or be able to obtain within first three months of employment, U. S. Department of Transportation, Transportation Safety Institute Instructor Certificate. Must be familiar with current business operating systems, software and programs.

PHYSICAL DEMANDS:
While performing the duties of this job, the employee is regularly required to sit and talk or hear. The employee is frequently required to stand, walk, use hands to finger, handle or feel and reach with hands and arms. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl; and taste or smell. The employee must regularly lift and/or move up to 10 pounds, frequently lift and/or move up to 25 pounds, and occasionally push/pull up to 90 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

WORK ENVIRONMENT:
While performing the duties of this job, the employee is frequently exposed to moving mechanical parts and outside weather conditions. The employee is occasionally exposed to fumes or airborne particles, and vibration. The noise level in the work environment is usually moderate.

RESOLUTION NO. 2015-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING, THE CLASSIFICATION AND COMPENSATION POLICY FOR PART-TIME EMPLOYEES OF THE CITY OF BANNING

WHEREAS, part-time employees are individuals who customarily work less than 1,000 hours per fiscal year, or an average of 20 hours per week on a regular year-round basis; and

WHEREAS, it is necessary and desirable to employ persons on a part-time basis to provide valuable services to augment the provision of City services; and

WHEREAS, such part-time employees are unrepresented "at-will" individuals that pay no dues to, nor receive benefits from, negotiations by employee unions; and

WHEREAS, the Council desires to provide guidelines for the compensation to such employees for the rendering of such valuable service;

WHEREAS, the City Council now desires to adopt an amended and restated resolution of salaries for the Part-Time Classifications, which has been updated to reflect changes in salary ranges per the recently approved fiscal year 2016 mid-cycle budget; restates and replaces any and all pre-existing salary resolutions for the Part-Time classifications, including, but not limited to Council Resolution No. 2015-13.

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

SECTION 1: Classification and Pay Structure. Part-time classification titles shall be authorized as set forth in Exhibit "A" and Exhibit "B", effective July 14, 2015, including the Recreation Sports Coordinator (Job Code 3329) and Human Resources Technician (Job Code 1230) job descriptions set forth as Exhibit "C". The minimum and maximum annual ranges used for the part-time classification hourly calculations shall be based on the permanent Salary Range Table, attached as Exhibit "D" divided by 2080 hours and determining where on the range to place the employee based on qualifications and experience.

SECTION 2: Performance Review System for Part-Time Employees. Part-time employees will receive performance reviews and merit adjustments after completing 1,000 hours of the service and thereafter upon completion of each additional period of 1,000 hours of service. Recommended merit adjustments must be based upon written performance evaluations and included in the City's annual budget.

PASSED, APPROVED, AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, 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. 2015-71 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT "A"

PART-TIME CLASSIFICATION TITLES (INCLUDING SEASONAL)

EFFECTIVE JULY 14, 2015

Administrative Intern	Range 33
Airport Attendant	Range 17
Assistant Pool Manager	Range 27
Building Attendant	Range 29
Cashier	Range 17
Crossing Guard	Range 12
Development Assistant	Range 42
Dial-A-Ride Driver	Range 31
Human Resources Technician*	**Range 54**
Lifeguard	Range 22
Lifeguard w/WSI Certification	Range 25
Pool Manager	Range 32
Recreation Leader	Range 29
Recreation Sports Coordinator*	**Range 43**
Senior Center Coordinator	Range 49
Senior Recreation Leader	Range 36

- New Classifications for Part-Time Positions/Resolution

EXHIBIT "B"

CLASSIFICATIONS AND SALARY RANGES

TITLE	SALARY RANGE*
Accountant	S4
Accountant II	59
Administrative Services Director/Deputy City Manager	101
Apprentice Electric Meter Test Technician	67 / 73
Assistant Civil Engineer	68
Assistant Planner	63
Associate Civil Engineer	76
Associate Electrical Engineer	76
Associate Planner	68
Building Maintenance Specialist	49
Building Permit 5pecialist	SS
Bus Driver	47
Bus Driver (part-time)	41
Cable Services Specialist	44
City Clerk/Executive Assistant	S7
City Engineer	85
City Manager	113
Code Compliance Officer	58
Community Center Caretaker	36
Community Development Director	92
Community 5ervices Director	86
Deputy Finance Director	87
Deputy Human Resources Director	83
Development Project Coordinator	58
Development Services Manager (Building Official)	84
Economic Development Director	92
Electric Meter Test Technician	7S
Electric Operations & Maintenance Manager	8S
Electric Service Planner	77
Electric 5ervices Worker	S2
Electric Utility Director	100
Engineering 5ervices Assistant	48
Executive Assistant	S7
Executive Secretary	53
Field Service Representative	S1
Financial Services Specialist	47
Fleet Maintenance Mechanic	53
Human Resources Technician	S4
Information Technology Coordinator	S9
Information Technology/Media Technician	57

*Per Class Plan Resolution No. 2014-44 or any future amendments authorized by Council.

CLASSIFICATIONS AND SALARY RANGES

Lead Bus Driver/Trainer	SS
Lead Field Service Representative	SS
Lead Public Safety Dispatcher	S6
Maintenance Worker	4S
Motor Sweeper Operator	S0
Office Specialist	44
Payroll Coordinator	S3
Police Assistant II	48
Police Assistant I	44
Police Chief	100
Police Corporal	71
Police Information Technology Technician	59
Police Lieutenant	87
Police Officer	67
Police Recruit/Trainee	N/A
Police Staff/Master Sergeant	78
Power Contracts & Revenue Administrator	8S
Powerline Apprentice	67/ 73
Powerline Crew Supervisor	79
Powerline Technician	7S
Program Coordinator	43
Public Benefits Coordinator	SS
Public Safety Dispatcher	S2
Public Works Analyst	68
Public Works Director	100
Public Works Inspector	62
Public Works Superintendent	78
Receptionist	31
Recreation Coordinator (correction of salary range)	43
Senior Building Inspector	67
Senior Civil Engineer	82
Senior Electric Service Planner	79
Senior Maintenance Worker	S0
Senior Utility Billing Rep	48
Substation Test Technician	7S
Transit Manager	73
Utility Billing Representative	43
Utility Financial Analyst	76
Utility Financial Analyst	76
Utility Services Assistant	48
Warehouse Services Specialist	S2
Wastewater Collection System Supervisor	60
Wastewater Collection System Technician	S2
Water Construction Crew Lead	S6

*Per Class Plan Resolution No. 2014-44 or any future amendments authorized by Council.

CLASSIFICATIONS AND SALARY RANGES

Water Crew Supervisor	60
Water Meter Crew Lead	56
Water Services Worker	52
Water Valve Flushing Crew Lead	56
Water/Wastewater Superintendent	78
Work Release Crew Leader	47

*Per Class Plan Resolution No. 2014-44 or any future amendments authorized by Council.

EXHIBIT "C"

JOB DESCRIPTIONS

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CITY OF BANNING, CALIFORNIA

Recreation Sports Coordinator

Job Code: 3329

FLSA **[ ] Exempt** **[x] Non-Exempt**

JOB DEFINITION: Under general direction of the Community Services Director, to assist in conducting various youth and adult sports programs; assist in organization, promotion and coordination of special events and activities; and to perform related duties as assigned.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Assists in planning, promoting, implementing, supervising, and coordinating sports programs, day camp, and special events. Proficiently operates computer and software programs in the design, preparation, and distribution of Community Services publicity, including press releases, flyers, and printed schedules. Promotes interest and participation in sports through public relations and informational programs. Assists in administration of the youth and adult sports and recreation classes, including processing registration forms and accepting fees. Assists in recruitment, selection, training and supervision of seasonal personnel. Plans work, schedules, and trains assigned staff. Responds to citizen inquiries and requests for information. Assists in coordinating sports, day camp, and special activities with other City departments and divisions, and with outside agencies. Actively researches new sports programs and sponsors, and develops ways to contact and obtain the appropriate coaches and assistants. Orders supplies and maintains inventory. Speaks before community groups. Works flexible hours, including weekends, evenings, and holidays. Performs related duties as assigned.

KNOWLEDGE and SKILLS:

- Knowledge of principles, procedures, and requirements used in developing and administering a coordinated community sports program adapted to the particular needs of the community, including youth and cultural activities.
- Knowledge of modern office procedures, methods, and computer equipment.
- Knowledge of business letter writing and basic report preparation.
- Knowledge of recent developments, current literature, and sources of information related to leisure services planning and administration.
- Knowledge of public relations principles and techniques.

- Ability to communicate clearly and concisely, both orally and in writing.
- Ability to stablish and maintain cooperative relationships with the general public and those contacted in the course of work.
- Ability to properly interpret and make decisions in accordance with laws, regulations, and policies.
- Ability to work well independently.
- Ability to work well in a fast-paced, often hectic environment, and meet established deadlines.
- Generate support and enthusiasm of leaders, participants, groups, and agencies in recreation programs.

MINIMUM QUALIFICATIONS: Two years of college-level coursework in recreation/sports management, social services or a related field and two (2) years of parks and recreation experience in sports.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license. May be exposed to extreme weather conditions, potential physical harm, infectious diseases, hazardous chemicals and/or dangerous machinery. May be required to work outside the traditional work schedule.

CITY OF BANNING, CALIFORNIA

Human Resources Technician

Job Code: 1230

FLSA **[ ] Exempt** **[x] Non-Exempt**

JOB DEFINITION: Under general supervision, provides responsible technical and office support for personnel and risk management activities and functions in a centralized personnel setting; performs related work as assigned.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES:

This is a technical support class, providing a variety of personnel and risk management support in clearly defined areas as well as performing complex and responsible office support work. This class is distinguished from the general office support classes by the technical knowledge of the personnel and risk management function required for successful performance of the work, including an above average degree of technological proficiency with modern computers.

- Prepares job announcements and advertising materials and places ads;
- Assists Analyst in preparing/administering written examinations, proctoring exams and oral boards;
- Scores examinations and prepares eligibility lists;
- Performs basic background and reference checks on new employees.
- Prepares and administers new hire orientation documents and assists them in completing necessary forms;
- Processes enrollments and changes in employee benefits, COBRA rights, maintains human resource records,
- Arrange for random drug testing of employees in accordance with city policies.
- Prepares employee evaluation forms for routing to department. Maintains a log of outstanding evaluations, and notifies department of any outstanding evaluations as needed.
- Respond to high volume of requests and inquiries from the general public, other agencies and other City departments regarding Human Resource Department functions, requiring the ability to easily interpret routine policies, procedures, rules with guidance from higher levels staff on difficult or complex interpretations; serves as ombudsman to employees on benefit questions; acts as liaison with benefit providers to solve problems; refers employees to the proper source for information;
- Performs a variety of responsible office support work such as preparation of confidential correspondence; prepares periodic and special reports regarding personnel activities utilizing complex software;
- Sets up and maintains workers comp and liability claim files; assembles and reviews pertinent information to assist in evaluation of claims; communicates with third-party administrators regarding claims activities;
- Arranges recovery and defense actions related to small claims subrogation efforts.
- Processes physical damage claims filed by City departments for reimbursement (create form for this)
- Coordinates with Information Services to maintain Human Resources Department web site. Converts documents into a format appropriate for the internet.
- Performs other duties as assigned or required.

(continued on reverse side)

CITY OF BANNING, CALIFORNIA

Human Resources Technician

Job Code: 1230

KNOWLEDGE and SKILLS:

Basic public personnel administration practices and terminology, particularly as related to recruitment, selection and compensation and benefits administration
Federal and State COBRA laws
Basic claims administration practices and terminology, particularly as related to public agency liability claims and workers compensation claims
Standard office practices and procedures, including filing and the use of office equipment
Use of Microsoft Word, Excel, Power Point & Access, separately and interactively
Business English, including spelling, grammar and punctuation
Business arithmetic
Basic functions and structure of a municipal government
Records management & retention policies, & document imaging software

Skill in:

Understanding, analyzing, interpreting, applying and explaining complex policies, procedures, laws and regulations
Preparing clear, concise and effective written materials
Maintaining accurate records and files
Researching and compiling information and preparing reports and recommendations
Exercising sound independent judgment within established guidelines
Establishing and maintaining effective working relationships with those contacted in the course of the work, including maintaining a high degree of confidentiality
Coordinating multiple concurrent projects

MINIMUM QUALIFICATIONS: Equivalent to graduation from high school and five years of progressively responsible personnel work or office administrative work in a public sector agency. A paralegal certificate or some college-level training is highly desirable. Must possess a valid California driver's license.

ADDITIONAL REQUIREMENTS: May be required to work outside the traditional work schedule.

EXHIBIT "D"

Permanent Salary Range Table

Salary Range	Minimum	Midpoint	Maximum	Salary Range	Minimum	Midpoint	Maximum
1	$10,712	$12,602	$14,492	59	$44,858	$52,774	$60,691
2	$10,979	$12,917	$14,855	60	$45,980	$54,094	$62,208
3	$11,254	$13,240	$15,226	61	$47,129	$55,446	$63,763
4	$11,535	$13,571	$15,607	62	$48,307	$56,832	$65,357
5	$11,824	$13,910	$15,997	63	$49,515	$58,253	$66,991
6	$12,119	$14,258	$16,397	64	$50,753	$59,709	$68,666
7	$12,422	$14,614	$16,807	65	$52,022	$61,202	$70,383
8	$12,733	$14,980	$17,227	66	$53,322	$62,732	$72,142
9	$13,051	$15,354	$17,657	67	$54,655	$64,301	$73,946
10	$13,377	$15,738	$18,099	68	$56,022	$65,908	$75,794
11	$13,712	$16,132	$18,551	69	$57,422	$67,556	$77,689
12	$14,055	$16,535	$19,015	70	$58,858	$69,245	$79,631
13	$14,406	$16,948	$19,491	71	$60,329	$70,976	$81,622
14	$14,766	$17,372	$19,978	72	$61,838	$72,750	$83,663
15	$15,135	$17,806	$20,477	73	$63,384	$74,569	$85,754
16	$15,514	$18,251	$20,989	74	$64,968	$76,433	$87,898
17	$15,902	$18,708	$21,514	75	$66,592	$78,344	$90,096
18	$16,299	$19,175	$22,052	76	$68,257	$80,303	$92,348
19	$16,707	$19,655	$22,603	77	$69,964	$82,310	$94,657
20	$17,124	$20,146	$23,168	78	$71,713	$84,368	$97,023
21	$17,552	$20,650	$23,747	79	$73,506	$86,477	$99,449
22	$17,991	$21,166	$24,341	80	$75,343	$88,639	$101,935
23	$18,441	$21,695	$24,950	81	$77,227	$90,855	$104,483
24	$18,902	$22,238	$25,573	82	$79,157	$93,126	$107,095
25	$19,375	$22,794	$26,213	83	$81,136	$95,455	$109,773
26	$19,859	$23,363	$26,868	84	$83,165	$97,841	$112,517
27	$20,355	$23,947	$27,540	85	$85,244	$100,287	$115,330
28	$20,864	$24,546	$28,228	86	$87,375	$102,794	$118,213
29	$21,386	$25,160	$28,934	87	$89,559	$105,364	$121,169
30	$21,921	$25,789	$29,657	88	$91,798	$107,998	$124,198
31	$22,469	$26,434	$30,399	89	$94,093	$110,698	$127,303
32	$23,030	$27,094	$31,159	90	$96,446	$113,465	$130,485
33	$23,605	$27,772	$31,938	91	$98,857	$116,302	$133,747
34	$24,196	$28,466	$32,736	92	$101,328	$119,210	$137,091
35	$24,801	$29,178	$33,554	93	$103,861	$122,190	$140,518
36	$25,421	$29,907	$34,393	94	$106,458	$125,245	$144,031
37	$26,057	$30,655	$35,253	95	$109,119	$128,376	$147,632
38	$26,708	$31,421	$36,134	96	$111,847	$131,585	$151,323
39	$27,376	$32,207	$37,038	97	$114,644	$134,875	$155,106
40	$28,060	$33,012	$37,964	98	$117,510	$138,247	$158,984
41	$28,762	$33,837	$38,913	99	$120,447	$141,703	$162,958
42	$29,481	$34,683	$39,886	100	$123,459	$145,245	$167,032
43	$30,218	$35,550	$40,883	101	$126,545	$148,876	$171,208
44	$30,973	$36,439	$41,905	102	$129,709	$152,598	$175,488
45	$31,747	$37,350	$42,952	103	$132,951	$156,413	$179,875
46	$32,541	$38,284	$44,026	104	$136,275	$160,324	$184,372
47	$33,355	$39,241	$45,127	105	$139,682	$164,332	$188,982
48	$34,189	$40,222	$46,255	106	$143,174	$168,440	$193,706
49	$35,043	$41,227	$47,411	107	$146,753	$172,651	$198,549
50	$35,919	$42,258	$48,597	108	$150,422	$176,967	$203,512
51	$36,817	$43,314	$49,812	109	$154,183	$181,392	$208,600
52	$37,738	$44,397	$51,057	110	$158,037	$185,926	$213,815
53	$38,681	$45,507	$52,333	111	$161,988	$190,574	$219,161
54	$39,648	$46,645	$53,642	112	$166,038	$195,339	$224,640
55	$40,839	$47,811	$54,983	113	$170,189	$200,222	$230,256
56	$41,655	$49,006	$56,357	114	$174,444	$205,228	$236,012
57	$42,697	$50,231	$57,766	115	$178,805	$210,359	$241,912
58	$43,764	$51,487	$59,210	116	$183,275	$215,617	$247,960

Midpoint
2.50%

Range Spread
35.00%

CITY COUNCIL AGENDA
REPORT OF DIRECTORS

DATE: **July 14, 2015**

TO: **Honorable Mayor and City Council**

FROM: **Alex Diaz, Chief of Police**

SUBJECT: **Animal Control Services Contract**

RECOMMENDATION: It is recommended that the City Council approve the "Agreement to Provide Animal Control Field Services" contract for FY16 (July 1, 2015 through June 30, 2016).

BACKGROUND: The City of Beaumont has provided Animal Control Field Services for the City of Banning since July 1, 2010. The contract is billed on a per-call basis, and initially entailed a cost of $30 per incident. In April 2012, the fee increased to $50 per-call. Our current contract is scheduled for renewal with an increase to $75 per-call. Based on prior year's activity, it is estimated that our annual costs might increase from $100,000 to a high of $170,000. The new contract (effective July 1st, 2015) is a month-to-month contract.

DISCUSSION: The month-to-month contract stipulation allows our City the ability to look at other options in the future, including the creation of our own Animal Control Services department. Staff will look for options on specific programs that will be beneficial to the care of domestic animals within our City, mindful of the economic impact the implementation of said program could create.

FISCAL DATA: N/A

RECOMMENDED BY:

Dean Martin
Interim City Manager

PREPARED BY:

Alex Diaz
Chief of Police

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AGREEMENT TO PROVIDE ANIMAL CONTROL FIELD SERVICES

THIS AGREEMENT is made and effective July 1, 2015, by and between the City of Banning ("City") and the City of Beaumont ("Beaumont"). City and Beaumont are at times hereinafter collectively referred to as "Parties" or individually as the "Party".

RECITALS

A. Beaumont has the personnel, experience and equipment to provide animal control field services under the direction of Beaumont's Chief of Police.

B. City has asked Beaumont to provide it with animal control field services. It is the purpose of this Agreement to set forth the terms and conditions by which Beaumont will do so.

AGREEMENT

NOW, THEREFORE, the consideration hereinafter set forth and subject to and upon the terms, covenants and conditions of this Agreement, the Parties agree as follows:

1. **Scope of Basic Animal Services.** Beaumont shall provide the following Basic Animal Services:

a. If available, a trained animal control field service officer on duty ("ACO") seven (7) days a week, between the hours of 7 a.m. and 5 p.m., which ACO shall be equipped with a motor vehicle suitable for the impoundment of small animals, including basic tools required to perform Basic Animal Services. If such ACO is not available, then City shall be responsible for responding to calls for service;

b. Beaumont will provide City 24-hour access to Beaumont temporary kennels;

c. Beaumont will provide a 24-hour Call Center to which City residents may call for animal control field services;

d. Beaumont will provide access for City residents to periodic animal licensing clinics in City of Beaumont;

e. Beaumont will directly bill fees and charges to City recipients of animal control services; and

f. Beaumont will provide recordkeeping services, including animal licenses.

2. **Afterhours Emergency Services.** City may request emergency services between the hours of 5 p.m. and 7 a.m. from Beaumont. Determination of what constitutes an "emergency" shall be made by Beaumont based on the specific facts of the incident and the need for an ACO.

3. **Compensation.** For each animal control service call-out, City shall pay to Beaumont the sum of $75.00 per call-out, plus any actual costs incurred including, but not limited to, the impoundment of large or wild animals, tranquilizers, veterinary services, shelter services, additional officers, animal cruelty investigations, and any additional services not included within Basic Animal Services, billed monthly.

4. **Credit for Fees and Charges.** Beaumont shall attempt to collect from City recipients of animal control services such fees and charges as are lawfully imposed for the impoundment, boarding, and adoption of animals. When collected, Beaumont shall remit the collected amount to City monthly.

5. **Term of Agreement.** The initial term of this Agreement shall be for one (1) year with automatic one year renewals for two additional years unless terminated sooner as provided in section 6.

6. **Termination.** City or Beaumont may terminate this Agreement at any time, upon 30-days prior written notice; provided, however, that City shall pay for all services rendered to it prior to the date of termination, and Beaumont shall reimburse City for any fees and charges collected from recipients of animal control services rendered prior to the termination date but collected thereafter.

7. **City Liaison.** In order to ensure smooth operation of the services provided hereunder, City and Beaumont each agree to appoint a representative who shall be responsible for coordinating the implementation of this Agreement.

Beaumont Appointment: Beaumont appoints the Chief of Police as its representative. The chief may be contacted as follows:

Name: Frank Coe, Chief of Police
Beaumont Police Department
550 East 6th Street
Beaumont, CA 92223
Telephone: 951-769-8500
Fax: 951-769-8508
E-mail: fcoe@beaumontpd.org

City Appointment: City appoints City Manager as its representative. City Manager may be contacted as follows:

Name: Alex Diaz, Chief of Police
Banning Police Department
125 E. Ramsey Street
Banning, CA 92220
Telephone: 951-849-1194
Fax: 951-922-0039
E-mail: adiaz@ci.banning.ca.us

8. **Notices.** Any notice, payment, statement, or demand required or permitted to be given hereunder by either Party to the other shall be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the Parties at the addresses appearing in section 7 above but each Party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

9. **Indemnification.** Nothing in the provisions of this Agreement is intended to create duties or obligations to, or rights in third parties not party to this Agreement, or affect the legal liability of either Party to Agreement, by imposing any standard of care respecting the regulation and enforcement of laws regarding animals different from the standard of care imposed by law. It is understood and agreed that neither City, nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Beaumont under or in connection with any work, authority or jurisdiction delegated to Beaumont under this Agreement. It is also understood and agreed that pursuant to Government Code 895.4, Beaumont shall defend, indemnify and save harmless City, all officers, and employees from all claims, suits or actions of every name, kind, and description brought forth or on account of injuries or death of any person or damage to property resulting from anything done or omitted to be done by Beaumont under this Agreement except as otherwise provided by Statute. It is understood and agreed that neither Beaumont nor any officer or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority or jurisdiction delegated to City under this Agreement. It is also understood and agreed that pursuant to Government Code Section 895.4, City shall defend, indemnify and save harmless Beaumont, all officers and employees from all claims, suits or actions of every name, kind and description brought forth on account of injuries or death of any person or damage to property resulting from anything done or omitted to be done by City under connection with any work, authority or jurisdiction delegated to City under this Agreement except as otherwise provided by Statute.

10. **Status of the Parties' Officers/Employees/Agents.** Neither Party's officers, employees, agents, partners, other contractors or subcontractors shall be deemed to be employees of the other Party at any time. Nothing in this Agreement shall be construed as creating a civil service employer- employee relationship or a joint venture relationship. No officer, employee, agent, partner, other contractor or subcontractor of the other Party shall be eligible for membership in or any benefits from any plan for hospital, surgical, or medical insurance, or for membership in any retirement program, paid vacation, paid sick leave, other leave, with or without pay, collective bargaining rights, grievance procedures, or any other benefits which inures to or accrues to an employee of the other Party. The only performance and rights due the other Party are those specifically stated in this Agreement.

11. **Governing Law and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Additionally, this Agreement has been formed and shall be performed in Riverside County; the venue for any legal action on the Agreement shall be in Riverside County.

12. **Entire Agreement**. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without the prior written agreement of the Parties.

13. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be

considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

14. **Successors and Assigns.** This Agreement shall be binding upon and insure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

15. **Captions.** The captions to the various clauses of this Agreement are for information purposes only and shall not alter the substance of the terms and conditions of this Agreement.

16. **Authorization.** Each of the Parties represents and warrants to the other that this Agreement has been duly authorized by all necessary corporate or governmental action on the part of the representing Party and that this Agreement is fully binding on such Party.

17. **Amendments to this Agreement.** From time-to-time, City and Beaumont may determine that the provision of services hereunder could be improved, made more efficient or expanded. Therefore, the Parties agree to meet and confer at the request of either Party and to negotiate in good faith such reasonable amendments to this Agreement as the Parties deem appropriate.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following authorized officials.

CITY OF BEAUMONT

By _____
BRENDA KNIGHT, Mayor

ATTEST:

By _____
JULIO MARTINEZ, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF CALIMESA

By _____
DEBORAH FRANKLIN, Mayor

ATTEST:

By _____
MARIE A. CALDERON, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **CITY COUNCIL**

FROM: **Dean Martin, Interim City Manager**

SUBJECT: **City Manager Signing Authority**

RECOMMENDATION:

1. **Require a monthly written report to the City Council of the contracts signed under the sole authority of the City Manager.**
2. **Eliminate the provision within the City's standard professional serviee contracts that allow for exceedance of Council approved contract amounts.**
3. **Require City Couneil approval for contracts that are renewed on an annual basis which in the aggregate will exceed $25,000.**

JUSTIFICATION: Codified in the City's Municipal Code is the authority for the City Manager to execute contracts under his or her sole authority for $25,000 or less. However, no provision exists that requires regular reporting to City Council of the contracts executed under this authority. Additionally, there are ambiguities in the existing authority that require clarification to ensure appropriate accountability and to minimize the potential for abuse.

BACKGROUND: Municipal Code Section 3.24, "Purchasing System", governs the City Manager's authority to sign contracts. Section 3.24.040, "Types of contracts", part B, states that "informal letter contracts shall be used when the purchasing officer (defined in Section 3.24.020, Definitions, as the city manager or his or her designees(s)) determines that due to a lack of complexity, risk, or monetary value, a purchase of services need not include the detailed procedural and substantive protections of the city's interests". Section 3.24.070, Formal bid procedures, part A.6, Acceptance of Formal Bid, states that "contracts in the amount of $25,000 or less will be awarded by the City Manager".

Contracts for professional services are governed by Section 3.24.090, "Professional services purchasing procedures", part A, which states in part "professional services contracts of twenty-five thousand dollars or less shall be awarded by the city manager, upon recommendation of the director of the department responsible for the project." Part C of that same section, states in part "in the event that it is determined by the city manager, that it would be in the best interest of the city for services to be provided by a specific consultant, a contract may be awarded based on negotiations with the specific consultant. Contracts in the amount of twenty-five thousand or less will be awarded by the city manager". From the foregoing, the authority of the City

Manager to execute contracts less than $25,000 is codified in the City's Municipal Code. However, the Code does not include a reporting requirement.

In addition to the Municipal Code, the City's standard professional services contract in Section 1.8, "Additional Services", grants the City Manager the authority to exceed the original contract amount by the lesser of 10% or $25,000, or to extend the maturity date up to 180 days.

Establishment of a policy that requires monthly reporting of the contracts executed under the City Manager's authority would result in greater transparency. Additionally, deletion of the contractual authority granted in the standardized contract to exceed the Council approved contract amount would lead to greater accountability. Finally, it would be good to clarify that a multi-year contract (including contracts that are renewed from year to year) requires Council approval, even if the annual amount is $25,000 or less, if the aggregate amount of the contracted services will exceed $25,000. For example, there are a number of maintenance type contracts that annually are less than $25,000, but are renewed each year. Since the service continues from year to year and the aggregate amount is more than $25,000 over an extended period of time, Council action would be advisable as it reduces the potential for abuse.

FISCAL DATA: No fiscal impact

RECOMMENDED BY:

Dean Martin
Interim City Manager

CITY COUNCIL AGENDA

REPORT OF OFFICERS

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Heidi Meraz, Community Services Director**

SUBJECT: **RESOLUTION NO. 2015-64 "AUTHORIZING THE PURCHASE OF TWO (2) ELDORADO NATIONAL CNG POWERED EZ-RIDER II BUSES FROM CREATIVE BUS SALES UTILIZING THE CALIFORNIA ASSOCIATION FOR COORDINATED TRANSPORTATION (CALACT) COMPETITIVE BID AWARD FOR A TOTAL OF $888,681.06"**

RECOMMENDATION: That the Council authorizes the purchase of TWO (2) El Dorado National CNG powered EZ-Rider II buses from Creative Bus Sales utilizing the California Association for Coordinated Transportation (CalAct) competitive bid award for a total of $888,681.06.

BACKGROUND: Due to an aging fleet, additional buses are needed to maintain existing service of our fixed-route bus system. Funds are available to cover the purchase of the two (2) buses and all the necessary options via State Transit Assistance (STA) as well as the California Department of Transportation through the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Program. The purchase of said buses will provide increased reliability an passenger comfort, as well as replace existing buses that are beyond their useful life and only being kept in service to meet demand.

CalAct conducts Caltrans approved vehicle procurements as a competitive process for many various types and sizes of transit vehicles to assist the purchase of equipment by small and medium public transit agencies. By utilizing this cooperative process to purchase transit vehicles, we are receiving the lowest possible pricing.

FISCAL DATA: Funding for this purchase is available in Transit Fund 610-5800-434-90-51. There will be no impact to the General Fund.

RECOMMENDED BY:

Heidi Meraz
Community Services Director

REVIEWED AND APPROVED BY:

Dean Martin, Interim City Manager/
Interim Administrative Services Director

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RESOLUTION NO. 2015-64

RESOLUTION NO. 2015-64 "AUTHORIZING THE PURCHASE OF TWO (2) ELDORADO NATIONAL CNG POWERED EZ-RIDER II BUSES FROM CREATIVE BUS SALES UTILIZING THE CALIFORNIA ASSOCIATION FOR COORDINATED TRANSPORTATION (CALACT) COMPETITIVE BID AWARD FOR A TOTAL OF $888,681.06"

WHEREAS, funding has been made available for the capital expenses through State Transit Assistance (STA), as well as by the California Department of Transportation through the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Program; and

WHEREAS, two buses in the Banning Pass Transit Fleet have exceeded their useful lives; and

WHEREAS, Banning Pass transit desires to purchase two (2) EZ-Rider II buses that will meet the needs of the department; and

WHEREAS, Creative Bus Sales has prepared a proposal through the CalAct Purchasing Cooperative; and

WHEREAS, utilizing the CalAct competitive bid award is the most fiscally responsible means for acquiring the above mentioned EZ-Rider II buses,

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

SECTION 1. The City Council adopts Resolution No. 2015-64, Authorizing the purchase of two (2) El Dorado National CNG Powered EZ-Rider II Buses from Creative Bus Sale Utilizing the California Association for Coordinated Transportation (CALACT) Competitive Bid Award for a total $888,681.06.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, 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. 2014-64, was duly adopted by the City Council of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-67, "Approving the Inerease of Hangar Rents and Access Fees at the Banning Mnnicipal Airport and Amending Resolution No. 2005-44 and Resolution No. 2006-114"**

RECOMMENDATION: Adopt Resolution No. 2015-67, "Approving the Increase of Hangar Rents and Access Fees at the Banning Municipal Airport and Amending Resolution No. 2005-44 and Resolution No. 2006-114."

JUSTIFICATION: The proposed increase will generate additional revenues to provide funding for the general operations and maintenance of the Banning Municipal Airport.

BACKGROUND: The current Airport Fee Schedule was approved on November 22, 2005 under Resolution No. 2005-44. Currently, the airport operates independently with revenues generated by hangar and tie-down rental fees, fuel sales and annual operation grants from the Department of Transportation. The revenues are used for general operations and to provide grant matching funds as required by the Federal Aviation Administration ("FAA") for capital improvement projects.

Per Section 7 of the Agreement, attached as Exhibit "A", with a City provided 30 day notice, rates can be increased once per calendar year at the sole discretion of the City. As a result, staff recommends an increase in fees to be implemented over a period of five (5) years with the rates increasing 5% in year one beginning September 1, 2015 with the implementation of automatic rate increases for the following four year period beginning July 1st of each year commencing in 2016, 2017, 2018 and 2019.

On July 6, 2015, the proposed rate increase was presented to the Budget and Finance Committee ("Committee"). Consequently, the Committee made the following recommendations in addition to the initial 5% rate increase effective September 1, 2015:

- The rate increase for years 2016, 2017, 2018 and 2019 will be automatic rate increases equal to the average of the monthly percentage increases in the Consumer Price Index ("CPI"), All Urban Consumers, for the Los Angeles/Orange County/Riverside Area as published by the United States Department of Labor, Bureau of Labor Statistics for the March through February period or reflect a 2% increase, whichever is higher; and

- Currently the City pays for all water and electric services in connection with use of the hangars. The Committee recommends establishing a fair and reasonable manner in which

to bill the hangar tenants for the water and electric charges associated with the use of the hangars.

Current rates and proposed rates are attached as Exhibit "B" and will be effective September 1, 2015. As a comparison, surrounding airport hangar rates are attached as Exhibit "C".

FISCAL DATA: The proposed 5% rate increase will generate additional revenues in an approximate amount of $4,050.00 for Fiscal Year 2015/2016.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim City Manager/
Administrative Services Director

Attachments:

1. Exhibit "A"- Hangar Rental Agreement Template
2. Exhibit "B" – Current Rates and Proposed Rates
3. Exhibit "C" –Surrounding Area Hangar Rate Comparison

RESOLUTION NO. 2015-67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE INCREASE OF HANGAR RENTS AND ACCESS FEES AT THE BANNING MUNICIPAL AIRPORT AND AMENDING RESOLUTION NO. 2006-114 AND RESOLUTION NO. 2005-44

WHEREAS, Resolution No. 2006-114 revised the Fee and Service Charge Revenue/Cost Comparison System in conformance with Ordinance Nos. 908 and 912, amending Resolution Nos. 1993-30, 1995-46, 2000-70, 2004-64 and 2005-34; and

WHEREAS, the airport hangar fees and other airport fees were adjusted with the approval of Resolution No. 2005-44; and

WHEREAS, in order to meet current operational demands, it is essential for the City to increase the rates as allowed per the Airport Hangar Use Agreements; and

WHEREAS, per Section 7 of the agreements, as shown in Exhibit "A" with a City provided 30 day notice, rates can be increased once per calendar year at the sole discretion of the City;

WHEREAS, an increase in fees will be implemented over a period of five (5) years with the rates increasing 5% in year one beginning September 1, 2015 as shown in attached Exhibit "B"; and

WHEREAS, the rate increase for years 2016, 2017, 2018 and 2019 will be automatic rate increases equal to the average of the monthly percentage increases in the Consumer Price Index ("CPI"), All Urban Consumers, for the Los Angeles/Orange County/Riverside Area as published by the United States Department of Labor, Bureau of Labor Statistics for the March through February period or reflect a 2% increase, whichever is higher; and

WHEREAS, staff will establish a fair and reasonable manner in which to bill the hangar tenants for the water and electric charges associated with the use of the hangars which is currently paid for by the City.

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

SECTION 1. The hangar rents and access fees at Banning Municipal Airport are hereby established per the attached Exhibit "A".

SECTION 2. The rates will become effective the first year on September 1, 2015 with the subsequent years being increased on July 1st of 2016, 2017, 2018 and 2019.

PASSED, ADOPTED AND APPROVED this 14th day of July, 2015.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon,
City Clerk of the 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. 2015-67, was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

ATTACHMENT 1

EXHIBIT "A" - BANNING AIRPORT HANGAR USE AGREEMENT

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AIRPORT HANGAR USE AGREEMENT

1. PARTIES. This Agreement (hereinafter "the Agreement") is made between the City of Banning (hereinafter "CITY") and:

_____ **Te**nant's Name (hereinafter "TENANT")

_____ Tenant's Street Address/P.O. Box

_____ City/State/Zip Code

_____ Tenant's Telephone Number

TENANT hereby agrees that he/she may be given Notice, as provided for herein, at the above-stated address.

2. PREMISES. City hereby leases to TENANT the following Aircraft Hangar at Banning Municipal Airport, in Banning, California:

_____ Hangar Number (hereinafter "Premises").

TENANT hereby acknowledges that he/she has inspected the Premises and accepts said Premises "as is" and in its present condition.

3. USE. TENANT shall use the Premises for the storage of an aircraft identified as follows:

_____ Aircraft Make

_____ Aircraft Model

_____ Aircraft registration number

In addition to the above-described aircraft, TENANT may also store such supporting equipment as necessary for the operation and/or maintenance of said aircraft. TENANT shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or nuisance, or causes damage to the Premises or neighboring properties. TENANT shall not permit anything to be done in or about the Premises which will in any way obstruct, interfere, injure, annoy, or disturb the rights of other tenants, other occupants or users of the Banning Municipal Airport or employees and/or agents of CITY. All uses of the Premises that are not expressly granted by this Agreement are not permitted without prior written consent of CITY.

4. TERM. TENANT's occupancy and use of the Premises shall begin on the following date:

_____ hereinafter referred to as "Commencement Date")

The term of the TENANT's occupancy of the Premises shall be on a month-to-month basis. The term shall continue on a month-to-month basis until the agreement is terminated by one of the parties as provided for herein.

5. RENT. TENANT agrees to pay to CITY as rent, the sum of $ ____( )__, or demand, on the first day of each month. Should this agreement commence on other than the first day of a calendar month, the monthly rent for the first month shall be the full amount expressed above and the rent for the second month shall be prorated based on the number of days remaining in the month on which TENANT first commences the Agreement.

6. LATE PAYMENT. If the monthly rent is not received by the tenth day after it is due, TENANT shall pay to CITY a late payment charge equal to ten percent (10%) of the outstanding monthly rent. TENANT and CITY agree CITY will sustain damage on account of late payment of rent, including, but not limited to, administrative, processing, accounting management expenses and costs, but that it will be impracticable and extremely difficult to specify the actual amount of such damage. The parties agree that this late charge represents a fair and reasonable estimate of the damages that CITY will incur by reason of TENANT's late payment of rent. TENANT bears the risk of loss or delay of any payment made by mail. Acceptance of a late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount, or prevent CITY from exercising any of the other rights and remedies available to CITY pursuant to this lease or under any applicable law.

7. ADJUSTMENTS TO MONTHLY RENT. The monthly rent established in paragraph 5 herein, shall continue until changed by CITY as provided for herein. No more than once each calendar year, CITY shall have the right to adjust the amount of the monthly rent. The amount of monthly rent, as adjusted, shall be determined at the sole discretion of CITY, or its designated representative. The adjusted rent amount shall be deemed effective upon thirty (30) days written notice to TENANT at the address set forth in paragraph 1, above. Notice shall be deemed effective upon CITY depositing same with the U.S. Postal Service with prepaid, first-class postage affixed.

8. SECURITY DEPOSIT. Prior to the Commencement Date of this agreement, TENANT shall pay to CITY a Security Deposit in the amount of $ ( ). The Security Deposit shall secure TENANT's faithful performance of TENANT's obligations under the agreement. If TENANT fails to pay the Monthly Rent amount or any other amount which TENANT is obligated to pay pursuant to this agreement or defaults on the performance of any of the terms, provisions, covenants, and conditions contained in the agreement, CITY may withdraw the Security Deposit for the payment of any amount in default or for any other sum which CITY may spend or be required to spend by reason of TENANT's default. The Security Deposit or any balance of the Security Deposit remaining shall be returned to TENANT at the termination of the agreement, less any accrued or accruing interest, and less any amount expended by CITY to repair damage or deterioration left un-repaired by TENANT.

9. INSURANCE. TENANT, at his/her own expense, shall procure and maintain during the duration this Agreement, the following insurance with the following limits:

(i) General Liability Insurance, one million dollars ($1,000,000);
(ii) Property Damage Insurance, one million dollars ($1,000,000);

(A) All insurance required pursuant to this Agreement shall be with carriers duly licensed to transact business in the State of California.

(B) The policies shall contain additional insured endorsements naming CITY and its officers, employees, agents, and volunteers, as additional insureds with respect to all claims alleged to arise out of or arising out of TENANT's use or occupancy of the Premises. The policy shall provide CITY with thirty (30) days written notice of cancellation. CITY shall have no liability for any premiums charged for such coverage(s). The inclusion of CITY as an additional named insured is not intended to and shall not make CITY a partner or joint venturer with TENANT in TENANT's operations at Airport.

(C) TENANT shall provide CITY with certificates of insurance and additional insured endorsements as evidence of compliance with this provision. TENANT may not occupy the Premises until evidence of insurance, satisfactory to CITY, is provided to CITY.

(D) All insurance required as part of this Agreement must be maintained in force at all times by TENANT. Failure to maintain said insurance, due to expiration, cancellation, or for any other reason shall be deemed a material breach of the agreement and may be cause for CITY to direct TENANT to immediately suspend all activities at the Airport. Failure to reinstate said insurance within ten (10) days of TENANT's receipt of CITY's notice shall be cause for termination and forfeiture of this Agreement.

10. INDEMNITY. Except to the extent that indemnification is prohibited by law, TENANT shall defend, with counsel approved by CITY, indemnify and hold harmless, CITY, its authorized officers, agents, volunteers and employees, from and against any and all claims, actions, losses, damages, costs, expenses, and/or liability alleged to arise out of or arising out of this Agreement or from TENANT's use or occupancy of the Premises, including the acts, errors or omissions of any agent, contractor, employee or invitee of TENANT and for any costs or expenses incurred by the CITY on account of any such claim. TENANT's obligation to defend and indemnify CITY as provided herein shall apply regardless of whether said claim(s) also allege the acts or omissions of CITY caused or contributed to the cause of the subject incident. TENANT shall not be required to defend or indemnify CITY for those claims arising out of the sole negligence of CITY.

(A) The expiration or termination of this Agreement and or the termination of TENANT's right to possession shall not relieve TENANT from liability under any indemnity provisions of this agreement as to matters occurring or accruing during the Term or by reason of TENANT's occupancy of the Premises.

11. TAXES, ASSESSMENTS, AND LICENSES. TENANT shall pay before delinquency any and all property taxes, assessments, fees, or charges, including but not limited to possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to TENANT and located in or about the Premises. TENANT recognizes and understands that this agreement may create a possessory interest subject to property taxation and that the TENANT is obligated to pay and discharge such taxes. TENANT shall also pay all license or permit fees necessary or required by law for the conduct of TENANT's operation.

12. IMPROVEMENTS. No alterations, modifications, improvements or the installation of fixtures of any kind whatsoever in or about the Premises shall be undertaken by TENANT, unless TENANT has first obtained the written approval from CITY. All alterations, modifications improvements or installation shall be completed in: (i) accordance with the plans and specifications approved by CITY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, any and all applicable permits and the Master Plan for the Airport. TENANT shall provide CITY with not less than thirty (30) day's notice prior to the commencement of any work in, on or about the Premises so that CITY, at CITY's option, may post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed contractors, which contractors shall be acceptable to CITY. Prior to commencing work, Tenant's contractor(s) shall provide written evidence that said contractor(s) has complied with all insurance requirements contained in Paragraph 9, herein.

13. MAINTENANCE OF PREMISES. TENANT shall, at TENANT's sole expense and at all times, keep the Premises and every part thereof in good order, condition and repair. TENANT shall deposit all non-hazardous waste, including rubbish garbage and debris in receptacles provided by CITY in the vicinity of the Premises. TENANT shall remove all hazardous materials, including but not limited to, used crank case oils, hydraulic fluids, engine coolants, etc. from the Airport Premises and dispose of said hazardous materials in a manner consistent with the regulations set out at paragraph 16.

(A) Should TENANT fail to perform any of TENANT's maintenance obligations, CITY may enter upon the Premises, after ten (10) days prior written notice to TENANT (except in the case of an emergency, in which case no notice shall be required), and perform such obligations on TENANT's behalf. If CITY performs any of TENANT's maintenance obligations, such maintenance shall be at TENANT's sole cost and expense and TENANT shall reimburse CITY for all costs incurred by CITY within ten (10) days of CITY's demand. TENANT acknowledges that the Premises are located at an airport and that the control of potential damage to aircraft utilizing Airport is of utmost importance, TENANT, in performing TENANT's maintenance obligations, shall maintain the Premises and implement such maintenance procedures as are required to eliminate the risk of Foreign Object damage.

(B) CITY shall maintain all access routes to the Premises and CITY's mains and main sewer lines. CITY shall also be responsible for maintaining the Premises in a structurally sound and waterproof condition.

14. SURRENDER AND RESTORATION OF THE PREMISES. TENANT shall surrender the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not

include any damage or deterioration that could have been prevented by good maintenance practice or by TENANT performing all of its obligations under this agreement. TENANT's obligation shall include the repair of any damage occasioned by the installation, maintenance or removal of TENANT's fixtures, furnishings, equipment, by or for TENANT, and the removal, replacement, or remediation of any soil, material or ground water contamination by TENANT, all as may then be required by any applicable law, ordinance or regulation and/or good practice.

15. HAZARDOUS MATERIALS. During the term of this agreement and any extensions thereof, TENANT shall not violate any federal, state or local law, or ordinance or regulation, relating to industrial hygiene or to the environmental condition on, under or about the leased Premises including, but not limited to, soil and groundwater conditions. TENANT is responsible for obtaining any permit or registration required for activities performed on the Premises including, but not limited to, any permit or registration required for handling hazardous materials. Further, TENANT, its successors, assigns and sublessee shall not handle, use, generate, manufacture, produce, store or dispose of on, under or about the Premises or transport to or from the Premises any hazardous material, hazardous substance, or hazardous waste in a manner inconsistent with regulations governing such materials. For the purpose of this agreement, hazardous materials shall include, but not be limited to, those materials defined as "hazardous substances," "hazardous materials," "hazardous wastes," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; and those substances defined in the California Health and Safety Code as "hazardous wastes" (Section 25117), or "hazardous substances" (Section 25316).

16. UTILITIES. CITY shall provide and pay for all water and electrical services in connection with the Premises. TENANT shall provide and pay for all other utilities that it may require in connection with the Premises.

17. ASSIGNMENT AND SUBLETTING. TENANT shall not assign, sublet, mortgage, hypothecate or otherwise transfer in any manner any of its rights, duties or obligations hereunder to any person or entity without the written consent of CITY.

18. CITY'S ENTRY ON PREMISE. CITY and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes: (1) to determine whether the Premises are in good condition and whether TENANT is complying with its obligations under this agreement; (2) to do any necessary maintenance and to make any restoration to the Premises that CITY has the right or obligation to perform; (3) to serve, post, or keep posted any notices required or allowed under the provisions of this agreement; (4) to carry-out whatever action is necessary to lease or rent the Premises during the last month of the term or during any period while TENANT is in default, including but not limited to, posting "for rent" signs, and showing the Premises to brokers, agents, prospective tenants, or other persons interested in the Premises.

19. ERECTION OF SIGNS. TENANT may not erect signs on the external portions of the Premises without the written permission of CITY.

20. INGRESS AND EGRESS. TENANT shall be permitted ingress and egress to and from the Premises through established gates and/or over such routes as are designated by the Airport Manager. CITY, at its sole discretion, shall determine and may from time to time change the routes of surface ingress and egress to the Premises, but agrees to locate such routes as conveniently as may be done for airport tenants and users, having in mind the reasonable requirements of CITY with respect to the operation of the Airport. CITY also reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of the TENANT and without interference or hindrance.

21. DAMAGE OR DESTRUCTION OF PREMISES. Upon thirty (30) days written notice from CITY, TENANT shall repair or replace any damage to the Premises or any other portion of the Airport caused by TENANT. If TENANT fails to repair or replace said damage within thirty (30) days, CITY reserves the right to draw from the Security Deposit, to pay for repairs to the Premises caused by TENANT. TENANT shall replenish the amount used by CITY within ten (10) days of TENANT's receipt of written notice of the same from CITY.

22. SPECIAL USE COVENANTS AND RESTRICTIONS. TENANT, by accepting this agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and/or taking off of aircraft from the Airport, or any part therein or otherwise constitute a hazard to navigation on the use of the Airport by aircraft as determined by the CITY. TENANT shall not use the Premises or store any personal property therein or thereon, for the purpose of conducting any activity upon or within the airport Premises for which any form of remuneration is expected or received, unless between CITY and TENANT.

(A) TENANT shall not fuel or defuel an aircraft inside or upon the Premises or within twenty five (25) feet of any hangar. TENANT shall not store any highly volatile materials, including but not limited to, paint products, aviation fuels or those hazardous materials described in paragraph 16 herein within or outside of the Premises.

(B) TENANT agrees to conform to all applicable federal, state and county rules and regulations and to further conform to any and all requirements or regulations of the Federal Aviation Administration as may be applicable to the TENANT and the TENANT's use of the Premises.

(C) This agreement shall be subordinate to the provisions and requirements of any existing or future agreement between CITY and the United States relative to the development, operation or maintenance of the Airport.

(D) TENANT agrees that before commencing any use of the Premises, TENANT will acquire, provide and maintain those notices, certifications, licenses, approvals and permits required by any federal, state, or local jurisdiction or authority for carrying out the purpose of this agreement. Failure to comply with this provision will constitute a default and right to terminate by CITY under paragraph 24, DEFAULT AND RIGHT TO TERMINATE of this agreement.

(E) TENANT agrees to abide by, keep and observe all minimum standards, reasonable rules and regulations which CITY may make from time to time for the management, safety, care, cleanliness of the grounds, parking

areas, and the preservation of good order, as well as for the convenience of other tenants, occupants, or visitors to the Airport.

23. RIGHT TO TERMINATE AND DEFAULT. This Agreement shall remain in effect, and the term shall continue on a month-to-month basis until one of foregoing occurs:

(A) One of the parties hereto serves a thirty (30) day written notice on the other indicating intent to terminate the Agreement upon expiration of such period.

(B) TENANT is in default of any provision of this Agreement. The term "Default" as used in this paragraph shall mean any of the following:

(i) TENANT's failure to comply with the limitations on use of the Premises;

(ii) TENANT's vacating of the Premises without evident intention to reoccupy; an abandonment of the Premises, or written notice of TENANT's intent to abandon Premises;

(iii) TENANT's failure to pay the Rent, or any other monetary payment required to be made by TENANT hereunder following ten (10) days written notice thereof by CITY to TENANT;

(iv) TENANT's failure to provide CITY with evidence of insurance required under this Agreement, following ten (10) days written notice thereof by CITY to TENANT,

(v) The filing by TENANT of a petition for voluntary or involuntary bankruptcy, or the making by TENANT of an assignment for the benefit of creditors, or the appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this agreement,

(vi) TENANT's failure to perform any of its duties or obligations, not specifically mentioned in this paragraph but required under this Agreement, following ten (10) days written notice from CITY to TENANT.

(C) In the event of a default by TENANT, CITY may terminate TENANT's right of possession of the Premises by any lawful means, in which case this Agreement and the term shall terminate and TENANT shall immediately surrender possession of the Premises to CITY pursuant to paragraph 14. CITY shall be entitled to recover from TENANT the amount of unpaid rent accrued at the time of termination of this agreement as well as the reasonable loss of rent and other damages incurred by CITY for the reasonable time during which CITY was unable to rent the Premise. Nothing in this agreement shall prevent or preclude CITY from pursuing any other remedy now or hereafter available to CITY under the laws of the State of California.

(D) Immediately upon termination of this Agreement, TENANT agrees to remove all of TENANT's personal property, machinery or fixtures from the Premises. If TENANT fails to remove any such personal property, CITY shall have the right to remove and place the same in storage at the expense of TENANT and without liability to CITY for losses. Following ten (10) days written notice to TENANT, CITY may sell all or any part of said personal property. CITY shall apply the proceeds of any such sale to the amounts due from TENANT under this

agreement and to any expense incidental to said sale. Any remainder arising from said sale shall be refunded to TENANT.

(E) CITY's receipt of any rent or of any other sum of money paid by TENANT after the termination of this Agreement, or after the giving by CITY of any notice to effect such termination, shall not waive the Default, reinstate, continue or extend the Term of this agreement, or destroy or impair the efficacy of CITY's notice of termination, unless otherwise agreed in writing by CITY.

24. HOLDING OVER. If the TENANT continues in possession of the Premises after the expiration of the Term or after any termination of this Agreement prior to the expiration of the Term, and if said occupancy is with the consent of CITY, then TENANT shall be deemed to be holding the Premises on a month-to-month tenancy subject to all the provisions of this agreement. TENANT shall be responsible for the monthly rent during the period of holding pursuant to paragraphs 5, 6, and 7 of this Agreement.

25. CHOICE OF LAW. All disputes regarding or resulting from this Agreement shall be determined pursuant to and in accordance with the laws of the State of California.

26. VENUE. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in Riverside County, California. The parties agree that any action at law or in equity brought by either of the parties to this Agreement for the purpose of enforcing a right or rights provided hereunder shall be tried in a court of competent jurisdiction in the County of Riverside, State of California. Each party hereby waives any law or rule of court which would allow the parties to request or demand a change of venue. If any action or claim concerning this agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to Riverside County.

27. ATTORNEY'S FEES AND COSTS. In any action claim or proceeding arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

28. PARAGRAPH HEADINGS. The paragraph headings herein are for the convenience of the parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

29. NOTICES. TENANT hereby agrees that any notice, demand, request, consent, or communication that either party desires or is required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally or sent by prepaid, first-class mail to the other party at the following addresses:

CITY:
Airport Manager
City of Banning
P.O. Box 998
Banning CA 92220

TENANT:
(Address set forth in Paragraph 1)

(A) Either party may change its address by notifying the other party of the change of address.

30. SEVERABILITY. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

31. BINDING ON SUCCESSORS. TENANT, its assigns, and successors in interest shall be bound by all of the terms and conditions contained in this Agreement, and all of the parties thereto shall be jointly and severally liable hereunder.

32. INTERPRETATIONS. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

33. ENTIRE AGREEMENT. This Agreement constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this Agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

34. MODIFICATION. No waiver, modification or amendment of any term, condition, or provision of this Agreement shall be valid or shall have any force or effect unless made in writing and signed by all of the parties hereto. This provision shall not apply to adjustments to monthly rent made by CITY pursuant to paragraph 7 as said adjustments to monthly rent are contemplated by this agreement and as such do not constitute a modification.

35. MATERIAL MISREPRESENTATION. If during the course of the administration of this Agreement, CITY determines that the TENANT has made a material misstatement or misrepresentation, or that material inaccurate information has been provided to CITY, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, CITY is entitled to pursue any available legal remedies.

36. WAIVER OF PERFORMANCE. Failure of CITY to enforce any of the terms and conditions of this Agreement shall not be construed as a waiver by CITY of its right to later enforce said terms and conditions of this Agreement or the strict and timely performance of such terms and conditions.

37. DISCRIMINATION. TENANT, in utilizing the storage area, shall not discriminate against any person or class of persons on account of race, color, creed, sex, or national origin.

38. SALE OR DISPOSAL OF AIRCRAFT. In the event that TENANT sells or otherwise disposes of the aircraft described in paragraph 3 herein, TENANT shall notify CITY, in writing, within ten (10) days of such sale or disposal. TENANT shall have sixty (60) days from the date of such sale within which to become the owner of another aircraft to be stored in the Premises pursuant to the Agreement. If TENANT does not obtain the ownership of another aircraft within said sixty (60) day period, CITY may, upon ten (10) days written notice, declare the agreement to be void and require TENANT to immediately vacate the Premises.

39. JOINT USE. When two or more persons, in an unincorporated or other informal association, make use of the Premises described in Paragraph 2, the following conditions shall apply:

(A) Each party shall be signatory of an agreement with CITY.

(B) Each party shall be jointly and severally liable for all obligations of his or her joint use arising under the agreement.

(C) Entitlement to continued occupancy of the Premises, by the remaining joint user(s), upon vacation of the Premises by one or more of the original joint users, shall be based on the right of the longest occupying joint user remaining in possession to such continued use.

(1) CITY maintains a waiting list for the assignment of hangars. Upon a space becoming available, the person most senior on the waiting list is assigned the newly available space.

(2) If there is not among the remaining joint users at least one who would be entitled to assignment of a hangar based on their place on the waiting list, then all remaining joint users must immediately vacate the Premises upon the voluntary or involuntary vacation of the Premises by the original joint user who initially obtained the license for the hangar.

40. CITY'S REPRESENTATIVE. CITY hereby appoints the Director of Public Works as its authorized representative to administer this license. CITY may, from time-to-time, change said designated authorized representative without notice.

41. FORMAT APPROVAL. The format of this Agreement has been approved by the Banning City Council.

42. SIGNATURE. All parties to this Agreement represent that the signators executing this document are fully authorized to enter into this agreement.

IN WITNESS THEREOF, the parties executed this Agreement:

TENANT: _____ Date: _____

CITY OF BANNING _____ Date: _____

ATTACHMENT 2 - EXHIBIT "B"

RESOLUTION NO. 2015-67

BANNING MUNICIPAL AIRPORT RATES

T-HANGAR	EXISTING RATE/UNIT	PROPOSED RATE/UNIT
A/B ROW	$285.00	$299.25
A/B CORNER	$350.00	$367.50
C/D ROW	$255.00	$267.75
C/D CORNER	$320.00	$336.00
E ROW	$270.00	$283.50
E CORNER	$295.00	$309.75
F-1	$150.00	$157.50
FC B-1 thru FC B-8	$160.00	$168.00
FC C-1 thru FC D-8	$170.00	$178.50
FC S-1 thru FC S-6	$ 45.00	$47.25
FC A & E	$330.00	$346.50
G-1 (BEASLEY)	$270.00	$283.50

MISC. FEES	EXISTING RATE	PROPOSED RATE
ACCESS FEE	$ 20.00	$21.00
TIE DOWN/DAILY	$ 3.50	$3.68
TIE DOWN/MONTHLY	$ 40.00	$42.00

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ATTACHMENT 3

EXHIBIT "C" – SURROUNDING AREA HANGAR RATE COMPARISON

ATTACHMENT 3 - EXHIBIT "C"

LOCAL AIRPORT T-HANGAR RENTAL COMPARISONS

	BIG BEAR	FLABOB	FRENCH VALLEY	HEMET	REDLANDS	BANNING	5% inc	2% inc	2% inc	2% inc	2% inc
SQ FT											
700						$150.00	$157.50	$160.65	$162.66	$164.69	$166.75
955				$376.00							
1060						$270.00	$283.50	$289.17	$292.78	$296.44	$300.15
1092				$435.00							
1126						$255.00	$267.75	$273.11	$276.52	$279.98	$283.47
1160						$295.00	$309.75	$315.95	$319.89	$323.89	$327.94
1248			$435.00								
1455					$315-$350						
*1476	$270.00										
1470	$200-$270	$375.00									
1483						$320.00	$336.00	$342.72	$347.00	$351.34	$355.73
*1522	$220.00										
*1573	$350.00										
1671						$285.00	$299.25	$305.24	$309.05	$312.91	$316.82
2430						$350.00	$367.50	$374.85	$379.54	$384.28	$389.08

BIGBEAR: ONLY HAS ONE SIZE T-HANGAR BUT 12 OPTIONS FOR BOX HANGARS (UNITS HAVE * NEXT TO THEM)
82 OPERATIONS/DAY 141 AIRCRAFT BASE

FLABOB: RECENTLY BOUGHT T-HANGARS FROM RIALTO AIRPORT (65)
109 OPERATIONS/DAY 202 AIRCRAFT BASE

FRENCH VALLEY: HAS EDA OWNED HANGARS AND PRIVATELY OWNED HANGARS
269 OPERATIONS/DAY 170 AIRCRAFT BASE

HEMET: SMALL HANGARS ONLY-MOSTLY A CAL-FIRE FIELD
206 OPERATIONS/DAY 151 AIRCRAFT BASE

BANNING: ONLY SMALL AIRPORT TO HAVE A WIDE VARIETY OF T-HANGAR SIZES
10 OPERATIONS/DAY 40 AIRCRAFT BASE

REDLANDS: NO INFORMATION AVAILABLE

CITY COUNCIL AGENDA

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Resolution No. 2015-68, "Approving a Professional Services Agreement with Aspen Environmental Group to Provide Environmental and Permitting Serviees related to the Flume"**

RECOMMENDATION: The City Council adopt Resolution No. 2015-68:

l. Approving a Professional Services Agreement with Aspen Environmental Group of Agoura Hills, California in the amount of $82,098.00.

ll. Authorizing the Interim Administrative Services Director to make necessary budget adjustments and appropriations and transfers related to the project.

lll. Authorizing the Interim City Manager to execute the Professional Services Agreement with Aspen Environmental Group.

JUSTIFICATION: It is necessary for the City to obtain a consulting firm to provide environmental and permitting services for the purpose of obtaining a U.S. Forest Service ("USFS") Special Use Permit and other applicable permits or authorizations to repair, upgrade, operate and maintain existing water conveyance facilities ("Flume").

BACKGROUND: The City and its partner agencies (Banning Heights Mutual Water Company and San Gorgonio Pass Water Agency) hold water rights to surface waters originating at stream diversions on the South Fork and Middle Fork of the Whitewater River, at about 7,200 feet elevation. The water is currently conveyed to the Banning Heights Mutual Water District via a flume and penstock system that is owned by Southern California Edison ("SCE"), under license by Federal Energy Regulatory Commission ("FERC").

The conveyance system is located in part on National Forest System lands managed by the USFS, and in part on City-owned lands. The conveyance system has been damaged by storms and erosion, and is not in operation for power generation; however, it continues to convey water. The system provides 100 percent of the Banning Heights Mutual Water Company's supply and provides water that recharges the Banning Canyon Storage Unit which is pumped out off to provide about 30 percent of the City's municipal water supply. SCE has applied to FERC to surrender its license; that application is currently under FERC review. Upon surrender of the license, SCE proposes to transfer ownership of the conveyance system to the City and its partner agencies.

The City will be required to obtain a USFS Special Use Permit in order to continue the operation and maintenance of the Flume. Staff determined that it would be beneficial to the City to hire a consulting firm with experience in similar projects involving the USFS.

Consequently, staff solicited proposals and statement of qualifications from consultants that demonstrated strong capabilities in environmental review and permitting complex infrastructure systems on National Forest System Lands; experience permitting for water conveyance systems; experience with USFS permitting; the full range of National Environmental Policy Act ("NEPA") and California Environmental Quality Act ("CEQA") analysis and compliance; and strong technical expertise in resource areas such as public utilities and ground water.

Staff advertised a Request for Qualifications ("RFQ"), attached as Exhibit "A", on May 18, 2015 in the Press Enterprise and on the City's website. The RFQ is provided as Exhibit "B".

Public Works staff received four proposals in response to the RFQ, assembled a committee consisting of three members who evaluated the proposals based on project approach, technical competency, project team and experience, overall responsiveness to the RFQ and cost. The following are the average scores for the four proposers:

	Consultant	Score
1.	Aspen Environmental Group	76.0
2.	Placeworks	76.0
3.	Meridian Consultants	63.5
4.	KWC Engineers	34.0

The evaluation summary can be found attached as Exhibit "C". In addition, interviews for the two highest scored consulting firms were conducted on June 18, 2015. As a result the interview committee recommended the award of the project to Aspen Environmental Group. The fee schedule submitted by Aspen Environmental Group is attached as Exhibit "D".

FISCAL DATA: The Professional Services Agreement shall be funded in an amount of $82,098.00, Account No. 663-6300-471.96-35 (Flume Project) which has an approved budget of $300,000.00 in the 2015/2016 Fiscal Year budget.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim City Manager/
Administrative Services Director

Attachments:

1. Exhibit "A"- Press Enterprise Advertisement
2. Exhibit "B" - Request for Qualifications (RFQ)
3. Exhibit "C" –Proposal Evaluation Summary
4. Exhibit "D" –Aspen Environmental Group Fee Schedule

RESOLUTION NO. 2015-68

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ASPEN ENVIRONMENTAL GROUP TO PROVIDE ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO THE FLUME

WHEREAS, in order to obtain a U.S. Forest Service ("USFS") Special Use Permit and other applicable permits or authorizations to repair, upgrade, operate and maintain existing water conveyance facilities the City deemed it necessary to obtain an environmental and permitting services consulting firm; and

WHEREAS, staff solicited proposals and statement of qualifications from consultants that demonstrated strong capabilities in environmental review and permitting complex infrastructure systems on National Forest System Lands; experience permitting for water conveyance systems; experience with USFS permitting; the full range of NEPA and CEQA analysis and compliance; and strong technical expertise in resource areas such as public utilities and ground water; and

WHEREAS, staff advertised a Request for Qualifications ("RFQ"), attached as Exhibit "A", on May 18, 2015 in the Press Enterprise and on the City's website and the RFQ is provided as Exhibit "B"; and

WHEREAS, following the evaluation committee recommendations, attached as Exhibit "C" interviews were held on June 18, 2015, resulting in the selection of Aspen Environmental Group; and

WHEREAS, the fee schedule is attached as Exhibit "D" and a contract award in the amount of $82,098.00 will be funded by Account No. 663-6300-471.96-35 (Flume Project).

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

SECTION 1. The Banning City Council adopts Resolution No. 2015-68 approving a Professional Services Agreement with Aspen Environmental Group of Agoura Hills, California in an amount of $82,098.00.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments and appropriations and transfers related to the project.

SECTION 3. The Interim City Manager is authorized to execute the Professional Services Agreement with Aspen Environmental Group of Agoura, California, in a form approved by the City Attorney.

PASSED, ADOPTED AND APPROVED this 14th day of July, 2015.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon,
City Clerk of the 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. 2015-68, was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

ATTACHMENT 1

EXHIBIT "A" - RFP ADVERTISEMENT

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REQUEST FOR QUALIFICATIONS (RFQ) FOR
ENVIRONMENTAL AND PERMITTING SERVICES

The City of Banning (City) is soliciting Statements of Qualifications (SOQs) from qualified consulting firms to provide environmental and permitting services to the City for the purpose of obtaining a US Forest Service (USFS) Special Use Permit and any other applicable agency permits or authorizations, to repair, upgrade, operate, and maintain existing water conveyance facilities. In addition, the City may pursue a Federal Energy Regulatory Commission (FERC) license to operate the existing conveyance system as a hydroelectric power plant, consistent with its historic use.

The City anticipates the need to consult with multiple agencies to identify issues and concerns, prepare environmental review documents under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), and prepare a number of technical studies to support the Special Use Permit application.

A complete copy of the Request for Qualifications may be obtained by visiting the City of Banning website at http://www.ci.banning.ca.us/index.aspx?nid=19 or by contacting Ms. Holly Stuart, Public Works Analyst by email at hstuart@ci.banning.ca.us or by phone at (951) 922-3138. The Proposals are due by Monday, June 1, 2015 by 10:00 a.m. to the City of Banning, City Clerk located at 99 E. Ramsey Street, Banning, CA 92220.

BY ORDER OF THE CITY CLERK of the City of Banning, California.

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

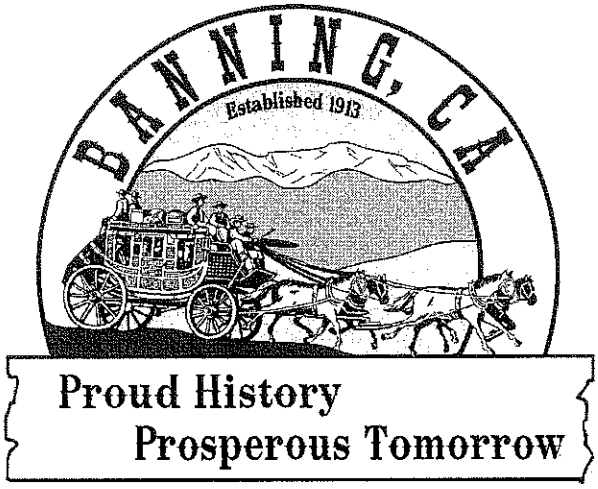
DATED: May 14, 2015
PUBLISH: May 18, 2015

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ATTACHMENT 2

EXHIBIT "B" - REQUEST FOR PROPOSALS

Request for Qualifications (RFQ)
Environmental and Permitting Services



Responses Due:
City of Banning
Public Works Department
99 E. Ramsey Street
Banning, CA 92220
(951) 922-3130

May, 2015

TABLE OF CONTENTS

1.0	INTRODUCTION		1
	1.1	Project Description and Objectives	1
	1.2	Background Information	1
2.0	CONSULTANT QUALIFICATIONS		1
	2.1	Project Administration and Coordination	2
	2.2	Qualifications and Understanding	3
	2.3	Project Team	3
	2.4	References	4
	2.5	Schedule	4
	2.6	Workshops and Meetings	4
3.0	PROPOSAL SUBMISSION		4
	3.1	RFP Time Schedule	4
	3.2	Number of Copies and Delivery	5
	3.3	Format and Content	5
	3.4	Proposal Evaluations	6
	3.5	Negotiations	6
4.0	CONTRACT REQUIREMENTS AND SUBMITTALS		7
	4.1	City of Banning Requirements	7

1.0 INTRODUCTION

1.1 PROJECT DESCRIPTION AND OBJECTIVES

The City of Banning (City) is soliciting Statements of Qualifications (SOQs) from qualified consulting firms to provide environmental and permitting services to the City for the purpose of obtaining a US Forest Service (USFS) Special Use Permit and any other applicable agency permits or authorizations, to repair, upgrade, operate, and maintain existing water conveyance facilities. In addition, the City may pursue a Federal Energy Regulatory Commission (FERC) license to operate the existing conveyance system as a hydroelectric power plant, consistent with its historic use.

The City anticipates the need to consult with multiple agencies to identify issues and concerns, prepare environmental review documents under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), and prepare a number of technical studies to support the Special Use Permit application.

1.2 BACKGROUND INFORMATION

The City and its partner agencies (Banning Heights Mutual Water Company and San Gorgonio Pass Water Agency) hold water rights to surface waters originating at stream diversions on the South Fork and Middle Fork of the Whitewater River, at about 7,200 feet elevation. The water is currently conveyed to the Banning Heights Mutual Water District via a flume and penstock system that is owned by Southern California Edison (SCE), under license by FERC (San Gorgonio Hydroelectric Project No. 344). The conveyance system is located in part on National Forest System lands managed by the San Bernardino National Forest (SBNF), and in part on City-owned lands. The conveyance system has been damaged by storms and erosion, and is not in operation for power generation; however, it continues to convey water. The system provides about 30 percent of the City's municipal water supply, and 100 percent of the Banning Heights Mutual Water Company's supply. SCE has applied to FERC to surrender its lieense; that application is currently under FERC review. Upon surrender of the license, SCE proposes to transfer ownership of the conveyance system to the City and its partner agencies.

A summary of the system's history, current status, and ongoing regulatory proceeding may be found at the FERC web site: https://www.ferc.gov/whats-new/comm-meet/2014/091814/H-3.pdf

2.0 CONSULTANT QUALIFICATIONS

Qualified consultants should be located in southern California. The SOQ must demonstrate strong capabilities in environmental review and permitting of complex infrastructure systems on National Forest System Lands within the past five years; experience permitting for water conveyance systems within the past five years; experience with USFS permitting within the past five years; the full range of NEPA and

CEQA analysis and compliance; and strong technical expertise in resource areas including but not limited to:

- Public utilities and services
- Public health and safety
- Surface hydrology
- Groundwater
- Biological resources
- Cultural resources
- Land use
- Geology and soils

In addition, qualified consultants should have strong prior experience with county, city, and local districts, and a strong understanding of the FERC regulatory processes. The SOQ should demonstrate staffing capacity and availability to provide the needed services; ability to meet with City staff and other agencies on short notice; and ability to complete tasks and high-quality, professional, and legally defensible work products according to agreed-upon schedules. Specify any conflict of interest conditions and/or disclose the firm's or subconsultants' prior work or ongoing work with other interested parties.

2.1 PROJECT ADMINISTRATION AND COORDINATION

Kick-off Meeting

Upon receipt of a written Notice to Proceed from the City of Banning, consultant shall conduct a kick-off meeting with the City and/or Participating Entities ("PE") to review the scope of the project, develop a project schedule, and confirm deliverables. The project schedule shall include each task and subtasks, milestones, critical path designation and a schedule for progress meetings.

Multi-Agency Coordination

The City, has been working with Banning Heights, SCE and the San Gorgonio Pass Water Agency ("Pass Water") for a number of years to secure control of the Flume, once SCE's Surrender Application has been accepted by the Federal Energy Regulatory Commission ("FERC"), which is anticipated to be handed down at any time. It is very important to coordinate with all participating Pes, as well as, other entities as needed.

Project Milestone/Monthly Meetings

Consultant shall prepare a project execution schedule with major milestones for approval. Consultant shall prepare regular progress reports each month.

2.2 QUALIFICATIONS AND UNDERSTANDING

This section should describe one or more proposed strategies for achieving the objectives of the RFQ. It should provide a description of environmental services tasks that will be needed to complete the project objective, including a list of anticipated documents and technical studies needed, and list of local, state, and federal agencies that are likely to be involved. The narrative should include a description of the logical progression of tasks and efforts and estimated schedule for the completion of the work.

Please note that the City has not identified a specific scope of work. The Qualifications and Understanding section of the SOQ should demonstrate the consultant's understanding of the project, and its ability to develop a detailed scope, including schedule and budget, in collaboration with the City. The overall permitting strategy may necessitate a phased process, such that only the initial tasks and budget can be specified at this time. In addition, please provide descriptions of no more than four comparable projects the firm has eompleted.

Each Consultant must provide the following information about their company so the City can evaluate the Consultant's stability and ability to support the commitments set forth in response to the RFQ. It is imperative the Consultant's proposal fully address all aspects of the RFQ. The proposal must provide the City Staff with clearly expressed information concerning the Proposer's understanding of the City's specific requirements which would result in the conduct of this study in a thorough and efficient manner.

The Consultant shall outline their company's (or team's) background, including:

- How long the company has been in business, plus a brief description of the company history, size and organization.
- Consultant qualifications to complete the scope of services and a statement of understanding of the work involved to complete this assignment.

2.3 PROJECT TEAM

Each Consultant must provide the following information about their project team.

- Primary point of contact, person responsible for overall corporate commitment (must be a company principal or officer) and project manager. Describe the responsibilities of the individuals and extent of involvement with the project.
- Identify and list key individuals proposed for the project team. Describe the responsibilities of the individuals and extent of involvement with the project.
- All key personnel listed should have current names, titles and telephone numbers and be listed on at least one of the supplied client references who are familiar with work performed by the individual in a similar capacity. References will be contacted as part of the selection process.

- Clearly identify project sub consultants, how long the prime and sub have worked together and the reason why they were selected. Consultants are encouraged to support small businesses where ever possible.

2.4 REFERENCES

The Consultant shall supply a minimum of 3 references from agencies with projects of similar nature. Each reference shall contain:

- Client name and contact information
- Project description
- Role of key project team members.

Only references of the prime consultant shall be considered, or references from project teams that have completed at least 3 projects together. The Consultant shall also list projects completed for other agencies.

2.5 SCHEDULE

The consultant shall provide a project schedule indicating key milestones and activities.

2.6 WORKSHOPS AND MEETINGS

Additionally, it is estimated that the consultant will be required to attend ten (10) meetings located at City Hall, Banning, California. The meetings will be held between staff, Consultant, and participating entities. A fee reflecting this requirement shall be included in the proposal.

3.0 PROPOSAL SUBMISSION

3.1 RFQ TIME SCHEDULE

• Request for Proposal Available	Wed.,	May 20, 2015
• Inquiry Deadline @ 1:00 p.m.	Tues.,	May 26, 2015
• Proposals Due @ 10:00 a.m.	Mon.,	June 1, 2015
• Final Selection	Thurs.,	June 11, 2015
• City Council Approval	Tues.,	June 23, 2015
• Notice to Proceed (Tentative)	Tues,	July 21, 2015

3.2 NUMBER OF COPIES AND DELIVERY

Four (4) copies of the proposal shall be submitted to the following address:

City of Banning
City Clerk's Office
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220

The proposal title, consultants name and deadline information sball be clearly identified on the submission package and cover page. Submission deadline is Monday, June 1, 2015 at 10:00 a.m. Proposals submitted after that time shall not be considered. All questions regarding the scope of work shall be submitted to Holly Stuart, Public Works analyst at the address above or via e-mail at hstuart@ci.banning.ca.us.

3.3 FORMAT AND CONTENT

Proposals shall be printed on 8 ½" X 11" paper, single sided in a 10 point Arial font and be limited to 25 pages excluding the eover letter, resumes and any appended information.

Proposals should address the following items in order of appearance:

Cover letter

The cover letter shall be provided which explains the firm's interest in the project. The letter shall contain name/address/phone number of the person who will serve as the firm's principal contact person.

Qualifications of Firm/Project Team

Provide names, titles and responsibilities of key personnel wbo will be responsible for the management of the project. Include qualifications, resumes, experience of each, and length of time with the company.

References

Give at least three (3) references for projects of similar size and scope, including at least three (3) references for projects completed during the past five years. Include the name and organization, a brief summary of tbe work, the cost of the project and tbe name and telephone number of a responsible contact person.

Strategy and Implementation Plan

Prepare a list of tasks to address tbe Scope of Work. Describe the firm's interpretation of the City's objectives with the regard to this RFP. Describe the proposed strategy and/or plan for achieving the objectives of the RFP. The narrative should include a description of the logical progression of tasks and efforts. Also include an explanation of the type of technology that will be used. This section shall also include a time schedule for the completion of the project and an estimate of time commitments from City staff.

Proposed quality assurance program (QA/QC)

Explain the firm's quality assurance program and the proposed approach for implementing the plan with this project.

Fee Proposal: One set in a separate sealed envelope

The Fee Schedule in a separate envelope shall be broken down on separate sheets as follows:

- A "Not to Exceed" fee for all services. Man-hours and billing rates per classification of personnel will be indicated for each task and/or subtask.
- Provide a complete list of costs per task and/or subtask and a total fee for the proposal, including expected reimbursable expenses (non-binding), for completion of the scope of services set forth in the proposal.
- A current hourly Fee Schedule for Fiscal Year 2014/2015 and classification of personnel for the firm, along with the type of work they and any sub consultants will perform, is also required.
- All printing and reproduction costs, research, meetings, mileage, telephone usage, general office supplies and overhead, etc., shall be included in the proposal and its "Not to Exceed" Fee schedule. Proposals should be prepared in a straight forward manner.

Note: A separate fee schedule is required for each project location.

3.4 PROPOSAL EVALUATION

Proposals will be evaluated based on the following criteria:

- Responsiveness to the RFP.
- Consultant qualifications, project understanding, and overall experience.
- Technical Competency.
- Results of reference checks.
- Project Schedule.
- Proposed QA/QC plan.
- Proposal Fee.

3.5 NEGOTIATIONS

In an effort to manage the resources available for this project, the City may find it necessary to negotiate tasks, include contingencies for additional meetings or workshops, and address other factors identified by the Proposer not contemplated in this document or the City's standard agreement.

4.0 CONTRACT REQUIREMENTS AND SUBMITTALS

4.1 CITY OF BANNING REQUIREMENTS

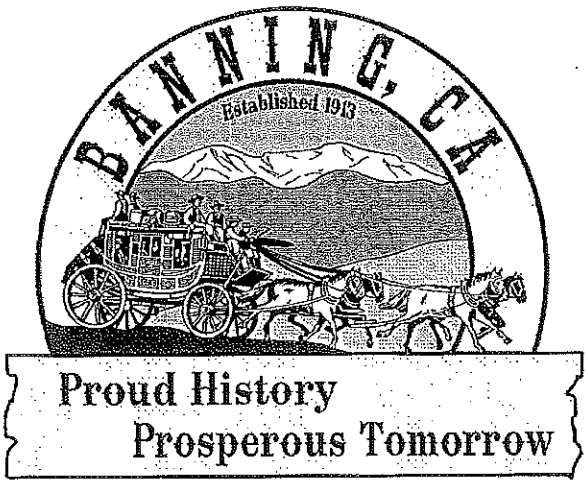
The Contract will be presented to Council for approval. Please provide a copy of the attached City agreement to your legal team and insurance provider, if you are selected for Final Evaluation. This will expedite the process. A purchase order will not be granted until the contract is signed and all insurance requirements are satisfied.

ATTACHMENT 3

EXHIBIT "C" - PROPOSAL EVALUATION SUMMARY

Design of Improvements at Roosevelt Williams Park

Reviewers	Aspen Environmental Group	Placeworks	Meridian Consultants	KWC Engineers
City of Banning, Acting Director of Public Works	86	85.5	84.5	51
Banning Heights Municipal Water Company, Board of Directors President	66	65	35	2
Stockton Consutling, Stephen P. Stockton	76	77.5	71	49
Total Score	228	228	190.5	102
Average Score	**76.0**	**76.0**	**63.5**	**34.0**



CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: ASPEN ENVIRONMENTAL GROUP

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): [signature]

DATE OF EVALUATION: 6/5/15

8 of 300

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 18

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) 9

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 9

B. **TECHNICAL COMPETENCY (20 Points)** 16

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) 8

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 8

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 18

I. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) 9

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 9

D. **RESPONSIVENESS TO RFP (10 Points)** 9

I. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) 4

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) 5

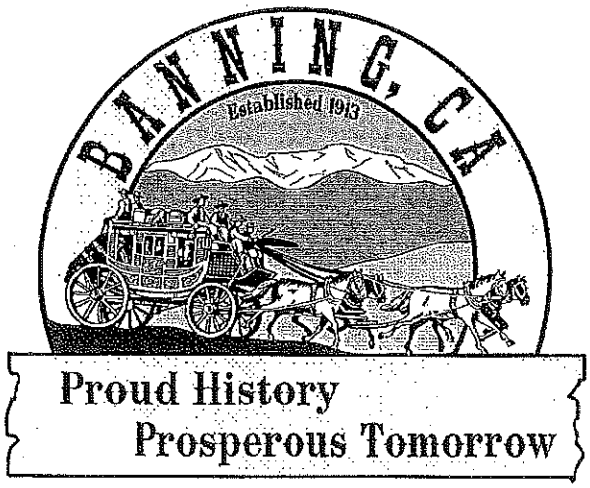
E. PROPOSAL FEE / COST (30 Points) 25

TOTAL POINTS: 86

ADDITIONAL NOTES:

- Permitting lead has experience w/ SBNF & USFS.
- Subconsultant w/ FERC Experience
- Good list of projects.
- Good experience w/ NEPA/CEQA process.
- Referenced projects related to FERC and water conveyance systems.
- Good understanding of scope.
- Good approach to project.

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: ASPEN ENVIRONMENTAL GROUP

EVALUATOR (PRINT): Julie L. Hutchinson - BHMWC

EVALUATOR (SIGN): Julie L Hutchinson

DATE OF EVALUATION: 6/3 - 6/4, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 17

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 16

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 15

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 8

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. **PROPOSAL FEE / COST** (30 Points) * seems low and not comprehensive due to variables & complexities involved. 10 *

TOTAL POINTS: 77 66 *

ADDITIONAL NOTES:

Pros - Positives

① Tom Davidson indicated Hydro Divesture experience w/ PG&E

② John Kessler - FERC licensing, relicensing experience as well as experience w/ surrender, transfer and Powers Co. culture and vulnerabilities - All could be helpful to us

③ seem to be reputable & organized - more govt based

Cons - Concerns

① *Red Flag* on potential conflict and major situational awareness - Scott White listed as "Permitting Lead" works as consultant to SBNF, was previous employee of SBNF, has done projects for Wildlands Conservancy (Key on issue) and w/ Angeles NF (Jody Noiron)

② Alternative of Powers FERC license not discussed - limits alternatives

③ Limited water conveyance experience other than (Kessler)

④ RFQ seems very Process orientated vs. strategic thinking (alternatives, suggestions, etc)

⑤ William Lathey - Special Use Compliance but nothing in RFQ really supports his experience on SUP etc.. other than studying

⑥ James Thurber - SCE consultant w any potential concerns -

⑦ No understanding of current PRD w/ FERC and coming in to replace previous consultant

⑧ No recognition of historical analysis & Value of historic preservation

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: ASPEN ENVIRONMENTAL GROUP 76

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: June 1, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 15

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 16

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 17

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 8

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

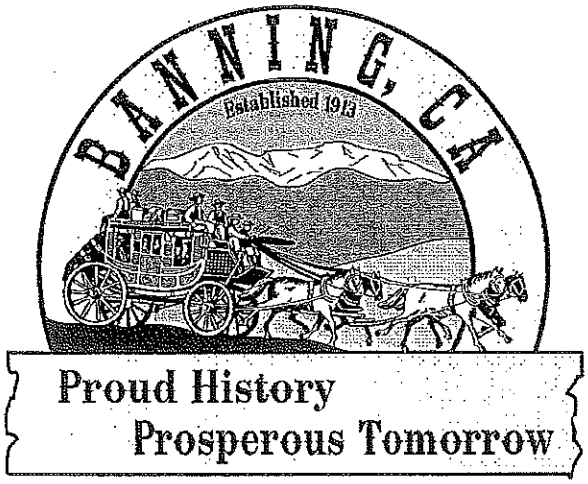
E. PROPOSAL FEE / COST (30 Points) 20

TOTAL POINTS: 76

ADDITIONAL NOTES:

NO schedule for phase I tasks

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: PLACEWORKS

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): [signature]

DATE OF EVALUATION: 6/5/15

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 18

I. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) 9

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 9

B. **TECHNICAL COMPETENCY (20 Points)** 15.5

I. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) 7.5

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 8.0

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 18

I. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) 9

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 9

D. **RESPONSIVENESS TO RFP (10 Points)** 9

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) 4

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) 5

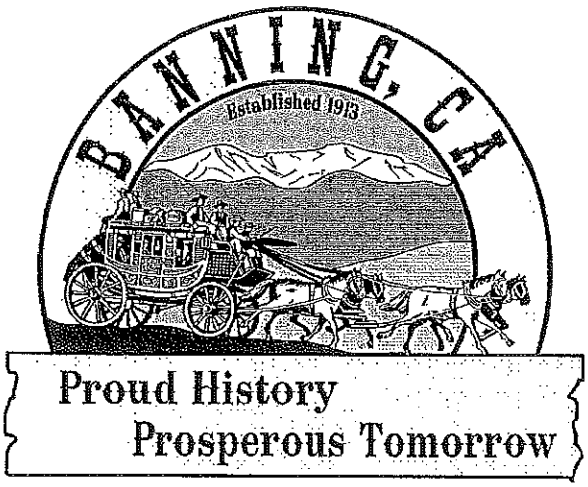
E. PROPOSAL FEE / COST (30 Points) 25

TOTAL POINTS: 85.5

ADDITIONAL NOTES:

- Good team, which includes an attorney specializing in environmental projects.
- Biologist has good experience with SCE on this specific proj.
- Project experience includes SUP through USFS.
- Good understanding of project.

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: PLACEWORKS

EVALUATOR (PRINT): Julie L. Hutchinson - BHMWC

EVALUATOR (SIGN): Julie L. Hutchinson

DATE OF EVALUATION: 6/3-6/4, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 15

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 14

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 14

I. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 7

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 15

TOTAL POINTS: 45

ADDITIONAL NOTES:

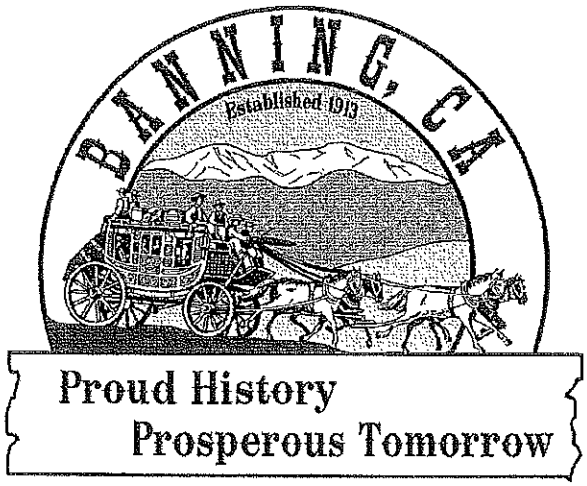
Pros- Positives

* (1) Past experience w/ this project (Decomissioning & Biologists, environmental Studies)
* (2) Understands SCE culture - past employee
* (3) Has worked w/ USBR specifically Jody Nixon (while ANF)
* Pro/good and/~~Good~~ could be a Concern

Cons- Concerns

(1) Greg Miller - SCE history (any conflict?)
(2) No evidence of any water Conveyance projects or similar
(3) NEPA/CEQA support for FERC Hydro license option - no strategy or management identified
(4) No FERC DRD understanding that already mid-process
(5) No comparisons of other water Conveyance projects successes

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: PLACEWORKS – 775

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: 6-3-2015

EVALUATION CRITERIA

A. PROJECT UNDERSTANDING AND APPROACH (20 Points) 15

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. TECHNICAL COMPETENCY (20 Points) 19

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. QUALIFICATIONS AND PROJECT TEAM (20 Points) 19

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. RESPONSIVENESS TO RFP (10 Points) 9.5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 15

TOTAL POINTS: 77.5

ADDITIONAL NOTES:

NO Firm Schedule

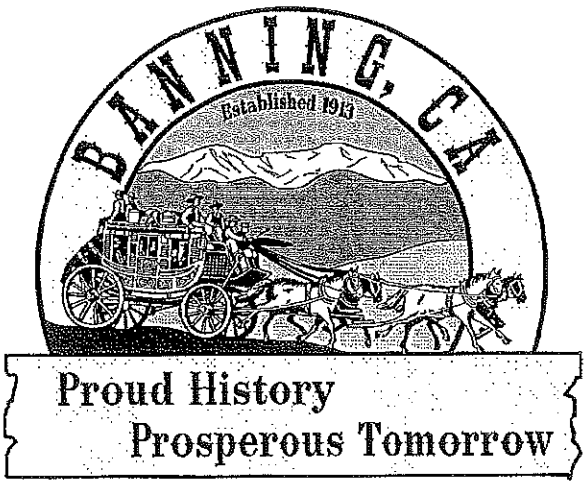
COST ESTIMATE only APPROACHABLE All prospects

VERY Good understanding of project & process

I LIKED Greg Miller & his previous work on P-344

SPS

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: MERIDIAN CONSULTANTS

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): A. Vela

DATE OF EVALUATION: 6/5/15

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 17.5

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) 9.5

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 9

B. **TECHNICAL COMPETENCY (20 Points)** 15

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) 7

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 8

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 16.5

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) 8

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 8.5

D. **RESPONSIVENESS TO RFP (10 Points)** 9.5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) 4.5

E. PROPOSAL FEE / COST (30 Points) 26

TOTAL POINTS: 84.5

ADDITIONAL NOTES:

- Firm has past exper. w/ USFS.
- Good team
- Good understanding of project and scope.
- Experience w/ water projects

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: MERIDIAN CONSULTANTS

EVALUATOR (PRINT): Julie L. Hutchinson, BHMWC

EVALUATOR (SIGN): Julie L Hutch

DATE OF EVALUATION: 6/2-6/3, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 10

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) (5)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) (5)

B. **TECHNICAL COMPETENCY (20 Points)** 7

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) (3)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) (4)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 11

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) (6)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) (5)

D. **RESPONSIVENESS TO RFP (10 Points)** 2

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) (2)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. **PROPOSAL FEE / COST (30 Points)** 5

TOTAL POINTS: ~~(44)~~ 35

ADDITIONAL NOTES:

Pros -

(1) Staff seems experienced in EIR, CEQA

Cons -

(1) limited Water conveyance experience ~ projects staff

(2) " " FERC regulatory & USFS.

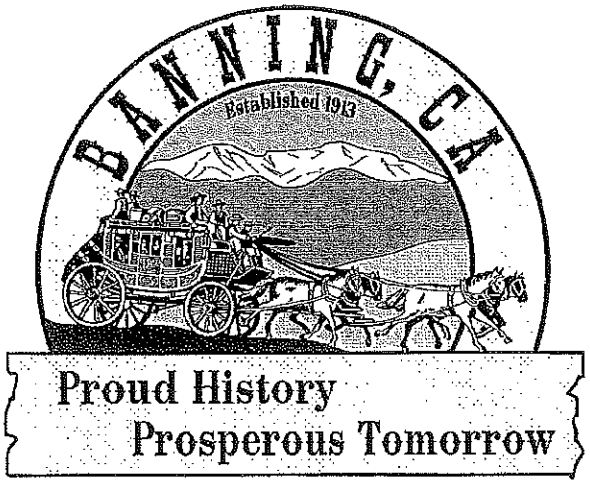
(3) did not provide reference projects of similar nature

(4) Strategy + Implementation Plan very limited and more CEQA/EIR based - not exhibiting broad thinking/alternatives

(5) Overall lacks a understanding of complexities on "on the ground" work and strategy

(6) Fee breakdown Vague

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: MERIDIAN CONSULTANTS 71

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: 6-3-2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 16

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 15

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 16

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 9

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 15

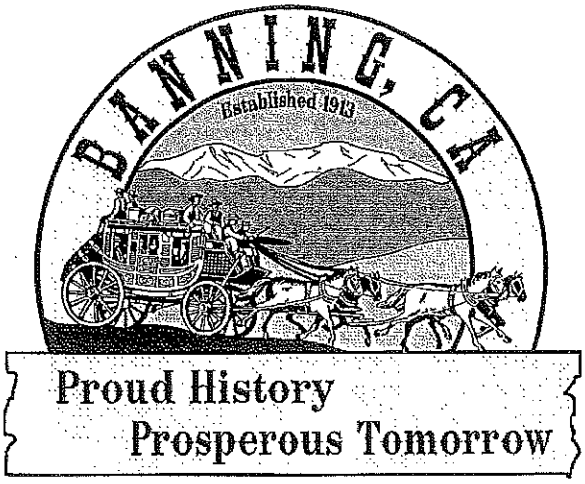
TOTAL POINTS: 71

ADDITIONAL NOTES:

NO FEE ESTIMATE BUT OTHERS DO NOT HAVE FIRM COST ESTIMATES, AS IT IS DIFFICULT TO ESTIMATE AT THIS TIME

GDS

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: KWC ENGINEERS

EVALUATOR (PRINT): Arturo Vela

EVALUATOR (SIGN): Arturo Vela

DATE OF EVALUATION: 6/5/15

EVALUATION CRITERIA

A. PROJECT UNDERSTANDING AND APPROACH (20 Points) 6

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS) ~~3~~ 3
   no references/past projects related to this one
2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS) 3.

B. TECHNICAL COMPETENCY (20 Points) 8

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS) ~~Same~~ only 3
   Attorney/legal experience
2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS) 5

C. QUALIFICATIONS AND PROJECT TEAM (20 Points) 6

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS) No. 3
2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS) 3
   only for two team members

D. RESPONSIVENESS TO RFP (10 Points) 5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS) ~~4~~ 3

Only from a legal perspective.

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS) No 2

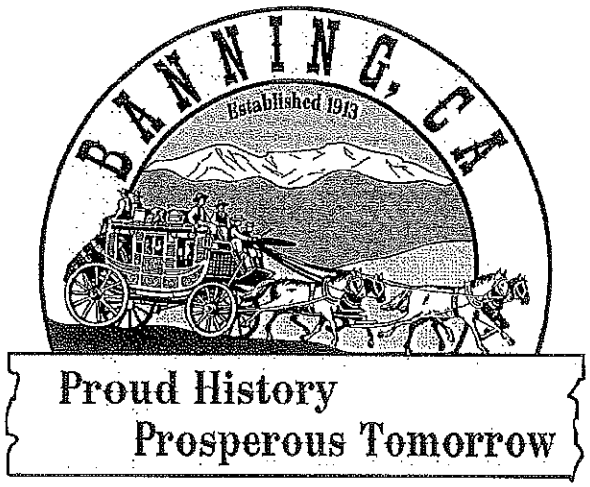
E. PROPOSAL FEE / COST (30 Points) 26

TOTAL POINTS: 51

ADDITIONAL NOTES:

- lacked Team w/ experience. Only info. for two members included.
- Lacked relevant projects.
- Overall not a good proposal.

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: KWC ENGINEERS

EVALUATOR (PRINT): Julie L Hutchinson, BHMWC

EVALUATOR (SIGN): Julie L. Hutchins

DATE OF EVALUATION: 6/3-6/4, 2015

EVALUATION CRITERIA

A. **PROJECT UNDERSTANDING AND APPROACH (20 Points)** 1

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. **TECHNICAL COMPETENCY (20 Points)** 0

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. **QUALIFICATIONS AND PROJECT TEAM (20 Points)** 1

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. **RESPONSIVENESS TO RFP (10 Points)** 0

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. PROPOSAL FEE / COST (30 Points) 0

TOTAL POINTS: 2

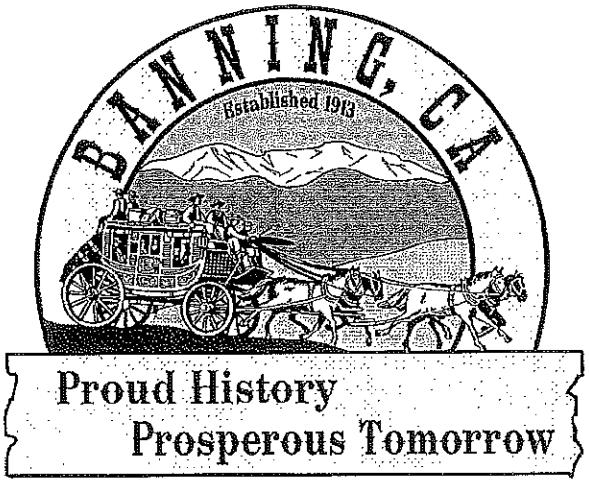
ADDITIONAL NOTES:

I would completely disqualify this RFQ proposal as it in no way meets the RFQ as provided by the city.

The attorneys listed in the RFQ used personal conversations with the BHMWC attorney to be the sole basis of his RFQ submission.

1. NO plan
2. NO experience w/ USFS on water conveyance or w/ FERC
3. RFQ response has no relavance

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CITY OF BANNING
PUBLIC WORKS DEPARTMENT

STATEMENT OF QUALIFICATIONS EVALUATION

EVALUATION DUE: WEDNESDAY, JUNE 10, 2015

CONSULTANT: KWC ENGINEERS – 49

EVALUATOR (PRINT): STEPHEN P. STOCKTON

EVALUATOR (SIGN): Stephen P. Stockton

DATE OF EVALUATION: 6-3-2015

EVALUATION CRITERIA

A. PROJECT UNDERSTANDING AND APPROACH (20 Points) 10

1. HAVE ALL ASPECTS OF THE REQUEST FOR QUALIFICATIONS BEEN ADDRESSED IN THE CONSULTANT'S SUBMITTAL? (10 POINTS)

2. DID THE CONSULTANT RESPOND TO THE PROPOSAL AS OUTLINED IN THE SUBMITTAL REQUIREMENTS? (10 POINTS)

B. TECHNICAL COMPETENCY (20 Points) 14

1. CONSULTANT'S PREVIOUS EXPERIENCE WITH ENVIRONMENTAL AND PERMITTING SERVICES RELATED TO INFRASTRUCTURE SYSTEMS ON NATIONAL FOREST SYSTEM LANDS; PERMITTING FOR WATER CONVEYANCE SYSTEMS AND EXPERIENCE WITH USFS PERMITTING WITHIN THE PAST 5 YEARS (10 POINTS)

2. FIRM'S QUALITY ASSURANCE PROGRAM AND THE PROPOSED APPROACH FOR IMPLEMENTING THE PLAN WITH THIS PROJECT (10 POINTS)

C. QUALIFICATIONS AND PROJECT TEAM (20 Points) 10

1. DID THE CONSULTANT PROVIDE AN ADEQUATE PROJECT TEAM THAT DEMONSTRATES FAMILIARITY WITH SERVICES REQUESTED? (10 POINTS)

2. DID THE CONSULTANT LIST INDIVIDUAL QUALIFICATIONS, EDUCATION, LICENSE AND CERTIFICATE INFORMATION AND DEMONSTRATE THAT THE PROJECT TEAM IS ADEQUATE FOR THIS PROJECT? (10 POINTS)

D. RESPONSIVENESS TO RFP (10 Points) 5

1. DID THE CONSULTANT'S PROPOSAL DEMONSTRATE A THOROUGH UNDERSTANING OF THE SCOPE OF WORK AND PROJECT REQUIREMENTS? (5 POINTS)

2. IS THE QUALITY OF THE CONSULTANT'S RESPONSE TO THE RFQ HIGH? (5 POINTS)

E. **PROPOSAL FEE / COST (30 Points)** 10

TOTAL POINTS: 49

ADDITIONAL NOTES:

VERY LITTLE PROJECT UNDERSTANDING, HENCE NO BIOLOGICAL BACKGROUND

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CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: ASPEN ENV.

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	~~8~~ 9	90	- TEAM HAS WORKED TOGETHER FOR 2 10YRS.
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	9	90	- COMPLETED ABT 30 ENVIR. DOCS ON FOREST SVC. PROPERTY.
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	~~X~~ 9	135	- GOOD, WELL THOUGHT OUT APPROACH & STRATEGY. - DEMONSTRATED ABILITY TO SUCCESSFULLY COMPLETE THIS PROJECT.
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	~~X~~ 8	40	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	8	40	
GENERAL NOTES: - 90% OF WORK INFRAST. (P.W.). MOSTLY WATER/ELECTRIC. - THE FIRM HAS A LOT OF EXPERIENCE & SUCCESS W/ SIMILIAR PROJECTS			TOTAL		395

NAME: ART VEJA TITLE: ACTING DIR. PUB. WORKS DATE: 6/18/15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: Aspen

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	9	90	Chris Hurley PM 25yrs
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	9	90	Has worked on projects by and Forest Lands, worked Directly w/ Forest -25 yr Permit - STAFF Availability
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	9	135	Review Existing Data • Restoration and Enhancement
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	6	30	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	8	40	Call References
GENERAL NOTES: Power Point Presentation			**TOTAL**		385

NAME: Terry Gregory TITLE: Water/Wastewater DATE: 6/18/15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: ASPEN

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	9	90	
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	9	90	
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	9 ~~10~~	135 ~~240~~	
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	8 ~~9~~	40 ~~50~~	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	~~8~~ 9	40 10	
GENERAL NOTES:			**TOTAL** ~~410~~ 395		

NAME: STEVE STOCKTON TITLE: CONSULTANT DATE: 6-15-15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: PLACE WORKS

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	*PROJECT TEAM* - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	~~8~~ 8	80	- P.M. IS AN ATTORNEY. - Good Biological expr.
2	*FIRM'S CAPABILITIES* - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	7	70	- Mentioned one relevant/recent project of the uses. -
3	*PROJECT UNDERSTANDING AND APPROACH* - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	~~8~~ 8	120	- Good project approach and understanding. -
4	*PROJECT CONTROLS OF OVERSIGHT* - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	~~8~~ 8	40	-
5	*REFERENCES* - Record of producing a quality product on similar projects on time and within budget.	5	8	40	
GENERAL NOTES: · Project team will be run out of L.A. · Compared to ASPEN, PLACEWORKS team was weaker, although professional AND well rounded.			TOTAL		350

NAME: Art Vela TITLE: Acting Dir. Pub. Works DATE: 6/18/15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: Placeworks

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
					Duane means Principle
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	7	70	Jeanne PM 110 Employees Karl 30 years exp. out of LA
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	8	80	organizational chart of documents Technological Reports 30 year sup Angles NF Two Biologist worked on SB NF. Grain Trust ✓
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	8	120	Repairing to Schematic showed that that they have been up.
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	6	30	Committed, Willing to Provide Staff.
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	6	30	
GENERAL NOTES: • Not much work in the S.B.N.F. • Did not seem very Prepared.			**TOTAL**		330

NAME: Peggy Greggs TITLE: WATER/WASTEWATER DATE: 6-18-15

CONSULTANT EVALUATION

Project: Environmental and Permitting Services Related to the Flume

Consultant: PLACEWORKS

NO	CRITERIA	WEIGHT	SCORE (1 to 10)	SCORE (Wt x Score)	COMMENTS
1	***PROJECT TEAM*** - Qualifications/Relevant Individual Experience - Qualifications of key - Time commitment of key members - Organizational Chart	10	7	70	
2	***FIRM'S CAPABILITIES*** - Demonstrated capability on similar/related projects - Management/Organizational capabilities - Impacts of other on-going projects and priorities - Quality and cost control procedures/policies - Staff availability - Ability to meet City's insurance requirements	10	8	80	
3	***PROJECT UNDERSTANDING AND APPROACH*** - Demonstrated knowledge of the work required - Provided an explanation of the project - Showed familiarity with project area and issues - Logical course of action to meet goal - Had internal measures proposed to meet timely completion - Provided a Project Schedule - Included innovative approaches	15	7 ~~8~~	105 ~~150~~	
4	***PROJECT CONTROLS OF OVERSIGHT*** - Ability to the timely response to City requirements. - Firm location (work done) & accessibility to City staff.	5	8 ~~8~~	40 ~~50~~	
5	***REFERENCES*** - Record of producing a quality product on similar projects on time and within budget.	5	8 ~~8~~	40 ~~50~~	
GENERAL NOTES:			TOTAL 335		

NAME: STEVE STOCKTON TITLE: CONSULTANT DATE: 6/18-15

ATTACHMENT 4

EXHIBIT "D" – ASPEN ENVIRONMENTAL GROUP
FEE SCHEDULE

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Aspen Team Hourly Fee Schedule

Fiscal Year 2014/2015

Personnel	Classification	Proposed Work	Rates
Jon Davidson	Principal Associate	Principal-in-Charge	$195
Chris Huntley	Senior Associate II	Project Manager, Biological Resources	$165
Scott White	Senior Associate III	Permitting Lead, Biological Resources	$175
Negar Vahidi	Senior Associate III	NEPA/CEQA Lead, Land Use and Planning, Environmental Justice	$160
Scott Debauche	Associate II	Aesthetics, Noise, Population, Housing and Environmental Justice, Public Services and Utilities, Transportation and Traffic	$100
William Walters	Senior Associate III	Air Quality and Greenhouse Gases	$170
Justin Wood	Associate II	Biological Resources	$100
Carla Wakeman	Associate II	Biological Resources	$100
Jared Varonin	Senior Associate I	CDFW/USACE Permitting	$110
Elizabeth Bagwell	Senior Associate I	Cultural and Paleontological Resources	$110
Evan Elliott	Associate I	Cultural and Paleontological Resources	$75
Anton Kozhevnikov	Senior Associate I	Geographic Information Systems	$140
Tracy Popiel	Associate I	Geographic Information Systems	$75
Matthew Long	Associate II	Geology/Soils, Mineral Resources, Surface Hydrology/Water Quality	$210
Philip Lowe	Senior Associate III	Groundwater, Surface Hydrology and Water Quality	$165
Susanne Huerta	Associate II	Land Use and Planning, Public Services and Utilities, Recreation	$87
Jamison Miner	Associate II	Biological Resources	$95
Jennifer Lancaster	Associate II	Biological Resources	$95
Melissa Jordan	Staff I	Administrative Assistant	$65
Maral Koshkarian	Staff I	Accounting	$65
Subconsultants			
James Thurber	Senior Geologist	Geology/Soils, Mineral Resources, Groundwater, Hazards/Hazardous Materials	$180
Aurie Patterson	Senior Geologist	Geology/Soils, Mineral Resources, Hazards/Hazardous Materials	$110
John Kessler	Principal	FERC Regulatory Specialist	$100
William Lahaye	Principal	USFS Special Use Compliance	$110

Aspen Environmental Group

City of Banning

Qualification for Environmental and Permitting Services

Summary Page

	Task 1 Initial Coordination	Task 2 Meetings	Total
Aspen Environmental Group - Labor	$47,492	$29,870	$77,362
Aspen Environmental Group - ODC	$1,183	$1,001	$2,184
ASPEN ENVIRONMENTAL GROUP TOTAL	$48,675	$30,871	$79,546

SUBCONTRACTOR COST:			
Getoechnical Consultants	$792	$792	$1,584
Willaim S. LaHaye	$484	$484	$968
Kessler and Associates	$440	$440	$880
Total Subcontractor Cost	**$1,276**	**$1,276**	**$2,552**

Total Cost Per Task	**$49,951**	**$32,147**	**$82,098**

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Prime Contractor: Aspen Environmental Group

Aspen Labor Costs		Task 1 Data Review and Initial Coordination		Task 2 Meetings		Total	
Key Personnel/Category	Hourly Rate*	Hours	Amount	Hours	Amount	Hours	Amount
Jon Davidson, Vice President	$195.00	8	$1,560	20	$3,900	28	$5,460
Chris Huntley	$165.00	90	$14,850	80	$13,200	170	$28,050
Scott White	$175.00	90	$15,750	40	$7,000	130	$22,750
Negar Vahidi	$160.00	18	$2,880	16	$2,560	34	$5,440
Jared Varonin	$110.00						
Scott White	$175.00						
Phil Lowe	$165.00	30	$4,950	16	$2,640	46	$7,590
Beth Bagwell	$110.00	20	$2,200	4	$440	24	$2,640
Justin Wood	$100.00						
Carla Wakeman	$100.00						
Jamison Miner	$95.00						
Jennifer Lancaster	$95.00						
Susanne Huerta	$87.00	56	$4,872			56	$4,872
Scott Debauche	$100.00						
Will Walters	$170.00						
Tracy Valentovich	$75.00	4	$300			4	$300
Anton Kozhevnikov	$140.00						
Melissa Jordan	$65.00						
Maral Koshkarian	$65.00	2	$130	2	$130	4	$260
TOTAL		318	$47,492	178	$29,870	496	$77,362

* Including fringe benefits, overhead, and fee.

Non-Labor Costs

Direct Project Cost Item	Unit Cost						
Printing & CD reproduction							
Mileage - 2 Wheel Drive (per mile)	$0.55	500	$275	1,200	$660	1700	$935
Mileage - 4 Wheel Drive (per mile)	$0.75						
Travel and Per Diem			$750		$250		$1,000
Postage/Delivery							
Outside Word Processing/Data Entry							
Outside Services Graphics/Mapping							
Document/Data Acquisition							
Miscellaneous		-	$50				$50
Subtotal ODC Cost			**$1,075**		**$910**		**$1,985**
Aspen Fee 10%			**$108**		**$91**		**$199**
Total ODC Cost			**$1,183**		**$1,001**		**$2,184**
Total Cost by Task		**318**	**$48,675**	**178**	**$30,871**	**496**	**$79,546**

Assumptions: Task 1
104 hours for review of existing data by Chris Huntley, Scott White, Negar Vahidi, and Phil Lowe.
24 hours meetings with ANF/Banning for Chris Huntley and Scott White
16 hours misc calls and coordination
40 hours development of draft Project Description and Purpose & Need statement

Assumptions: Task 2
One or two Aspen team leaders in person at all meetings. Others by conference calls as needed.

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Subcontractor Name: Geotechnical Consultants Inc

Aspen Labor Costs		Task 1 and Initial Coordination	Task 2 Meetings	Total
Key Personnel/Category	Hourly Rate*			
Jim Thurber	$180.00	4	4	8
Aurie Patterson	$150.00			
TOTAL		4	4	8

* Including fringe benefits, overhead, and fee.

LABOR COST ($)

Key Personnel/Category			
Jim Thurber	$720	$720	$1,440
Aurie Patterson			
Total Labor Cost	**$720**	**$720**	**$1,440**

Non-Labor Costs

Direct Project Cost Item	Unit Cost			
Internal Copies (per page)	$0.10			
Outside Copies/Printing	cost			
Mileage - 2 Wheel Drive (per mile)	$0.55			
Mileage - 4 Wheel Drive (per mile)	$0.75			
Monitor Vehicle Expenses				
Monitor Meals				
Travel and Per Diem	cost			
Postage/Delivery	cost			
Telephone	cost			
Outside Word Processing/Data Entry	cost			
Outside Services Graphics/Mapping	cost			
Document/Data Acquisition	cost			
Miscellaneous	cost			
Total ODC Cost				

Total Cost by Task		**$720**	**$720**	**$1,440**
Aspen Fee		**$72**	**$72**	**$144**
Total Subcontractor Cost per Task		**$792**	**$792**	**$1,584**

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Subcontractor Name: William Lahaye

Fehr & Peers Labor Costs		Task 1 and Initial Coordination	Task 2 Meetings	Total
Key Personnel/Category	Hourly Rate*			
William Lahaye	$110.00	4	4	8
TOTAL		4	4	8

* Including fringe benefits, overhead, and fee.

LABOR COST ($)

Key Personnel/Category			
William Lahaye	$440	$440	$880
Total Labor Cost	**$440**	**$440**	**$880**

Non-Labor Costs

Direct Project Cost Item	Unit Cost			
Internal Copies (per page)	$0.10			
Outside Copies/Printing	cost			
Mileage - 2 Wheel Drive (per mile)	$0.55			
Mileage - 4 Wheel Drive (per mile)	$0.75			
Monitor Vehicle Expenses				
Monitor Meals				
Travel and Per Diem	cost			
Postage/Delivery	cost			
Telephone	cost			
Outside Word Processing/Data Entry	cost			
Outside Services Graphics/Mapping	cost			
Document/Data Acquisition	cost			
Miscellaneous	cost			
Total ODC Cost				

Total Cost by Task		**$440**	**$440**	**$880**
Aspen Fee		**$44**	**$44**	**$08**
Total Subcontractor Cost per Task		**$484**	**$484**	**$968**

Aspen Environmental Group

City of Banning
Qualification for Environmental and Permitting Services

Cost Estimate

Subcontractor Name: Kessler and Associates

Fehr & Peers Labor Costs

Key Personnel/Category	Hourly Rate*	Task 1 and Initial Coordination	Task 2 Meetings	Total
John Kessler, FERC Regulatory Specialist	$100.00	4	4	8
TOTAL		4	4	8

* Including fringe benefits, overhead, and fee.

LABOR COST ($)

Key Personnel/Category			
John Kessler, FERC Regulatory Specialist	$400	$400	$800
Total Labor Cost	**$400**	**$400**	**$800**

Non-Labor Costs

Direct Project Cost Item	Unit Cost			
Internal Copies (per page)	$0.10			
Outside Copies/Printing	cost			
Mileage - 2 Wheel Drive (per mile)	$0.55			
Mileage - 4 Wheel Drive (per mile)	$0.75			
Monitor Vehicle Expenses				
Monitor Meals				
Travel and Per Diem	cost			
Postage/Delivery	cost			
Telephone	cost			
Outside Word Processing/Data Entry	cost			
Outside Services Graphics/Mapping	cost			
Document/Data Acquisition	cost			
Miscellaneous	cost			
Total ODC Cost				

Total Cost by Task		**$400**	**$400**	**$800**
Aspen Fee		**$40**	**$40**	**$80**
Total Subcontractor Cost per Task		**$440**	**$440**	**$880**

CITY COUNCIL AGENDA

Date: **July 14, 2015**

TO: **Honorable Mayor and City Council**

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

SUBJECT: **Resolution No. 2015-65 Approving the Exit from the San Juan Generating Station**

RECOMMENDATION: Adopt City Council Resolution No. 2015-65:

I. Approving the exit from the San Juan Generating Station and authorizing the Electric Utility Director to work with the Southern California Public Power Authority ("SCPPA") to execute and complete any and all required obligations to effect said divestiture.

JUSTIFICATION: Under an approved Settlement Agreement with the U.S. Environmental Protection Agency ("EPA"), San Juan Units 2 and 3 will be shut down on or before December 31, 2017. Approval of this Resolution ensures compliance with the Settlement Agreement.

BACKGROUND: Due to a variety of reasons including: Legislative mandates, regulatory requirements, environmental concerns, and political pressure, electric generating facilities which are powered by coal have been under increasing pressure to shut down or implement costly upgrades to reduce emissions. The San Juan Generating Station ("San Juan") has not been immune to this and has been the target of environmental lawsuits, one with the Sierra Club resulted in a settlement in excess of $300M in 2004.

The EPA brought forward a Federal Implementation Plan ("FIP") which would have required San Juan to install Selective Catalytic Reduction ("SCR") equipment to reduce regional haze (i.e. NOx emissions) by October 2016. This forced the San Juan participants to look hard at the future of the power station. The estimated cost of SCR was in the $1 Billion range. After much analysis and negotiations, the EPA and the New Mexico Environmental Improvement Board agreed to a proposal to shut down two of the four units at San Juan (units 2 and 3) by the end of 2017, in return for permission to install much less expensive NOx controls on the remaining two units.

The proposed shutdown of the two San Juan units provided an opportunity for all of the California public agency participants, who were facing many of the same issues as Banning, to elect to leave the San Juan project at the end of 2017. All have elected to do so.

Implementation of this divestiture strategy has been very complex due to the multitude of parties involved, including private and public electric utility participants serving customers across a variety of western states, several Federal and State regulatory agencies and other interested parties including environmental justice groups, Native American tribes, coal suppliers, and organizations representing labor interests.

After over two years of intense negotiations, the participants in the San Juan project have agreed to the final terms and conditions necessary to effectuate the exit from San Juan of all California

public power participants and a multi-state electric power cooperative by no later than December 31, 2017. In addition to Banning, the California parties supporting the shutdown include the Cities of Anaheim, Azusa, Colton, Glendale, Redding, and Santa Clara, as well as the Imperial Irrigation District and the Modesto Irrigation District.

Effectuating the closure of San Juan Unit 3 will require the execution by all participants of three agreements – an umbrella Restructuring Agreement, a Coal Mine Reclamation Agreement and a Decommissioning Agreement. Since SCPPA is technically the owner of Banning's interest in the San Juan Project (Banning acquires all rights and obligations related to SCPPA's interest in San Juan through a Power Sales Agreement or PSA), SCPPA will be the party executing these agreements. Authorization for SCPPA to execute the agreements requires an 80% affirmative vote of the five SCPPA members involved in the San Juan Project. Due to the deadlines that have been established by the New Mexico Public Regulatory Commission, it will be necessary for the SCPPA Board to authorize execution of the three agreements at its July 16, 2015 meeting.

It is recommended that the City Council authorize the Electric Utility Director to vote to approve execution by SCPPA of: (i) the San Juan Project Restructuring Agreement, (ii) Amended and Restated Mine Reclamation and Trust Funds Agreement and (iii) the San Juan Decommissioning and Trust Funds Agreement – the documents necessary to implement a closure of San Juan Unit 3 Generating Station by no later than December 31, 2017, as per the Regional Haze (NO_x) settlement with the EPA. The agreements are attached herewith as Exhibit "A" and are summarized below.

Restructuring Agreement

- Restructuring Fee: In consideration of the costs to restructure the ownership and physical plant for a two unit operation, the Exiting Participants will pay a restructuring fee of $8.8M. SCPPA's share is approximately $4M. Banning's share is 9.8% of that amount or approximately $400K.
- Coal Inventory Sale: On the same day as payment of the Restructuring Fee, the San Juan Plant Manager will purchase the Exiting Participant's share of the coal inventory. The amount of proceeds to be received is estimated at $26M, SCPPA's share is $13M and Banning's share is approximately $1.3M.
- Future Coal Purchases: The San Juan Plant Manager has agreed to supply coal as needed to the Exiting Participants beginning January 1, 2016 at a price of $50/ton. This is less than the current coal price of $58/ton.
- Plant and Units 3&4 Common O&M: The Exiting Participants will have no obligation to pay for these plant and Units 3&4 common facilities retroactively to January 1, 2015. This is estimated to save SCPPA about $35M over the current 2022 term of the San Juan Participation Agreement (Banning's share of these savings is about $3.4M).
- Plant and Units 3&4 Common Capital: Exiting Participants will have no obligation to pay for the capital improvements for these common facilities retroactively to January 1, 2015.
- Demand Charge: In return for the short-term use of new capital improvements prior to December 31, 2017, the Exiting Participants will pay a demand charge of $6.2M. SCPPA's share is only 2.8% or $173.6K (Banning's share is $17K).
- Fuel Oil Inventory: At December 31, 2017, the remaining Participants will purchase the Fuel Oil inventory belonging to the Exiting Participants at book value.
- Ownership: The ownership of SCPPA's share of San Juan will be transferred to the Acquiring Participants on December 31, 2017.

Mine Reclamation and Trust Funds Agreement

The Mine Reclamation and Trust Agreement is necessary to define the power plant participant's obligations related to the reclamation of the on-site coal plant. The basic concept is that the Exiting Participants will only be responsible for their share of coal mine reclamation that results from coal mining activities prior to December 31, 2017. Participants are each required to establish a Mine Reclamation Trust Fund and fully fund their share of estimated mine restoration costs. SCPPA presently has a Trust Fund that is funded at the $3M level. This will be increased to $18M by the end of 2017, and will be funded from coal sale revenues and debt service savings. Banning's share is approximately $1.8M and it will be collected through the usual monthly operating payments made to SCPPA, however there will be no increase to the monthly payments, due to the offset from the coal sale revenue and debt service savings.

Decommissioning and Trust Funds Agreement

The Decommissioning and Trust Funds Agreement is necessary to define each parties responsibility related to the interim and eventual decommissioning of the power plant. The agreement establishes a time based sliding scale for decommissioning such that SCPPA's and Banning's responsibility for plant decommissioning would decline over time after the Unit 3 shutdown at the end of 2017. In this agreement the parties agreed to fund decommissioning trust to a combined level of $30M, which was deemed to be the minimum that might be necessary at total station shutdown, whenever it occurs. SCPPA's share of this minimum trust fund level is $3.8M and Banning's share of this is $380K. There is also an obligation for the parties to fund a "retirement in place" in 2018 following shutdown of Units 2 and 3 in the amount of $1.2M. SCPPA's share is $152K and Banning's share of this is $15K.

FISCAL DATA: The total net direct costs estimated for the San Juan divestiture is $1,312,000. This number is comprised of $2,612,000 in expenses, and $1,300,000 in revenue, as detailed above. These are the "hard" costs for the divestiture and do not take into consideration Banning's O&M savings realized from the early termination of the San Juan Participation Agreement, which are estimated at $3,400,000. The hard costs related to the divestiture will be collected through the monthly operating payment made to SCPPA, however there will be no increase to the monthly payments, due to the offset from the coal sale revenue and debt service savings.

RECOMMENDED BY:

Fred Mason
Electric Utility Director

APPROVED BY:

Dean Martin
Interim City Manager

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RESOLUTION NO. 2015-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE EXIT FROM THE SAN JUAN GENERATING STATION

WHEREAS, the City of Banning ("City") owns and operates its Municipal Electric Utility; and

WHEREAS, the City obtains power from the San Juan Generating Station ("San Juan") through a Power Sales Agreement with the Southern California Public Power Authority ("SCPPA") for output from Unit 3; and

WHEREAS, the New Mexico Environmental Improvement Board and the US Environmental Protection Agency ("EPA") reached a Settlement Agreement to shut down two of the four units at San Juan (units 2 and 3) by December 31, 2017; and

WHEREAS, the San Juan owners have negotiated for over two years to develop the final terms and conditions necessary to effectuate the exit from San Juan of all California public power participants (including the City of Banning) and a multi-state electric power cooperative, by no later than December 31, 2017; and

WHEREAS, effectuating the closure of San Juan Unit 3 will require the execution by all participants of three agreements – an umbrella Restructuring Agreement, a Coal Mine Reclamation Agreement and a Decommissioning Agreement, attached herewith as Exhibit "A"; and

WHEREAS, since SCPPA is technically the owner of Banning's interest in the San Juan Project (Banning acquires all rights and obligations related to SCPPA's interest in San Juan through a Power Sales Agreement), SCPPA will be the party executing these agreements; and

WHEREAS, authorization for the SCPPA Board to execute the agreements requires an 80% affirmative vote of the five SCPPA members involved in the San Juan Project, and due to the deadlines that have been established by the New Mexico Public Regulatory Commission, it will be necessary for the SCPPA Board to authorize execution of the three agreements at its July 16, 2015 meeting; and

WHEREAS, the total net direct costs to the City for the San Juan divestiture are estimated at $1,312,000, which is comprised of $2,612,000 in expenses, and $1,300,000 in revenue, and will be collected through the monthly operating payment made to SCPPA. However there will be no increase to the monthly payments, due to the offset from related revenues and debt service savings; and

WHEREAS, the City wishes to exit from the San Juan Generating Station on or before December 31, 2017;

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

SECTION 1: Adopt Resolution 2015-65 authorizing the Electric Utility Director to work with the Southern California Public Power Authority to execute and complete any and all required obligations to effect divestiture from the San Juan Generating Station within the parameters detailed in the attached: (i) the San Juan Project Restructuring Agreement, (ii) Amended and Restated Mine Reclamation and Trust Funds Agreement and (iii) the San Juan Decommissioning and Trust Funds Agreement.

PASSED, APPROVED, AND ADOPTED this 14th day of July 2015.

Deborah Franklin, 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. 2015-65 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____

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

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Exhibit "A"

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SAN JUAN PROJECT RESTRUCTURING AGREEMENT

AMONG

PUBLIC SERVICE COMPANY OF NEW MEXICO

TUCSON ELECTRIC POWER COMPANY

THE CITY OF FARMINGTON, NEW MEXICO

M-S-R PUBLIC POWER AGENCY

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

CITY OF ANAHEIM

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

July ___, 2015

SAN JUAN PROJECT RESTRUCTURING AGREEMENT

TABLE OF CONTENTS

RECITALS 1
1. Effective Date and Termination 4
1.1 Effective Date. 4
1.2 FERC Filings. 4
1.3 Filings with Governmental Authorities. 5
1.4 Review of Regulatory Orders. 5
1.5 Appellate Decision. 6
1.6 Actions not Arbitrable. 6
1.7 Termination Date. 6
2. Definitions and Rules of Interpretation 6
2.1 Definitions. 6
2.2 Rules of Interpretation. 15
3. Status of PNMR-D under SJPPA 17
3.1 PNMR-D as Party to SJPPA. 17
3.2 Parental Guaranty and Letter of Credit. 17
4. Restructuring Fee, Demand Charge and Voting 17
4.1 Restructuring Fee. 17
4.2 Payment of Restructuring Fee and Common Participation Shares of Shared Coal Inventory. 18
4.3 Costs of Capital Improvements Invoiced after January 1, 2015. 18
4.4 Demand Charge. 19
4.5 Voting on Capital Improvements. 20
5. Fuel Supply 20
5.1 Certain Cost Allocations. 20
5.2 Supply of Coal to Exiting Participants and Remaining Participants. 21
5.3 Relinquishment of Coal Inventory. 21
5.4 Coal Supply for Exiting Participants. 21
5.5 Minimum Purchase Obligations. 21
5.6 Exiting Participant Dispatch Requirements; Invoicing. 21
5.7 Monthly Remaining Participant Coal Invoicing. 22

5.8 Section 23.14 Superseded. 24
6. Exit Date and Ownership Conveyances 24
6.1 Transfer of Exiting Participants' Rights. 24
6.2 Acquisition of Ownership Interests of Exiting Participants. 24
6.3 Plant Ownership after Acquisition of Ownership Interests of Exiting Participants. .. 25
6.4 Unit 1 and Unit 2 Ownerships After Exit Date. 25
6.5 "AS IS" Conveyances. 25
7. Closing of Ownership Conveyances 26
7.1 Closing. 26
7.2 Closing Statement. 26
7.3 Closing Deliveries by the Exiting Participants. 26
7.4 Closing Deliveries by the Acquiring Participants 27
7.5 Conditions Precedent. 27
7.6 Prior Notification of Certain Events. 28
7.7 Prorations. 28
7.8 Governmental Recording and Filing. 28
8. Notifications, Consents and Rights-of-First-Refusal. 28
9. Operation and Maintenance Expenses. 29
10. Replacement Power. 29
11. Other Project Agreements 29
11.1 Other Project Agreements Identified. 29
11.2 Actions with Respect to Other Project Agreements. 29
12. Land Ownership 29
12.1 No Change in Ownership. 29
12.2 Relinquishment of Certain Rights. 29
12.3 Easement and Right of Entry. 29
13. Coal Mine Reclamation Funding. 30
14. Decommissioning. 30
15. Confidentiality 30
15.1 Confidentiality of Negotiations 30
15.2 Non-confidentiality of Restructuring Agreement. 30
16. Taxes 30
16.1 Obligations of Parties. 30
16.2 Notification of Taxing Authorities 30

16.3 IRS Exclusion. 31
17. Representations and Warranties; Opinions of Counsel 31
17.1 Requisite Power and Authority. 31
17.2 No Violation 31
17.3 Opinions of Counsel. 31
18. Relationship of Parties 31
18.1 Several Obligations. 32
18.2 No Joint Venture or Partnership. 32
19. Establishment of Environmental Baseline 32
19.1 Baseline Environmental Study 32
19.2 Scope of BES and Environmental Audit. 32
19.3 Draft Report. 33
19.4 Final Report. 33
19.5 Remediation or Corrective Action. 33
19.6 Further Audit 33
19.7 Subsequently Discovered Environmental Issues. 34
19.8 Claims against Predecessors. 34
20. Liability and Indemnification 34
20.1 Liabilities Defined. 34
20.2 Liabilities Arising Prior to Exit Date. 34
20.3 Liabilities Arising After Exit Date 35
20.4 Apportionment of Liabilities 35
20.5 Limitation of Liability for Willful Action. 35
20.6 Several Liability 35
20.7 Claims Arising After Exit Date 35
20.8 Claims against Predecessors. 37
20.9 PNM Responsibility. 37
20.10 Indemnification Procedures. 37
20.11 Anti-Indemnity Provisions. 39
20.12 Internal Counsel. 39
20.13 Willful Action. 39
20.14 Damages 39
20.15 Mitigation of Damages. 39
20.16 Anaheim and M-S-R. 40

20.17 Southern California Public Power Authority. 40
20.18 Farmington and Los Alamos. 40
20.19 Utah Associated Municipal Power Systems. 40
21. Insurance Coverage for Continuing Obligations 40
21.1 Occurrence-based Policies. 40
21.2 Claims-Made Policies. 41
21.3 Other Insurance Coverage Matters. 42
22. Assignments 42
22.1 Assignment. 42
22.2 Assignee Responsibility. 43
22.3 Parties not Relieved of Obligations. 43
23. Dispute Resolution and Default 43
23.1 Amicable Resolution. 44
23.2 Call for Arbitration. 45
23.3 Selection of Arbitrators. 45
23.4 Arbitration Procedures. 46
23.5 Decision of Arbitrators. 46
23.6 Enforcement of Arbitration Award. 46
23.7 Fees and Expenses. 46
23.8 Interest and Penalty Interest. 46
23.9 Prompt Resolution. 47
23.10 Default. 47
23.11 Consequences of Default. 47
23.12 Legal Remedies. 47
24. Audit Rights; Related Disputes 47
24.1 Right of Audit. 47
24.2 Dispute Resolution. 48
24.3 Adjusted Billing Procedures. 48
24.4 Effectiveness. 48
25. Miscellaneous Provisions 48
25.1 Governing Law. 48
25.2 Venue. 48
25.3 Manner of Giving of Notice. 49
25.4 Other Documents. 51

25.5 Incorporation of Exhibits. 51
25.6 Captions and Headings. 51
25.7 Prior Obligations Unaffected. 51
25.8 Amendment and Modification. 51
25.9 Waivers of Compliance 52
25.10 Uncontrollable Forces. 52
25.11 No Interpretation against Drafter. 52
25.12 No Third Party Beneficiaries. 52
25.13 Compliance with Law. 52
25.14 Independent Covenants. 52
25.15 Invalid Provisions. 52
25.16 Parties' Cost Responsibilities. 53
25.17 Entire Agreement. 53
25.18 Survival of Certain Provisions. 53
25.19 No Admission of Liability. 53
25.20 Other Rights 53
25.21 Execution in Counterparts 53

List of Exhibits

Exhibit A	Regulatory Approvals
Exhibit B	Other Project Agreements
Exhibit C	Form of Instrument of Sale and Conveyance
Exhibit D	Form of Opinion of Counsel
Exhibit E	Parties' Pre-Exit Date Ownership Interests in Project Facilities
Exhibit F	SJGS Plant Site
Exhibit G	Form of Instrument Relinquishing Easement and License
Exhibit H	Form of Easement and Right of Entry
Exhibit I	Form of Parental Guaranty
Exhibit J	Form of Letter of Credit
Exhibit K	Form of Bring-Down Opinion

SAN JUAN PROJECT RESTRUCTURING AGREEMENT

This SAN JUAN PROJECT RESTRUCTURING AGREEMENT ("Restructuring Agreement") is executed as of July __, 2015 ("Execution Date") by and among PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Los Alamos"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"); and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"). The parties to this Restructuring Agreement are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

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

A. The San Juan Project is a four-unit, coal-fired electric generation plant located in San Juan County, near Farmington, New Mexico, also known as the San Juan Generating Station ("SJGS" or the "Project"). On the Execution Date, the owners of the Project are: PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS and Tri-State; these entities, as the owners of the Project on the Execution Date, are sometimes referred to in this Restructuring Agreement as the "Participants."

B. As specified in Sections 6.2.1, 6.2.2 and 6.2.3 of the Amended and Restated San Juan Project Participation Agreement dated March 23, 2006 ("SJPPA"), as of the Execution Date, SJGS Unit 1 and Unit 2 are owned by PNM (50%) and TEP (50%); Unit 3 is owned by PNM (50%), SCPPA (41.8%) and Tri-State (8.2%); and Unit 4 is owned by PNM (38.457%), M-S-R (28.8%), Farmington (8.475%), Los Alamos (7.2%), Anaheim (10.04%) and UAMPS (7.028%). Equipment and facilities associated with more than one SJGS Unit are owned in other ownership percentages, as specified in Sections 6.2.4, 6.2.5 and 6.2.6 of the SJPPA. As provided in the SJPPA, such ownership interests are undivided interests.

C. PNM and PNMR-D are wholly-owned subsidiaries of PNM Resources, Inc. PNMR-D intends, consistent with the provisions of this Restructuring Agreement, to acquire an

Ownership Interest in the Project on the Exit Date and, prior to the acquisition of such Ownership Interest in the Project, to assume certain obligations under this Restructuring Agreement and the SJPPA. PNMR-D is a party to this Restructuring Agreement but is not as of the Execution Date a Participant in the Project.

D. On August 22, 2011, the federal Environmental Protection Agency ("EPA") published its Federal Implementation Plan ("FIP") which included a Best Available Retrofit Technology ("BART") determination to meet regional haze requirements for SJGS. The FIP required the installation of selective catalytic reduction ("SCR") technology on all four Units by September 21, 2016. Thereafter, PNM (in its capacity as SJGS Operating Agent), the Governor of the State of New Mexico and the New Mexico Environmental Department ("NMED") petitioned the United States Court of Appeals for the Tenth Circuit to review this EPA decision. In subsequent discussions between PNM, NMED, EPA and other stakeholders, PNM supported an alternative to the FIP ("BART Alternative") that would be less costly than the FIP while also achieving significant environmental benefits. The specific terms of the BART Alternative were set forth in the EPA Term Sheet, discussed in Recital F.

E. On February 12, 2013, the Participants, through their Coordination Committee representatives, voted (with certain abstentions) to adopt a "Resolution of the San Juan Generating Station Coordination Committee Supporting the Term Sheet with EPA and NMED for the Settlement of the Dispute Relating to the U.S. Environmental Protection Agency Best Available Retrofit Technology Determination for the San Juan Generating Station." The resolution, among other things, approved the EPA Term Sheet (addressed below in Recital F) and contemplated the use of good faith efforts to pursue the approvals necessary to support the implementation of the EPA Term Sheet.

F. On February 15, 2013, PNM, NMED and EPA entered into a Term Sheet (the "EPA Term Sheet") reflecting the terms of a non-binding "tentative agreement" for certain actions intended to address pollution control requirements for SJGS under the federal Clean Air Act's requirements for regional haze and interstate transport for visibility. The EPA Term Sheet provided for the retirement of Unit 2 and Unit 3 by December 31, 2017, and the installation of selective non-catalytic reduction ("SNCR") technology on Unit I and Unit 4 by the later of January 31, 2016 or fifteen (15) months after EPA approval of the BART Alternative.

G. On September 5, 2013, the State of New Mexico approved the BART Alternative as a revision to New Mexico's Regional Haze State Implementation Plan ("RH SIP") and, thereafter, submitted the revision to EPA. Under the terms of the RH SIP, Units 2 and 3 will cease operations by December 31, 2017.

H. By letter dated March I0, 2014, PNM declared in its capacity as Operating Agent that it needed to commence studies, analysis, assessments and design related to the installation of the BART Alternative on Unit 4 in order to comply with the deadlines set forth in the EPA Term Sheet. By letter dated July 14, 2014, PNM declared in its capacity as Operating Agent that it needed to begin incurring capital expenditures for engineering, analysis, computational fluid dynamics modeling and geotechnical evaluation, which was the next phase of the SNCR/balanced draft project for Unit 4. By letter dated March 20, 2015, PNM declared in its

capacity as Operating Agent that it needed to begin incurring equipment fabrication and engineering costs necessary to adhere to the RH-SIP compliance schedule.

I. On October 9, 2014, the EPA issued a final rule approving the BART Alternative and New Mexico's revised RH SIP and issued a separate final rule withdrawing the FIP. EPA's rules became effective November 10, 2014.

J. The California legislature has enacted statutes, and the California Energy Commission has promulgated implementing regulations, limiting the ability of SCPPA, M-S-R and Anaheim to enter into certain life extension projects for coal-fired power plants, including SJGS.

K. As the result of, among other things, the developments described in the foregoing Recitals, the anticipated costs of environmental compliance at SJGS and the California laws and regulations referenced above, the Participants entered into discussions with respect to the restructuring of their respective rights and obligations in the Project. To accomplish this restructuring, several of the Participants are willing or desire to divest or terminate their ownership in the Project while other Participants and PNMR-D are willing or desire to retain, increase or acquire ownership in the Project.

L. To facilitate the discussions referenced in Recital K, the Participants retained the services of an independent mediator. Mediated negotiations commenced in January 2014. In light of PNMR-D's willingness to acquire ownership in the Project, PNMR-D became involved in the mediation in early 2015.

M. On September 12, 2014, the Participants entered into the San Juan Generating Station Fuel and Capital Funding Agreement ("Funding Agreement"). The Funding Agreement was accepted for filing by the Federal Energy Regulatory Commission ("FERC") with an effective date of July 1, 2014. The Funding Agreement terminated by its own terms.

N. PNM has filed an application with the New Mexico Public Regulation Commission ("NMPRC") for approvals required under the New Mexico Public Utility Act for, among other things, approval to abandon SJGS Units 2 and 3 and for a certificate of public convenience and necessity for PNM to own 132 MW of additional capacity in SJGS Unit 4.

O. Concurrently herewith, the Parties are executing: (i) the Amended and Restated Mine Reclamation and Trust Funds Agreement ("Mine Reclamation Agreement"); (ii) the San Juan Decommissioning and Trust Funds Agreement ("Decommissioning Agreement"); (iii) the SJPPA Restructuring Amendment; and (iv) the SJPPA Exit Date Amendment.

P. The Parties desire, by the agreements referenced in Recital O, to establish a comprehensive set of binding agreements with respect to the restructuring of Project ownership interests, rights and cost responsibilities.

Q. The terms, covenants and conditions set out herein are acceptable to each of the Parties and will promote the ability of each Party to provide adequate, efficient, reliable and economical service to its customers in a manner consistent with its legal obligations.

R. The foregoing Recitals are included to provide background regarding this Restructuring Agreement, and while certain Recitals may be referenced in this Restructuring Agreement, they are neither part of nor incorporated into the terms, covenants and conditions of this Restructuring Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises and obligations reflected in the covenants, terms and conditions in this Restructuring Agreement, all of which together provide the consideration for this Restructuring Agreement, the Parties agree as follows:

1. Effective Date and Termination

1.1 Effective Date. Conditioned upon due execution and delivery of this Restructuring Agreement by all of the Parties, the effective date of this Restructuring Agreement ("Effective Date") is the date of the last to occur of the following: (i) FERC has approved the FPA Section 203 applications and has accepted for filing the FPA Section 205 application referenced in Section 1.2.1, in each case without conditions or with conditions acceptable to the Parties as provided in Section 1.4; (ii) the NMPRC has granted PNM authority to abandon Units 2 and 3 and has also granted a certificate of public convenience and necessity to own an additional interest in Unit 4, without conditions or with conditions acceptable to the Parties as provided in Section 1.4; or (iii) the effective date of the CSA.

1.2 FERC Filings.

1.2.1 Within fifteen (15) Business Days after the Execution Date (i) PNM and PNMR-D will file applications with FERC under Section 203 of the FPA for approval of the transactions provided for in Section 6, with a request for expedited consideration; and (ii) PNM will file an application with FERC under Section 205 of the FPA for acceptance of an amendment to the SJPPA incorporating relevant provisions of this Restructuring Agreement. The aforementioned amendment to the SJPPA (the "SJPPA Restructuring Amendment") is being executed by the Parties concurrently with the execution of this Restructuring Agreement. PNM will be responsible for the preparation and filing of the Section 205 application, and PNM and PNMR-D will be responsible for the preparation and filing of their respective Section 203 applications. At least ten (10) Business Days prior to making the Section 203 and 205 applications referenced in this Section 1.2.1, PNM and PNMR-D will provide drafts thereof to the other Parties. PNM's Section 205 filing of the SJPPA Restructuring Amendment will request that the effective date for the SJPPA Restructuring Amendment be the effective date of this Restructuring Agreement; provided, however, that such effective date is conditioned upon PNM providing notice to FERC that all of the other conditions for the effectiveness of this Restructuring Agreement, as identified in Section 1.1, have occurred. If necessary, PNM's filing of the

SJPPA Restructuring Amendment will request any waivers of FERC's regulations that may be necessary to request an effective date for such revisions as specified in the previous sentence of this Section 1.2.1.

1.2.2 Additionally, prior to the Exit Date, PNM will file with FERC a further amendment to the SJPPA under FPA Section 205 (the "SJPPA Exit Date Amendment") to reflect the exit from the Project of the Exiting Participants and to set forth the terms of the SJPPA under which the Remaining Participants will continue their participation in the Project, including the Remaining Participants' operation and maintenance of Units 1 and 4 after the Exit Date. The SJPPA Exit Date Amendment is being executed by the Parties concurrently with the execution of this Restructuring Agreement. PNM will make this Section 205 filing of the SJPPA Exit Date Amendment not less than sixty (60) days nor more than one hundred twenty (120) days prior to the Exit Date and will request that the SJPPA Exit Date Amendment become effective on the Exit Date. At least ten (10) Business Days prior to filing the SJPPA Exit Date Amendment, PNM will provide a draft thereof to the other Parties.

1.2.3 If PNM and PNMR-D have complied with the obligation to provide drafts of the Section 203 and 205 filings set forth in Sections 1.2.1 and 1.2.2, and if such filings are consistent with the terms of this Restructuring Agreement, then all other Parties will support or not oppose PNM and/or PNMR-D's FERC filings by the prompt filing at FERC of certificates or letters of concurrence; by intervening at FERC in support of the filings; or by not taking any action to oppose the filings.

1.3 Filings with Governmental Authorities. PNM and PNMR-D will provide each of the other Parties a copy of the FERC filings referenced in Sections 1.2.1 and 1.2.2, and will keep the other Parties reasonably apprised of the status of all filings to obtain Regulatory Approvals including copies of any Regulatory Approvals or other pertinent orders issued by Governmental Authorities with respect to such filings. PNM and PNMR-D will also provide each of the other Parties a copy of any motion for rehearing or reconsideration filed with respect to any Regulatory Approval and any notice of appeal or petition for review filed with respect to any Regulatory Approval within five (5) Business Days of receipt thereof, and in the manner provided in Section 25.3.

1.4 Review of Regulatory Orders.

1.4.1 Following issuance of an order by any Governmental Authority with regard to a Regulatory Approval, each Party will review such order to determine whether such Governmental Authority has (i) changed or modified a condition, deleted a condition or imposed a new condition with regard to the filing; or (ii) conditioned its approval of the filing upon changes or modifications to a condition, deletion of a condition or imposition of a new condition (the actions described in Sections 1.4.1(i) and 1.4.1(ii) hereinafter collectively referred to as "Regulatory Revision"). The Party receiving such order will provide a copy thereof to the other Parties in the manner provided in Section 25.3 within five (5) Business Days.

1.4.2 Within ten (10) Business Days after delivery of the copy of the order, the Parties will provide written notice to each other of their acceptance or objection to the Regulatory Revision, specifying in such notice in the case of an objection each Regulatory Revision on which such objection is based and the reason for the objection. A failure to notify within said ten (10) Business Day period will be equivalent to a notification of acceptance of the Regulatory Revision.

1.4.3 If any Party objects to a Regulatory Revision, the Parties will attempt, in good faith, to renegotiate the terms and conditions of this Restructuring Agreement to resolve the Regulatory Revision leading to such objection to the satisfaction of the Parties and obtain necessary Board approvals within ninety (90) days after the date of notice of objection to such Regulatory Revision under Section 1.4.2, or such other period as the Parties may agree upon in writing.

1.4.4 If the Parties reach agreement on renegotiated terms and conditions, they will thereafter seek to obtain requisite Regulatory Approval of such renegotiated agreement, with any filings necessary to seek such Regulatory Approval being made within twenty (20) Business Days after the execution of the renegotiated agreement.

1.4.5 If the Parties fail to agree on such renegotiated terms and conditions within the ninety (90) day period referenced in Section 1.4.3, or such other period as the Parties may agree upon in writing, this Restructuring Agreement will not take effect.

1.5 Appellate Decision. A Party receiving a copy of an opinion or other decision affecting a Regulatory Approval or the terms or conditions thereof ("Decision") of an appellate court will, within five (5) Business Days and in the manner provided in Section 25.3, provide a copy thereof to each other Party. Following receipt of the Decision, each Party will review the Decision to determine the potential effect of the Decision on the transactions provided for in this Restructuring Agreement. The Parties will confer in good faith regarding the effect, if any, of the Decision and will attempt, within seventy-five (75) days of receipt of a copy of the Decision, or such other period as the Parties may determine, to mutually agree upon the appropriate course of action in light of the Decision.

1.6 Actions not Arbitrable. Neither a dispute between or among the Parties arising under, nor a Party's action or failure to act under this Section 1, is arbitrable under Section 23.

1.7 Termination Date. Unless otherwise agreed by the Parties, following the Effective Date, this Restructuring Agreement will continue until six (6) months after the later of the termination or expiration of (i) the Mine Reclamation Agreement; or (ii) the Decommissioning Agreement (the "Termination Date").

2. Definitions and Rules of Interpretation

2.1 Definitions. The following terms, when used herein with initial capitalization, have the meanings specified below:

2.1.1 AAA means the American Arbitration Association.

2.1.2 Acquiring Participants means PNM and PNMR-D.

2.1.3 Affiliate means with respect to any person: (i) each person that, directly or indirectly, controls or is controlled by or is under common control with such designated person; (ii) any person that beneficially owns or holds 50% or more of any class of voting securities of such designated person or 50% or more of the equity interest in such designated person; and (iii) any person of which such designated person beneficially owns or holds 50% or more of any class of voting securities or in which such designated person beneficially owns or holds 50% or more of the equity interest; provided, however, that members of a Party will not be deemed to be Affiliates of each such Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise; PNM and PNMR-D are Affiliates.

2.1.4 Arbitration Award means an award of the arbitrators, as provided for in Section 23.5.

2.1.5 Arbitration Notice has the meaning provided for in Section 23.2.

2.1.6 Arbitration Organization means an organization described in Section 23.3.2.

2.1.7 Available Pre-existing Stockpile Tons has the meaning provided for in Section 12.1(C)(1) of the CSA.

2.1.8 BART means Best Available Retrofit Technology.

2.1.9 BART Alternative means the alternative to the FIP, as identified in Recital D.

2.1.10 Baseline Environmental Study or BES means the study provided for in Section 19.1.

2.1.11 Board means the governing body of a Party.

2.1.12 Business Day means any day other than a Saturday, Sunday or federal holiday.

2.1.13 Capital Improvements means any property, land or land rights added to the Project or the substitution, replacement, enlargement or improvement of any units of property, structures, facilities, equipment, property, land or land rights constituting a part of the Project, which in accordance with accounting practice would be capitalized, and

also including the costs of removal, salvage or disposal of any units of property being replaced or substituted.

2.1.14 CCBDA means the existing Coal Combustion Byproducts Disposal Agreement between PNM, TEP and SJCC.

2.1.15 CCR means ash and gypsum byproducts produced by the Project.

2.1.16 CCRDA means the new Coal Combustion Residuals Disposal Agreement entered into between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.17 Charter Documents means with respect to any Party, the certificate or articles of incorporation or organization and by-laws, the limited partnership agreement, the partnership agreement, the limited liability company agreement or trust agreement, or other organizational documents of such Party.

2.1.18 Claims-Made Policy has the meaning provided for in Section 21.2.1.

2.1.19 Clean Air Act means 42 U.S.C. § 7401 *et seq.* (1970).

2.1.20 Closing means the closing, as provided for in Section 7, of the conveyance of the Ownership Interests as provided for in Section 6.

2.1.21 Closing Date means the date of the Closing as provided for in Section 7.1.

2.1.22 Closing Statement has the meaning provided for in Section 7.2.

2.1.23 Coal Tonnage Components means coal tonnage categories as defined in the CSA and comprised of Pre-existing Stockpile Coal, Force Majeure Tons, Available Pre-existing Stockpile Tons, Tier 1 Tons, and Tier 2 Tons.

2.1.24 Common Participation Share means a Participant's share of equipment and facilities common to all of the Units as set out in Section F in Exhibit E.

2.1.25 Common Participation Share of Shared Coal Inventory means a Party's share of equipment and facilities common to all of the Units (as shown in Section F in Exhibit E) multiplied by the sum of (i) coal tons stockpiled on SJCC's property, and (ii) coal tons stockpiled on the SJGS Plant Site.

2.1.26 Condition Precedent means an event that, unless waived, must occur prior to Closing as provided for in Section 7.5.

2.1.27 Consultant means the consultant retained pursuant to Section 19.1.

2.1.28 Continuing Coverage has the meaning provided for in Section 21.2.2.

2.1.29 Credit Rating means the rating publicly assigned to PNMR's senior, unsecured long-term debt obligations (not supported by third-party credit enhancements) by a Rating Agency or, if PNMR does not have a public rating for its senior, unsecured long-term debt, the rating publicly assigned to PNMR by a Rating Agency as its corporate credit rating, or long term issuer rating, as applicable.

2.1.30 CSA means the new Coal Supply Agreement entered into between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.31 Decision has the meaning provided for in Section 1.5.

2.1.32 Decommissioning Agreement means the San Juan Decommissioning and Trust Funds Agreement executed concurrently herewith.

2.1.33 Default has the meaning provided for in Section 23.10.

2.1.34 Draft Report means the draft report provided for in Section 19.3.

2.1.35 EAF means "equivalent availability factor" as defined in the North American Electric Reliability Corporation's Generating Availability Data System Data Reporting Instructions.

2.1.36 Effective Date has the meaning provided for in Section 1.1.

2.1.37 Environmental Audit means the audit provided for in Section 19.1.

2.1.38 EPA means the federal Environmental Protection Agency or its successor agency.

2.1.39 EPA Term Sheet means the term sheet referenced in Recital F.

2.1.40 Escrow Interest has the meaning provided for in Section 23.8.

2.1.41 Execution Date has the meaning provided for in the introductory paragraph of this Restructuring Agreement.

2.1.42 Exit Date means the date upon which the Exiting Participants transfer all of their respective rights, titles and interests in and to their Ownership Interests to the Acquiring Participants as provided in Section 6 and terminate their active involvement in the operation of the SJGS, except as expressly provided for in this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement; the Exit Date is anticipated to be on or about December 31, 2017.

2.1.43 Exiting Participants means those Participants that will transfer all of their respective rights, titles and interests in and to their Ownership Interests to the Acquiring

Participants as provided in Section 6, and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement; the Exiting Participants are M-S-R, Anaheim, SCPPA and Tri-State.

2.1.44 Federal Implementation Plan or FIP has the meaning provided for in Recital D.

2.1.45 Federal Power Act or FPA means 16 U.S.C. §§ 791a *et seq.*

2.1.46 FERC means the Federal Energy Regulatory Commission or any successor thereto.

2.1.47 Final Report means the final report provided for in Section 19.4.

2.1.48 Force Majeure Tons has the meaning provided for in Section 12.1(C)(1) of the CSA.

2.1.49 Fuels Committee means the committee established in the SJPPA to facilitate the discussion of Project coal issues.

2.1.50 Funding Agreement means the San Juan Generating Station Fuel and Capital Funding Agreement among the Participants, dated September 12, 2014.

2.1.51 Further Audit means the audit provided for in Section 19.6.

2.1.52 Governmental Authority means any federal, state, tribal, local, municipal or foreign governmental or regulatory authority, department, agency, commission, body, court or other governmental authority other than a Party.

2.1.53 Guaranteed Parties has the meaning provided for in the form of Parental Guaranty Agreement attached as Exhibit I.

2.1.54 Indemnified Party means a Party that is seeking or entitled to indemnification or is being indemnified, as provided in Section 20.10.1.

2.1.55 Indemnifying Party means a Party indemnifying another Party, as provided in Section 20.10.1.

2.1.56 Initiating Party means a Party initiating an audit as provided for in Section 24.1.

2.1.57 Law means statutes, rules, regulations, ordinances, orders and codes of federal, state and local Governmental Authorities.

2.1.58 Legacy Costs means those costs payable under Sections 8.2, 8.3 and 8.4 of the CSA

2.1.59 Letter of Credit has the meaning provided for in Section 3.2.2.

2.1.60 Liability means those liabilities described in Section 20.1.

2.1.61 Liens and Encumbrances means, as to each Exiting Participant, all liens, mortgages, claims, assignments, taxes, assessments, governmental charges, filings, pledges, grants of security interests and any other form of encumbrance on the Exiting Participant's Ownership Interest created by each such Exiting Participant.

2.1.62 Mine Reclamation Agreement means the Amended and Restated San Juan Mine Reclamation and Trust Funds Agreement, executed concurrently herewith.

2.1.63 Minimum Annual Generation ("MAG") (expressed in MWh) means Net Maximum Capacity ("NMC") (of Unit 3 or Unit 4, as applicable), and expressed in MW, multiplied by each Participant's percentage Ownership Interest ("I") in a Unit multiplied by 0.85 multiplied by (the Unit 3 Equivalent Availability Factor ("EAF") for SCPPA and Tri-State or the Unit 4 EAF for M-S-R and Anaheim) multiplied by the total annual hours in the calendar year ("AH"). The AH in calendar year 2016 equals 8784 hours and the AH in calendar year 2017 equals 8760 hours. The foregoing is expressed in the following formula: $MAG = NMC * I * 0.85 * EAF * AH$.

2.1.64 Minimum Annual Tonnage Purchase Obligation ("MTO") means Minimum Annual Generation multiplied by the Participant's respective actual average net unit heat rate ("NUHR"), expressed in Btu/kWh, for the year, divided by two times the weighted average heat content ("HC"), expressed in Btu/Lb, of coal delivered by SJCC in the year. The foregoing is expressed in the following formula: $MTO = (MAG * NUHR)/(2 * HC)$.

2.1.65 Minimum Credit Threshold means an investment grade Credit Rating of both Baa3 from Moody's and BBB- from S&P.

2.1.66 Moody's means Moody's Investors Services, Inc. or its successors.

2.1.67 Net Maximum Capacity means the maximum continuous ability of each Unit to produce power, as defined by the North American Electric Reliability Corporation in its Generating Availability Data System Data Reporting Instructions.

2.1.68 NMED means the New Mexico Environment Department or its successor agency.

2.1.69 NMPRC means the New Mexico Public Regulation Commission or its successor agency.

2.1.70 Notice of Dispute has the meaning provided for in Section 23.1.1.

2.1.71 Noticing Party has the meaning provided for in Section 23.1.1.

2.1.72 Operating Agent means the Participant or other entity which has been selected by the Participants as the entity responsible for the operation and maintenance of the Project pursuant to the SJPPA; as of the Effective Date, PNM is the Operating Agent. Unless otherwise specifically provided for, when in this Restructuring Agreement a reference is made to the "agent" of a Party, such reference will not be deemed to include reference to the Operating Agent.

2.1.73 Operating Insurance means policies of insurance secured or to be secured by the Operating Agent as provided for in the SJPPA.

2.1.74 Operating Work means engineering, contract preparation and administration, purchasing, repair, supervision, training, expediting, inspection, testing, protection, operation, use, management, replacement, retirement, reconstruction and maintenance of and for the benefit of the Project, including the administration of the SJPPA, environmental compliance activities and the procurement of fuel and water and other necessary materials and supplies.

2.1.75 Operation and Maintenance ("O&M") Expenses means expenses incurred by the Operating Agent in the performance of Operating Work and chargeable to the Parties pursuant to the SJPPA and this Restructuring Agreement.

2.1.76 Other Project Agreements means agreements entered into between or among one or more of the Parties and/or other persons prior to the Execution Date in connection with the Parties' respective purchases of Ownership Interests in the Project or the operation of the Project; the Other Project Agreements that have been identified by the Parties are listed in **Exhibit B**.

2.1.77 Ownership Interest means a Party's percentage undivided ownership interest in a Unit and in common equipment and facilities and as increased, decreased, acquired or transferred as provided in this Restructuring Agreement, and rights incidental thereto.

2.1.78 Parental Guaranty has the meaning provided for in Section 3.2.1.

2.1.79 Participant means any one of PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS or Tri-State.

2.1.80 Participant Coal Consumption means each Participant's total San Juan Project coal consumption in tons as determined by the Operating Agent. A Participant's Coal Consumption is comprised of its share of coal consumed in its Unit(s) plus its share of coal consumed for common loads, auxiliary loads and start-up for all Units.

2.1.81 Party means any one of the Participants as well as PNMR-D.

2.1.82 Penalty Interest means interest awarded by the arbitrators pursuant to Section 23.8.

2.1.83 PNMR means PNM Resources, Inc., a New Mexico corporation.

2.1.84 Predecessor means any person, including a Party, that, at any time prior to the Execution Date, held ownership of the Ownership Interest of a Party that is seeking indemnity or contribution for environmental Liability under Sections 19 or 20.

2.1.85 Pre-existing Stockpile Coal means coal that as of the Effective Date is stockpiled on SJCC property.

2.1.86 Project has the meaning described in Recital A.

2.1.87 Project Coal Inventory means the sum of coal in coal storage piles, silos, conveying systems, hoppers and all other coal storage at the Project as accounted in FERC Account 151.

2.1.88 Protest has the meaning provided for in Section 23.1.2.

2.1.89 Protesting Party means a Party making a protest in accordance with Section 23.1.2.1.

2.1.90 Rating Agency means Moody's or S&P.

2.1.91 Refined Coal Supply Agreement means the Refined Coal Supply Agreement by and between San Juan Fuels, LLC and PNM dated June 21, 2013.

2.1.92 Regulatory Approval means an authorization, consent, license, certificate, permit, waiver, privilege, acceptance or approval issued or granted by a Governmental Authority. Regulatory Approvals identified by the Parties as required in connection with this Restructuring Agreement are set out in **Exhibit A**.

2.1.93 Regulatory Revision has the meaning provided for in Section 1.4.1.

2.1.94 Remaining Participants means those Parties that will continue participation, or acquire an Ownership Interest, in the Project on and after the Exit Date; the Remaining Participants are PNM, TEP, Farmington, UAMPS, Los Alamos and PNMR-D.

2.1.95 Restructuring Agreement has the meaning provided for in the introductory paragraph of this agreement.

2.1.96 RH SIP has the meaning provided for in Recital G.

2.1.97 RSA means the new Reclamation Services Agreement entered into between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.98 SCR means selective catalytic reduction.

2.1.99 SJCC means San Juan Coal Company, a Delaware corporation, or its successors or assigns.

2.1.100 SJCC Environmental Force Majeure has the meaning provided for in Section 12.1(C)(1) of the CSA.

2.1.101 SJGS means the San Juan Generating Station.

2.1.102 SJGS Plant Site means what are identified as Parcels A, B, D, E and F in **Exhibit F**.

2.1.103 SJPPA means the Amended and Restated San Juan Project Participation Agreement, dated March 23, 2006.

2.1.104 SJPPA Exit Date Amendment means the amendment to the SJPPA as provided for in Section 1.2.2.

2.1.105 SJPPA Restructuring Amendment means the amendment to the SJPPA as provided for in Section 1.2.1.

2.1.106 SNCR means selective non-catalytic reduction.

2.1.107 S&P means the Standard & Poor's Financial Services, LLC (a subsidiary of McGraw-Hill Companies) or its successor.

2.1.108 Termination Date has the meaning provided for in Section 1.7.

2.1.109 Tier 1 Tonnage Allocation means a schedule allocating Tier 1 Tons on a monthly basis based on the SJGS monthly planned coal consumption.

2.1.110 Tier 1 Tons means, with respect to: (i) each of 2016 and 2017, 5.750 million tons; (ii) each of 2018 and 2019, 2.8 million tons; (iii) each of 2020 and 2021, 2.65 million tons; and (iii) 2022, 1.4 million tons.

2.1.111 Tier 2 Tons means all tons delivered to and accepted by SJGS in a year in excess of Tier 1 Tons.

2.1.112 UG-CSA means the Underground Coal Sales Agreement between PNM, TEP and SJCC executed on August 31, 2001.

2.1.113 UG-CSA Termination Agreement means the Underground Coal Sales Agreement Termination and Mutual Release Agreement among PNM, TEP, SJCC and BHP Billiton New Mexico Coal.

2.1.114 Uncontrollable Forces has the meaning provided for in Section 25.10.

2.1.115 Unit means Unit 1, Unit 2, Unit 3 or Unit 4 of the Project.

2.1.116 Willful Action means: (i) action taken or not taken by a Party (or the Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance under this Restructuring Agreement, which 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 (ii) action taken or not taken by a Party (or the Operating Agent) at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default hereunder and which action occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default, or if no time to cure is specified therein, occurs or continues beyond a reasonable time to cure such default; or (iii) action taken or not taken by a Party (or the Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default hereunder. The phrase "employees having management or administrative responsibility," as used in this Section 2.1.116, means employees of a Party who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Restructuring Agreement; provided, however, that, with respect to employees of the Operating Agent acting in its capacity as such and not in its capacity as a Party, but only during such time as any one of Unit 1, 2, 3 or 4 is commercially producing electrical power, such phrase refers only to: (x) the senior employee of the Operating Agent on duty at the Project who is responsible for the operation of the Units, and (y) anyone in the organizational structure of the Operating Agent between such senior employee and an officer. After such time as none of Unit 1, 2, 3 or 4 is commercially producing electrical power, the phrase "employees having management or administrative responsibility" as used in this Section 2.1.116 will mean employees of any Party (including the Operating Agent), who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Restructuring Agreement. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

2.2 Rules of Interpretation. Unless a clear contrary intention appears, this Restructuring Agreement will be construed and interpreted as follows:

2.2.1 Any reference to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization, governmental entity or other entity;

2.2.2 Any reference to a day, week, month or year is to a calendar day, week, month or year, unless otherwise specified as a Business Day;

2.2.3 Any act required to occur by or on a certain day is required to occur before or on that day unless the day falls on a Saturday, Sunday or federal holiday, in which case the act must occur before or on the next Business Day;

2.2.4 The singular includes the plural and *vice versa*;

2.2.5 Reference to the feminine, masculine or neutral gender includes reference to all other genders;

2.2.6 Reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Restructuring Agreement;

2.2.7 Unless expressly stated otherwise, reference to any agreement (including this Restructuring Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended, supplemented, replaced or modified and in effect from time-to-time;

2.2.8 Reference to any Law means such Law as amended, modified, codified supplemented or reenacted, in whole or in part, and in effect from time-to-time, including, if applicable, rules and regulations promulgated thereunder;

2.2.9 Unless expressly stated otherwise, reference to any article, section, exhibit or appendix means such article, section, exhibit or appendix of this Restructuring Agreement, as the case may be;

2.2.10 "Hereunder," "hereof," "herein," "hereto" and words of similar import are deemed references to this Restructuring Agreement as a whole and not to any particular provision hereof;

2.2.11 "Including," "include" and "includes" are deemed to be followed by the phrase "without limitation" and will not be construed to mean the examples given constitute an exclusive list of the matters covered;

2.2.12 Relating to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; and

2.2.13 Whenever an act is required to be performed by a particular time of day, prevailing Mountain Time will be the standard by which performance is measured.

3. Status of PNMR-D under SJPPA

3.1 PNMR-D as Party to SJPPA. As reflected in this Restructuring Agreement, PNMR-D will not acquire an Ownership Interest in the Project until the Exit Date. However, the SJPPA will be amended to provide that PNMR-D will be a party to the SJPPA upon the Effective Date. The purpose of adding PNMR-D as a party to the SJPPA is to set out certain financial obligations PNMR-D will assume, and rights it will have, in contemplation of its acquisition of an Ownership Interest on the Exit Date as described in Sections 6.1 and 6.2.

3.2 Parental Guaranty and Letter of Credit.

3.2.1 Parental Guaranty. As a condition of PNMR-D becoming a party to the SJPPA as provided in Section 3.1, PNMR-D's parent company, PNM Resources, Inc. ("PNMR"), will enter into, on or before the Execution Date, a parental guaranty of PNMR-D's obligations under the Restructuring Agreement, the Decommissioning Agreement, the Mine Reclamation Agreement and the SJPPA ("Parental Guaranty"). The form of the Parental Guaranty is attached hereto as **Exhibit I**.

3.2.2 Letter of Credit. If PNMR's Credit Rating falls below the Minimum Credit Threshold, then PNMR will provide the Operating Agent with a letter of credit (the "Letter of Credit") in the amount of ten million dollars ($10,000,000) with the Operating Agent as the beneficiary. The form of the Letter of Credit is attached hereto as **Exhibit J**. PNMR will deliver the Letter of Credit to the Operating Agent for the benefit of the Guaranteed Parties within ten (10) Business Days following: (i) the effective date of the Credit Rating downgrade that results in PNMR not meeting the Minimum Credit Threshold; or (ii) the withdrawal of PNMR from being rated by one or more of the Rating Agencies. Upon a failure of PNMR to make payment under the Parental Guaranty or a failure of PNMR to procure a conforming replacement Letter of Credit no later than twenty (20) days before expiration of the existing Letter of Credit, the beneficiary will promptly draw upon the Letter of Credit. If appropriate, the Operating Agent will prorate among the Guaranteed Parties the funds drawn against the Letter of Credit. If the issuer of the Letter of Credit notifies the Operating Agent that the issuer's long term obligation rating has fallen below the rating established in the Letter of Credit, PNMR will have twenty-five (25) days within which to replace the Letter of Credit with a new letter of credit from an issuer that meets the minimum long term obligation rating established in the Letter of Credit. If PNMR fails to procure a new letter of credit as provided in the previous sentence, the beneficiary will draw upon the Letter of Credit for the benefit of the Guaranteed Parties.

4. Restructuring Fee, Demand Charge and Voting

4.1 Restructuring Fee. In consideration of costs to restructure the ownership of the Project as provided for herein and for the restructuring of rights and obligations of the Parties in

relation to the Project, the Exiting Participants will pay and the Remaining Participants will accept a restructuring fee in the amount of eight million eight hundred thousand dollars ($8,800,000) ("Restructuring Fee").

4.1.1 The responsibility to pay the Restructuring Fee is allocated among the Exiting Participants in the following percentages: M-S-R – 32.22%; Anaheim – 11.48%; SCPPA – 47.08%; and Tri-State – 9.22%.

4.1.2 The receipt of the Restructuring Fee is allocated as follows: PNM – 0%; TEP – 0%; Farmington – 17.24%; LAC – 22.20%; UAMPS – 22.20%; and PNMR-D – 38.36%.

4.2 Payment of Restructuring Fee and Common Participation Shares of Shared Coal Inventory. Payment of the Restructuring Fee, and payment for the Common Participation Shares of Shared Coal Inventory pursuant to Section 5.3, will occur on the same date, in the manner agreed upon by the Parties, which date will be no later than thirty (30) days after the Effective Date. Each Exiting Participant will pay its proportionate share of the Restructuring Fee as set forth in Section 4.1.1 to the Remaining Participants entitled to receive such payment as provided in Section 4.1.2.

4.3 Costs of Capital Improvements Invoiced after January 1, 2015. The provisions of Section 7 of the SJPPA, Capital Improvements and Retirements of San Juan Project and Participants' Solely Owned Facilities, are modified by this Section 4.3 as follows:

4.3.1 The Remaining Participants are responsible for the costs of Capital Improvements invoiced after January 1, 2015, and the Exiting Participants have no ownership interest in such Capital Improvements. The Exiting Participants will have no responsibility for costs of the SNCR/balanced draft project to be placed on Units 1 and 4. Costs of Capital Improvements invoiced after January 1, 2015, are allocated to the Remaining Participants as follows:

4.3.1.1 For Unit 4 and for all equipment and facilities directly related to Unit 4 only, in accordance with the following percentages:

4.3.1.1.1	PNM:	64.482%
4.3.1.1.2	Farmington:	8.475%
4.3.1.1.3	LAC:	7.200%
4.3.1.1.4	UAMPS:	7.028%
4.3.1.1.5	PNMR-D	12.815%

4.3.1.2 For equipment and facilities common to Units 3 and 4 only, in accordance with the following percentages:

4.3.1.2.1	PNM:	64.482%
4.3.1.2.2	Farmington:	8.475%
4.3.1.2.3	LAC:	7.200%

4.3.1.2.4	UAMPS:	7.028%
4.3.1.2.5	PNMR-D	12.815%

4.3.1.3 For equipment and facilities common to all of the Units in accordance with the following percentages:

4.3.1.3.1	PNM:	58.671%
4.3.1.3.2	TEP:	20.068%
4.3.1.3.3	Farmington:	5.076%
4.3.1.3.4	LAC:	4.309%
4.3.1.3.5	UAMPS:	4.203%
4.3.1.3.6	PNMR-D:	7.673%

4.3.2 The modifications to Section 7 of the SJPPA set out in Section 4.3.1 replace and supersede the provisions of Section 7.13 of the SJPPA accepted for filing as PNM Rate Schedule No. 144 and currently on file with the FERC.

4.4 Demand Charge. For the period July 1, 2014, through December 31, 2017, the Exiting Participants will pay a Demand Charge for the use of new Capital Improvements implemented on Unit 4, facilities common to Units 3 and 4, and facilities common to all Units.

4.4.1 The total Demand Charge is six million two hundred thousand dollars ($6,200,000) of which five million three hundred fourteen thousand two hundred eighty-six dollars ($5,314,286) remains unpaid. The Demand Charge will be paid regardless of the output of Unit 3 or 4. The Exiting Participants will be invoiced by the Operating Agent for and will pay the unpaid balance of the Demand Charge in monthly amounts of no less than 1/36th of the unpaid balance; provided, the sum of the monthly amounts which would have accrued between January 1, 2015 and the Effective Date will be paid within forty-five (45) days of the Effective Date.

4.4.2 The Exiting Participants will pay the Demand Charge as follows:

4.4.2.1	M-S-R	71.650%
4.4.2.2	Anaheim	25.000%
4.4.2.3	SCPPA	2.800%
4.4.2.4	Tri-State	0.550%

4.4.3 The Remaining Participants will be paid the Demand Charge as follows from July 1, 2014 through December 31, 2014:

4.4.3.1	PNM	0.000%
4.4.3.2	TEP	0.000%
4.4.3.3	Farmington	55.600%
4.4.3.4	LAC	22.200%
4.4.3.5	UAMPS	22.200%
4.4.3.6	PNMR-D	0.000%

4.4.4 The Remaining Participants will be paid the Demand Charge as follows from January 1, 2015 through December 31, 2017:

4.4.4.1	PNM	0.000%
4.4.4.2	TEP	0.000%
4.4.4.3	Farmington	17.24%
4.4.4.4	LAC	22.20%
4.4.4.5	UAMPS	22.20%
4.4.4.6	PNMR-D	38.36%

4.4.5 With respect to any Demand Charges paid or received between July 1, 2014 and December 31, 2014, any Exiting Participant that made such a Demand Charge payment and any Remaining Participant that received a Demand Charge payment and did not return it will be credited the amount of that payment or receipt as follows: the amount of any such payment will be proportionately offset against the amount of the Demand Charge payment each such Exiting Participant is obligated to pay under Sections 4.4.1 through 4.4.4, and the amount of any such receipt by a Remaining Participant will be proportionately offset against the amount of the Demand Charge payment each such Remaining Participant is entitled to receive under Sections 4.4.1 through 4.4.4. The Demand Charge payments made by Exiting Participants to the Operating Agent between July 1, 2014, and December 31, 2014, were as follows: M-S-R - $634,614; Anaheim - $221,429; SCPPA - $24,800; and Tri-State - $4,871. The Demand Charge payments received by the Remaining Participants between July 1, 2014, and December 31, 2014, and not returned to the Operating Agent were as follows: Farmington - $492,457. For a Remaining Participant that returned Demand Charge payments received between July 1, 2014 and December 31, 2014, such Remaining Participant will receive a disbursement from the Operating Agent constituting the Remaining Participant's entire proportionate share of Demand Charge payments as set forth in Sections 4.4.1, 4.4.3 and 4.4.4.

4.5 Voting on Capital Improvements. As of the Effective Date, for purposes of the application of the double voting procedures set out in Section 18.4 of the SJPPA, the Ownership Interests and the number of individual Parties required to approve a Capital Improvement will be as provided in Section 4.3.1.

5. Fuel Supply

5.1 Certain Cost Allocations. Payment obligations for coal supply, reclamation and CCR disposal will be allocated as follows:

5.1.1 For payments under the UG-CSA, the CCBDA, the UG-CSA Termination Agreement and the CCBDA Termination Agreement, Sections 23.1 through 23.13 of the SJPPA (as those sections were in effect on March 23, 2006) will apply.

5.1.2 Sections 23.1 through 23.13 of the SJPPA (as those sections were in effect on March 23, 2006) will apply for allocation of any fuel-related payments (other than for

coal) incurred through December 31, 2017 and chargeable to FERC Account 501, including limestone, fuel oil, CCR disposal, fuel handling or start-up or auxiliary power and energy.

5.1.3 For payments arising under the CSA and the CCRDA, Sections 5.2 through 5.7 of this Restructuring Agreement will apply.

5.1.4 Payments arising under the RSA will be allocated as determined under the Mine Reclamation Agreement.

5.2 Supply of Coal to Exiting Participants and Remaining Participants. Beginning on January 1, 2016, PNM will supply coal to (i) the Exiting Participants under the provisions of Sections 5.3 through 5.6; and (ii) the Remaining Participants under the provisions of Section 5.7. PNM will have all cost obligations under the CSA for coal supplied to the Exiting Participants and PNM will have all rights to the Exiting Participants' inventory relinquished to PNM under Section 5.3.

5.3 Relinquishment of Coal Inventory. The Exiting Participants will relinquish to PNM their Common Participation Shares of Shared Coal Inventory that exist as of January 1, 2016, at the following values: (i) $16.88/ton for coal tons stockpiled on SJCC's property and $22.69/ton for coal tons stockpiled on the SJGS Plant Site. The total sum paid by PNM for Common Participation Shares of Shared Coal Inventory will be allocated as follows:

5.3.1	M-S-R	32.22%
5.3.2	Anaheim	11.48%
5.3.3	SCPPA	47.08%
5.3.4	Tri-State	9.22%

5.4 Coal Supply for Exiting Participants. From January 1, 2016 through the Exit Date, the Exiting Participants will receive coal monthly to meet their Participant Coal Consumption from PNM at a cost of $50/ton in 2016 and 2017. This $50/ton covers all payment obligations for coal supplied to the Exiting Participants that might otherwise be due under (i) this Restructuring Agreement; (ii) the CSA, including Legacy Costs, taxes and royalties; and (iii) gross receipts taxes under the Refined Coal Supply Agreement or otherwise. This $50/ton does not include payments for reclamation costs under the RSA or disposal costs under the CCRDA.

5.5 Minimum Purchase Obligations. The Exiting Participants will not have any take-or-pay or minimum purchase obligations under the CSA; provided, however, the Exiting Participants must comply with the dispatch requirements described in Section 5.6.

5.6 Exiting Participant Dispatch Requirements; Invoicing. The Exiting Participants will dispatch their respective shares of the Units to no less than their Minimum Annual Generation. The Exiting Participants will be billed monthly based on their Participant Coal Consumption. At the end of each of 2016 and 2017, any Exiting Participant that has not met its Minimum Annual Tonnage Purchase Obligation will be billed at $50/ton for the difference between its actual Participant Coal Consumption and its Minimum Annual Tonnage Purchase

Obligation; provided, in the event that at any time during 2016 or 2017 PNM is unable to supply coal to the Exiting Participants as provided in Section 5.4, then the Minimum Annual Tonnage Purchase Obligation will be proportionately reduced to account for any such period of time in which PNM is unable to supply coal.

5.7 Monthly Remaining Participant Coal Invoicing. For purposes of the calculations in this Section 5.7, PNM's Common Participation Share will include the Exiting Participants' Common Participation Share, and PNM's Participant Coal Consumption will include the Exiting Participants' Participant Coal Consumption. SJCC will invoice PNM monthly as provided under the CSA. PNM will invoice each Remaining Participant monthly by Coal Tonnage Component and such Coal Tonnage Component will be paid for as follows:

5.7.1 Pre-existing Stockpile Coal Tons. Pre-existing Stockpile Coal tons as invoiced by SJCC will be allocated by a Remaining Participant's Common Participation Share as of the Effective Date and will be paid for by each Remaining Participant at the price per ton charged by SJCC in its monthly invoicing to PNM.

5.7.2 Tier 1 Tons. Each year, PNM will develop a monthly Tier 1 Tonnage Allocation schedule with SJCC in the annual operating plan process as provided for in Section 7.2 of the CSA. With input from the Remaining Participants, PNM will develop a monthly allocation by Remaining Participant of such Tier 1 Tons (such individual allocation, its "Tier 1 Tonnage Allocation"). Such monthly Tier 1 Tonnage Allocation will be paid for by Remaining Participants whether or not their Participant Coal Consumption exceeded their Tier 1 Tonnage Allocation in the month. Monthly, for each Remaining Participant, its Tier 1 Tonnage Allocation, net of its invoiced Pre-existing Stockpile Coal for such month will be paid for at the then-existing price for Tier 1 Tons under the CSA. In each of 2016 and 2017, five million six hundred thousand (5,600,000) tons will be allocated by Remaining Participant Share, and then PNM will be allocated an additional one hundred fifty thousand (150,000) tons in each of those years. In each of 2018 and 2019, two million eight hundred thousand (2,800,000) tons will be allocated by Remaining Participant Share. In each of 2020 and 2021, two million eight hundred thousand (2,800,000) tons will be allocated by Remaining Participant Share, and then PNM's allocation will be reduced by one hundred fifty thousand (150,000) tons in each of those years. In 2022, one million four hundred thousand (1,400,000) tons will be allocated by Remaining Participant Share.

5.7.3 Tier 2 Tons. To the extent that a Remaining Participant's Participant Coal Consumption in a month exceeds its Tier 1 Tonnage Allocation for such month, PNM will invoice such Remaining Participant such excess as Tier 2 Tons to be paid for at the then existing price for Tier 2 Tons under the CSA.

5.7.4 Legacy Costs. Legacy Costs as invoiced monthly by SJCC will be allocated using a Remaining Participant's Common Participation Share for that year.

5.7.5 Reclamation Bond Premium. Cost for SJCC's reclamation bond premium invoiced through the CSA will be allocated using a Remaining Participant's Common Participation Share for that year.

5.7.6 Weight-based Taxes. Weight-based taxes will be applied to the tonnages as invoiced by PNM to each Remaining Participant at the then-existing rates applicable to SJCC invoices.

5.7.7 Revenue-based Taxes and Royalties. Revenue-based taxes and royalties will be applied to the tonnages and total coal costs as invoiced by PNM to each Remaining Participant at the then-existing rates applicable to SJCC invoices.

5.7.8 SJCC Environmental Force Majeure. In the event of an SJCC Environmental Force Majeure, then Available Pre-existing Stockpile Tons will be allocated in the same manner as Pre-existing Stockpile Coal tons, and Force Majeure Tons will be allocated in the same manner as Tier 1 Tons unless otherwise approved by the Remaining Participants in the Fuels Committee. Such calculations will be on an annual basis.

5.7.9 Other Costs. Any other costs billed by SJCC under the CSA and not specifically addressed in this Section 5.7 will be apportioned among and paid for by the Remaining Participants on the basis of Remaining Participant's Common Participation Share for that year unless otherwise annually approved by the Remaining Participants in the Fuels Committee.

5.7.10 Annual Year-End Reconciliation Process.

5.7.10.1 At the end of each year, the Operating Agent will reconcile the sum of each Remaining Participant's monthly CSA-related payments to a properly allocable share of annual Tier 1 Tons, Tier 2 Tons, Pre-existing Stockpile Coal tons, and cost associated with any change in Project Coal Inventory and invoice or refund any such reconciliation amounts to each Remaining Participant.

5.7.10.2 Any net consumption of Project Coal Inventory tons will be charged to FERC Account 501 and apportioned among and paid for by the Remaining Participants on the basis of the percentage that each Remaining Participant's annual Tier 2 Tons after the reconciliation process bears to the total annual Tier 2 Tons consumption after the reconciliation process for all Units. The price for such tons will be determined by dividing the total recorded cost in FERC Account 151 by the total number of tons of coal in Project Coal Inventory, both as recorded on January 1 of said year. The total amount of any such payment for consumed Project Coal Inventory tons will subsequently be credited to FERC Account 151 and apportioned to the Remaining Participants based on the Remaining Participant's Common Participation Share for that year.

5.7.10.3 The costs of any net addition to Project Coal Inventory tons, as invoiced by SJCC, will be charged to FERC Account 151 and apportioned to and paid for by the Remaining Participants based on the Remaining Participant's Common Participation Share for that year.

5.7.10.4 If, at the end of any year, the Operating Agent has collected amounts in excess of those due SJCC under the CSA, such over-collection will be refunded to the Remaining Participants. The refund to each Remaining Participant will be an amount equal to the total amount of the over-collection multiplied by the tons each Remaining Participant's Coal Consumption was less than its total annual Tier 1 Tonnage Allocation divided by the total amount by which all such Remaining Participants' Coal Consumption was less than their Tier 1 Tonnage Allocation.

5.8 Section 23.14 Superseded. The provisions of this Section 5 replace and supersede the provisions of Section 23.14 of the SJPPA accepted for filing as PNM Rate Schedule No. 144 and currently on file with the FERC.

6. Exit Date and Ownership Conveyances

6.1 Transfer of Exiting Participants' Rights. The Exiting Participants will each transfer all of their respective rights, titles and interests in and to their Ownership Interests to the Acquiring Participants as specified in Section 6.2 and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement. The Remaining Participants will purchase fuel oil inventory from the Exiting Participants at book value on the Exit Date. On the first monthly invoice following the Exit Date, the Operating Agent will credit each of the Exiting Participants for its share of the book value for fuel oil inventory, and charge each of the Remaining Participants for its share of such book value. Each Exiting Participant's share of fuel oil inventory will be calculated using its Common Participation Share prior to the Exit Date. Each Remaining Participant's share will be calculated using its Common Participation Share after the Exit Date.

6.2 Acquisition of Ownership Interests of Exiting Participants. On the Exit Date and in accordance with this Restructuring Agreement and with all other instruments referenced herein:

6.2.1 SCPPA and Tri-State will convey all of their respective rights, titles and interests in and to their Ownership Interests to PNM, and PNM (an "Acquiring Participant") will acquire all of SCPPA's and Tri-State's respective rights, titles and interests in and to their Ownership Interests; and

6.2.2 M-S-R and Anaheim will convey all of their respective rights, titles and interests in and to their Ownership Interests to PNM and PNMR-D, and PNM and PNMR-D ("Acquiring Participants") will acquire all of M-S-R's and Anaheim's respective rights, titles and interests in and to their Ownership Interests, including

approximately 132 MW of Unit 4 in the case of PNM (an additional 26.025% ownership of Unit 4) and approximately 65 MW of Unit 4 in the case of PNMR-D (a 12.815% ownership of Unit 4).

6.2.3 TEP, Los Alamos, Farmington and UAMPS will not acquire any ownership of Unit 3 or any additional Ownership Interest in Unit 4; and PNMR-D will not acquire any ownership of Unit 3, but all Remaining Participants will have shares of plant common and Unit 3 and 4 common as set forth in Section 6.3.

6.3 Plant Ownership after Acquisition of Ownership Interests of Exiting Participants. Upon completion of the transfers provided for in Section 6.2, the Remaining Participants will hold the following Ownership Interests in Units 3 and 4, Unit 3 and 4 common and in plant common equipment and facilities, which change in Ownership Interests will be reflected in the SJPPA Exit Date Amendment:

	Unit 3	Unit 4	Unit 3&4 Common	Plant Common
PNM	100.00%	64.482%	64.482%	58.671%
PNMR-D	0.000%	12.815%	12.815%	7.673%
TEP	0.000%	0.000%	0.000%	20.068%
Farmington	0.000%	8.475%	8.475%	5.076%
LAC	0.000%	7.200%	7.200%	4.309%
UAMPS	0.000%	7.028%	7.028%	4.203%
Exiting Participants	0.000%	0.000%	0.000%	0.000%
Total	100.00%	100.000%	100.000%	100.000%

6.4 Unit 1 and Unit 2 Ownerships After Exit Date. This Restructuring Agreement does not alter the ownership of Units 1 and 2. After the Exit Date, Units 1 and 2 will continue to be owned 50% by PNM and 50% by TEP.

6.5 "AS IS" Conveyances. Except as otherwise provided in this Restructuring Agreement: (i) THE TRANSFERS PROVIDED FOR IN THIS SECTION 6 ARE TO BE ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS; (ii) NO EXITING PARTICIPANT MAKES ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, QUANTITY, CONDITION, SALABILITY, OBSOLESCENCE, MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR WORKING ORDER OF, ALL OR ANY PART OF THE OWNERSHIP INTERESTS TO BE TRANSFERRED HEREUNDER OR AS TO ANY PORTION OF THE PROJECT; AND (iii) NO EXITING PARTICIPANT REPRESENTS OR WARRANTS THAT THE USE OR OPERATION OF AN OWNERSHIP INTEREST OR ANY PORTION OF THE PROJECT WILL NOT VIOLATE OR CONFLICT WITH ANY PATENT, TRADEMARK OR SERVICE MARK RIGHTS OF ANY THIRD PARTY. EACH ACQUIRING PARTICIPANT ACCEPTS ALL SUCH TRANSFERS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS RESTRUCTURING AGREEMENT.

7. Closing of Ownership Conveyances

7.1 Closing. The date of Closing of the conveyances provided for in Section 6.2 ("Closing Date") will take place on or before the Exit Date at a time and place agreeable to the Exiting Participants and the Acquiring Participants, will be effective as of the Exit Date and may occur via the exchange of electronically transmitted signatures contained in counterpart signature pages for any required Closing documents. Closing will occur after all conditions to Closing set forth in this Restructuring Agreement (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived.

7.2 Closing Statement. At least sixty (60) days prior to the anticipated Closing Date, the Exiting Participants and the Acquiring Participants will have jointly prepared a preliminary closing statement setting out relevant details concerning the Closing and relevant post-Closing items; and at least seven (7) days prior to the anticipated Closing Date, the Exiting Participants and the Acquiring Participants will have jointly prepared a final closing statement ("Closing Statement"). Copies of the preliminary closing statement and the Closing Statement will be provided to all of the Parties.

7.3 Closing Deliveries by the Exiting Participants. At the Closing, the Exiting Participants will deliver, or will cause to be delivered, to the Acquiring Participants, each of the following:

7.3.1 Instruments of Sale and Conveyance in substantially the form of **Exhibit C**, duly executed by the Exiting Participants.

7.3.2 Evidence, in form and substance reasonably satisfactory to the Acquiring Participants and their counsel, of the Exiting Participants' receipt of: (i) Board approvals authorizing the conveyance of the Exiting Participants' Ownership Interests in SJGS to the Acquiring Participants; (ii) any required Regulatory Approvals; and (iii) the release of all Liens and Encumbrances (exclusive of taxes and charges that are prorated as of the Exit Date).

7.3.3 A certificate by each Exiting Participant, duly executed by an authorized officer or agent of the Exiting Participant, identifying the name and title and bearing the signatures of the representatives of each Exiting Participant authorized to execute and deliver documents at the Closing.

7.3.4 A bring-down opinion by each Exiting Participant's counsel, in form and substance reasonably acceptable to the Acquiring Participants and their counsel, in the form set forth in **Exhibit K**.

7.3.5 As provided in Section 12.2, an appropriate instrument in the form of **Exhibit G**, relinquishing their easements and license rights in lands associated with the Project.

7.3.6 All such other agreements, documents, instruments and writings required by the Acquiring Participants to be delivered at or prior to the Closing Date pursuant to this Restructuring Agreement or necessary to sell, assign, convey, transfer and deliver all of the Exiting Participants' rights, titles and interests in and to Ownership Interests to be transferred pursuant to and in accordance with this Restructuring Agreement and, where necessary and desirable, in recordable form.

7.4 Closing Deliveries by the Acquiring Participants. At the Closing, the Acquiring Participants will deliver, or will cause to be delivered, to the Exiting Participants, each of the following:

7.4.1 Evidence, in form and substance reasonably satisfactory to the Exiting Participants and their counsel, of the Acquiring Participants' receipt of: (i) Board approvals authorizing the acquisition of the Exiting Participants' Ownership Interests in SJGS; and (ii) any required Regulatory Approvals.

7.4.2 A certificate by each Acquiring Participant, duly executed by an authorized officer or agent of the Acquiring Participant, identifying the name and title and bearing the signatures of the representatives of each Acquiring Participant authorized to execute and deliver documents at the Closing.

7.4.3 A bring-down opinion by each Acquiring Participant's counsel, in form and substance reasonably acceptable to the Exiting Participants and their counsel, in the form set forth in **Exhibit K**.

7.4.4 An instrument as described in Section 12.3, the form of which is shown in **Exhibit H**, by which PNM and TEP provide to the Exiting Participants all access and use rights necessary to exercise their rights, protect their interests and fulfill their obligations under this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement.

7.4.5 All such other agreements, documents, instruments and writings required by the Exiting Participants to be delivered at or prior to the Closing Date pursuant to this Restructuring Agreement or necessary to acquire, accept, own and operate all of the Acquiring Participants' rights, titles and interests to be acquired pursuant to and in accordance with this Restructuring Agreement and, where necessary and desirable, in recordable form.

7.5 Conditions Precedent. The obligations of the Exiting Participants to complete the Closing are subject to the satisfaction or waiver, on or prior to the Closing Date, of each of the following conditions precedent by the Acquiring Participants (each a "Condition Precedent"); and the obligations of the Acquiring Participants to complete the Closing are subject to the satisfaction or waiver, on or prior to the Closing Date, of each of the following Conditions Precedent by the Exiting Participants. To the extent any Condition Precedent has not been satisfied or waived, the Party required to satisfy the condition will take prompt steps to do so.

7.5.1 All Acquiring Participants and Exiting Participants have performed or complied in all material respects with all covenants, agreements and conditions contained in this Restructuring Agreement, the Mine Reclamation Agreement and the SJPPA.

7.5.2 All Acquiring Participants and Exiting Participants have received Regulatory Approvals required for the Closing to occur.

7.5.3 The representations and warranties of the Acquiring Participants and Exiting Participants set forth in Section 17 are true and correct in all material respects as of the Closing Date, in each case as though made as of the Closing Date.

7.5.4 All consents or approvals to the Closing that may be required from any lender or creditor of an Acquiring Participant or an Exiting Participant have been obtained and all requirements related to the Closing have been satisfied in respect of master indentures or other financing instruments or arrangements to which such Acquiring Participant or Exiting Participant may be parties.

7.6 Prior Notification of Certain Events. No later than ninety (90) days prior to the scheduled or anticipated Closing Date, if as a result of uncertainties resulting from pending judicial or regulatory proceedings, a Party is uncertain of its ability to satisfy the conditions for Closing as referenced in Sections 7.3, 7.4 or 7.5, such Party will provide written notice to the other Parties of such uncertainty. Upon receipt of any notification given pursuant to this Section 7.6, the Parties will confer in good faith regarding the circumstances set out in the notification and will attempt, within seventy-five (75) days of receipt of the notification, or such other period as the Parties may determine, to mutually agree upon the appropriate course of action in light of the notification, including negotiating a layoff agreement with Unit 4 Exiting Participants, such layoff agreement to be effective between January 1, 2018, and the Closing Date or the expiration of the SJPPA, whichever occurs first.

7.7 Prorations. Except as may otherwise be provided in this Restructuring Agreement, all of the ordinary and recurring items normally charged to the Participants, including property taxes, insurance premiums and O&M Expenses in any period prior to the Exit Date relating to the operation of the Project, as provided for in the SJPPA, will be prorated and charged as of the Exit Date. All Parties will be liable for their prorated share of such expenses to the extent such items relate to all time periods prior to the Exit Date and the Remaining Participants will be liable to the extent such items relate to all time periods on and after the Exit Date.

7.8 Governmental Recording and Filing. To the extent required, and as addressed in the Closing Statement, the Exiting Participants and the Acquiring Participants will cause appropriate releases, terminations, conveyances, deeds and other instruments reflecting the transfers provided for in Section 6 to be filed in a timely manner in the real estate records of San Juan County, New Mexico and/or in the offices of other appropriate Governmental Authorities.

8. Notifications, Consents and Rights-of-First-Refusal. To effectuate the transfers provided for in Section 6, all Parties hereby expressly: (i) give any and all prior

notifications and grant any and all required consents that they have or may have a right to give or grant under the SJPPA (including under Section 10 of the SJPPA) or under any other agreements; and (ii) waive, relinquish or decline to exercise, any rights they have or may have under Section 11 of the SJPPA or under any other agreements with respect to the exercise of any right-of-first-refusal in connection with the transfers provided for in Section 6.

9. Operation and Maintenance Expenses. Through December 31, 2017, the Exiting Participants will continue to pay all O&M Expenses associated with their Ownership Interests in accordance with Section 28 of the SJPPA and will have no responsibility for ongoing O&M work thereafter, except as required by Section 19.

10. Replacement Power. Each Participant will be solely responsible for its own replacement power requirements resulting from: (i) in the case of the Exiting Participants, the Exiting Participant's exit from active involvement in the operation of SJGS; or (ii) in the case of all affected Participants, the retirement of Unit 2 or Unit 3.

11. Other Project Agreements

11.1 Other Project Agreements Identified. The Other Project Agreements are shown in **Exhibit B**.

11.2 Actions with Respect to Other Project Agreements. Each Party will undertake an analysis of those Other Project Agreements to which it is a party and will address with each counterparty to each Other Project Agreement whether such Other Project Agreement should be retained, amended, terminated or superseded. The affected Parties that are parties to Other Project Agreements will act in a timely fashion prior to the Exit Date to execute any requisite instruments to amend, terminate or supersede such Other Project Agreements and to seek and obtain any requisite Regulatory Approvals in regard thereto.

12. Land Ownership

12.1 No Change in Ownership. Nothing in this Restructuring Agreement will be construed to effect a change of ownership interests in real property, as provided in Section 6.1 of the SJPPA, except as may be provided in Sections 7.3.5, 7.4.4, 12.2 and 12.3 of this Restructuring Agreement.

12.2 Relinquishment of Certain Rights. Upon the transfer of Ownership Interests on the Exit Date, the Exiting Participants will deliver appropriate instruments in the form of **Exhibit G** relinquishing their easements and license rights in lands associated with the Project, as provided in Section 7.3.5.

12.3 Easement and Right of Entry. Upon the transfer of the Ownership Interests on the Exit Date, PNM and TEP will deliver an instrument in the form of **Exhibit H** to each of the Exiting Participants providing them all access and use rights necessary to exercise their rights, protect their interests and fulfill tbeir obligations under this Restructuring Agreement, the Mine Reclamation Agreement and the Decommissioning Agreement, as provided in Section 7.4.3.

13. Coal Mine Reclamation Funding. The arrangements under which mine reclamation will be undertaken, and the Parties' agreed funding responsibilities for mine reclamation, will be as provided in the Mine Reclamation Agreement.

14. Decommissioning. The arrangements under which Project decommissioning will be undertaken, and the Parties' agreed funding responsibilities for decommissioning, will be as provided in the Decommissioning Agreement, and such agreement will become effective as of the Exit Date.

15. Confidentiality

15.1 Confidentiality of Negotiations. The Parties' discussions and negotiations that led to the development of this Restructuring Agreement, the Decommissioning Agreement, the Mine Reclamation Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment, including discussions taking place in the context of mediation, were conducted in confidence and will remain confidential; provided, that nothing herein will prevent a Party from making disclosures pursuant to a requirement of Law (including laws related to the inspection of public records and securities), including subpoena or discovery request. If any Party determines that it is legally obligated to make a disclosure, the Party obligated to make such disclosure will make reasonable efforts to notify the other Parties prior to such disclosure and will reasonably cooperate with any other Party in seeking an order of a Governmental Authority preventing or limiting such disclosure; provided further, however, that the Party seeking any such order to prevent or limit disclosure will be responsible for all costs for seeking such an order. Prior to making disclosure, a Party will, as available or appropriate, attempt to utilize a confidentiality agreement to protect the confidentiality of the information disclosed.

15.2 Non-confidentiality of Restructuring Agreement. While negotiations were and remain confidential as addressed in Section 15.1, neither this Restructuring Agreement nor any version of it publicly disclosed pursuant to applicable Law is confidential.

16. Taxes

16.1 Obligations of Parties. All taxes or assessments levied against each Party's Ownership Interest, excepting those taxes or assessments levied against an individual Party on behalf of other Parties, will be the sole responsibility of the Party upon whom said taxes and assessments are levied, subject to proration as set forth in Section 7.7. If any taxes or assessments are levied and assessed in a manner other than specified in this Section 16.1, it will be the responsibility of the Parties to establish equitable standard practices and procedures for the apportionment among the Parties of such taxes and assessments and the payment thereof.

16.2 Notification of Taxing Authorities. In conjunction with the Closing, the Acquiring Participants and the Exiting Participants will work together to provide timely notification to taxing authorities of the Closing and will use commercially reasonable efforts to have any taxing authority imposing any taxes or assessments on or with respect to the Project assess and levy such taxes or assessments directly against each Party in accordance with its

respective Ownership Interest in the property taxed. The manner of making such notifications will be addressed in the Closing Statement.

16.3 IRS Exclusion. The Parties hereby elect to be excluded from the application of Subchapter "K" of Chapter 1 of Subtitle "A" of the Internal Revenue Code of 1986, or such portion or portions thereof as may be permitted or authorized by the Secretary of the Treasury or its delegate insofar as such subchapter, or any portion or portions thereof, may be applicable to the Parties hereunder.

17. Representations and Warranties; Opinions of Counsel

17.1 Requisite Power and Authority. Each Party represents and warrants to the other Parties that it has the requisite power and authority to execute this Restructuring Agreement and that the person executing this Restructuring Agreement on its behalf has the requisite authority to do so and, subject to the receipt of requisite Regulatory Approvals, to perform its obligations set out in this Restructuring Agreement; the execution and delivery of this Restructuring Agreement and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party; and the obligations set out herein are valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions hereof, except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at law.

17.2 No Violation. Each Party, to the best of its knowledge and upon reasonable inquiry, represents and warrants to the other Parties that the execution and delivery of this Restructuring Agreement by such Party, and the performance by such Party of all of its obligations hereunder, will not violate any term, condition or provision of its Charter Documents; any applicable Law by which the Party is bound; any applicable court or administrative order or decree; or any agreement or contract to which it is a party. Further, each Party represents and warrants to the other Parties that, to the best of its knowledge and upon reasonable inquiry, there is no claim pending or threatened against it which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Restructuring Agreement or which could result in the filing of any mechanic's or materialman's lien against the SJGS Plant Site, other than a disclosed appeal of a Regulatory Approval.

17.3 Opinions of Counsel. On or before the Execution Date, counsel for each Party will provide its opinion to each of the other Parties, in form and substance reasonably acceptable to the Party to which such opinion is delivered, that the Party is in compliance with the representations and warranties given in this Section 17. The form of such opinion of counsel is provided in **Exhibit D**.

18. Relationship of Parties

18.1 Several Obligations. The covenants, obligations and liabilities of the Parties are, except as otherwise specifically provided herein, intended to be several and not joint or collective. At no time will a non-defaulting Party be responsible for making payments required under this Restructuring Agreement on behalf of any other Party. Each Party will be individually responsible for its own covenants, obligations and liabilities as provided for herein.

18.2 No Joint Venture or Partnership. Nothing in this Restructuring Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties. No Party or group of Parties will be under the control of or will be deemed to control any other Party or the Parties as a group. Except as expressly provided in this Restructuring Agreement, the Mine Reclamation Agreement, the Decommissioning Agreement and the SJPPA, no Party will be the agent of or have a right or power to bind any other Party without its express written consent.

19. Establishment of Environmental Baseline

19.1 Baseline Environmental Study. In furtherance of their common interest with respect to the identification of potential environmental Liabilities, the Participants have engaged an independent, third-party environmental consultant ("Consultant") to complete a confidential baseline environmental self-evaluation ("Baseline Environmental Study" or "BES") of SJGS and its operations. Associated with the BES will be a multi-media compliance audit ("Environmental Audit") to determine compliance with applicable environmental requirements from the previous SJGS audit to the present. The BES and the Environmental Audit will be funded as Operating Work under the SJPPA. The purpose of the BES and the Environmental Audit is to establish a baseline of environmental conditions in anticipation of the Exiting Participants' exit from active involvement in the operation of SJGS on the Exit Date. It is the intent of the Participants that the Consultant's work and communications be protected to the fullest legal extent possible under Law, including under any attorney-client privilege, environmental audit privilege, self-critical analysis privilege and the attorney work product doctrine. The Consultant has been engaged and is being directed by counsel jointly representing the Participants. The Consultant's work and communications, including the Draft Report, Final Report and Further Audit addressed below, have been and will continue to be treated as privileged and confidential pursuant to the retention agreement between the Consultant and the counsel retained by the Participants pursuant to this Section 19.1, and will be included as Defense Materials pursuant to the Joint Defense and Confidentiality Agreement effective December 9, 2009 and the Addendum to Joint Defense and Confidentiality Agreement effective January 31, 2010.

19.2 Scope of BES and Environmental Audit. The scope of work for the BES and Environmental Audit has been developed by agreement of all Participants and will include: (i) review and analysis of data, documents and information, such as monitoring data for air emissions, surface and groundwater discharges, to identify potential or actual emissions, spills or leaks related to SJGS; and (ii) interviews of key past or present Operating Agent personnel (as identified and agreed upon by all Participants) with knowledge of past and present SJGS operations. The BES and Environmental Audit may identify environmental issues that require further assessment or investigation. To the extent possible (based upon regulatory requirements)

and by agreement of all the Participants, additional environmental assessments such as document review, studies, data collection, sampling, analysis of soil, surface water, and groundwater sampling and similar activities may be conducted with a desired completion date of June 30, 2015, or as otherwise agreed by the Participants. Issues of concern that are already identified and that are the current subject of monitoring, investigative and remediation activities in accordance with regulatory, permitting or other legal requirements will be excluded from further assessment in the BES; provided, however, that such issues and remediation activities will be identified and listed in the Final Report.

19.3 Draft Report. The Consultant will prepare and provide a draft confidential baseline environmental report ("Draft Report") setting forth the Consultant's findings and recommendations, which Draft Report will be distributed to all the Participants for review and comment.

19.4 Final Report. After receiving and considering the Participants' comments, the Consultant will prepare a confidential final BES report for SJGS and its operations ("Final Report") setting forth the Consultant's findings and recommendations, if any, to address any environmental issues in accordance with any applicable environmental Laws. The Final Report will be directed to all the Participants and each and all of the Participants may rely on the Final Report. The Draft Report, Final Report and Further Audit are privileged and confidential pursuant to this Section 19. If the Operating Agent or a Participant is requested by an insurance carrier or broker, in connection with an application for coverage, or renewal of coverage, or in connection with a claim filed by the Operating Agent or a Participant, to provide information in regard to the operation or environmental compliance of SJGS, the Operating Agent or the Participant may provide factual information to the insurance carrier or broker pertinent to the application for coverage, or renewal of coverage, or the filed claim, including based upon findings contained in the Draft Report, the Final Report or the Further Audit but may not provide a copy of the Draft Report, Final Report or the Further Audit. Any Participant providing such factual information to an insurance carrier or broker will seek an agreement from the insurance carrier or broker to maintain the confidentiality of such information.

19.5 Remediation or Corrective Action. If the Final Report identifies any environmental issues at SJGS that require remediation or corrective action or similar activities that are not being currently addressed, then, as part of Operating Work and funded as such, the Operating Agent will to the extent possible (given any constraints and/or schedule that may be imposed by the regulatory agency overseeing the remediation) on or before thirty (30) days prior to the Exit Date remediate, or commence the remediation of, any and all environmental issues identified in the Final Report, with responsibility for the cost of such remediation, corrective action, or similar activities to be borne by Parties or, if applicable, their respective insurance carriers, based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the Liability.

19.6 Further Audit. After the Final Report, but prior to the Exit Date, the Operating Agent will complete an additional environmental audit of SJGS (the "Further Audit") to identify environmental issues, if any, that may have arisen subsequent to the completion of the Final Report. The scope of work for the Further Audit will be developed by agreement of all the

Participants. The Further Audit will be treated as confidential, as set forth in Section 19.1, and will be directed to all the Participants (all of whom may rely on the Further Audit). The Further Audit and any remediation undertaken pursuant to the Further Audit will be funded as Operating Work, the cost responsibilities for which will be borne by Parties based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the Liability. The Final Report may be supplemented to the extent updates are required by the Further Audit.

19.7 Subsequently Discovered Environmental Issues. The Parties acknowledge that: (i) the BES, the Final Report and the Further Audit may not discover or report all environmental issues that existed prior to the date thereof; and (ii) there may be exposure to claims for environmental Liabilities for changes in applicable Law after the Exit Date. Liabilities for environmental issues identified after the Exit Date will be resolved pursuant to Section 20.

19.8 Claims against Predecessors. Nothing in this Section 19 affects the right of a Party to seek contribution from or otherwise make claims against any Predecessor with respect to environmental Liabilities arising from an event prior to such Party's acquisition of its Ownership Interest, provided that any Party seeking such contribution is not relieved of its obligation to pay any amounts it owes under this Section 19.

20. Liability and Indemnification

20.1 Liabilities Defined. Except as expressly limited, the term "Liabilities" as used in this Restructuring Agreement means all liabilities, claims, demands, actions, damages, fines, penalties, remedial or corrective action costs, and causes of action whatsoever, including without limitation the reasonable fees and disbursements of the applicable Party's external attorneys and their staff, and costs and expenses, including but not limited to costs of consultants and experts and other litigation costs reasonably incurred in investigating, preparing, prosecuting or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character for which indemnification is provided hereunder. The term "Liabilities" specifically and expressly includes: (i) all liabilities of any kind or character arising out of or related to the contamination of the SJGS Plant Site by any hazardous substance, hazardous waste or any environmental pollutant or contaminant; or (ii) the violation of any permit applicable to SJGS; or (iii) the violation of any environmental Law, including violations of the Comprehensive Environmental Response Compensation and Liability Act, the Federal Clean Air Act, the Federal Clean Water Act and the Federal Resource Conservation and Recovery Act; provided, however, that "Liabilities" under this Restructuring Agreement do not include costs for planning or implementing decommissioning of the San Juan Project, which are addressed in the Decommissioning Agreement, or the costs of mine reclamation, which are addressed in the Mine Reclamation Agreement.

20.2 Liabilities Arising Prior to Exit Date. Except in situations when the event giving rise to the Liability is the result of Willful Action of the Operating Agent or a Party, all Parties will be responsible for Liabilities arising from SJGS plant operations and ownership prior to the Exit Date, based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the liability. If the Liability is the result of Willful Action of the Operating Agent

or a Party, the Operating Agent or the Party will be responsible for such Liabilities within the limitations of the SJPPA.

20.3 Liabilities Arising After Exit Date. Only the Remaining Participants will be responsible for Liabilities arising from SJGS plant operations or ownership after the Exit Date based on the Remaining Participants' respective post-Exit Date plant ownership interests in the facilities giving rise to the Liability.

20.4 Apportionment of Liabilities. It is recognized that some events giving rise to Liabilities may potentially begin prior to the Exit Date and continue after the Exit Date; in such event, responsibility will be apportioned based on the relative time periods before and after tbe Exit Date and pursuant to the provisions of Sections 20.2 and 20.3.

20.5 Limitation of Liability for Willful Action. For claims made prior to the Exit Date, the ten million dollar ($10,000,000) limitation of liability in Sections 36.6 and 36.9 of the SJPPA will apply. For claims made on or after the Exit Date, the limitation of liability for each occurrence of Willful Action will be fourteen million dollars ($14,000,000). As of the Exit Date, all references in Sections 36.6 and 36.9 of the SJPPA to a limitation of liability of ten million dollars ($10,000,000) for each occurrence of Willful Action will be amended to increase that amount to a limitation of liability of fourteen million dollars ($14,000,000) for each occurrence of Willful Action.

20.6 Several Liability. All Parties' obligations for Liability and indemnity hereunder will be several and not joint or collective. Each Party will be individually responsible for its own covenants, obligations and Liabilities as provided for herein.

20.7 Claims Arising After Exit Date. If on or after the Exit Date a claim for Liability arising from SJGS operations or ownership is made against one or more of the Parties, or by any Party against another Party (in each case, including the Operating Agent), then the following will occur:

20.7.1 In the event a claim for Liability is brougbt against any Party asserting claims for Liability arising from ownership or operation of SJGS, said Party will notify the other Parties in writing within ten (10) Business Days after the Party learns of the claim for Liability.

20.7.2 The Exiting Participants and the Remaining Participants will confer promptly to determine if the event giving rise to the Liability occurred prior to or on or after the Exit Date.

20.7.3 If all the Exiting Participants and the Remaining Participants agree that the event giving rise to the Liability occurred prior to the Exit Date, all Parties will bear their respective proportionate shares of any resulting Liability, based on the Parties' respective pre-Exit Date Ownership Interests in the facilities giving rise to the Liability. The Parties' pre-Exit Date Ownership Interests in the Project facilities are shown in **Exhibit E**.

20.7.4 If all the Exiting Participants and the Remaining Participants agree that the event giving rise to the Liability occurred on or after the Exit Date, the Remaining Participants, based on their respective post-Exit Date Ownership Interests in the facilities giving rise to the Liability, will indemnify, defend and hold harmless the Exiting Participants and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against any and all Liabilities of any kind or character resulting from such claim for Liability arising out of or related to SJGS operations and ownership on or after the Exit Date.

20.7.5 If all the Exiting Participants and the Remaining Participants cannot agree whether the event giving rise to the Liability occurred prior to, on or after the Exit Date, then the Parties will unanimously agree upon the retention of an independent third-party consultant (with expertise in the subject matter giving rise to the liability) who will be tasked with determining whether the event giving rise to the Liability occurred before or on or after the Exit Date (or the extent to which the event giving rise to the liability occurred before or on or after the Exit Date). To the extent permitted by law, the Parties will provide for the confidentiality of the independent third-party consultant's determination and will share equitably in the consultant's fees and costs. The determination of the independent third-party consultant will be final and binding on the Parties except as provided in Sections 20.7.8 and 20.7.9 and is not arbitrable under Section 23.

20.7.6 To the extent the independent third-party consultant determines that the event giving rise to the Liability occurred prior to the Exit Date, the provisions of Section 20.7.3 will apply.

20.7.7 To the extent the independent third-party consultant determines that the event giving rise to the Liability occurred on or after the Exit Date, the provisions of Section 20.7.4 will apply.

20.7.8 If all the Parties have agreed, or the independent third-party consultant has determined, that the event giving rise to the Liability occurred prior to the Exit Date, but there is a final judicial determination that the event giving rise to the Liability occurred (fully or partially) on or after the Exit Date, the Remaining Participants, based on their respective post-Exit Date plant ownership interests in the facilities giving rise to the Liability, will indemnify, defend and hold harmless the Exiting Participants and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against any and all Liabilities of any kind or character resulting from such claim for Liability arising out of or related to SJGS plant operations and ownership on or after the Exit Date (to the extent the event is judicially determined to have occurred after the Exit Date), including a refund to the Exiting Participants of sums paid by the Exiting Participants for any Liability; provided, that no Party will: (a) commence a lawsuit seeking a judicial determination to reverse the agreement of the Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred; or (b) assert or support a position in a lawsuit commenced by a third party that would have the effect of reversing the agreement of the

Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred. As used in Sections 20.7.8 and 20.7.9, "final judicial determination" refers to: (x) the decision of a trial court that has become final by virtue of the appeal period having expired without an appeal having been taken; or (y) the final decision of an appellate court from which no rehearing or further appeal may be taken.

20.7.9 If all the Parties have agreed, or the independent third-party consultant has determined, that the event giving rise to the Liability occurred on or after the Exit Date, but there is a final judicial determination that the event giving rise to the Liability occurred (fully or partially) before the Exit Date, the Exiting Participants, based on their pre-Exit Date plant ownership interests in the facilities giving rise to the Liability, will indemnify, defend and hold harmless the Remaining Participants and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against the Exiting Participants' individual proportionate shares of said Liability arising out of or related to SJGS plant operations and ownership prior to the Exit Date (to the extent the event is judicially determined to have occurred before the Exit Date), including a refund to the Remaining Participants of a proportionate share of sums paid by the Remaining Participants for any Liability; provided, however, that no Party will: (a) commence a lawsuit seeking a judicial determination to reverse the agreement of the Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred; or (b) assert or support a position in a lawsuit commenced by a third party that would have the effect of reversing the agreement of the Parties or the determination of the independent third-party consultant as to when the events giving rise to the Liability occurred.

20.8 Claims against Predecessors. Nothing in this Section 20 affects the right of a Party to seek contribution from or otherwise make claims against any Predecessor with respect to environmental Liabilities arising from an event prior to such Party's acquisition of its Ownership Interest, provided that any Party seeking such contribution is not relieved of its obligation to pay any amounts it owes under this Section 20.

20.9 PNM Responsibility. PNM will defend, indemnify and hold harmless the other Parties and their agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against Liabilities to the extent arising from the development, operation and/or ownership by PNM (or PNM's affiliate, assignee, successor, licensee or lessee) of any new future use of property at or adjacent to the SJGS Plant Site, including the development, operation or ownership of any future gas-fueled electric generating plant to be developed by PNM (or PNM's affiliate, assignee, successor, licensee or lessee) at or adjacent to the SJGS Plant Site.

20.10 Indemnification Procedures.

20.10.1 A Party seeking indemnification hereunder (the "Indemnified Party") will give prompt written notice to the Party from whom indemnification is sought (the "Indemnifying Party") of the assertion of any Liability for which indemnification is

sought. The notice will set forth in reasonable detail the factual basis asserted for the Liability and the claimed or estimated amount of the Liability. Notwithstanding the foregoing, the failure or delay of the Indemnified Party to so notify the Indemnifying Party will not relieve the Indemnifying Party of its indemnification obligations under this Restructuring Agreement unless, and only to the extent that, such failure or delay materially and adversely prejudiced the Indemnifying Party. Nothing in this Section 20.10.1 is intended nor will be construed to toll or otherwise affect the operation of any applicable statute of limitations.

20.10.2 With respect to any Liability as to which indemnification is sought, if the Indemnifying Party has acknowledged in writing its indemnification obligations under this Restructuring Agreement without qualification or reservation of rights, the Indemnifying Party has the right at its own expense to conduct and control the defense, compromise or settlement of such Liability, utilizing counsel of its choice, subject to the limitations set forth in this Section 20.10. Such counsel must be reasonably acceptable to the Indemnified Party. The Indemnified Party may participate at its own expense in such defense, compromise or settlement utilizing its own counsel. Notwithstanding the foregoing, the Indemnified Party has the right to conduct and control the defense, compromise or settlement of any Liability with counsel of its choice and at the Indemnifying Party's expense if: (i) the Indemnifying Party has not delivered the written acknowledgement of indemnification obligations and given notice of its decision to conduct and control the defense of such Liability within thirty (30) days after notice of such Liability is served; (ii) the Indemnifying Party fails to conduct such defense diligently and in good faith; (iii) the Indemnified Party reasonably determines, based upon the advice of counsel (including in-house counsel), that the use of counsel selected by the Indemnifying Party to represent the Indemnified Party would present such counsel with an actual or potential conflict of interest to which the Indemnified Party and, if necessary, the Indemnifying Party has not consented in writing; (iv) the claim for Liability seeks injunctive or other non-monetary relief against the Indemnified Party; or (v) the Liability relates to or otherwise arises in connection with any criminal or regulatory proceeding.

20.10.3 The Indemnifying Party and the Indemnified Party will, and will cause their respective Affiliates and representatives to, cooperate with the defense or prosecution of any claim. Such cooperation includes furnishing such records, information and witnesses and attending such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party of the Indemnified Party or the Indemnified Party of the Indemnifying Party in connection with the defense or prosecution of any claim.

20.10.4 Except as set forth below, no claim may be settled or compromised by the Indemnified Party without the prior written consent of the Indemnifying Party or by the Indemnifying Party without the prior written consent of the Indemnified Party, in each case which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Indemnified Party has the right to pay, settle or compromise any Liability, provided that the Indemnified Party waives all rights against

the Indemnifying Party to indemnification under this Section 20 with respect to such Liability unless the Indemnified Party sought the consent of the Indemnifying Party to such payment, settlement or compromise but the Indemnifying Party unreasonably withheld, conditioned or delayed such consent. The Indemnifying Party has the right to consent to the entry of a judgment or enter into a settlement with respect to any Liability without the prior written consent of the Indemnified Party, if the judgment or settlement (i) involves only the payment of money damages to be paid in full by the Indemnifying Party concurrently with the effectiveness of such judgment of settlement; (ii) does not contain any restriction or condition that would reasonably be expected to have a future adverse effect on the Indemnified Party or the conduct of its business; (iii) does not include any admission of wrongdoing; (iv) includes in any settlement documents and/or release a statement that the matter is being settled without agreement of the Indemnified Party as allowed by this Section 20.10.4; and (v) includes, as a condition to any settlement or other resolution, a complete and irrevocable release of the Indemnified Party from all liability for the claim on which the judgment or settlement is based.

20.11 Anti-Indemnity Provisions. The Parties acknowledge the potential applicability of NMSA 1978, §§ 56-7-1 and 56-7-2. Any agreement to indemnify contained herein will be enforced only to the extent it requires the Indemnifying Party to indemnify and hold harmless the Indemnified Party, including its agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns, against liabilities: (i) only to the extent that the liabilities are caused by, or arise out of, the acts or omissions or negligence of the Indemnifying Party or its agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns; and (ii) except to the extent such liabilities arise out of the negligence, actions or omissions of an Indemnified Party or such Indemnified Party's agents or employees or independent contractors.

20.12 Internal Counsel. There will be no indemnification with respect to fees or expenses of internal counsel of a Party.

20.13 Willful Action. No Party (including the Operating Agent) committing Willful Action will be indemnified or held harmless by the other Parties for the consequences of the Party's Willful Action.

20.14 Damages. Notwithstanding Section 20.1, in no event will any Party be liable under any provision of this Restructuring Agreement for any indirect, punitive or incidental damages or costs of any other Party (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and the Parties hereby waive, release and discharge one another from all such indirect, punitive and incidental damages and costs; provided, that this Section 20.14 does not affect or negate the provisions of Section 23.8 regarding Penalty Interest or the provisions of Section 20 regarding obligations to indemnify.

20.15 Mitigation of Damages. Each Party will take appropriate and prudent actions reasonably to mitigate any damages such Party may suffer as a result of the conduct or Default of another Party.

20.16 Anaheim and M-S-R. Anaheim (which includes its Public Utilities Department) and M-S-R are governmental entities whose liability is limited by the California Government Claims Act (Government Code §§ 810 – 998.3) and any Liability or indemnity assumed by Anaheim or M-S-R in this Restructuring Agreement will be limited by the provisions of the California Government Claims Act. Nothing in this Restructuring Agreement is intended to create or will be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend which is against public policy, void and unenforceable. Notwithstanding any other provision of this Restructuring Agreement, the payment for all purchases, fees or charges made by Anaheim or M-S-R under this Restructuring Agreement will be made from the legally available revenues of M-S-R or the legally available revenues of the Anaheim Electric System. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or general taxing power of Anaheim or of M-S-R or any of the members of M-S-R.

20.17 Southern California Public Power Authority. SCPPA is a joint exercise of powers agency organized under the laws of the State of California, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of SCPPA.

20.18 Farmington and Los Alamos. Farmington (and the Farmington Electric Utility System) and Los Alamos are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington and the Farmington Electric Utility System or Los Alamos in this Restructuring Agreement will be limited by the provisions of the New Mexico Tort Claims Act. Notwithstanding any other provisions of this Restructuring Agreement, the payment for all purchases, fees or charges made by Farmington and Los Alamos under this Restructuring Agreement will be made from the legally available revenues of Farmington's and/or Los Alamos's Electric Utility System. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or Los Alamos.

20.19 Utah Associated Municipal Power Systems. UAMPS is a joint action agency organized under the laws of the State of Utah, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of UAMPS.

21. Insurance Coverage for Continuing Obligations

21.1 Occurrence-based Policies. All occurrence-based policies of Operating Insurance required by the SJPPA will be in effect on the Exit Date (auto liability, workers' compensation, general liability, crime and property). The Exiting Participants will not be eligible for inclusion in occurrence-based Operating Insurance renewed after the Exit Date.

21.2 Claims-Made Policies.

21.2.1 Except as provided in Section 21.2.2, after the Exit Date the Exiting Participants will not be eligible for inclusion in the Operating Insurance policies that are claims-made policies (environmental liability, excess liability, fiduciary liability and employment practices liability) (each a "Claims-Made Policy") and, as of the Exit Date, all obligations of the Operating Agent to procure Claims-Made Policies for the benefit or protection of the Exiting Participants will cease.

21.2.2 If an Exiting Participant desires to purchase continuing or stand-alone "tail" coverage (collectively, "Continuing Coverage") under a Claims-Made Policy that would or may provide coverage for risks insurable under the insurance coverage form in effect at the time of a covered loss, for which the Exiting Participant has potential responsibility, the Operating Agent will, upon timely written notice from the Exiting Participant, work with the Exiting Participant to provide the Exiting Participant the opportunity to obtain such Continuing Coverage. Continuing Coverage may be procured through the purchase of a stand-alone Claims-Made Policy issued to the Exiting Participant or by one or more endorsements on Claims-Made Policies purchased by the Operating Agent. If requested in writing by an Exiting Participant, the Operating Agent will provide an analysis to the Exiting Participant as to coverage options. The availability, if any, of Continuing Coverage is dependent on market conditions. Upon the renewal of a Claims-Made Policy under which an Exiting Participant has Continuing Coverage, the Operating Agent, upon written request, will provide the Exiting Participant a copy of the policy with all endorsements demonstrating compliance with this Section 21.2.2; provided, however, that if in the judgment of the Operating Agent portions of a policy are proprietary, confidential or otherwise not disclosable, and these portions of the policy do not impact the premium allocated or relate specifically to the SJGS Plant Site, including exposures, loss experience, severity and frequency of loss, then the Operating Agent may redact such portions with a full explanation to the Exiting Participant of the reason for the redaction.

21.2.3 Each Exiting Participant electing Continuing Coverage under a Claims-Made Policy procured by the Operating Agent for or on behalf of the Exiting Participant will pay for the Continuing Coverage during the period in which the Continuing Coverage is or will be in effect as set forth below.

21.2.3.1 If Continuing Coverage is procured by the purchase of a stand-alone Claims-Made Policy issued to the Exiting Participant, the Exiting Participant will pay the associated premium to the Operating Agent.

21.2.3.2 If Continuing Coverage is procured by one or more endorsements on Claims-Made Policies purchased by the Operating Agent, the Exiting Participant will pay its allocated share of the premium associated with the Continuing Coverage. The determination of the allocated share will be based on factors customarily employed, including the property affected, exposures, loss experience and severity and frequency of loss.

21.2.3.3 With respect to Continuing Coverage procured as provided in Section 21.2.3.2, the Operating Agent will invoice the allocated share of the premium to the Exiting Participant, with necessary and sufficient supporting information, and will timely provide all additional supporting information as the Exiting Participant may reasonably request. If there is a dispute between the Operating Agent and the Exiting Participant as to the Exiting Participant's allocable share of the premium, the Exiting Participant will pay the invoice and the disputing Parties will retain the services of a mutually agreed independent third party (broker or other consultant) with expertise in insurance matters to resolve the dispute. The fees and expenses of the independent third party will be shared equally among the disputing Parties. Upon the resolution of the dispute, an appropriate adjustment will be made to the invoice, if required. Any disputes under this Section 21.2.3 are not arbitrable under Section 23.

21.2.4 Nothing in this Section 21.2 prevents an Exiting Participant that may wish to purchase Continuing Coverage from doing so on its own, and at its own expense, without involvement of the Operating Agent. The Operating Agent will reasonably cooperate with the Exiting Participant in its efforts to obtain Continuing Coverage.

21.2.5 In the event an Exiting Participant that has obtained Continuing Coverage no longer desires to have Continuing Coverage under any Claims-Made Policy procured by the Operating Agent, the Exiting Participant must give the Operating Agent at least one hundred and fifty (150) days written notice prior to the next incepting coverage term of the Claims-Made Policy.

21.3 Other Insurance Coverage Matters. Prior to the Exit Date, if requested by an Exiting Participant, the Operating Agent will consult with the Exiting Participant in reference to insurance issues related to the departure of the Exiting Participants, including insuring physical property on a cash value basis.

21.4 Obligation to Maintain Policies. The Operating Agent and the Remaining Participants will continue to obtain and maintain Operating Insurance as provided for in the SJPPA, and the Operating Agent will, upon written request, including email, provide within five (5) Business Days an Exiting Participant a certificate of insurance as proof of continued coverage. For insurance policies required to be provided by vendors or service providers whose services, in the reasonable opinion of the Operating Agent, could expose a Party to Liability, then, where permitted by such policies, such Party will be included as an additional insured on such policies, including all applicable endorsements.

22. Assignments

22.1 Assignment. This Restructuring Agreement and the rights, duties and obligations hereunder may not be assigned or delegated by any Party without the prior written consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); provided,

however, any Party may without the consent of any other Party (and without relieving itself from liability hereunder) but with prior notice to the other Parties:

22.1.1 transfer, sell, pledge, encumber or assign this Restructuring Agreement as collateral in connection with any financing arrangements;

22.1.2 transfer or assign this Restructuring Agreement to an Affiliate of such Party so long as (i) such Affiliate's creditworthiness is equal to or higher than that of the assigning Party; and (ii) such assignee has agreed in writing to unconditionally assume and be bound by the terms and conditions hereof and all of the transferring Party's obligations hereunder; or

22.1.3 transfer or assign this Restructuring Agreement to any entity succeeding to all or substantially all of the assets of the transferring Party so long as the assignee's creditworthiness is equal to or higher than that of the assigning Party and such assignee has agreed in writing to unconditionally assume and be bound by the terms and conditions hereof and all of the transferring Party's obligations hereunder.

Any (i) mortgagee, trustee or secured party under present or future deeds of trust, mortgages, indentures or security agreements of any of the Parties and any successor or assign thereof; (ii) receiver, referee, or trustee in bankruptcy or reorganization of any of the Parties, and any successor by action of law or otherwise; and (iii) purchaser, transferee or assignee or any thereof may, without need for the prior consent of the other Parties and subject to the provisions of Section 22.2, succeed to and acquire all the rights, titles and interests of such Party in this Restructuring Agreement, and upon such succession or acquisition, will assume all of the obligations of such Party in this Restructuring Agreement arising from and after the date of the succession and may take over possession of or foreclose upon said property, rights, titles and interests of such Party.

22.2 Assignee Responsibility. Any (i) mortgagee, trustee or secured party; (ii) receiver, referee or trustee appointed pursuant to the provisions of any present or future mortgage, deed of trust, indenture or security agreement creating a lien upon or encumbering the rights, titles or interests of any Party in, to and under this Restructuring Agreement and any successor thereof by action of law or otherwise; and (iii) purchaser, transferee or assignee of any thereof, will not be obligated to pay any monies accruing on account of any of the obligations or duties of such Party under this Restructuring Agreement incurred prior to the taking of possession, the effectiveness of transfer, or the initiation of foreclosure or other remedial proceedings by such mortgagee, trustee or secured party.

22.3 Parties not Relieved of Obligations. No Party will be relieved of any of its obligations and duties to the other Parties by a transfer or assignment under this Section 22 without the express prior written consent of the remaining Parties, which consent will not be unreasonably withheld, conditioned or delayed.

23. Dispute Resolution and Default

23.1 Amicable Resolution. If a dispute between or among any of the Parties should arise under this Restructuring Agreement, or in relation to the rights or obligations of the Parties under this Restructuring Agreement, the Parties will first seek to resolve the dispute as set forth in this Section 23.1.

23.1.1 The dispute resolution process will be initiated by the delivery of a written notice by a Party ("Noticing Party") of the dispute ("Notice of Dispute") to the Party with which a dispute is claimed. The Notice of Dispute will specify the existence, nature and extent of the dispute. Copies of the Notice of Dispute will also be served on all other Parties. The Notice of Dispute will specifically state the sums allegedly due, any non-monetary obligation allegedly not performed, or both if applicable.

23.1.2 Within fifteen (15) Business Days of receipt of the Notice of Dispute, the Party alleged not to be performing will (i) pay any undisputed amount to the Party entitled to such payment, and deposit any disputed amount into escrow in accordance with an escrow agreement consistent with this Section 23; and (ii) commence performance of any disputed non-monetary obligation, but in either case may do so under protest (the "Protest").

23.1.2.1 The Protest will be in writing, will accompany the disputed payment into escrow or precede the commencement of performance of the disputed non-monetary obligation, and will specify the basis of the Protest. Copies of the Protest will be served by the protesting Party ("Protesting Party") on all other Parties.

23.1.2.2 The escrow agreement will (i) provide that amounts deposited into escrow will be held in escrow until the Noticing Party and the Protesting Party mutually direct otherwise or until an award of arbitrators directs otherwise; (ii) direct the escrow agent to deposit the escrowed amounts into an interest-bearing account with appropriate liquidity considering the nature and likely duration of the dispute; and (iii) provide that fees for establishing the escrow be paid by the Protesting Party and that fees for other services of the escrow agent may be deducted periodically from the funds held in escrow or as otherwise agreed by the Noticing Party, Protesting Party and escrow agent. The escrow agreement may contain other appropriate terms customarily required in such agreements by escrow agents.

23.1.3 Within fifteen (15) Business Days of the giving of a Notice of Dispute under Section 23.1.1, or within ten (10) Business Days after the service of a Protest under Section 23.1.2, executive representatives of the Parties involved in the dispute with authority to resolve the dispute will meet at a mutually acceptable time and place to attempt to negotiate a timely and amicable resolution of the dispute. If an executive of a Party involved in the dispute intends to be accompanied by counsel, the other Party or Parties involved in the dispute must be given at least five (5) Business Days' written notice of such intent and such other Parties may also be accompanied by counsel. All negotiations will be confidential and will be treated as compromise and settlement

negotiations under New Mexico law. If the executive representatives of the Parties are unable to resolve the dispute within sixty (60) days of the Notice of Dispute (or such other period as they may agree to), any Party involved in the dispute may call for submission of the dispute to arbitration, which call will be binding upon all other affected Parties.

23.2 Call for Arbitration. The Party calling for arbitration must give written notice to all other Parties ("Arbitration Notice"), setting forth in the Arbitration Notice in adequate detail the entity against whom relief is sought, the nature of the dispute, the amount, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, which may include monetary, equitable and declaratory relief. Within twenty (20) Business Days after receipt of the Arbitration Notice, any other Party may submit its own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated, with copies of such notice provided to all other Parties. Thereafter, the Party calling for arbitration will have ten (10) Business Days in which to submit a written rebuttal statement, copies of which must be provided to all other Parties.

23.3 Selection of Arbitrators.

23.3.1 The Parties involved in the arbitration will seek to agree upon a panel of three (3) neutral arbitrators as follows. Within ten (10) days after service of the written rebuttal statement, the Parties representing each side of the dispute will provide to the Parties representing the other side of the dispute a list of up to five (5) suggested arbitrators having the qualifications required by Section 23.3.2 and a summary of each such suggested arbitrator's experience and qualifications. Within five (5) Business Days thereafter, the Parties involved in the arbitration will meet and confer by telephone or in person to seek to agree upon a panel of three (3) neutral arbitrators from the lists that have been exchanged. If such agreement is not reached as the result of such meeting, the Parties representing each side of the dispute will provide a second list of suggested arbitrators to one another, and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon a panel of three (3) neutral arbitrators. If such agreement on arbitrators is reached, the Parties will proceed to arbitration as further set forth in this Section 23.

23.3.2 If the Parties involved in the arbitration are not able to agree upon a complete panel of three (3) neutral arbitrators, such Parties will select the arbitrators upon which agreement has not been reached as follows. The Parties will request from the American Arbitration Association ("AAA") (or similar organization as the arbitrating Parties agree upon) ("Arbitration Organization") a list of seven (7) arbitrators with names and biographical sketches and specific qualifications relating to the case to be heard. The proposed arbitrators must be retired judges or other attorneys with experience in complex business disputes. The Parties involved in the arbitration will each advise the Arbitration Organization of its order of preference of such arbitrators by numbering from one (1) to seven (7) each name on the list (with one (1) being the most preferred arbitrator) and submitting the numbered lists in writing to the Arbitration Organization. Depending upon the number of arbitrators to be selected, the name or names with the lowest

combined numbers will be appointed as the remaining neutral arbitrator(s). In the event more than one name on the list has the same lowest combined score, the tie will be broken by lot. Should the Parties agree that one list of seven (7) is insufficient to obtain a total of three (3) neutral arbitrators with the required qualifications, an additional list of arbitrators may be requested from the Arbitration Organization.

23.3.3 No person will be eligible for appointment as an arbitrator who is an officer or employee of any of the Parties to the dispute or is otherwise interested in the matter to be arbitrated.

23.4 Arbitration Procedures. Except as otherwise provided in this Section 23 or otherwise agreed by the Parties to the dispute, the Parties will utilize in the arbitration the AAA's Commercial Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Commercial Disputes) or similar rules and practices of another Arbitration Organization from time-to-time in force, except that if such rules and practices, as modified herein, conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico law then in force that are specifically applicable to arbitration proceedings, such New Mexico laws will govern. The arbitration will be conducted at a location in Albuquerque, New Mexico, unless otherwise agreed by the affected Parties.

23.5 Decision of Arbitrators. The arbitrators will hear evidence submitted by the respective Parties or group or groups of Parties and may call for additional information, which additional information must be furnished by the Party having such information. The decision of a majority of the arbitrators ("Arbitration Award") must be rendered no later than twenty (20) days after the conclusion of the arbitration hearing and will be binding upon all the Parties and must be based on the provisions of this Restructuring Agreement and applicable New Mexico or federal Law. The Arbitration Award must be in writing and must explain in reasonable detail the basis of the award.

23.6 Enforcement of Arbitration Award. This agreement to arbitrate is specifically enforceable, and the Arbitration Award will be final and binding upon the Parties to the extent provided by the laws of the State of New Mexico. Any Arbitration Award may be filed with a court of competent jurisdiction in New Mexico and upon motion of a Party the court shall enter a judgment in conformity therewith as provided by the New Mexico Uniform Arbitration Act. Said judgment shall be enforceable in other States and Territories of the United States under the Full Faith and Credit provisions of the United States Constitution and other Laws.

23.7 Fees and Expenses. The non-prevailing Party will be responsible for reimbursing the prevailing Party for the fees and expenses of the arbitrators, unless the Arbitration Award specifies some other apportionment of such fees and expenses. All other expenses and costs of the arbitration, including attorney fees and expert witness fees, will be borne by the Party incurring the same.

23.8 Interest and Penalty Interest. The arbitrators will award the amount of interest actually earned during deposit of the disputed amounts in the escrow account ("Escrow Interest") to the Party who prevails in the arbitration. The arbitrators will further calculate interest on the

monetary portion of the Arbitration Award at the Wall Street Journal Prime Rate (or any successor to that rate) plus five percent (5%). The arbitrators will subtract Escrow Interest from the interest calculated pursuant to the immediately preceding sentence and also award the result of that calculation ("Penalty Interest") to the prevailing Party. The arbitrators will have no discretion to refuse to award either Escrow Interest or Penalty Interest.

23.9 Prompt Resolution. The Parties acknowledge the importance of prompt dispute resolution and will cooperate toward the rendering of an Arbitration Award no later than two hundred and seventy (270) days after the Arbitration Notice is served.

23.10 Default. A default under this Restructuring Agreement ("Default") will occur only if a Party (i) has received a Notice of Dispute and fails to follow the procedures in Section 23.1.2, or (ii) does not comply with all of the terms and conditions of an Arbitration Award against it (unless the effect of such Arbitration Award is stayed).

23.11 Consequences of Default. Any Party in Default under this Restructuring Agreement will lose its rights under this Restructuring Agreement, the Decommissioning Agreement (if the Decommissioning Agreement is in effect), and the Mine Reclamation Agreement so long as the Party remains in Default. This consequence of Default is in addition to and cumulative of any other remedy to which the Party in Default may be subject. If and when the Party in Default remedies the Default, its rights under such agreements will be restored.

23.12 Legal Remedies. Nothing in this Section 23 will be deemed to prevent a Party from commencing judicial action: (i) to obtain a provisional remedy to protect the effectiveness of the arbitration proceeding; (ii) to confirm, enforce, modify, correct, vacate or challenge an Arbitration Award on grounds provided for in the New Mexico Uniform Arbitration Act; (iii) to obtain relief in instances where the arbitrators are unable or unwilling to act within the time provided for in Section 23.9; or (iv) where, as the result of the unreasonable or dilatory conduct of another Party, a Party is not able to obtain a timely valid and enforceable Arbitration Award.

24. Audit Rights; Related Disputes

24.1 Right of Audit. The Operating Agent will maintain complete and accurate records of all expenses and transactions for which a Party may have cost responsibility under this Restructuring Agreement. Such records will be maintained from the date an expense is billed to a Party hereunder for a period of the longer of: (i) the expiration of the statute of limitations for actions based on contract; or (ii) the date the records may be destroyed under the Operating Agent's document retention policy. Any Party (an "Initiating Party") may, upon reasonable advance written notice to the Operating Agent, conduct an audit of all records, invoices, costs, expenses or Liabilities charged to the Initiating Party or for which the Initiating Party has or may have cost responsibility. Parties desiring to perform an audit will cooperate with one another so as to minimize the number of audits and any undue burden upon the Operating Agent. Each such audit will be carried out by an auditor of the Initiating Party's choosing and at the expense of the Initiating Party, except as provided in Section 24.3. The Operating Agent will cooperate with the Initiating Party and the Initiating Party's auditor and will make available its relevant business records at reasonable times and places, upon reasonable advance notice. A copy of the audit

report will be provided to all Parties by the Initiating Party within fifteen (15) days of receipt of the audit report.

24.2 Dispute Resolution. If any Party disagrees with an audit finding from an audit conducted under Section 24.1, the Party may within fifteen (15) Business Days of the receipt of the audit report request in writing that the audit be reviewed by providing such request to all of the Parties. After any such request, the affected Parties will review the expenditure and will endeavor to agree upon whether an over- or under-billing occurred. If, after the review, the affected Parties determine that the expenditure was over- or under-billed, an adjustment to the billing that is the subject of the audit finding will be made to eliminate the over- or under-billing and an adjusted bill will be sent as provided for in Section 24.3. Each Party that receives a payment as a result of under- or over-billing will reimburse the Initiating Party as provided for in Section 24.3. If within thirty (30) Business Days of the date of the mailing of the written request for review the affected Parties are unable to agree in writing on a modification of the expenditure to eliminate the over- or under-billing, the matter will be submitted to dispute resolution pursuant to Section 23.

24.3 Adjusted Billing Procedures. If as the result of an audit and any related dispute resolution procedures under Section 23.1 or Section 23.2 it is determined that there was an under- or over-billing, the Operating Agent will issue invoices to correct the under- or over-billing with interest at the Wall Street Journal Prime Rate (or any successor to that rate). Interest will be calculated from the due date for payments on the prior invoices that included the under-or over-billed amounts to the date of the revised billings. The owing Party will pay any amounts owed on the corrected invoices within twenty (20) Business Days of receipt of the revised billing reflecting the result of the audit report. Each Party (other than an Initiating Party) that receives a payment or credit as a result of an audit report will reimburse the Initiating Party for the cost of the audit based on the amount received by such Party as a percentage of the total amount of payments and credits received by Parties; provided, that if the amount received by a Party is less than the lower of (i) $5,000 or (ii) ten percent (10%) of the amount of the disputed billing, no reimbursement for the audit costs will be required.

24.4 Effectiveness. The provisions of this Section 24 will become effective as of the Exit Date. Matters requiring audit arising before the Exit Date will be addressed in a manner consistent with the audit provisions of the SJPPA.

25. Miscellaneous Provisions

25.1 Governing Law. This Restructuring Agreement is made under and will be governed by New Mexico law, without regard to conflicts of law or choice of law principles that would require the application of the laws of a different jurisdiction.

25.2 Venue. Venue with respect to any judicial proceeding arising out of or relating to this Restructuring Agreement will lie exclusively in the state or federal courts in Albuquerque, New Mexico, and the Parties irrevocably consent and submit to the exclusive jurisdiction of such courts for such purpose and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner

recognized by such courts. A final judgment of the state or federal court will be enforceable in other states under applicable Law.

25.3 Manner of Giving of Notice. Any notice, demand, protest or request provided for in this Restructuring Agreement, or served, given or made in connection with it, will be deemed properly served, given or made: (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next Business Day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

25.3.1 Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

with a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

25.3.2 Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

25.3.3 City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

with a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

25.3.4 M-S-R Public Power Agency
c/o General Manager
1231 11th Street

Modesto, CA 95354

25.3.5 Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

25.3.6 City of Anaheim
c/o City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

25.3.7 Incorporated County of
Los Alamos, New Mexico
c/o County Clerk
P.O. Box 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of
Los Alamos, New Mexico
c/o Utilities Manager
P.O. Drawer 1030
170 Central Park Square
Suite 130
Los Alamos, NM 87544

25.3.8 Utah Associated Municipal Power Systems
c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

25.3.9 Tri-State Generation and Transmission
Association, Inc.
c/o Chief Executive Officer

1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

25.3.10 PNMR Development and Management Corporation
c/o Corporate Secretary
PNM Resources
Corporate Headquarters
414 Silver Ave. SW
Albuquerque, NM 87158-1245

A Party may, at any time or from time-to-time, by written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Restructuring Agreement.

25.4 Other Documents. Each Party agrees, upon request of another Party, to make, execute and deliver any and all documents and instruments reasonably required to carry into effect the terms of this Restructuring Agreement; provided, that such documents and instruments will not increase or expand the obligations of a Party hereunder.

25.5 Incorporation of Exhibits. All exhibits attached to, or referred to in, this Restructuring Agreement are incorporated in this Restructuring Agreement by this reference.

25.6 Captions and Headings. The captions and headings appearing in this Restructuring Agreement are inserted merely to facilitate reference and will have no bearing upon the interpretation of the provisions hereof.

25.7 Prior Obligations Unaffected. Except as otherwise provided herein, nothing in this Restructuring Agreement will be deemed to relieve the Parties of their obligations in effect prior to the Effective Date and such obligations will continue in full force and effect until satisfied or as otherwise mutually agreed.

25.8 Amendment and Modification. Except as otherwise provided herein, this Restructuring Agreement may be amended, modified or supplemented only by written instrument executed by all of the Parties with the same formality as this Restructuring Agreement.

25.9 Waivers of Compliance. Except as otherwise provided herein, any failure by a Party to comply with any obligation, covenant, agreement or condition of this Restructuring Agreement may be waived by the Party entitled to the benefits thereof only by written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition will not operate as a waiver of, or estoppel with respect to, any earlier or subsequent or other failure.

25.10 Uncontrollable Forces. No Party will be considered to be in default in the performance of any of its obligations hereunder (other than obligations of a Party to pay costs and expenses) if failure of performance is due to Uncontrollable Forces. The term "Uncontrollable Forces" means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, fire, lightning, epidemic or pandemic, war, riot, civil disturbance, labor dispute, sabotage or terrorism, restraint by court order or public authority, or failure to obtain approval from a necessary Governmental Authority which by exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it is unable to overcome. Nothing contained herein requires a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces will promptly provide notice to the other Parties and will exercise due diligence to remove such inability with all reasonable dispatch.

25.11 No Interpretation against Drafter. This Restructuring Agreement has been drafted with full participation by all of the Parties and their counsel of choice and no provision hereof will be construed against any Party on the ground that such Party or its counsel was the author of such provision. All of the provisions of this Restructuring Agreement will be construed in a reasonable manner to give effect to the intentions of the Parties in executing this Restructuring Agreement.

25.12 No Third Party Beneficiaries. The terms and provisions of this Restructuring Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

25.13 Compliance with Law. The Parties will comply with all applicable Laws in the performance of their respective obligations under this Restructuring Agreement.

25.14 Independent Covenants. The covenants and obligations contained in this Restructuring Agreement are independent covenants, not dependent covenants, and the obligation of a Party to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by another Party of all of the covenants and obligations to be kept and performed by it. Nothing in this Section 25.14 affects the rights of the Parties under the dispute resolution and default provisions of Section 23.

25.15 Invalid Provisions. If any provision of this Restructuring Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Restructuring Agreement will not be materially and adversely affected

thereby, such provision will be fully severable, this Restructuring Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Restructuring Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and the Parties will negotiate in good faith to attempt to agree upon a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

25.16 Parties' Cost Responsibilities. Each Party will be solely responsible for its own costs and expenses, including fees and costs of counsel, incurred in connection with the negotiation of this Restructuring Agreement and with any actions associated with the implementation of this Restructuring Agreement, including obtaining Regulatory Approvals.

25.17 Entire Agreement. This Restructuring Agreement, together with the schedules and exhibits hereto, supersedes all prior negotiations, agreements and understandings between the Parties with respect to the covenants and obligations agreed upon in this Restructuring Agreement.

25.18 Survival of Certain Provisions. Termination of this Restructuring Agreement will not relieve a Party of any obligation or liability incurred by such Party before and existing as of the Termination Date, or any obligations resulting from such Party's Default hereunder.

25.19 No Admission of Liability. The terms of this Restructuring Agreement are the product of compromise between and among the Parties. Neither any conduct nor statements made in its negotiation, nor entry by the Parties into it, will constitute evidence of, or an admission of, liability; provided, however, nothing in this Section 25.19 will be construed or interpreted to excuse any Party from, or be used by any Party to argue against, that Party's performance of any of its obligations under this Restructuring Agreement.

25.20 Other Rights. Subject to Sections 20.14, 23.1.3 and 23.12, the rights and remedies provided in this Restructuring Agreement will be in addition to any other rights and remedies the non-defaulting Parties have in law or equity.

25.21 Execution in Counterparts. This Restructuring Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the Parties to the aggregated counterparts had signed the same instrument. Any signature page of this Restructuring Agreement may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon and may be attached to any other counterpart of this Restructuring Agreement identical in form thereto but having attached to it one or more additional pages. Electronic or pdf signatures will have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties have caused this Restructuring Agreement to be executed on their behalf and the signatories hereto represent that they have been duly authorized to enter into this Restructuring Agreement on behalf of the Party for whom they sign.

[Signatures on succeeding pages]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Its: _____
Date: _____

TUCSON ELECTRIC POWER COMPANY

By: _____
Its: _____
Date: _____

THE CITY OF FARMINGTON, NEW MEXICO

By: _____
Its: _____
Date: _____

M-S-R PUBLIC POWER AGENCY

By: _____
Its: _____
Date: _____

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Its: _____
Date: _____

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Its: _____
Date: _____

CITY OF ANAHEIM

By: _____
Its: _____
Date: _____

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: _____
Its: _____
Date: _____

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

By: _____
Its: _____
Date: _____

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

By: _____
Its: _____
Date: _____

EXHIBIT A

Regulatory Approvals

The Parties have identified the following Regulatory Approvals required in connection with this Restructuring Agreement:

A. Public Service Company of New Mexico

a. New Mexico Public Regulation Commission
   i. Approval for abandonment of interests in Unit 2 and Unit 3 pursuant to NMSA 1978, § 62-9-5;
   ii. A certificate of public convenience and necessity pursuant to NMSA 1978, § 62-9-1 to own and operate Unit 4 with a greater ownership interest.

b. Federal Energy Regulatory Commission
   i. Approvals for the transfer of ownership interests in jurisdictional assets pursuant to Section 203 of the Federal Power Act.
   ii. Approvals pursuant to Section 205 of the Federal Power Act.

B. Tucson Electric Power Company

None

C. City of Farmington, New Mexico

None

D. M-S-R Public Power Agency

None

E. County of Los Alamos

None

F. Southern California Public Power Agency

None

G. City of Anaheim

None

H. Utah Associated Municipal Power Systems

None

I. Tri-State Generation and Transmission Association, Inc.

None

J. PNMR Development and Management Corporation

Federal Energy Regulatory Commission

i. Approvals for the transfer of ownership interests in jurisdictional assets pursuant to Section 203 of the Federal Power Act.

EXHIBIT B

Other Project Agreements

The Parties have identified the following Other Project Agreements:

Contract Title	Contract Date	Contract Parties
Amended and Restated San Juan Project Participation Agreement	3/23/2006	San Juan Participants
San Juan Project Designated Representative Agreement and amendment No. 1 thereto	4/29/1994; 10/31/2000	San Juan Participants
San Juan Project Operating Procedure No. 1, Energy Accounting under SJ Project Participation Agreement	10/11/2000	San Juan Participants
Mine Reclamation and Trust Funds Agreement	6/1/2012	San Juan Participants
San Juan Unit 3 Purchase Agreement	3/25/1993	Century Power and SCPPA
San Juan Unit 3 Purchase Agreement	6/1/1994	Century Power and Tri-State
1st Amendment to the San Juan Unit 3 Purchase Contract	5/20/1993	Century Power Corporation and Southern California Public Power Authority
Amended and Restated Interconnection Agreement	10/7/1992	Tucson Electric Power and Century
Assignment and Amendment to Amended and Restated Interconnection Agreement	3/1/1993	Tucson Electric Power and Century Power Corporation
San Juan Unit 4 Purchase and Participation Agreement and Amendment No. 1	4/26/1991 and 10/27/1999	PNM and Anaheim
Instrument of Sale and Conveyance	8/12/1993	PNM and Anaheim
Insurance Policy endorsements adding Anaheim as named insured on SJ Project insurance policies	8/12/1993	PNM and Anaheim
Assumption Agreement (Pollution Control Bond Operation, Maintenance and Insurance Covenants)	8/12/1993	PNM and Anaheim
Interconnection Agreement	4/26/1991	PNM and Anaheim

Contract Title	Contract Date	Contract Parties
Letters to Anaheim from PNM re: exchange of economy energy under 5ervice Schedule C of the Interconnection Agreement dated 4/26/1991	5/22/1992; 5/19/2003	PNM and Anaheim
Interconnection Agreement, 5ervice 5chedule E, Interruptible Transmission 5ervice	4/26/1991	PNM and Anaheim
Interconnection Agreement, 5ervice, Schedule F, 5an Juan Unit 4 Transmission 5ervice	4/26/1991	PNM and Anaheim
Operating Procedure No. 1 under the Purchase and Participation Agreement	12/27/1995	PNM and Anaheim
Letter to PNM from Anaheim (notice of intent to become CAISO member)	6/20/2002	PNM and Anaheim
Recovery System Water Agreement	8/31/2012	PNM and BHP Navajo Coal Co
Water Use Agreement Amendment 1 Amendment 2	12/1/2009 10/26/2011 6/1/2013	PNM and BHP Navajo Coal Co
Amended Instrument of 5ale and Conveyance (Installment 5ale Agreement; pollution control systems) (PNM grantee, Farmington, grantor)	5/16/1979	PNM and Farmington
Amended Instrument of 5ale and Conveyance (Installment 5ale Agreement; pollution control systems) (PNM grantor, Farmington grantee)	5/16/1979	PNM and Farmington
Purchase Agreement and Participation Agreement and amendments 1 and 2 thereto	11/17/1981; 10/31/1984 & 10/27/1999	PNM and Farmington
Instrument of 5ale and Conveyance	11/17/1981	PNM and Farmington
Insurance (adding Farmington to Project insurance policies)	11/1981	PNM and Farmington
First Amended and Restated Interconnection Agreement	6/19/2007	PNM and Farmington
First Amended and Restated Construction and Interconnection Agreement	6/19/2007	PNM and Farmington
Operating Procedure No. 1 for Hazard 5haring Obligation, Rev. 2, in conjunction with 5ervice 5chedule E of Interconnection Agreement	5/31/2007	PNM and Farmington
Operating Procedure No. 2 for Blackstart Restoration Plan, Rev. 2, in conjunction with Interconnection Agreement dated 11/17/1981	5/31/2007	PNM and Farmington

Contract Title	Contract Date	Contract Parties
Operating Procedure No. 3 for Normal and Emergency Operation of the Hogback Substation	6/7/2007	PNM and Farmington
Operating Procedure No. 4 for Notification of Maintenance or Testing	6/7/2007	PNM and Farmington
Operating Procedure No. S for Clearance and Switching Coordination Agreement (First Amended and Restated Interconnection Agreement)	6/7/2007	PNM and Farmington
San Juan to Shiprock Transmission System Participation Agreement	S/24/1982	PNM and Farmington
Managed Business Relationship Agreement	7/1/2004	PNM and GE
Water Supply Agreement	7/17/2000	PNM and Jicarilla Apache Tribe
Amended and Restated San Juan Unit 4 Purchase and Participation Agreement and Amendment No. 1 thereto	12/28/1984 and 10/27/1999	PNM and Los Alamos County
Instrument of Sale and Conveyance	7/1/198S	PNM and Los Alamos County
Los Alamos County added as additional insured on Project insurance policies	7/1/198S	PNM and Los Alamos County
Interconnection Agreement	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule A, Emergency Generation Service	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule B, Economy Energy Interchange	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule C, Hazard Sharing	11/26/1984	PNM and Los Alamos County
Interconnection Agreement, Service Schedule G, Transmission Service through the Norton 11S KV Switching Station	11/26/1984	PNM and Los Alamos County
Third Revised Service Agreement for Network Integration Transmission Service	7/3/2012	PNM and Los Alamos County
Third Revised Network Operating Agreement	7/3/2012	PNM and Los Alamos County
Agreement of the Operating Committee (cost sharing of telemetry and data acquisition at SJ Units 3 and 4, SJ Switching Station) (supersedes 2 operating committee agreements dated 7/11/198S)	7/22/1986	PNM and Los Alamos County
PNM-LAC Operating Procedure Number II, Substitute Energy	S/1/1991	PNM and Los Alamos County

Contract Title	Contract Date	Contract Parties
Operating Procedure Number III, Hazard Sharing obligation, Service Schedule C of Interconnection Agreement (SJ Units 3 and 4)	9/29/1992	PNM and Los Alamos County
PNM-LAC Operating Procedure Number IV, Area Control Accounting (Service Schedule H) (entitlement to SJ generation)	S/1/1991	PNM and Los Alamos County
Operating Procedure Number V, Determination of Credit for Self Supply of Reactive Supply & Voltage Control Service from Generation Sources (attachment refers to SJ Ratio)	9/20/1999	PNM and Los Alamos County
Replacement for the Revised & Restated Operating Procedure No. VI, Energy Imbalance Accounts & Derivation of Monthly Invoices (SJ Station)	7/26/2002	PNM and Los Alamos County
Letter Agreement between PNM and Incorporated Los Alamos County of Los Alamos re: defining and agreeing on interruptible schedules (San Juan)	4/16/1998	PNM and Los Alamos County
Interconnection Agreement	9/26/1983	PNM and M-S-R
San Juan Unit 4 Early Purchase and Participation Agreement, as amended	9/26/1983; 12/16/1987; 10/31/1989; 10/27/1999	PNM and M-S-R
Instrument of Sale and Conveyance	12/31/1983	PNM and M-S-R
Certificate of Insurance	12/28/1983	PNM and M-S-R
Interconnection Agreement, Service Schedule A, Economy Energy Interchange (SJ Units 3 and 4)	9/26/1983	PNM and M-S-R
Amendment No. 1 to Service Schedule A, to the Interconnection Agreement (to permit seller to offer economy energy at current market price or actual costs to generate energy)	1/22/1986	PNM and M-S-R
SSB - Economy Energy Brokerage	9/26/1983	PNM and M-S-R
SSC - Power Exchange	9/26/1983	PNM and M-S-R
San Juan Unit 4 Operating Procedure No. 1	4/2S/199S	PNM and M-S-R
Coal Feedstock Purchase Agreement	6/21/2013	PNM and San Juan Fuels, LLC
Pre-Closing Coal Inventory Purchase Agreement	6/21/2013	PNM and San Juan Fuels, LLC
Refined Coal Supply Agreement	6/21/2013	PNM and San Juan Fuels, LLC
Surface Use Lease Agreement	1/1/2003	PNM and SJCC
Water Use Agreement - SJCC Pit Dewatering	4/24/1989	PNM and SJCC
Purchase Agreement	S/16/1979	PNM and TEP

Contract Title	Contract Date	Contract Parties
Instrument of Sale and Conveyance	S/16/1979	PNM and TEP
Tucson Assignment	S/16/1979	PNM and TEP
Amended Interconnection Agreement	12/19/1997	PNM and TEP
Amendment No. 1 to the Amended Interconnection Agreement	7/13/1998	PNM and TEP
Amendment No. 2 to the Amended Interconnection Agreement	1/1/2003	PNM and TEP
Amendment No. 3 to the 1997 Amended Interconnection Agreement	3/14/2007	PNM and TEP
Amended Interconnection Agreement, Service Schedule A - Reserve Sharing, Exhibit 1 - Revised 2009 (Springerville Unit)	1/1/2009	PNM and TEP
Letter to Tucson Electric from PNM re: agreement for SJGS Curtailment Energy Sales (1/2S/1979 Interconnection Agreement)	4/26/1982	PNM and TEP
Power Exchange and Transmission Agreement (SJGS, SJ 34SkV Switchyard), as amended	4/26/1982; 10/12/2006	PNM and TEP
Network Interface Control Document (power control systems data exchange)	9/23/1985	PNM and TEP
Assignment of Water Contract (delivery of 20,200 acre feet of water per annum)	12/1/2009	PNM and TEP
Fourth Revised Service Agreement for Network Integration Transmission Service	7/31/2006	PNM and Tri-State
Fourth Revised Operating Agreement	7/31/2006	PNM and Tri-State
Schedule of Tri-State Generation and Transmission Assoc Network Resources (SJ Unit 3)	8/26/2010	PNM and Tri-State
Operating Procedures Agreement, Contract No. TS-00-0020, with Operating Agreement Nos. 1 through 6 (signed 2/2001) re: adoption of operating procedures between PNM/Plains subsequent to merger of Plains and Tri-State to provide SCADA for PNM assets purchased from Plains.	7/1/2000	PNM and Tri-State
Revision 2 to Operating Procedure 06, Real Time Metering Data and Equipment Status to be Exchanged (SJ Units 3 & 4)	1/31/2007	PNM and Tri-State
Operating Procedure 03, Restoration and Operating Guidelines (San Juan-Ojo 34SkV line)	8/7/2008; 1/30/2010	PNM and Tri-State
Operating Procedure 8 rev S - Tri-State Load Within PNM Balancing Authority	1/1/2013	PNM and Tri-State
Operating Procedure 10 - Energy Imbalance accounts & Derivations of Monthly Invoices, under Specification 4 of the Service Agreement for Network Integration Transmission Service (SJGS)	2/28/2001	PNM and Tri-State

Contract Title	Contract Date	Contract Parties
Op Proc No 11 Defining the Methodology for Determination of a Credit for Tri-State's Reactive Supply (attachment re: San Juan)	2/28/2001	PNM and Tri-State
First Revised Op Proc No 12 Rev 1 Reserve Methodology Activation and Scheduling, under First Revised Reserve Obligation Agreement effective 10/1/04	9/27/2004	PNM and Tri-State
Op Proc No 13 Pyramid Generating Station Deliveries (ALIS), under Second Revised Service Agreement for Network Integration Transmission Service dated 4/1/2003 (San Juan 34SkV)	1/1/2013	PNM and Tri-State
Op Proc No 14 Hourly Check-Out (of key energy schedules and meter data), under Network Service Agreement (PNM Control Area)	S/1/2004	PNM and Tri-State
Op Proc No 1S After the Fact Check-Out (of key energy schedules and meter data), under network integration transmission service agreement (NITSA) in PNM Control Area)	S/1/2004	PNM and Tri-State
Restoration and Operating Guidelines 03-02 Western New Mexico Area 115kV Line Overloads (San Juan-BA 34SkV Line listed as a probable contingency)	S/27/2010	PNM and Tri-State
Instrument of Sale and Conveyance	1/2/1996	Century and Tri-State
Assignment and Assumption Agreement	1/2/1996	Century and Tri-State
Assignment and Assumption of Easement and License	1/2/1996	Century and Tri-State
Assignment and Amendment No. 2 to Amended and Restated Interconnection Agreement	1/2/1996	TEP, Century, SCPPA and Tri-State
Assignment and Amendment No. 2 to Assumption Agreement	1/2/199S	TEP, Century, SCPPA and Tri-State
Delegation Agreement and Acknowledgment	6/18/2007	All San Juan Participants
Various Letter Agreements	1/13/98, 1/29/1999, 1/1/2000, 1/24/2001, 1/1/2002, 2/12/2003, 1/31/2004, 1/7/200S,	PNM, TEP, Los Alamos, Farmington, MSR, SCPPA, Anaheim, UAMPS and Tri-State

Contract Title	Contract Date	Contract Parties
	and 2/13/2006	
Contract No. TS-99-003S for Purchase of Firm Power (SJ 34SkV Bus)	7/1/2000	PNM and Tri-State
Restated and Amended San Juan Unit 4 Purchase and Participation Agreement and Amendment No. 1 thereto	S/27/1993 and 10/27/1999	PNM and UAMPS
Instrument of Sale and Conveyance	6/2/1994	PNM and UAMPS
PNM Certificate adding UAMPS as named insured on all San Juan Project Insurance Policies	6/2/1994	PNM and UAMPS
Assumption Agreement (assumes PNM's obligations for PCB Operation, Maintenance and Insurance Covenants under ISAs)	6/2/1994	PNM and UAMPS
Interconnection Agreement	S/27/1993	PNM and UAMPS
Service Schedule A to Interconnection Agreement, Emergency Assistance	S/27/1993	PNM and UAMPS
Service Schedule B, to Interconnection Agreement Banked Energy	S/27/1993	PNM and UAMPS
Service Schedule C to Interconnection Agreement, Short Term Firm Capacity	S/27/1993	PNM and UAMPS
Amendment Number One to Service Schedule C to Interconnection Agreement	11/12/1993	PNM and UAMPS
Service Schedule D to Interconnection Agreement, Interruptible Transmission Service	S/27/1993	PNM and UAMPS
Amendment Number One to Service Schedule D to Interconnection Agreement	11/12/1993	PNM and UAMPS
Service Schedule E to Interconnection Agreement, San Juan Unit 4 Transmission Service	S/27/1993	PNM and UAMPS
Amended Number One to Service Schedule E to Interconnection Agreement	7/20/1994	PNM and UAMPS
Operating Procedure Number 1 re: scheduling of UAMPS SJ Unit 4 entitlement pursuant to Section 12 of the Purchase and Participation Agreement	S/31/1994	PNM and UAMPS
The Further Assurance Agreement (with regard to certain costs and liabilities arising in future re: contamination of soil or groundwater allocable to PNM ownership prior to purchase)	S/20/1994	PNM and UAMPS
Non-Exclusive Technology License Agreement	6/21/2013	PNM and VRC Technology, LLC
Easement and License	8/12/1993	PNM, TEP, and

Contract Title	Contract Date	Contract Parties
		Anaheim
Easement and License	11/17/1981	PNM, TEP, and Farmington
Easement and License	7/1/198S	PNM, TEP, and Los Alamos County
Easement and License	12/31/1983	PNM, TEP, and M-S-R
Low Water Weir Lease	7/9/1971	PNM, TEP, and Navajo Tribe of Indians
Environmental Indemnity Agreement	6/21/2013	PNM, TEP, and San Juan Fuels, LLC
License and Access Agreement	6/21/2013	PNM, TEP, and San Juan Fuels, LLC
Underground Coal Sales Agreement; Amendments 1, 2, 3, 4, S	8/31/2001; 12/1S/2003; 9/1S/2004; S/11/200S; 3/7/2007; 12/21/2007	PNM, TEP, and SJCC
Closing Agreement (Amendment One to Underground Coal Sales Agreement)	12/1S/2003	PNM, TEP, and SJCC
Letter Agreement (Reimbursement of taxes and royalties under the Underground Coal Sales Agreement)	12/1S/2003	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 1 - Post Retirement Medical Benefits (FAS-106) Settlement Agreement	4/29/200S	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 8 - Operating Cost Treatment for SJCC Asset Disposal	1/1/2006	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 2 - Operating Cost Clarification	11/28/2006	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 4 - Settlement of 2007 Issues	12/21/2007	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number S - Revision of Base Year for Implicit Price Deflator, Gross Domestic Product	8/10/2009	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 6 - Accounting Guidance Regarding Labor and Services to Install Fixed Assets Underground	12/1/2009	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 7 - Settlement and Future Treatment of Gatebelt Drive Installation Costs	12/1/2009	PNM, TEP, and SJCC

Contract Title	Contract Date	Contract Parties
UG-CSA Joint Committee Resolution Number 9 - Extension of Operating Cost Definition for Third Party Audit to years 2006-2009	7/30/2010	PNM, TEP, and SJCC
UG-CSA Joint Committee Resolution Number 10 - Costs Arising from Sierra Club's December 2009 RCRA and SMCRA Notice of Intent Letters and Sierra Club's April 8, 2010 Complaint	7/30/2010	PNM, TEP, and SJCC
Coal Combustion Byproduct Disposal Agreement Closing Agreement	1/1/2008	PNM, TEP, and SJCC
Coal Combustion Byproduct Disposal Agreement	1/1/2008	PNM, TEP, and SJCC
Easement (grant of easement to SJCC) (undated but in file with 3/10/89 Water Use Agreement)	3/10/1989	PNM, TEP, and SJCC
Refined Coal Facility Agreement	1/1/2012	PNM, TEP, and TCG Global, LLC
Easement and License	6/2/1994	PNM, TEP, and UAMPS
Grant of Authority	8/18/1980	PNM, TEP, and Utah International Inc.
Payment Allocation and Process Agreement Jicarilla Agreement	9/14/2007	PNM; APS; BHP Navajo Coal Company
Letter Agreement	3/28/1996	PNM; BHP Navajo Coal Co; BHP Minerals International, Inc.
Recommendations for San Juan River Operations and Administration for 2013 through 2016	7/2/2012	PNM; BHP; APS; Navajo Nation
Water Supply Agreement	3/2/2007	PNM; Jicarilla Apache Nation; APS; BHP Navajo Coal Company
Installment Sale Agreement (air and water pollution control facilities at San Juan Generation Station)	11/1/1977	TEP and Farmington
Installment Sale Agreement (air and water pollution control facilities at San Juan Generation Station)	1/1/1978	TEP and Farmington
Amendment No. 1 to Installment Sale Agreement	5/16/1979	TEP and Farmington
Amendment No. 2 to Installment Sale Agreement	S/16/1979	TEP and

Contract Title	Contract Date	Contract Parties
		Farmington
Agreement (Installment Sale Agreement; pollution control systems facilities to be acquired, constructed and installed at San Juan Generating Station)	5/16/1979	TEP and Farmington
San Juan Unit No. 4 Sale of Option Agreement	11/29/1982	TEP and M-S-R
Assignment of Option by TEP	11/29/1982	TEP and M-S-R
Instrument of Sale and Conveyance by TEP	11/29/1982	TEP and M-S-R
Title Commitment re: Interest created by Easement and License	5/27/1994 (land) 6/2/1994 (easement)	UAMPS (In favor of)
Fuel and Capital Funding Agreement	09/2014	All Participants
Capacity Option and Funding Agreement	05/2015	PNM, PNMR, PNMR-D, Anaheim and M-S-R

EXHIBIT C

Form of Instrument of Sale and Conveyance

[Exiting Participant], a _____ ("_____"), in consideration of the mutual covenants and agreements contained in that certain San Juan Project Restructuring Agreement dated as of _____, 2015 (the "Restructuring Agreement"), which Restructuring Agreement is incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, bargains, sells and conveys to [Acquiring Participant], a _____ ("_____"), all of its rights, titles and interests consisting of an undivided _____% of the Ownership Interest (as defined in the Restructuring Agreement) previously conveyed to [Exiting Participant] in that certain Instrument of Sale and Conveyance (the "Original Instrument") granted by [Grantor] to [Exiting Participant] dated [_____] and recorded in the Records of the County Clerk of San Juan County, New Mexico on [_____] in Book ____, Page _____ ("Conveyed Assets"), including all subsequent changes, additions, improvements, substitutions and accessions to the Conveyed Assets. Capitalized terms used in this document have the meaning as defined in the Restructuring Agreement unless specifically defined herein.

1. This Instrument of Sale and Conveyance is intended to, and does include all of [Exiting Participant's] rights, titles and interests in and to all fixtures which are part of or related to the Conveyed Assets situate upon the real property described in the Original Instrument, but is not intended to and does not convey title to the underlying real property described in the Original Instrument.

2. [Exiting Participant] represents and warrants to [Acquiring Participant] and [Acquiring Participant's] authorized successors, trustees and representatives that the Conveyed Assets are free from all encumbrances made by [Exiting Participant] and that [Exiting Participant] shall warrant and defend the same to [Acquiring Participant] and its authorized successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under [Exiting Participant], but against none other. Such representation and warranty by [Exiting Participant] are subject to the following disclaimer:

> EXCEPT AS OTHERWISE PROVIDED HEREIN: (1) THE CONVEYED ASSETS ARE CONVEYED BY [EXITING PARTICIPANT] TO [ACQUIRING PARTICIPANT] ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS; (2) [EXITING PARTICIPANT] MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, QUANTITY, CONDITION, SALABILITY, OBSOLESCENCE, MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR WORKING ORDER OF, ALL OR ANY PART OF THE CONVEYED ASSETS; AND (3) [EXITING PARTICIPANT] DOES NOT REPRESENT OR WARRANT THAT THE USE OR OPERATION OF THE CONVEYED ASSETS WILL NOT VIOLATE OR CONFLICT WITH PATENT, TRADEMARK OR SERVICE MARK RIGHTS OF ANY THIRD PARTY. [ACQUIRING PARTICIPANT] ACCEPTS THE CONVEYANCE OF CONVEYED ASSETS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE RESTRUCTURING AGREEMENT.

3. NOTWITHSTANDING THE FOREGOING, [Acquiring Participant] shall have the benefit, in proportion to its interest in the Conveyed Assets, of all manufacturers' and vendors' warranties (to the extent [Exiting Participant] may have a right or benefit thereof) in connection with the Conveyed Assets.

4. NOTWITHSTANDING THE FOREGOING, (i) [Exiting Participant] covenants and warrants that title to the Conveyed Assets is free from all former grants, sales, taxes, assessments, liens, trusts, mortgages and encumbrances created by or through [Exiting Participant] through the Exit Date; and (ii) nothing contained berein shall be construed to relieve [Exiting Participant] from its duties under the Restructuring Agreement, the Decommissioning Agreement and the Mine Reclamation Agreement.

5. [Exiting Participant], by execution and delivery of this Instrument of Sale and Conveyance, and [Acquiring Participant], by its acceptance hereof, hereby waive and renounce for themselves, their successors, transferees and assigns, any and all rights, titles and interests of any kind or nature whatsoever, legal or equitable, as a tenant in common in the Conveyed Assets, to partition or equitable accounting.

6. This Instrument of Sale and Conveyance and the terms and conditions contained herein shall bind and inure to the benefit of the respective successors, assigns, trustees and representatives of [Exiting Participant] and [Acquiring Participant].

This Instrument of Sale and Conveyance shall be governed and construed in accordance with New Mexico law.

IN WITNESS WHEREOF, [Exiting Participant] has caused this Instrument of Sale and Conveyance to be executed as of the ___ day of ___, 2017.

[Exiting Participant]
By: _____
Its: _____

ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2017 by _____, as _____ of _____, a _____.

_____
Notary Public

My Commission Expires: _____

EXHIBIT D

Form of Opinion of Counsel

The legal opinions of counsel for each of the Parties required by Section 17.3 of the Restructuring Agreement will be to the following effect:

[Addressed to Parties]

Ladies and Gentlemen: [Expand as appropriate to encompass customary qualifications and limitations and other relevant language]

We have acted as counsel to _____ [Insert name of the Party on whose behalf this opinion is provided] in connection with the San Juan Project Restructuring Agreement among Public Service Company of New Mexico; Tucson Electric Power Company; The City of Farmington, New Mexico; M-S-R Public Power Agency; The Incorporated County of Los Alamos, New Mexico; Southern California Public Power Authority; City of Anaheim; Utah Associated Municipal Power Systems; Tri-State Generation and Transmission Association, Inc.; and PNMR Development and Management Corporation, dated as of _____, 2015 ("Restructuring Agreement") (each a "Party" and collectively the "Parties"). Section 17 of the Restructuring Agreement contains certain representations and warranties of the Parties to one another; and Section 17.3 provides that counsel for each Party will provide its opinion to each of the other Parties that the Party is in compliance with the representations and warranties given in Section 17. This opinion of counsel is given in accordance with Section 17.3 of the Restructuring Agreement.

We are of the opinion that the representations and warranties made by _____ [Insert name of the Party on whose behalf this opinion is provided] pursuant to Section 17 of the Restructuring Agreement are true and correct in all material respects as of the Execution Date of the Restructuring Agreement (as that date is defined in the Restructuring Agreement). No facts have come to our attention, after reasonable inquiry, which would lead us to believe that the Section 17 representations and warranties of _____ [Insert name of the Party on whose behalf this opinion is provided] contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which they are being made, not misleading.

The opinions expressed herein are based only on the laws of the State of _____ [Insert State] in effect as of the date of this opinion and in all respects are subject to and may be limited by future legislation, as well as developing case law. We undertake no duty to advise you of the same.

This letter is furnished by us as _____ [Insert Title, e.g., – General Counsel] to _____ [Insert name of the Party on whose behalf this opinion is provided]. No attorney-client relationship has existed or exists between us and you in connection with the transactions provided for in the Restructuring Agreement or by virtue of this letter. This letter is delivered to you and is solely for your benefit and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person.

EXHIBIT E

Parties' Pre-Exit Date Ownership Interests in Project Facilities

The Parties' pre-Exit Date Ownership Interests in the Project are the following:

A. For Units 1 and 2 and for all equipment and facilities directly related to Units 1 and 2 only, in accordance with the following percentages:

- PNM: 50 percent
- TEP: 50 percent
- M-S-R: 0 percent
- Farmington: 0 percent
- Tri-State: 0 percent
- LAC: 0 percent
- SCPPA: 0 percent
- Anaheim: 0 percent
- UAMPS: 0 percent
- PNMR-D: 0 percent

B. For Unit 3 and for all equipment and facilities directly related to Unit 3 only, in accordance with the following percentages:

- PNM: 50 percent
- TEP: 0 percent
- M-S-R: 0 percent
- Farmington: 0 percent
- Tri-State: 8.2 percent
- LAC: 0 percent
- SCPPA: 41.8 percent
- Anaheim: 0 percent
- UAMPS: 0 percent
- PNMR-D: 0 percent

C. For Unit 4 and for all equipment and facilities directly related to Unit 4 only, in accordance with the following percentages:

- PNM: 38.457 percent
- TEP: 0 percent
- M-S-R: 28.8 percent
- Farmington: 8.475 percent
- Tri-State: 0 percent
- LAC: 7.20 percent
- SCPPA: 0 percent

- Anaheim: 10.04 percent
- UAMPS: 7.028 percent
- PNMR-D: 0 percent

D. For equipment and facilities common to Units 1 and 2 only, in accordance with the following percentages:

- PNM: 50 percent
- TEP: 50 percent
- M-S-R: 0 percent
- Farmington: 0 percent
- Tri-State: 0 percent
- LAC: 0 percent
- SCPPA: 0 percent
- Anaheim: 0 percent
- UAMPS: 0 percent
- PNMR-D: 0 percent

E. For equipment and facilities common to Units 3 and 4 only, in accordance with the following percentages:

- PNM: 44.119 percent
- TEP: 0 percent
- M-S-R: 14.4 percent
- Farmington: 4.249 percent
- Tri-State: 4.1 percent
- LAC: 3.612 percent
- SCPPA: 20.9 percent
- Anaheim: 5.07 percent
- UAMPS: 3.55 percent
- PNMR-D: 0 percent

F. For equipment and facilities common to all of the Units in accordance with the following percentages:

- PNM: 46.297 percent
- TEP: 19.8 percent
- M-S-R: 8.7 percent
- Farmington: 2.559 percent
- Tri-State: 2.49 percent
- LAC: 2.175 percent
- SCPPA: 12.71 percent
- Anaheim: 3.10 percent
- UAMPS: 2.169 percent

- PNMR-D: 0 percent

EXHIBIT F

SJGS Plant Site

The SJGS Plant Site consists of Parcels A, B, D, E and F in the property descriptions below.

PARCEL A

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 16: SW 1/4
Section 20: NE 1/4, N 1/2 SE 1/4, SW 1/4SE 1/4
Section 21: NW 1/4 NW 1/4
Section 29: NE 1/4

PARCEL B

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SW 1/4, SW 1/4 SE 1/4
Section 20: E 1/2 NW 1/4, NE 1/4 SW 1/4
Section 29: NW 1/4, N 1/2 SW 1/4
Section 30: NE 1/4, E 1/2 NW 1/4, N 1/2 SE 1/4

PARCEL D

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 17: SE 1/4 SW 1/4, S1/2 SE 1/4

PARCEL E

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SE 1/4
NE 1/4 SE 1/4
E 1/2 NW 1/4 SE 1/4

S 1/2 S 1/2 SE 1/4 NE 1/4

Section 20: SE 1/4 SW 1/4
SW 1/4 SW 1/4
NW 1/4 SW 1/4
S 1/2 SW 1/4 SW 1/4 NW 1/4

Containing 235 acres, more or less.

PARCEL F

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 20: SE 1/4 SE 1/4

EXHIBIT G

Form of Instrument Relinquishing Easement and License

TERMINATION AND RELINQUISHMENT

_____, a _____organized under the laws of the State of _____, hereby terminates and relinquishes all interests acquired as Grantee in that certain Easement and License dated _____ and recorded at Book _____, record number _____, page _____of Records of San Juan County, New Mexico.

Dated effective this ____ day of _____, 2017.

_____
[_____]

_____
Name and title

STATE OF)
) ss
COUNTY OF)

The foregoing document was acknowledged before me this _____ day of _____, 2017 by _____, as _____ of _____.

_____
Notary Public

_____
My Commission Expires

EXHIBIT H

Form of Easement and Right of Entry

PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, and TUCSON ELECTRIC POWER COMPANY, an Arizona corporation (together, the "Grantors"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grant and convey to _____, a _____ organized under the laws of the State of _____ ("Grantee"), and to Grantee's employees, contractors, subcontractors, representatives, agents and licensees, a non-exclusive easement and right of entry to, including rights of ingress and egress upon, over and across, the SJGS Plant Site, described in Exhibit 'A', attached hereto and made a part hereof (the "Premises") and to all buildings and personal property located thereon (collectively, the "Facilities"), for the purposes set forth below.

The rights and privileges granted herein give Grantee the right to access the Premises and Facilities for the purposes of Grantee exercising its rights, protecting its interests and fulfilling its obligations under the San Juan Project Restructuring Agreement dated _____, 2015, ("Restructuring Agreement"), the Amended and Restated Mine Reclamation and Trust Funds Agreement dated _____, 2015 ("Mine Reclamation Agreement"), and the San Juan Decommissioning and Trust Funds Agreement dated _____, 2015 ("Decommissioning Agreement"), to which Grantors and Grantee are parties (collectively, the "Purposes").

Grantors will make and keep available to Grantee all reasonable accommodations appropriate for Grantee's full use and enjoyment of this Easement and Right of Entry for carrying out the Purposes, including, without limitation, parking and security clearances appropriate for passage to and from the Premises and the Facilities, all upon reasonable advance notice and consistent with the San Juan Project Operating Agent's safety and security rules and other requirements applicable to persons who come upon the Premises and the Facilities.

This Easement and Right of Entry shall automatically expire, without any further or additional document or act, upon the last to occur of the following: (i) the termination or expiration of the Restructuring Agreement; (ii) the termination or expiration of the Mine Reclamation Agreement; and (iii) the termination or expiration of the Decommissioning Agreement. Further, this instrument is not assignable or transferable in whole or in part by Grantee without the prior written approval of such assignment by Grantors which approval will not be unreasonably conditioned, delayed or denied. Upon the last to occur of items (i), (ii) or (iii), above, Grantors may, upon thirty (30) days' written notice to Grantee, execute and record in the real estate records of San Juan County, New Mexico, a written instrument certifying that this Easement and Right of Entry has terminated.

Dated effective this ____ day of _____, 2017.

Public Service Company of New Mexico

By:_____
Name:_____
Title:_____

Tucson Electric Power Company

By:_____
Name:_____
Title:_____

STATE OF NEW MEXICO)
) ss
COUNTY OF)

The foregoing document was acknowledged before me this _____ day of _____, 2017 by _____, as _____ of Public Service Company of New Mexico.

_____
Notary Public

_____
My Commission Expires:

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing document was acknowledged before me this _____ day of _____, 2017 by _____, as _____ of Tucson Electric Power Company.

_____
Notary Public

_____
My Commission Expires:

EXHIBIT A
TO EASEMENT AND RIGHT OF ENTRY

DESCRIPTION OF SJGS PLANT SITE

PARCEL A

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 16: SW 1/4
Section 20: NE 1/4, N 1/2 SE 1/4, SW 1/4SE 1/4
Section 21: NW 1/4 NW 1/4
Section 29: NE 1/4

PARCEL B

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SW 1/4, SW 1/4 SE 1/4
Section 20: E 1/2 NW 1/4, NE 1/4 SW 1/4
Section 29: NW 1/4, N 1/2 SW 1/4
Section 30: NE 1/4, E 1/2 NW 1/4, N 1/2 SE 1/4

PARCEL D

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 17: SE 1/4 SW 1/4, S1/2 SE 1/4

PARCEL E

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SE 1/4
NE 1/4 SE 1/4
E 1/2 NW 1/4 SE 1/4
S 1/2 S 1/2 SE 1/4 NE 1/4

Section 20: SE 1/4 SW 1/4
SW 1/4 SW 1/4
NW 1/4 SW 1/4
S 1/2 SW 1/4 SW 1/4 NW 1/4

Containing 235 acres, more or less.

PARCEL F

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 20: SE 1/4 SE 1/4

EXHIBIT I

Form of Parental Guaranty

PARENTAL GUARANTY AGREEMENT

Reference is hereby made to the following agreements: (1) SAN JUAN PROJECT RESTRUCTURING AGREEMENT ("Restructuring Agreement"), executed as of _____, 2015 by and among PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Los Alamos"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"); and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"); (2) SAN JUAN PROJECT DECOMMISSIONING AND TRUST FUNDS AGREEMENT ("Decommissioning Agreement"), dated as of _____, 2015, by and among PNM; TEP; Farmington; M-S-R; LAC; SCPPA; Anaheim; UAMPS; Tri-State; and PNMR-D; (3) AMENDED AND RESTATED MINE RECLAMATION AND TRUST FUNDS AGREEMENT ("Mine Reclamation Agreement"), executed as of _____, 2015, by and among PNM; TEP; Farmington; M-S-R; LAC; SCPPA; Anaheim; UAMPS; Tri-State; and PNMR-D; and (4) AMENDED AND RESTATED SAN JUAN PROJECT PARTICIPATION AGREEMENT ("SJPPA") dated as of March 23, 2006, as amended, by and among PNM; TEP; Farmington; M-S-R; LAC; SCPPA; Anaheim; UAMPS; Tri-State; and PNMR-D. The Restructuring Agreement, Decommissioning Agreement, Mine Reclamation Agreement and SJPPA are hereinafter collectively referred to as "Guaranteed Agreements," and TEP, M-S-R, LAC, PNM, Farmington, Anaheim, UAMPS, SCPPA and Tri-State are hereinafter collectively referred to as "Guaranteed Parties."

FOR VALUE RECEIVED, and in consideration of any loans, advances, payments, extensions of credit and/or other financial accommodations heretofore, now or hereafter made, granted or extended by the Guaranteed Parties, and their respective successors and assigns, or which the Guaranteed Parties and/or their respective successors and assigns have or will become obligated to make, grant or extend, to or for the account of PNMR-D, and in consideration of any obligations heretofore, now or hereafter incurred by PNMR-D to the Guaranteed Parties and/or their respective successors and assigns, Guarantor hereby absolutely and unconditionally guarantees to each of the Guaranteed Parties and their respective successors and assigns the prompt and complete payment and performance when due in accordance with their terms

(whether by reason of demand, maturity, acceleration or otherwise) of any and all present and future obligations of PNMR-D to any one or more of the Guaranteed Parties, including, without limitation, all obligations of PNMR-D to the Guaranteed Parties under the Guaranteed Agreements (herein referred to as the "Guaranteed Obligations"). In addition, Guarantor shall and agrees to be liable to the Guaranteed Parties for all costs and expenses incurred by the Guaranteed Parties in attempting or effecting collection under this Parental Guaranty Agreement (whether or not litigation shall be commenced in aid thereof) and in connection with representation of the Guaranteed Parties in connection with bankruptcy or insolvency proceedings relating to or affecting this Parental Guaranty Agreement, including, without limitation, reasonable Attomeys' Fees for outside counsel for Guaranteed Parties, and interest payable on the Guaranteed Obligations as provided for in the Guaranteed Agreements or under applicable law. Guarantor agrees, represents and warrants that its obligations under this Parental Guaranty Agreement are, and will remain until all of its obligations hereunder have been fully and unconditionally performed and satisfied, ranked on parity with other unsecured and unsubordinated obligations of Guarantor to any other person or entity. Except as may be otherwise provided herein, in no event will Guarantor be liable under any provision of this Parental Guaranty Agreement for any indirect, special, punitive or incidental damages or costs of the Guaranteed Parties (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and the Guaranteed Parties hereby waive, release and discharge Guarantor from all such indirect, special, punitive and incidental damages and costs.

Notice of the acceptance of this Parental Guaranty Agreement, and of the incurrence of any of the Guaranteed Obligations, and presentment, demand for payment, notice of dishonor, protest, notice of protest and of default by PNMR-D are hereby waived by Guarantor. Guarantor hereby agrees that (a) this Parental Guaranty Agreement is a guaranty of payment and not of collection, and the obligations of such Guarantor under this Parental Guaranty Agreement may be enforced directly against such Guarantor independently of and without proceeding against PNMR-D with respect to any or all of the Guaranteed Obligations or foreclosing any collateral pledged to the Guaranteed Parties, and (b) the Guaranteed Parties may from time to time, in their sole and absolute discretion and without notice to or consent of such Guarantor and without releasing such Guarantor from any of its obligations under this Parental Guaranty Agreement, (i) extend the time of payment, change the interest rates and renew or change the manner, place, time and/or terms of payment of and make any other changes with respect to any or all of the Guaranteed Obligations, (ii) sell, exchange, release, surrender and otherwise deal with any collateral pledged to the Guaranteed Parties by PNMR-D or any other person to secure any or all of the Guaranteed Obligations, (iii) release and otherwise deal with any other guarantor(s) of any or all of the Guaranteed Obligations, (iv) exercise or refrain from exercising any rights against PNMR-D of any or all of the Guaranteed Obligations and otherwise act or refrain from acting with respect to PNMR-D of any or all of the Guaranteed Obligations and/or (v) settle or compromise any or all of the Guaranteed Obligations with PNMR-D.

Guarantor will not have any right of subrogation, reimbursement, contribution or indemnity whatsoever with respect to PNMR-D of any or all of the Guaranteed Obligations or any right of recourse to or with respect to any assets or property of PNMR-D of any or all of the Guaranteed Obligations or to any collateral or other security for the payment of any or all of the

Guaranteed Obligations unless and until (a) all of the Guaranteed Obligations have been fully, finally and indefeasibly paid in cash (except with respect to contingent indemnification obligations), (b) none of the Guaranteed Parties has any further commitment or obligation to advance funds, make loans, extend credit to or for the account of PNMR-D under the Guaranteed Agreements and/or enter into any Guaranteed Obligations and (c) this Parental Guaranty Agreement has been terminated. Nothing will discharge or satisfy the liability of Guarantor under this Parental Guaranty Agreement except the full performance and payment of all of the Guaranteed Obligations and all obligations of such Guarantor under this Parental Guaranty Agreement.

The books and records of the Guaranteed Parties showing the account between the Guaranteed Parties and PNMR-D shall be admissible in evidence in any action or proceeding and shall constitute prima facie proof of the items therein set forth.

No invalidity, irregularity or unenforceability of any or all of the Guaranteed Obligations or of any collateral or any other guarantees therefor shall affect, impair or be a defense to this Parental Guaranty Agreement. The liability of the Guarantor under this Parental Guaranty Agreement will in no way be affected or impaired by any acceptance by the Guaranteed Parties of any collateral for or other guarantees of any of the Guaranteed Obligations, or by any failure, neglect or omission on the part of the Guaranteed Parties to realize upon or protect any of the Guaranteed Obligations or any collateral therefor or guarantees thereof. No act of commission or omission of any kind by the Guaranteed Parties (including, without limitation, any act or omission which impairs, reduces the value of, releases or fails to perfect a security interest in and/or a lien on, any collateral for or guarantee of any of the Guaranteed Obligations) shall affect or impair the obligations of Guarantor under this Parental Guaranty Agreement in any manner.

Guarantor hereby waives any right to require the Guaranteed Parties to (a) proceed against PNMR-D, (b) marshal assets or proceed against or exhaust any security held from PNMR-D, (c) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from PNMR-D, (d) take any action or pursue any other remedy in the Guaranteed Parties' power and/or (e) make any presentment or demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor under this Parental Guaranty Agreement or in connection with any obligations or evidences of obligations held by the Guaranteed Parties as security for or which constitute in whole or in part the Guaranteed Obligations, or in connection with the creation of new or additional Guaranteed Obligations.

Guarantor hereby waives any defense to its obligations under this Parental Guaranty Agreement based upon or arising by reason of (a) any disability or other defense of PNMR-D or any other person or entity, (b) the cessation or limitation from any cause whatsoever, other than indefeasible payment in full, of the Guaranteed Obligations, (c) any lack of authority of any officer, director, partner, agent or any other person or entity acting or purporting to act on behalf of PNMR-D, or any defect in the formation of PNMR-D, (d) the application by PNMR-D of the proceeds of any of the Guaranteed Obligations for purposes other than the purposes represented by PNMR-D to, or intended or understood by, the Guaranteed Parties and/or the Guarantor, (e) any act or omission by the Guaranteed Parties which directly or indirectly results in or aids the discharge of PNMR-D or all or any portion of the Guaranteed Obligations by operation of law or

otherwise, or which in any way impairs or suspends any rights or remedies of the Guaranteed Parties against PNMR-D, (f) any impairment of the value of any interest in any security for the Guaranteed Obligations or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security, (g) any modification of any or all of the Guaranteed Obligations, in any form whatsoever, including, without limitation, the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, the Guaranteed Obligations or any portion thereof, including increasing or decreasing the rate of interest thereon and/or (h) any requirement that the Guaranteed Parties give any notice of aeceptance of this Guaranty. Guarantor hereby further waives all rights and defenses which such Guarantor may have arising out of (a) any election of remedies by the Guaranteed Parties, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Guaranteed Obligations, impairs, diminishes, negates or destroys such Guarantor's rights of subrogation or such Guarantor's rights to proceed against PNMR-D for reimbursement or (b) any loss of rights such Guarantor may suffer by reason of any rights, powers or remedies of PNMR-D in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging the Guaranteed Obligations, whether by operation of law or otherwise, including any rights which such Guarantor may have to a fair market value hearing to determine the size of a deficiency following any foreclosure sale or other disposition of any real property security for any portion of the Guaranteed Obligations. Guarantor acknowledges and agrees that the waivers in the immediately preceding sentence constitute unconditional and irrevocable waivers of any rights and defenses Guarantor may have, and that such rights and defenses include, without limitation, any rights and defenses based upon any and all applicable state statutes.

GUARANTOR HEREBY FURTHER WAIVES ANY AND ALL OTHER SURETYSHIP DEFENSES.

Guarantor hereby represents and warrants to the Guaranteed Parties that (a) such Guarantor is a New Mexico company duly formed, validly existing and in good standing under the laws of the State of New Mexico, (b) the execution, delivery and performance by such Guarantor of this Parental Guaranty Agreement (i) are within company powers of such Guarantor, (ii) have been duly authorized by all necessary company action on the part of such Guarantor, (iii) require no action by or in respect of, consent or approval of or filing or recording with, any governmental or regulatory body, instrumentality, authority, agency or official or any other person or entity and (iv) do not conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under or result in any violation of, the terms of the Articles of Incorporation, Bylaws and any other governing document of Guarantor, any applicable law, rule, regulation, order, writ, judgment or decree of any court or govemmental or regulatory body, instrumentality, authority, agency or official or any agreement, document or instrument to which such Guarantor is a party or by which such Guarantor or any of its property or assets is bound or to which Guarantor or any of its property or assets is subject and (c) this Parental Guaranty Agreement constitutes the legal, valid and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency or similar laws affecting the

enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

No delay by the Guaranteed Parties in exercising any of their options, powers or rights under this Parental Guaranty Agreement and/or any partial or single exercise thereof shall constitute a waiver thereof. No waiver of any of the rights and/or remedies of the Guaranteed Parties under this Parental Guaranty Agreement and no modification or amendment of this Parental Guaranty Agreement shall be deemed to be made by the Guaranteed Parties unless the same shall be in writing, duly signed on behalf of the Guaranteed Parties and each such waiver (if any) shall apply only with respect to the specific instance involved and shall in no way impair the rights of the Guaranteed Parties or the obligations of the Guarantor to the Guaranteed Parties in any other respect at any other time. In the event any one or more of the provisions contained in this Parental Guaranty Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Parental Guaranty Agreement shall not be affected or impaired thereby.

All payments made under or pursuant to this Parental Guaranty Agreement shall be paid for the benefit of the Guaranteed Parties and shall be allocated among the principal, interest and other portions of the Guaranteed Obligations and the other obligations of the Guarantor under this Parental Guaranty Agreement in the order and manner set forth in the Guaranteed Agreements.

Guarantor hereby covenants and agrees to deliver to the Guaranteed Parties (a) such publicly-available financial statements and other publicly-available financial information regarding the Guarantor as reasonably requested by the Guaranteed Parties~~:~~, and (b) notice and a true and correct executed copy of any other guaranty executed by Guarantor to guarantee any obligations of PNMR-D entered into at any time after the date this Parental Guaranty Agreement is executed and before the date of termination hereof.

This Parental Guaranty Agreement is a continuing guaranty which will remain in full force and effect and will not be terminable unless and until (a) all of the Guaranteed Obligations have been fully and finally paid in cash (except with respect to contingent indemnification obligations), (b) none of the Guaranteed Parties has any further commitment or obligation to advance funds, make loans, extend credit to or for the account of PNMR-D under the Guaranteed Agreements, and/or enter into any Guaranteed Obligations and (c) the Guaranteed Agreements have expired or been terminated in accordance with their terms. The dissolution of the Guarantor shall not effect a termination of this Parental Guaranty Agreement. If claim is ever made on the Guaranteed Parties for repayment or recovery of any amount or amounts received by the Guaranteed Parties in payment or on account of any of the Guaranteed Obligations (including payment under a guaranty or from application of collateral) and the Guaranteed Parties repay or disgorge all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over the Guaranteed Parties or any of the property or assets of the Guaranteed Parties or (b) any settlement or compromise of any such claim effected by the Guaranteed Parties with any such claimant (including, without limitation, PNMR-D and/or Guarantor), then and in such event Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on such Guarantor, notwithstanding any cancellation of any note or other instrument or agreement evidencing such Guaranteed

Obligations or of this Parental Guaranty Agreement, and Guarantor will be and remain liable to the Guaranteed Parties under this Parental Guaranty Agreement for the amount so repaid, recovered or disgorged to the same extent as if such amount had never originally been received by the Guaranteed Parties. This Parental Guaranty Agreement will continue to be effective or be reinstated, as the case may be, if (a) at any time any payment of any of the Guaranteed Obligations is rescinded, cancelled, voided or must otherwise be returned by or is disgorged from the Guaranteed Parties for any reason including, without limitation, the insolvency, bankruptcy or reorganization of PNMR-D, Guarantor or otherwise, all as though such payment had not been made or (b) this Parental Guaranty Agreement is released or the liability of Guarantor under this Parental Guaranty Agreement is reduced in consideration of a payment of money or transfer of property or grant of a security interest by PNMR-D, Guarantor or any other person and such payment, transfer or grant is rescinded, cancelled, voided or must otherwise be returned by or disgorged from the Guaranteed Parties for any reason including, without limitation, the insolvency, bankruptcy or reorganization of such person or otherwise, all as though such payment, transfer or grant had not been made.

Any notice, demand or other communication to Guarantor under this Parental Guaranty Agreement will be in writing and delivered in person or sent by facsimile, recognized overnight courier or registered or certified mail (return receipt requested) to Guarantor at the address or facsimile number for the Guarantor set forth on the signature page(s) of this Parental Guaranty Agreement, or at such other address or facsimile number as the Guarantor may designate as its address or facsimile number for communications under this Parental Guaranty Agreement. Such notices will be deemed effective on the day on which delivered or sent if delivered in person or sent by facsimile, on the first (1st) business day after the day on which sent, if sent by recognized overnight courier or on the third (3rd) business day after the day on which sent, if sent by registered or certified mail.

This Parental Guaranty Agreement will be understood to be for the benefit of the Guaranteed Parties, individually and collectively, and for such other person or persons as may from time to time become or be the holder or owner of any of the Guaranteed Obligations or any interest therein and this Parental Guaranty Agreement will be transferable to the same extent and with the same force and effect as any of the Guaranteed Obligations may be transferable, and any one or more of the Guaranteed Parties may, but is not required to, demand payment or performance hereunder by the Guarantor. This Parental Guaranty Agreement cannot be changed or terminated orally, will be governed by and construed in accordance with the substantive laws of the State of New Mexico (without reference to conflict of law principles), will be binding on the successors and permitted assigns of Guarantor and will inure to the benefit of the respective successors and assigns of the Guaranteed Parties. Guarantor may not assign or delegate any of its rights, obligations or duties under this Parental Guaranty Agreement without the prior written consent of the Guaranteed Parties.

GUARANTOR HEREBY IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW MEXICO STATE COURT OR FEDERAL COURT IN ALBUQUERQUE, NEW MEXICO, AS THE GUARANTEED PARTIES MAY ELECT, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS PARENTAL GUARANTY AGREEMENT, (B) AGREES THAT ALL CLAIMS IN

RESPECT TO ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE HELD AND DETERMINED IN ANY OF SUCH COURTS, (C) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH GUARANTOR MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, (D) WAIVES ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND (E) WAIVES ALL RIGHTS OF ANY OTHER JURISDICTION WHICH GUARANTOR MAY NOW OR HEREAFTER HAVE BY REASON OF ITS PRESENT OR SUBSEQUENT DOMICILES. **GUARANTOR (AND BY THEIR ACCEPTANCE HEREOF) THE GUARANTEED PARTIES HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH GUARANTOR, ON THE ONE HAND, AND THE GUARANTEED PARTIES, ON THE OTHER HAND, ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS PARENTAL GUARANTY AGREEMENT.**

Executed as of the ____ day of_____.

PNM RESOURCES, INC., a New Mexico corporation

Guarantor

By_____

Title: _____

Contact information of Guarantor, Guaranteed Parties and PNMR-D for purpose of Notices:

PNM Resources, Inc.
414 Silver Avenue SW
Albuquerque, NM 87102
Attention: Secretary
FAX No. (505) 241-2368

PNMR Development and Management Corporation
414 Silver Avenue SW
Albuquerque, NM 87102
Attention: Secretary
FAX No. (505) 241-2368

Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

With a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

With a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

Incorporated County of Los Alamos, New Mexico
c/o County Clerk
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of Los Alamos, New Mexico
c/o Utilities Manager
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

Utah Associated Municipal Power Systems
c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

City of Anaheim

Attention: City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

City of Anaheim
Attention: Public Utilities General Manager
201 South Anaheim Blvd., Suite 1101
Anaheim, CA 92805
FAX No. (714) 765-4138

M-S-R Public Power Agency
Attention: General Manager
1231 11th Street
Modesto, CA 95354
FAX No. (209) 526-7574

Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

EXHIBIT J

FORM OF LETTER OF CREDIT

L/C NUMBER AMOUNT EXPIRATION DATE

BENEFICIARY NAME
BENEFICIARY ADDRESS
BENEFICIARY ADDRESS

APPLICANT NAME
APPLICANT ADDRESS
APPLICANT ADDRESS

WE HEREBY OPEN OUR IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR IN CONNECTION WITH _____ AGREEMENT DATED AS OF_____ FOR THE ACCOUNT OF THE ABOVE REFERENCED APPLICANT IN THE AGGREGATE AMOUNT OF (Ten Million Dollars) WHICH IS AVAILABLE BY PAYMENT WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A DRAFT AT SIGHT DRAWN ON _____, DULY ENDORSED ON ITS REVERSE SIDE THEREOF BY THE BENEFICIARY, SPECIFICALLY REFERENCING THIS LETTER OF CREDIT NUMBER.

2. THE ORIGINAL LETTER OF CREDIT AND ANY AMENDMENTS ATTACHED THERETO.

3. COPY OF INVOICE MARKED UNPAID IN THE CASE OF ITEM 4.A, AND

4. A STATEMENT ISSUED ON THE LETTERHEAD OF AND PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY STATING THE FOLLOWING:

A. THE APPLICANT HAS NOT MADE PAYMENT ON INVOICE NUMBER (INSERT INVOICE NUMBER) PER OUR AGREED TERMS. WE THEREFORE DEMAND PAYMENT IN THE AMOUNT OF (INSERT AMOUNT) AS SAME IS DUE AND OWING; or

B. AT THE TIME OF ISSUANCE OF LETTER OF CREDIT NO. [INSERT NUMBER], [NAME OF ISSUING BANK] HAD A LONG TERM OBLIGATION RATING FROM ONE OR MORE OF THE FOLLOWING CREDIT RATING AGENCIES OF AT LEAST: MOODY'S, A3 OR BETTER; STANDARD & POOR'S, A- OR BETTER; AND/OR FITCH, A- OR BETTER. SAID RATING(S) HAS/HAVE FALLEN BELOW THAT EXISTING AT THE TIME OF ISSUANCE OF THE LETTER OF CREDIT.

INVOICE(S) IN EXCESS OF AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT ARE ACCEPTABLE, HOWEVER, DRAWINGS UNDER THIS LETTER OF CREDIT MAY NOT EXCEED AMOUNT AVAILABLE.

PARTIAL DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED.

MULTIPLE DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED.

ALL BANKING CHARGFS OF THE ISSUER ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED EACH YFAR WITHOUT AMENDMFNT FOR A PERIOD OF AT LEAST ONE YEAR FROM THE EXPIRATION DATE HEREOF, AS EXTENDED, UNLESS AT LEAST FORTY-FIVE (45) DAYS PRIOR TO THE EXPIRATION DATE, WE NOTIFY THE BENEFICIARY AND APPLICANT BY A NATIONALLY RECOGNIZED OVERNIGHT COURIER OR CERTIFIED MAIL THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD (THE PRESENT OR ANY FUTURE EXPIRATION DATE AS AFORESAID IS REFERRED TO HEREIN AS THE "EXPIRATION DATE"). WE WILL GIVE NOTICE OF NON-EXTENSION TO THE BENEFICIARY AT THE BENEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE TO US IN WRITING AT OUR LETTERHEAD ADDRESS. FOLLOWING RECEIPT BY THE BENEFICIARY OF SUCH NOTICE, AND NO EARLIER THAN TWENTY (20) DAYS BEFORE THE EXPIRATION DATE, THE BENEFICIARY MAY DRAW THE FULL AMOUNT HEREUNDER.

IF OUR CREDIT RATING(S) FALL BELOW OUR LONG TERM OBLIGATION RATING EXISTING AT THE TIME OF ISSUANCF OF THE LETTFR OF CREDIT, WE WILL GIVE NOTICE OF SUCH EVENT TO THE BENFFICIARY AND APPLICANT BY A NATIONALLY RECOGNIZED OVERNIGHT COURIER OR CERTIFIED MAIL. WE WILL GIVE SUCH NOTICE TO THE BENEFICIARY AT THE BFNEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE TO US IN WRITING AT OUR LETTERHEAD ADDRFSS. FOLLOWING RECEIPT BY THE BENEFICIARY OF SUCH NOTICE, AND NO EARLIER THAN TWENTY-FIVE (25) DAYS AFTER RECEIPT OF SUCH NOTICE, THE BENEFICIARY MAY DRAW THE FULL AMOUNT HEREUNDER.

THIS IRREVOCABLE LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT, AGREEMENT REFERENCED TO HEREIN.

WE HEREBY AGREE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED IF PRESENTED TOGETHERWITH DOCUMENT(S) AS SPECIFIED AT OUR OFFICE LOCATED AT _____ ATTENTION: STANDBY LETTERS OF CREDIT ON OR BEFORE _____

THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED EXPIRY DATE IF APPLICABLE. DRAFT(S) DRAWN UNDER THIS LETTER OF CREDIT MUST SPECIFICALLY REFERENCE OUR LETTER OF CREDIT NUMBER.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98").

SINCERELY,

AUTHORIZED SIGNATURE

XXX

PLEASE DIRECT ANY CORRESPONDENCE INCLUDING DRAWING OR INQUIRY QUOTING OUR LETTER OF CREDIT NUMBER TO:

EXHIBIT K

Form of Bring-Down Opinion of Counsel

The legal opinions of counsel for each of the Exiting Participants and Acquiring Participants required by Sections 7.3.4 and 7.4.3 of the Restructuring Agreement will be to the following effect:

[Addressed to Exiting and Acquiring Participants]

Ladies and Gentlemen: [Expand as appropriate to encompass customary qualifications and limitations and other relevant language]

We have acted as counsel to _____ [Insert name of Party on whose behalf this opinion is provided] in connection with the San Juan Project Restructuring Agreement among Public Service Company of New Mexico; Tucson Electric Power Company; The City of Farmington, New Mexico; M-S-R Public Power Agency; The Incorporated County of Los Alamos, New Mexico; Southern California Public Power Authority; City of Anaheim; Utah Associated Municipal Power Systems; Tri-State Generation and Transmission Association, Inc.; and PNMR Development and Management Corporation, dated as of _____, 2015 ("Restructuring Agreement") (each a "Party" and collectively the "Parties"). We have been advised that in accordance with Section 7 of the Restructuring Agreement all of the transactions contemplated to take place at the Closing are ready to close and all of the conditions precedent to the Closing have been satisfied or waived. Section [7.3.4 or 7.4.2] of the Restructuring Agreement provides for the giving of this bring-down opinion.

Pursuant to Section 17.3 of the Restructuring Agreement, we rendered to the other Parties a legal opinion, dated _____, 2015 [Date of Prior Opinion] ("Prior Opinion"), with respect to _____ [Insert name of the Party on whose behalf this opinion is provided]. In connection with the Closing, as defined in Section 7 of the Restructuring Agreement, we hereby reaffirm the Prior Opinion, as though it was dated the date hereof, in the form it was so rendered on _____, 2015 [Date of Prior Opinion].

In addition to the foregoing, we are of the opinion that the representations and warranties made by _____ [Insert name of the Party on whose behalf this opinion is provided] pursuant to Section 17.3 of the Restructuring Agreement were true and correct in all material respects as of the date of the Prior Opinion and are true and correct in all material respects as of the date hereof, and no facts have come to our attention, after reasonable inquiry, which would lead us to believe that such representations and warranties contained or contain any untrue statement of a material fact or omitted to state or omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which they were made, not misleading.

The opinions expressed herein are based only on the laws of the State of _____ [Insert State] in effect as of the date of this opinion and in all respects are subject to and may be

limited by future legislation, as well as developing case law. We undertake no duty to advise you of the same.

This letter is furnished by us as _____

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FINAL VERSION 06/18/2015
(SUBJECT TO CONFORMING CHANGES)

AMENDED AND RESTATED

MINE RECLAMATION AND

TRUST FUNDS AGREEMENT

AMONG

PUBLIC SERVICE COMPANY OF NEW MEXICO

TUCSON ELECTRIC POWER COMPANY

THE CITY OF FARMINGTON, NEW MEXICO

M-S-R PUBLIC POWER AGENCY

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

CITY OF ANAHEIM

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

July ___, 2015

TABLE OF CONTENTS

RECITALS 1
1.0 TERM AND TERMINATION 3
1.1 Effective Date. 3
1.2 Termination. 3
2.0 DEFINITIONS AND RULES OF INTERPRETATION 3
2.1 Definitions 3
2.2 Rules of Interpretation. 11
3.0 RECOGNITION OF OBLIGATIONS 12
3.1 Reclamation Trust Funding Obligations. 12
3.2 Cost Obligations 12
3.3 Definition of Reclamation Shares 13
4.0 FUNDING OF RECLAMATION TRUSTS AND OF MAKE-UP ACCOUNTS 13
4.1 Establishment and Funding of Reclamation Trusts. 13
4.2 Investment Policies 13
4.3 Mandatory Provisions 14
4.4 Only Purposes 14
4.5 Initial Funding of Reclamation Trusts 14
4.6 Subsequent Funding of Reclamation Trusts 14
4.7 Reclamation Recovery Deposits and Reclamation Correcting Deposits 14
4.8 Make-up Reclamation Trust Funds 15
4.9 Return of Funds in a Reclamation Trust 16
4.10 Status Reports 16
4.11 Compliance 16
5.0 ADJUSTMENTS TO RECLAMATION FUNDING CURVES 16
5.1 Adjustments to Reclamation Funding Curves 16
5.2 Reclamation Costs Review 17
5.3 Adjustment Requests 17
5.4 Costs of Reclamation Costs Review 18
6.0 RECLAMATION INVESTMENT COMMITTEE 18
6.1 Establishment of Reclamation Investment Committee 18
6.2 Reclamation Investment Committee Membership 18
6.3 Functions and Responsibilities of Reclamation Investment Committee 18
6.4 Make-up Funding Curves 20

6.5 Decisions of Reclamation Investment Committee 21
6.6 Meetings of Reclamation Investment Committee 22
7.0 RECLAMATION OVERSIGHT COMMITTEE 22
7.1 Establishment of Reclamation Oversight Committee 22
7.2 Reclamation Oversight Committee Membership 22
7.3 Functions and Responsibilities of Reclamation Oversight Committee 23
7.4 Decisions of Reclamation Oversight Committee 23
7.5 Meetings of Reclamation Oversight Committee 24
8.0 RECLAMATION TRUST FUNDS OPERATING AGENT 25
8.1 Selection of Reclamation Trust Funds Operating Agent 25
8.2 PNM as Initial Reclamation Trust Funds Operating Agent 25
8.3 Responsibilities of the Reclamation Trust Funds Operating Agent 25
8.4 Annual Budgets 28
8.5 Reimbursement of Costs and Expenses 28
8.6 Reclamation Administrative and General Expenses 29
8.7 Payment of Reclamation Cost Invoices 29
8.8 No Fee 29
8.9 Liability of Reclamation Trust Funds Operating Agent. 29
8.10 Resignation of Reclamation Trust Funds Operating Agent 30
8.11 Removal of Reclamation Trust Funds Operating Agent 30
9.0 CERTAIN RIGHTS OF PARTIES 30
9.1 Participant Representatives 30
9.2 Opt-out Right 31
10.0 DECLARATION OF DEFAULT 31
10.1 Definition of Default 31
10.2 Default Notice 32
10.3 Cure of Default 32
10.4 Protest of Default 32
10.5 Declaration of Default 32
10.6 Consequences of Default 33
10.7 No Stay for Arbitration 33
10.8 Termination of Default 33
10.9 Other Rights 33
10.10 No Waiver 33

11.0 FAILURE TO FUND RECLAMATION TRUST THROUGH DECEMBER 31, 2017 . 33
11.1 Shortfall in Trust Funds ... 33
11.2 Make-up Reclamation Trust Funds ... 33
11.3 Payment of Defaulting Party's Invoices for Reclamation Costs ... 34
11.4 Failure to Pay Other Costs ... 34
12.0 FAILURE TO FUND RECLAMATION TRUST AFTER DECEMBER 31, 2017 ... 34
12.1 Opt-in Participants ... 34
12.2 Payment of Defaulting Party's Invoices for Reclamation Costs ... 35
12.3 Opt-out Participants ... 35
12.4 Failure to Pay Other Costs ... 35
13.0 DISPUTE RESOLUTION ... 35
13.1 Amicable Resolution ... 35
13.2 Call for Arbitration ... 36
13.3 Selection of Arbitrators. ... 36
13.4 Arbitration Procedures ... 37
13.5 Decision of Arbitrators ... 37
13.6 Enforcement of Arbitration Award ... 37
13.7 Fees and Expenses ... 37
13.8 Legal Remedies ... 37
13.9 Rights of SJCC ... 38
13.10 Prompt Resolution ... 38
14.0 POWER AND AUTHORITY ... 38
14.1 Requisite Power and Authority ... 38
14.2 No Violation ... 38
15.0 RELATIONSHIP OF PARTIES ... 38
15.1 Several Obligations ... 38
15.2 No Joint Venture or Partnership ... 39
15.3 Parental Guaranty ... 39
16.0 SUCCESSORS AND ASSIGNS ... 39
16.1 Successors and Assigns ... 39
16.2 Third Party Beneficiaries ... 39
16.3 No Right to Mortgage ... 39
16.4 Prior Written Consent ... 39
17.0 OPT-IN/OPT-OUT ELECTION OF SUCCESSORS AND ASSIGNS ... 40

17.1 Protection of Parties' Rights 40
17.2 Assignee's Right of Election 40
17.3 Assignee's Funding of Principal Reclamation Trust Fund 40
17.4 Assignee's Funding of Make-up Reclamation Trust Fund(s) 40
17.5 Assigning Party's Right of Refund 41
18.0 AUDIT RIGHTS; RELATED DISPUTES 41
18.1 Right of Audit 41
18.2 Dispute Resolution. 42
18.3 Adjusted Billing Procedures. 42
18.4 Audit of Reclamation A&G Expenses 43
18.5 Effectiveness. 43
19.0 UNCONTROLLABLE FORCES 43
20.0 INVALID PROVISIONS 43
21.0 APPLICABLE LAW AND VENUE 43
21.1 Compliance with Law 43
21.2 New Mexico Law 43
21.3 Venue 44
22.0 ENTIRE AGREEMENT 44
22.1 Entire Agreement 44
22.2 Amendment and Modification 44
22.3 Prior Obligations Unaffected 44
23.0 WAIVER 44
24.0 NO INTERPRETATION AGAINST DRAFTER 44
25.0 INDEPENDENT COVENANTS 45
26.0 OTHER DOCUMENTS 45
27.0 NOTICES 45
27.1 Manner of Giving of Notice 45
27.2 Notices to SJCC 47
27.3 Changes in Designation 48
28.0 CAPTIONS AND HEADINGS 48
29.0 EFFECT OF MUNICIPAL LAW 48
29.1 Farmington and Los Alamos 48
29.2 Anaheim and M-S-R 48
29.3 Southern California Public Power Authority 48

29.4 Utah Associated Municipal Power Systems 48
30.0 PARTIES' COST RESPONSIBILITIES 49
31.0 CONFIDENTIALITY 49
31.1 Confidentiality of Negotiations 49
31.2 Non-confidentiality of Mine Reclamation Agreement 49
32.0 ORIGINAL TRUST FUNDS AGREEMENT 49
33.0 LIMITATIONS ON DAMAGES 49
34.0 EXECUTION IN COUNTERPARTS 50

List of Exhibits

EXHIBITS 1A - 1C REGARDING PRE-2017YE RECLAMATION LIABILITY:

EXHIBIT 1A: RECLAMATION FUNDING CURVES FOR 70%/30% EQUITY/FIXED INCOME PORTFOLIO.....1A-1

EXHIBIT 1B: RECLAMATION FUNDING CURVES FOR FIXED INCOME PORTFOLIO 1B-1

EXHIBIT 1C: FIXED INCOME PORTFOLIO RECLAMATION FUNDING CURVE WITH 3% RISK ADJUSTMENT.....1C-1

EXHIBITS 1D – 1F REGARDING POST-2017YE RECLAMATION LIABILITY [Reserved]

EXHIBIT 2: PERMITTED INVESTMENTS 2-1

EXHIBIT 3: MANDATORY PROVISIONS 3-1

EXHIBIT 4: ASSUMPTIONS, PROCEDURES AND PRINCIPLES FOR REVISIONS TO EXHIBITS 1A, 1B AND 1C 4-I

EXHIBIT 5: EXAMPLE OF RETURN RATE STUDY 5-1

EXHIBIT 6: SJCC SITE AREA 6-I

EXHIBIT 7: DISTURBANCE/RECLAMATION SURVEYS OF THE SJCC SITE AREA...7-1

EXHIBIT 8: COMPOSITE RECLAMATION SHARES.....8-1

AMENDED AND RESTATED
MINE RECLAMATION AND TRUST FUNDS AGREEMENT

This AMENDED AND RESTATED MINE RECLAMATION AND TRUST FUNDS AGREEMENT ("Mine Reclamation Agreement"), is executed as of July ___, 2015 ("Execution Date"), among PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("LAC"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"), and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"). PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS, Tri-State and PNMR-D are hereinafter sometimes referred to individually as a "Party" and collectively as "Parties."

RECITALS

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

A. The San Juan Project is a four-unit, coal-fired electric generation plant located in San Juan County, near Farmington, New Mexico, also known as the San Juan Generating Station ("SJGS" or the "Project"). On the Execution Date, the owners of the Project are: PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS and Tri-State; these entities, as the owners of the Project on the Execution Date, are sometimes referred to in this Mine Reclamation Agreement as the "Participants." Concurrently herewith, the Parties are executing: (i) the San Juan Project Restructuring Agreement ("Restructuring Agreement"); (ii) the San Juan Decommissioning and Trust Funds Agreement ("Decommissioning Agreement"); (iii) the SJPPA Restructuring Amendment; and (iv) the SJPPA Exit Date Amendment.

B. Under the terms of the Restructuring Agreement, the Parties have agreed to the restructuring of Project ownership interests, rights and cost responsibilities. Certain of the Participants (the "Exiting Participants") will cease their active involvement in the operation of the Project on the Exit Date, but the Exiting Participants will nonetheless remain "Parties" for purposes of this Mine Reclamation Agreement and the obligations herein contained. PNM and

PNMR-D will assume certain of the Exiting Participants' ownership interests, rights and cost responsibilities as of the Exit Date.

C. PNMR-D is a wholly-owned subsidiary of PNM Resources, Inc., and intends, consistent with the provisions of the Restructuring Agreement, to acquire an Ownership Interest in the Project on the Exit Date and, prior to the acquisition of such Ownership Interest, to assume certain obligations under this Mine Reclamation Agreement, the Restructuring Agreement and the SJPPA. PNMR-D is a party to this Mine Reclamation Agreement but is not as of the Execution Date a Participant in the Project. After the Exit Date, PNMR-D will become a Remaining Participant in the Project.

D. Coal for the operation of the Project is mined from the San Juan Mine, located adjacent to SJGS. PNM and TEP and San Juan Coal Company ("SJCC") are the parties to an Underground Coal Sales Agreement dated August 31, 2001 ("UG-CSA"), which is anticipated to terminate January 1, 2016. Thereafter, coal will be supplied under a new Coal Supply Agreement ("CSA") between SJCC and PNM.

E. PNM and TEP are required by Section 7.3(A) of the UG-CSA to "compensate SJCC for all reclamation and related liabilities, obligations and costs associated with disturbance on the SJCC Site Area resulting in any way from the supply of coal for San Juan Station . . . ." and are required under Section 7.3(B) of the UG-CSA to make certain arrangements for post-term reclamation obligations. Under Section 7.4 of the CSA, PNM is required to make arrangements under this Mine Reclamation Agreement to assure PNM's post-term reclamation obligations under the CSA. Concurrently with the CSA, PNM will enter into a Reclamation Services Agreement ("RSA") with SJCC for SJCC's performance of reclamation services.

F. To address PNM's and TEP's reclamation responsibilities under the UG-CSA, the Participants entered into the "Mine Reclamation and Trust Funds Agreement among the Participants," dated June 1, 2012 (the "Original Trust Funds Agreement"). The Original Trust Funds Agreement provided for the establishment by the Participants of certain irrevocable trusts ("Reclamation Trusts") to satisfy their respective obligations to pay for Reclamation Costs. Consistent with the Original Trust Funds Agreement, the Participants have established and funded their respective Reclamation Trusts.

G. PNM, TEP and SJCC will execute the UG-CSA Termination Agreement that provides for the termination of the UG-CSA and the termination of the mine reclamation obligations thereunder.

H. The Parties desire, by this Mine Reclamation Agreement, to amend and restate the Original Trust Funds Agreement, to address the replacement of the UG-CSA with the CSA and the establishment of the RSA, to add PNMR-D as a Party to the Mine Reclamation Agreement and to provide for the establishment, continuation and maintenance of irrevocable Reclamation Trusts to satisfy their respective responsibilities to pay for Reclamation Costs. The Reclamation Trusts must continue in effect until reclamation has been completed as determined by Reclamation Bond Release.

I. The foregoing Recitals are included to provide background regarding this Mine Reclamation Agreement, and while certain Recitals may be referenced in this Mine Reclamation Agreement, they are neither part of nor incorporated into the terms, covenants and conditions of this Mine Reclamation Agreement.

AGREEMENT

The Parties, for and in consideration of the mutual covenants to be by them kept and performed, agree as follows.

1.0 TERM AND TERMINATION

1.1 Effective Date. This Mine Reclamation Agreement will become effective (the "Effective Date") on the effective date of the Restructuring Agreement.

1.2 Termination. This Mine Reclamation Agreement will continue in full force and effect until one hundred and eighty (180) days after Reclamation Bond Release.

2.0 DEFINITIONS AND RULES OF INTERPRETATION

2.1 Definitions. The following terms used in this Mine Reclamation Agreement, with initial capitalization, have the meanings set out below.

2.1.1 AAA has the meaning provided for in Section 13.3.2.

2.1.2 Adjustment Request has the meaning provided for in Section 5.3.

2.1.3 Affiliate means with respect to any person: (i) each person that, directly or indirectly, controls or is controlled by or is under common control with such designated person; (ii) any person that beneficially owns or holds 50% or more of any class of voting securities of such designated person or 50% or more of the equity interest in such designated person; and (iii) any person of which such designated person beneficially owns or holds 50% or more of any class of voting securities or in which such designated person beneficially owns or holds 50% or more of the equity interest; provided, however, that members of a Party will not be deemed to be Affiliates of each such Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise; PNM and PNMR-D are Affiliates.

2.1.4 Arbitration Notice has the meaning provided for in Section 13.2.

2.1.5 Arbitration Organization has the meaning provided for in Section 13.3.2.

2.1.6 Arbitration Award has the meaning provided for in Section 13.5.

2.1.7 Assigning Party means a Party making a transfer or assignment as described in Section 17.1.

2.1.8 Business Day means any day other than a Saturday, Sunday or federal holiday.

2.1.9 Catalogue ID means the unique identifier assigned to each Disturbance Area within the SJCC Site Area.

2.1.10 CCR Disposal Costs means those costs incurred under the CCRDA.

2.1.11 CCRDA means the new Coal Combustion Residuals Disposal Agreement between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.12 Coal Combustion Residuals or CCR means ash and gypsum byproducts produced by the Project.

2.1.13 Composite Reclamation Shares means shares calculated as set forth in Exhibit 8.

2.1.14 CSA means the new Coal Supply Agreement between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.15 Decommissioning Agreement means the San Juan Project Decommissioning and Trust Funds Agreement executed concurrently herewith.

2.1.16 Default means a default in performance of a Party's obligations under this Mine Reclamation Agreement, as defined more particularly in Section 10.1.

2.1.17 Default Declaration means a declaration of default as defined in Section 10.5.

2.1.18 Default Notice means a notice of default as defined in Section 10.2.

2.1.19 Dispute Protest has the meaning provided for in Section 13.1.2.

2.1.20 Disturbance means a surface or underground physical disturbance resulting from or associated with coal mining activities, including mine pits, facilities, roads, ponds, topsoil and overburden removal, buildings, pipelines, power lines, water systems, fencing or auxiliary facilities that are subject to the Reimbursement Obligation.

2.1.21 Disturbance Area means a discrete area with a similar nature of Disturbance that can be classified as Pre-2017YE Reclamation Liability, Post-2017YE Reclamation Liability or a combination thereof, subject to reclassification as appropriate based on future activities as provided in Exhibit 7.

2.1.22 Effective Date means the date established in Section 1.1 for the effectiveness of this Mine Reclamation Agreement.

2.1.23 Exit Date means the date upon which the Exiting Participants transfer all of their respective rights, titles and interests in and to their Ownership Interests to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of the SJGS, except as expressly provided for in this Mine Reclamation Agreement, the Restructuring Agreement and the Decommissioning Agreement; the Exit Date is anticipated to be on or about December 31, 2017.

2.1.24 Exiting Participants means those Participants that will transfer all of their respective rights, titles and interests in and to their Ownership Interests to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in the Restructuring Agreement, this Mine Reclamation Agreement and the Decommissioning Agreement; the Exiting Participants are M-S-R, Anaheim, SCPPA and Tri-State.

2.1.25 Final Reclamation Report means a report provided by the Reclamation Trust Funds Operating Agent to the Reclamation Oversight Committee pursuant to Section 5.2.

2.1.26 Full Principal Funding Date means the date by which a particular Reclamation Funding Curve calculation indicates a Reclamation Trust needs no additional capital contributions.

2.1.27 Governmental Authority means any federal, state, tribal, local, municipal or foreign governmental or regulatory authority, department, agency, commission, body, court or other governmental authority other than a Party.

2.1.28 Initiating Party has the meaning provided for in Section 18.1.

2.1.29 Law means statutes, rules, regulations, ordinances, orders and codes of federal, state and local Governmental Authorities.

2.1.30 Make-up Funding Curve means the make-up funding curves established by the Reclamation Investment Committee pursuant to Section 6.4.

2.1.31 Make-up Reclamation Trust Fund means a sub-account within a Party's Reclamation Trust, as provided in Sections 4.1 and 4.8.

2.1.32 Mandatory Provisions means those provisions which must be included in each Party's Reclamation Trust Agreement, as described in Exhibit 3.

2.1.33 Notice means a notification given in accordance with Section 28.

2.1.34 Notice of Dispute has the meaning provided for in Section 13.1.1.

2.1.35 Noticing Party has the meaning provided for in Section 13.1.1.

2.1.36 Notification of Intent means a notification of intent to declare a Party in default, as defined in Section 10.5.

2.1.37 Operating Agent means the Participant or other entity which has been selected by the Participants as the entity responsible for the operation and maintenance of the Project pursuant to the SJPPA; as of the Effective Date, PNM is the Operating Agent. Unless otherwise specifically provided for, when in this Mine Reclamation Agreement a reference is made to the "agent" of a Party, such reference will not be deemed to include reference to the Operating Agent.

2.1.38 Opt-in Participant means a Party that has elected pursuant to Section 9.2 to become an Opt-in Participant.

2.1.39 Opt-out Participant means a Party that does not elect to become an Opt-in Participant.

2.1.40 Original Trust Funds Agreement means the Mine Reclamation and Trust Funds Agreement among the Participants dated June 1, 2012.

2.1.41 Ownership Interest means a Party's percentage of undivided ownership interest in a Unit and in common equipment and facilities and as increased, decreased, acquired or eliminated as provided in the Restructuring Agreement, and rights incidental thereto.

2.1.42 Participant means any one of PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS or Tri-State.

2.1.43 Participant Representative has the meaning provided for in Section 9.1.

2.1.44 Party means any one of the Participants as well as PNMR-D.

2.1.45 Permitted Investments means investments identified as permitted investments for Opt-out Participants and Opt-in Participants, as set out in Exhibit 2.

2.1.46 Post-2017YE Reclamation Liability means liability to reimburse costs for reclamation of all Disturbances that are not classified as Pre-2017YE Reclamation Liability; provided that Post-2017YE Reclamation Liability does not include Reclamation A&G Expenses or costs of Reclamation Work.

2.1.47 Post-2017YE Reclamation Liability Costs means the sum of costs for Post-2017YE Reclamation Liability; provided that Post-2017YE Reclamation Liability

Costs do not include CCR Disposal Costs and other costs such as coal supply that may be incurred by SJCC.

2.1.48 Pre-2017YE Reclamation Liability means liability to reimburse costs for reclamation of (i) all Disturbance on the SJCC Site Area existing as of the Effective Date as identified in Survey 1, for which there exists a Reimbursement Obligation as of the Effective Date, except those Disturbances before the Effective Date that occur as a result of activities associated with the post-2017 fuel supply; and (ii) all Disturbance on the SJCC Site Area existing as of the Exit Date as identified in Survey 2, for which there exists a Reimbursement Obligation as of the Exit Date, except those Disturbances after the Effective Date that occur as a result of activities associated with the post-2017 fuel supply; provided that Pre-2017YE Reclamation Liability does not include Reclamation A&G Expenses or costs of Reclamation Work.

2.1.49 Pre-2017YE Reclamation Liability Costs means the sum of costs for Pre-2017YE Reclamation Liability; provided that Pre-2017YE Reclamation Liability Costs do not include CCR Disposal Costs and other costs such as coal supply that may be incurred by SJCC.

2.1.50 Prime Rate means the interest rate per annum (sometimes referred to as the base rate) for large commercial loans to creditworthy entities announced from time-to-time by Wells Fargo Bank, N.A. (New York) or its successor bank or, if such rate is not announced, the rate published in the Wall Street Journal as the "prime rate" from time-to-time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay arises.

2.1.51 Principal Reclamation Trust Fund means a sub-account within a Party's Reclamation Trust.

2.1.52 Project has the meaning provided for in Recital A.

2.1.53 Protest means a protest made under Section 10.4.

2.1.54 Protesting Party has the meaning provided for in Section 13.1.2.

2.1.55 Purchase Transaction has the meaning provided for in Section 17.2.

2.1.56 Reclamation A&G Expenses means administrative and general expenses incurred by the Reclamation Trust Funds Operating Agent associated with its Reclamation Work as provided for in Section 8.6.

2.1.57 Reclamation Bond Release means the date as of which full reclamation bond release of the SJCC Site Area has been achieved, as defined by New Mexico Energy, Minerals, and Natural Resources Department, Mining and Minerals Division.

2.1.58 Reclamation Correcting Deposits means deposits to a Party's Reclamation Trust as required by Sections 4.7.1 and 4.7.2.2.

2.1.59 Reclamation Correction Period means the time in which Reclamation Correcting Deposits must be completed as provided for in Sections 4.7.1.1 and 4.7.2.

2.1.60 Reclamation Costs means the sum of Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs; Reclamation Costs do not include CCR Disposal Costs and other costs such as coal supply that may be incurred by SJCC.

2.1.61 Reclamation Costs Review means a review of Reclamation Costs undertaken pursuant to Section 5.2.

2.1.62 Reclamation Funding Curves means the Reclamation Funding Floor Curve and the Reclamation Funding Target Curve of Exhibit 1A (in the case of an Opt-in Participant), Exhibit 1B or Exhibit 1C (in the case of an Opt-out Participant) and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created. Exhibits 1A, 1B, and 1C, pertain to Pre-2017YE Reclamation Liability. Exhibits 1D, 1E, and 1F will pertain to Post-2017YE Reclamation Liability when they are created. Exhibits 1B and 1E are calculated as precursors to Exhibits 1C and 1F, respectively.

2.1.63 Reclamation Funding Floor Amount means the respective annual dollar amounts in the Reclamation Funding Floor Curves of Exhibit 1A, Exhibit 1B, or Exhibit 1C, for any given year and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.64 Reclamation Funding Floor Curve means the set of numbers in Exhibit 1A, Exhibit 1B, or Exhibit 1C, labeled as such and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.65 Reclamation Funding Target Amount means the respective annual dollar amounts in the Reclamation Funding Target Curves of Exhibit 1A, Exhibit 1B, or Exhibit 1C, for any given year and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.66 Reclamation Funding Target Curve means the set of numbers in Exhibit 1A, Exhibit 1B, or Exhibit 1C, labeled as such and similarly for Exhibit 1D, Exhibit 1E and Exhibit 1F when they are created.

2.1.67 Reclamation Investment Committee means the committee established in Section 6.

2.1.68 Reclamation Oversight Committee means the committee established in Section 7.

2.1.69 Reclamation Recovery Deposit means deposits to a Party's Reclamation Trust as required by Section 4.7.2.

2.1.70 Reclamation Recovery Period means the time in which Reclamation Recovery Deposits must be completed as provided for in Section 4.7.2.2.

2.1.71 Reclamation Share means a Party's proportionate funding and cost responsibility, as specified in Section 3.3, and applied for various purposes in this Mine Reclamation Agreement.

2.1.72 Reclamation Trust means a trust maintained by a Party with a Trustee pursuant to Section 4.

2.1.73 Reclamation Trust Agreement means a trust agreement entered into between a Party and its Trustee as provided for in Section 4.1.

2.1.74 Reclamation Trust Funds Operating Agent means the agent of the Parties, selected in accordance with Section 8, undertaking to perform the Reclamation Work.

2.1.75 Reclamation Work means the work undertaken by the Reclamation Trust Funds Operating Agent pursuant to Section 8.3.

2.1.76 Reimbursement Obligation means the obligation of PNM to pay SJCC, as provided for in the RSA.

2.1.77 Remaining Participants means those Parties that will continue participation, or acquire an Ownership Interest, in the Project on and after the Exit Date; the Remaining Participants are PNM, TEP, Farmington, UAMPS, Los Alamos and PNMR-D.

2.1.78 Restructuring Agreement means the San Juan Project Restructuring Agreement among the Parties, executed concurrently herewith.

2.1.79 Review Cost has the meaning provided for in Section 5.4.

2.1.80 RSA means the new Reclamation Services Agreement between PNM and SJCC with an anticipated effective date of January 1, 2016.

2.1.81 SJCC means San Juan Coal Company, a Delaware corporation, or its successors or assigns.

2.1.82 SJCC Site Area means the land identified in Exhibit 6.

2.1.83 SJPPA means the Amended and Restated San Juan Project Participation Agreement dated March 23, 2006.

2.1.84 Status Report means a status report prepared and provided to the Parties and to SJCC in accordance with Section 4.10.

2.1.85 Survey means Survey 1, Survey 2, Survey 3 or other Surveys, as provided for in Exhibit 7.

2.1.86 Surveyor has the meaning provided for in Exhibit 7.

2.1.87 Trustee means a financial institution selected by a Party at which the Party's Reclamation Trust is or will be held.

2.1.88 UG-CSA means the Underground Coal Sales Agreement between PNM, TEP and SJCC.

2.1.89 Uncontrollable Forces has the meaning provided for in Section 19.

2.1.90 Willful Action means: (i) action taken or not taken by a Party (or the Reclamation Trust Funds Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance under this Mine Reclamation Agreement, which 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 (ii) action taken or not taken by a Party (or the Reclamation Trust Funds Operating Agent) at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default hereunder and which action occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default, or if no time to cure is specified therein, occurs or continues beyond a reasonable time to cure such default; or (iii) action taken or not taken by a Party (or the Reclamation Trust Funds Operating Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default hereunder. The phrase "employees having management or administrative responsibility," as used in this Section 2.1.90, means employees of a Party who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Mine Reclamation Agreement; provided, however, that, with respect to employees of the Reclamation Trust Funds Operating Agent acting in its capacity as such and not in its capacity as a Party, but only during such time as any one of Unit 1, 2, 3 or 4 is commercially producing electrical power, such phrase refers only to: (x) the senior employee of the Reclamation Trust Funds Operating Agent on duty at the Project who is responsible for the operation of the Units, and (y) anyone in the organizational structure of the Reclamation Trust Funds Operating Agent between such senior employee and an officer. After such time as none of Unit 1, 2, 3 or 4 is commercially producing electrical power, the phrase "employees

having management or administrative responsibility" as used in this Section 2.1.90 will mean employees of any Party (including the Reclamation Trust Funds Operating Agent), who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Mine Reclamation Agreement. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

2.2 Rules of Interpretation. Unless a clear contrary intention appears, this Mine Reclamation Agreement will be construed and interpreted as follows:

2.2.1 Any reference to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization, governmental entity or other entity;

2.2.2 Any reference to a day, week, month or year is to a calendar day, week, month or year, unless otherwise specified as a Business Day;

2.2.3 Any act required to occur by or on a certain day is required to occur before or on that day unless the day falls on a Saturday, Sunday or federal holiday, in which case the act must occur before or on the next Business Day;

2.2.4 The singular includes the plural and *vice versa*;

2.2.5 Reference to the feminine, masculine or neutral gender includes reference to all other genders;

2.2.6 Reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Mine Reclamation Agreement;

2.2.7 Unless expressly stated otherwise, reference to any agreement (including this Mine Reclamation Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended, supplemented, replaced or modified and in effect from time-to-time;

2.2.8 Reference to any Law means such Law as amended, modified, codified supplemented or reenacted, in whole or in part, and in effect from time-to-time, including, if applicable, rules and regulations promulgated thereunder;

2.2.9 Unless expressly stated otherwise, reference to any article, section, exhibit or appendix means such article, section, exhibit or appendix of this Mine Reclamation Agreement, as the case may be;

2.2.10 "Hereunder," "hereof," "herein," "hereto" and words of similar import are deemed references to this Mine Reclamation Agreement as a whole and not to any particular provision hereof;

2.2.11 "Including," "include" and "includes" are deemed to be followed by the phrase "without limitation" and will not be construed to mean the examples given constitute an exclusive list of the matters covered;

2.2.12 Relating to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; and

2.2.13 Whenever an act is required to be performed by a particular time of day, prevailing Mountain Time will be the standard by which performance is measured.

3.0 RECOGNITION OF OBLIGATIONS

3.1 Reclamation Trust Funding Obligations. Each Party acknowledges and recognizes its respective obligation to have a balance in its Reclamation Trust sufficient to fund its Reclamation Share of the appropriate Reclamation Funding Target Curve in any given year during the term hereof, subject to the provisions of Section 4. The initial Reclamation Funding Curve for Opt-in Participants, having a Full Principal Funding Date of December 31, 2022, is set out in Exhibit 1A, as adjusted from time-to-time in accordance with Sections 5 and 6.3.3. The initial Reclamation Funding Curve for Opt-out Participants, having a Full Principal Funding Date of December 31, 2017, is set out in Exhibit 1C, as adjusted from time-to-time in accordance with Sections 5 and 6.3.3. Other funding curves will, as appropriate, be created with respect to Post-2017YE Reclamation Liability and adjusted from time-to-time in accordance with Sections 5 and 6.3.3. An adjustment to a Reclamation Funding Curve will not be deemed an amendment to this Mine Reclamation Agreement but rather will be considered an element of the administration and implementation of this Mine Reclamation Agreement; upon approval of a Reclamation Funding Curve adjustment, as provided for herein, such adjusted Reclamation Funding Curve will replace the Reclamation Funding Curve previously in effect.

3.2 Cost Obligations.

3.2.1 Each Party acknowledges and recognizes its obligation to pay its Reclamation Share of: (i) Reclamation Costs as provided herein; and (ii) costs of Reclamation Work and Reclamation A&G Expenses as provided in Sections 8.5 and 8.6.

3.2.2 In light of the fact that under the Restructuring Agreement the Exiting Participants will be terminating their active involvement in the operation of the Project on the Exit Date, the Reclamation Trust Funds Operating Agent will conduct, or cause to be conducted, the Surveys provided for in Exhibit 7 to identify Pre-2017YE Reclamation Liability and Post-2017YE Reclamation Liability.

3.2.3 Reclamation Costs are distinguished from the costs of other services (e.g., coal supply and CCR disposal). In particular, CCR is currently placed in the mine pits for disposal. Cover or spoil material over the CCR, as required by the CCRDA, will be assigned to the CCR disposal activity, not to Reclamation Costs, for so long as CCR

disposal is ongoing at San Juan mine. Any joint use of equipment, infrastructure or facilities in connection with Reclamation Costs activities and other services activities will be equitably allocated to each such activity by the Reclamation Trust Funds Operating Agent.

3.3 Definition of Reclamation Shares. The Reclamation Shares of the Parties for purposes of determining the proportionate funding and for cost responsibilities hereunder of each Party are the following:

		For Pre-2017YE Reclamation Liability	For Post-2017YE Reclamation Liability
3.3.1	PNM:	46.297 percent	58.671 percent
3.3.2	PNMR-D:	0.000 percent	7.673 percent
3.3.3	TEP:	19.800 percent	20.068 percent
3.3.4	M-S-R:	8.700 percent	0.000 percent
3.3.5	Farmington:	2.559 percent	5.076 percent
3.3.6	Tri-State:	2.490 percent	0.000 percent
3.3.7	Los Alamos:	2.175 percent	4.309 percent
3.3.8	SCPPA:	12.710 percent	0.000 percent
3.3.9	Anaheim:	3.100 percent	0.000 percent
3.3.10	UAMPS:	2.169 percent	4.203 percent

4.0 FUNDING OF RECLAMATION TRUSTS AND OF MAKE-UP ACCOUNTS

4.1 Establishment and Funding of Reclamation Trusts. Within ninety (90) days after the Effective Date of this Mine Reclamation Agreement, each Party will either execute or, if necessary, amend a separate Reclamation Trust Agreement between that Party and its Trustee for the establishment of an irrevocable Reclamation Trust to carry out the purposes of this Mine Reclamation Agreement. The Trustee will not be an Affiliate of a Party establishing a Reclamation Trust. To the extent not already provided, a copy of each Reclamation Trust Agreement will upon execution be provided to each other Party and to SJCC. Each Reclamation Trust will be funded as provided for in Sections 4.5, 4.6, 4.7 and 4.8. Each Reclamation Trust will be segregated into one or more sub-accounts: a Principal Reclamation Trust Fund and, if necessary, a Make-up Reclamation Trust Fund. Opt-out Participants will have a Principal Reclamation Trust Fund and may have Make-up Reclamation Trust Funds for the pre-Exit Date period, and Opt-in Participants will have a Principal Reclamation Trust Fund and may have Make-up Reclamation Trust Funds for both the pre- and post-Exit Date periods.

4.2 Investment Policies. Subject to compliance with the Permitted Investments standards set out in Exhibit 2, each Party may implement its own policies in relation to the investment of funds in its Reclamation Trust. Each Party may, at its discretion, appoint one or more investment managers to direct the investment of all or parts of funds held in trust.

4.3 Mandatory Provisions. Each Reclamation Trust Agreement must contain and maintain certain Mandatory Provisions. The Mandatory Provisions are described in Exhibit 3. Proposed amendments to any Mandatory Provision in a Party's Reclamation Trust Agreement are subject to review and approval by the Reclamation Investment Committee, as provided for in Section 6.3.6. A Party desiring to amend a Mandatory Provision must submit such proposed amendment to the Reclamation Investment Committee for prior review in accordance with procedures established by the Reclamation Investment Committee.

4.4 Only Purposes. Funds held in a Party's Reclamation Trust will be utilized for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Reclamation Trust, including the fees and expenses of the Trustee; and (b) to pay the Party's Reclamation Share (as defined in Section 3.3) of Reclamation Costs.

4.5 Initial Funding of Reclamation Trusts. Consistent with the Original Trust Funds Agreement, the Participants have established and funded, and are continuing to fund, their Reclamation Trusts. Within ninety (90) days after the Effective Date of this Mine Reclamation Agreement, PNMR-D will deposit into its Reclamation Trust immediately available funds sufficient to satisfy its Reclamation Share of the Reclamation Funding Target Amount for calendar year 2015.

4.6 Subsequent Funding of Reclamation Trusts. By December 31 of each year during the term hereof, each Party will have a balance in its Reclamation Trust sufficient to comply with the provisions of Section 3.1, 4.8 and this Section 4.6. Except as provided in Sections 4.9, 8.7, 11.3, 12.2 and 17.5, during the term hereof, no Party will be permitted to withdraw funds in its Reclamation Trust, including net earnings on accumulations in the Reclamation Trust. No additional funding of a Reclamation Trust will be required of a Party if the funds in its Reclamation Trust are sufficient by December 31 of each year during the term hereof, to satisfy the Party's Reclamation Share of the Reclamation Funding Target Amount for that year.

4.7 Reclamation Recovery Deposits and Reclamation Correcting Deposits.

4.7.1 In the event that, as of December 31 of any year during the term hereof, the value of funds in a Party's Reclamation Trust is less than its Reclamation Share of the Reclamation Funding Target Amount, but greater than its Reclamation Share of the Reclamation Funding Floor Amount for such year, then the Party will make one or more Reclamation Correcting Deposits. The amount and timing of such Reclamation Correcting Deposits will be made in conformance with policies established by the Reclamation Investment Committee under Section 6.3.4.

4.7.1.1 Reclamation Correcting Deposits in the aggregate will be sufficient to ensure that the value of funds in a Party's Reclamation Trust is equal to or greater than its Reclamation Share of the Reclamation Funding Target Amount at the end of the applicable Reclamation Correction Period determined as provided in Section 4.7.1.2.

4.7.1.2 The applicable Reclamation Correction Period during which one or more Reclamation Correcting Deposits must be made pursuant to Section 4.7.1.1 will be two (2) years.

Example:

Assuming the value of funds in Party A's Reclamation Trust is less than the Reclamation Funding Target Amount for Party A but greater than or equal to the Reclamation Funding Floor Amount for Party A at the end of 2015, then the Reclamation Correction Period expires December 31, 2017.

4.7.2 In the event that, as of December 31 of any year during the term hereof, the value of funds in a Party's Reclamation Trust is less than its share of the Reclamation Funding Floor Amount for such year, then the Party will make one or more Reclamation Recovery Deposits. The amount and timing of such Reclamation Recovery Deposits will be made in conformance with policies established by the Reclamation Investment Committee under Section 6.3.4.

4.7.2.1 Reclamation Recovery Deposits in the aggregate will be sufficient to ensure that the value of funds in a Party's Reclamation Trust is equal to or greater than its Reclamation Share of the Reclamation Funding Floor Amount at the end of the applicable Reclamation Recovery Period determined as provided in Section 4.7.2.2.

4.7.2.2 The applicable Reclamation Recovery Period during which one or more Reclamation Recovery Deposits must be made pursuant to Section 4.7.2.1 will be one (1) year, subject thereafter to the obligation to make one or more Reclamation Correcting Deposits within a Reclamation Correction Period equal to one (1) additional year.

Example:

Assuming the value of funds in Party A's Reclamation Trust is less than the Reclamation Funding Floor Amount for Party A at the end of 2015, the Reclamation Recovery Period expires December 31, 2016; such Party would then, however, be required to make Reclamation Correcting Deposits no later than December 31, 2017.

4.7.3 If any Party fails to make any Reclamation Correcting Deposit or Reclamation Recovery Deposit when due, then, within ten (10) days after the applicable due date, the chairperson of the Reclamation Investment Committee will report such failure by the Party to each representative on the Reclamation Investment Committee, to the Reclamation Oversight Committee and to the Reclamation Trust Funds Operating Agent.

4.8 Make-up Reclamation Trust Funds. In the event of a Default Declaration, made pursuant to Section 10.5, that a Party is in Default in regard to the funding of its Reclamation

Trust, each of the non-defaulting Parties will fund a Make-up Reclamation Trust Fund within its Reclamation Trust in the manner provided for, and subject to the various requirements and limitations set out in, Sections 6.4, 9.2, 11 and 12.

4.9 Return of Funds in a Reclamation Trust. Any funds remaining in a Party's Reclamation Trust after Reclamation Bond Release will be returned to the Party pursuant to the Party's Reclamation Trust Agreement. Any funds remaining in a Party's Make-up Reclamation Trust Fund may, at the election of the Party, and subject to the provisions of the Party's Reclamation Trust Agreement, be returned to the Party if a defaulting Party has cured the Default the existence of which led to the creation and funding of the Make-up Reclamation Trust Fund.

4.10 Status Reports. Each Party will prepare on an annual basis a funding status report regarding the funds in its Reclamation Trust (in both the Principal Reclamation Trust Fund and any Make-up Reclamation Trust Fund), as of December 31 of each year during the term hereof and will provide such annual funding status report to each of the other Parties, to the Reclamation Investment Committee and to SJCC. To demonstrate compliance with Exhibit 2, the funding status report will include a detailed summary of the investments made by the Party in its Reclamation Trust during the period covered by the status report. The funding status report will be prepared and provided to the other Parties, to the Reclamation Investment Committee and to SJCC no later than thirty (30) days following the end of a calendar year unless otherwise directed by the Reclamation Investment Committee. In addition to such annual funding status reports, on the written request of any other Party or of SJCC, for reasonable cause (*e.g.*, changes in market conditions that could significantly affect the value of funds in a Reclamation Trust), each Party will provide special funding status reports, in the same format and content as annual funding status reports, to the other Parties, to the Reclamation Investment Committee and to SJCC; provided, that such special reports will not be required of any Party more frequently than once in any calendar quarter.

4.11 Compliance. A Party whose funding of its Reclamation Trust (Principal Reclamation Trust Fund or any Make-up Reclamation Trust Fund) has been determined by the Reclamation Investment Committee, pursuant to Section 6.3.2, not to be in compliance with the requirements of this Mine Reclamation Agreement will act promptly to bring itself into compliance therewith. A Party, the Mandatory Provisions of whose Reclamation Trust Agreement have been determined by the Reclamation Investment Committee, pursuant to Section 6.3.6, not to be in compliance with the requirements of this Mine Reclamation Agreement, will act promptly to bring itself into compliance therewith and will promptly inform the Reclamation Investment Committee of actions taken to bring itself into compliance.

5.0 ADJUSTMENTS TO RECLAMATION FUNDING CURVES

5.1 Adjustments to Reclamation Funding Curves. The Parties acknowledge the appropriateness of adjusting, from time-to-time, the Reclamation Funding Curves for both Opt-in Participants and Opt-out Participants.

5.2 Reclamation Costs Review. A Reclamation Costs Review is a technical assessment performed (or caused to be performed) by the Reclamation Trust Funds Operating Agent of reclamation methods, status and costs using appropriate reclamation scenarios as determined by the Reclamation Oversight Committee. An initial Reclamation Costs Review will be commenced as soon as practicable after Survey 1 is both completed and approved by the Reclamation Oversight Committee as provided in Exhibit 7. A second Reclamation Costs Review will be performed as soon as practicable after Survey 2 is both completed and approved by the Reclamation Oversight Committee as provided in Exhibit 7. At the request of any Party made at any time after the second Reclamation Costs Review, the Reclamation Trust Funds Operating Agent will perform (or cause to be performed) a further Reclamation Costs Review; provided, such further review will not be required more frequently than every two (2) years. The Reclamation Costs Review will report estimated Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs based on the results of the most current Survey. The Reclamation Oversight Committee will establish reasonable goals, timelines and procedures with respect to the manner in which the required Reclamation Costs Review is to be conducted.

5.2.1 In performing the Reclamation Costs Review, the Reclamation Trust Funds Operating Agent (and its contractor or agent) will consult with SJCC and will utilize, as appropriate, information that may be provided by SJCC in reassessing reclamation methods, status and costs, including SJCC's anticipated annual reclamation expenditures.

5.2.2 The study period for purposes of a Reclamation Costs Review will be from January 1 of the year that the Reclamation Costs Review commences through Reclamation Bond Release.

5.2.3 The Reclamation Trust Funds Operating Agent will present a Final Reclamation Report to the Reclamation Oversight Committee.

5.2.4 The Reclamation Oversight Committee will, consistent with the voting procedures set out in Section 7.4, promptly either (i) approve the Final Reclamation Report; or (ii) direct that further study or revisions be made to the Final Reclamation Report. In the event the Reclamation Oversight Committee directs further study or revisions, the Reclamation Trust Funds Operating Agent will submit a new Final Reclamation Report to the Reclamation Oversight Committee. Upon approval of the Final Reclamation Report by the Reclamation Oversight Committee, the Reclamation Oversight Committee will forward a copy of the Final Reclamation Report to the members of the Reclamation Investment Committee for the establishment by the Reclamation Investment Committee of new Reclamation Funding Curves as necessary.

5.3 Adjustment Requests. A Party may request a Reclamation Costs Review by serving a written request ("Adjustment Request") upon the Reclamation Trust Funds Operating Agent, the members of the Reclamation Oversight Committee and SJCC, setting out in detail the facts relied on by the Party making the request.

5.4 Costs of Reclamation Costs Review. The cost of performing the Reclamation Costs Review ("Review Cost") will be allocated among the Parties based on the following calculation: Review Cost multiplied by the Composite Reclamation Shares of each Party as determined by Exhibit 8. The Reclamation Trust Funds Operating Agent will issue appropriate invoices to the Parties for such costs based on the Composite Reclamation Shares determined for the previously approved Reclamation Costs Review and then reallocate costs based on, and following the completion and approval of, the latest Reclamation Costs Review.

6.0 RECLAMATION INVESTMENT COMMITTEE

6.1 Establishment of Reclamation Investment Committee. The Original Trust Funds Agreement established a Reclamation Investment Committee. The Reclamation Investment Committee will remain in existence during the term of this Mine Reclamation Agreement. The Reclamation Investment Committee will have no authority to modify any of the provisions of this Mine Reclamation Agreement.

6.2 Reclamation Investment Committee Membership. The Reclamation Investment Committee will consist of one representative from each Party who must be an officer or other authorized representative of the Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Reclamation Investment Committee in the absence of the regular representative on the Reclamation Investment Committee or to act on specified occasions or with respect to specified matters. Each Party must notify the other Parties promptly, in writing, of the designation of its representative and alternate representative on the Reclamation Investment Committee and of any subsequent changes in such designations. The chairperson of the Reclamation Investment Committee will be a representative of the Reclamation Trust Funds Operating Agent if the Reclamation Trust Funds Operating Agent is a Party. If the Reclamation Trust Funds Operating Agent is not a Party, the chairperson will be elected by a majority of the individual representatives on the Reclamation Investment Committee. Each Party will be responsible for the costs of its Reclamation Investment Committee representative, including fees and travel reimbursement.

6.3 Functions and Responsibilities of Reclamation Investment Committee. The Reclamation Investment Committee will have the following functions and responsibilities:

6.3.1 Establish and revise the format and content to be used for each Party's annual funding status report;

6.3.2 Review each Party's annual and special funding status report(s), including, as to each Party, whether the investments in the Party's Reclamation Trust have been made in a manner consistent with Exhibit 2 and report the review findings to the Reclamation Oversight Committee;

6.3.3 Upon receipt from the Reclamation Oversight Committee of a copy of a Final Reclamation Report, as provided for in Section 5.2.4, establish and provide to each of the Parties new Reclamation Funding Curves for Opt-in Participants and for Opt-out Participants. The new Reclamation Funding Curves will be incorporated in new Exhibits

1A, 1B, and 1C and similarly for Exhibits 1D, 1E and 1F when they are created which will be substituted for the then-existing Exhibits 1A, 1B, 1C, 1D, 1E, and 1F. The new Exhibits 1A, 1B, and 1C will utilize the same assumptions, procedures and principles, to the extent possible, as are reflected in Exhibits 1A, 1B, and 1C attached hereto on the Effective Date. Such assumptions, procedures and principles are set out in Exhibit 4. In establishing a new Exhibit 1C, the Reclamation Funding Target Curve values and Reclamation Funding Floor Curve values in Exhibit 1B that occur during or after 2017 will be adjusted upward by a risk adjustment factor of three percent (3%). Exhibits 1A, 1B, and 1C pertain to Pre-2017YE Reclamation Liability. New Exhibits 1D, 1E and 1F, analogous to Exhibits 1A, 1B and 1C, will be created for Post-2017YE Reclamation Liability Cost estimates as soon as practicable after any such estimates are available;

6.3.4 Establish, consistent with Section 4.7, policies regarding the number and timing of Reclamation Correcting Deposits and Reclamation Recovery Deposits;

6.3.5 Audit, or cause to be audited, as determined to be necessary, compliance of Parties in meeting their obligations under Sections 3.1, 4.5, 4.6, 4.7 and 4.8;

6.3.6 Under procedures to be established in a timely fashion by the Reclamation Investment Committee, (i) promptly upon execution of each Party's Reclamation Trust Agreement, review the Mandatory Provisions of each such Reclamation Trust Agreement to assure that the Mandatory Provisions of each such Reclamation Trust Agreement conform to the requirements of Section 4.3 and of Exhibit 3; and (ii) review any proposed amendment to a Mandatory Provision in a Party's Reclamation Trust Agreement. If the Reclamation Investment Committee representatives (other than the representative representing any Party whose compliance is under review) conclude that a Party's initial Reclamation Trust Agreement is inconsistent with Section 4.3 and Exhibit 3, or that a proposed amendment to a Mandatory Provision is inconsistent with the purposes of this Mine Reclamation Agreement, the Reclamation Investment Committee will inform the Party of the reasons why, in the judgment of the Reclamation Investment Committee, the Mandatory Provisions of its initial Reclamation Trust Agreement are inconsistent with Section 4.3 and Exhibit 3 or why the proposed amendment to the Mandatory Provision is inconsistent with this Mine Reclamation Agreement. No Party may amend a Mandatory Provision in its Reclamation Trust Agreement in a manner contrary to a determination of the Reclamation Investment Committee;

6.3.7 In the event of a Default Declaration against a Party resulting from the Party's failure to fund its Reclamation Trust as required by Sections 3.1, 4.1, 4.5, 4.6 and 4.7, establish funding curves for Make-up Reclamation Trust Funds, consistent with Section 6.4;

6.3.8 Perform such other tasks as the Reclamation Oversight Committee will from time-to-time assign to the Reclamation Investment Committee; and

6.3.9 Perform such other tasks as may be delegated under this Mine Reclamation Agreement to the Reclamation Investment Committee.

6.4 Make-up Funding Curves. In the event a Default Declaration is made against a Party on the basis of the Party's failure to fund its Reclamation Trust (including making required Reclamation Recovery Deposits and Reclamation Correcting Deposits) in the manner provided for in this Mine Reclamation Agreement, the Reclamation Investment Committee will act promptly to provide the non-defaulting Parties with appropriate funding curves for their Make-up Reclamation Trust Funds ("Make-up Funding Curves").

6.4.1 Investments in a Make-up Reclamation Trust Fund will be subject to the same Permitted Investment limitations as those applicable to each Party's respective Principal Reclamation Trust Fund.

6.4.2 With regard to Pre-2017YE Reclamation Liability, the Reclamation Investment Committee will develop two sets of Make-up Funding Curves: the first, applicable to Opt-in Participants, will assume the return and discount rates of Exhibit 1A; the second, applicable to Opt-out Participants, will assume the return and discount rates of Exhibit 1B. However, after December 31, 2017, Opt-out Participants will have no further liability for defaulting Parties and any shortfalls in the Make-up Reclamation Trust Funds of the Opt-out Participants will be made up by non-defaulting Opt-in Participants as described in Section 11.3. Subject to Section 4.9, such Opt-out Participant Make-up Reclamation Trust Funds will remain available to pay any relevant invoices. After December 31, 2017, a set of Make-up Funding Curves for Opt-out Participants is not necessary.

6.4.3 With regard to Post-2017YE Reclamation Liability, the Reclamation Investment Committee will develop two sets of Make-up Funding Curves: the first, applicable to Opt-in Participants, will assume the return and discount rates of Exhibit 1D; the second, applicable to Remaining Opt-out Participants, will assume the return and discount rates of Exhibit 1E. After December 31, 2017, Remaining Opt-out Participants will have no further liability for defaulting Parties and any shortfalls in the Make-up Reclamation Trust Funds of the Remaining Opt-out Participants will be made up by non-defaulting Opt-in Participants as described in Section 11.3. Subject to Section 4.9, such Remaining Opt-out Participant Make-up Reclamation Trust Funds will remain available to pay any relevant invoices.

6.4.4 The Make-up Funding Curves will be based on the defaulting Party's projected reclamation liability remaining after all funds in the defaulting Party's Reclamation Trust are exhausted when using the reclamation costs underlying Exhibit 1A and Exhibit 1B, or Exhibit 1D and Exhibit 1E, as the case may be, at the time of the Default Declaration.

6.4.5 The Make-up Funding Curves will be revised when revisions and updates are made to Exhibit 1A and Exhibit 1B or Exhibit 1D and Exhibit 1E, as the case may be.

6.4.6 The same general financial analysis principles will be applied to the calculation of the Make-up Funding Curves as were applied in developing the

Reclamation Funding Curves of Exhibit 1A and Exhibit 1B, or Exhibit 1D and Exhibit 1E, as the case may be, as set forth in Exhibit 4.

6.4.7 As to Make-up Funding Curves that are established before the expiration of the CSA (as extended or replaced), the Make-up Funding Curves will be calculated to reach full principal funding upon expiration of the CSA (as extended or replaced); and such Make-up Funding Curves will be developed by assuming equal annual payments for the period between the Default Declaration and the expiration of the CSA, with the exception that the first year's Make-up funding target will be modified to reflect the existing balance in the defaulting Party's Reclamation Trust, *i.e.*, any funding shortage should be made up in the year of the Default Declaration. For Opt-out Participants, the date of expiration, extension, or replacement of the CSA for purposes of this Section 6.4.7 will be fixed at December 31, 2017. From the Effective Date until December 31, 2017, for Opt-in Participants, the date of expiration, extension, or replacement of the CSA, for purposes of this Section 6.4.7, will be fixed at December 31, 2022. After December 31, 2017, Opt-in Participants may request the Reclamation Trust Investment Committee to modify their Make-up Funding Curves to reflect any extension or replacement of the CSA with an expiration date subsequent to December 31, 2022.

6.4.8 With respect to Make-up Funding Curves for Defaults that occur after the expiration of the CSA (as extended or replaced), the Make-up Funding Curves will be developed by assuming a single, lump sum contribution is made by December 31 of the year in which the Make-up Reclamation Trust Funds are established to fully fund the shortfall in the defaulting Party's Reclamation Trust.

6.4.9 Annual funding requirements for Make-up Reclamation Trust Funds will be analogous to the provisions of Sections 4.6 and 4.7. The Make-up Reclamation Funding Floor Curve will be one hundred percent (100%) of the Make-up Funding Target Curve by the expiration date of the CSA (or any extension or replacement thereof) for Opt-in Participants and by December 31, 2017 for Opt-out Participants.

6.5 Decisions of Reclamation Investment Committee. Any actions or determinations brought before the Reclamation Investment Committee will require the affirmative vote of the representatives on the Reclamation Investment Committee as set out in Sections 6.5.1 and 6.5.2. Matters approved by the requisite majority of the Reclamation Investment Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default, such Party will not have a right to vote, and the requisite majorities for actions or determinations of the Reclamation Investment Committee will be adjusted in proportion to the number of Reclamation Investment Committee members whose right to vote has not been suspended. The outcome of any vote of the Reclamation Investment Committee properly conducted in accordance with this Mine Reclamation Agreement will not be subject to the dispute resolution provisions of Section 13.

6.5.1 If the matter involves purely Pre-2017YE Reclamation Liability issues or purely Post-2017YE Reclamation Liability issues, the affirmative vote is required of: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Reclamation

Shares of the Parties as set out in Section 3.3; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties with Reclamation Shares of greater than zero percent (0%).

6.5.2 If the matter involves both Pre-2017YE Reclamation Liability issues and Post-2017YE Reclamation Liability issues, the affirmative vote is required of: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Composite Reclamation Shares of the Parties as set out in Exhibit 8; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties.

6.6 Meetings of Reclamation Investment Committee. The Reclamation Investment Committee will meet no less frequently than annually. Special meetings will be held promptly at the written request of any Party, such request to be delivered to the chairperson of the Reclamation Investment Committee. The Reclamation Investment Committee will keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Reclamation Investment Committee will be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Reclamation Investment Committee. Reclamation Investment Committee representatives will be permitted, by prior notification to the chairperson of the Reclamation Investment Committee, to attend a meeting of the Reclamation Investment Committee by conference call or video conferencing. A Reclamation Investment Committee representative who is unable to attend a meeting of the Reclamation Investment Committee will be permitted to vote in absentia by delivering to the chairperson of the Reclamation Investment Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

7.0 RECLAMATION OVERSIGHT COMMITTEE

7.1 Establishment of Reclamation Oversight Committee. The Original Trust Funds Agreement provides for a Reclamation Oversight Committee. The Reclamation Oversight Committee will be activated on the Effective Date of this Mine Reclamation Agreement and will remain in existence during the term of this Mine Reclamation Agreement. The Reclamation Oversight Committee will have no authority to modify any of the provisions of this Mine Reclamation Agreement.

7.2 Reclamation Oversight Committee Membership. The Reclamation Oversight Committee will consist of one representative from each Party who will be an officer or other authorized representative of a Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Reclamation Oversight Committee in the absence of the regular representative on the Reclamation Oversight Committee or to act on specified occasions or with respect to specified matters. Each Party will notify the other Parties promptly, in writing, of the designation of its representative and alternate representative on the Reclamation Oversight Committee and of any subsequent changes in such designations. The chairperson of the Reclamation Oversight Committee will be a representative of the Reclamation Trust Funds

Operating Agent. Each Party will be responsible for the costs of its Reclamation Oversight Committee representative, including fees and travel reimbursement.

7.3 Functions and Responsibilities of Reclamation Oversight Committee. The Reclamation Oversight Committee will have the following functions and responsibilities:

7.3.1 Oversee the Reclamation Work of the Reclamation Trust Funds Operating Agent;

7.3.2 Vote as to matters assigned to the Reclamation Oversight Committee, including amendments to provisions of the RSA or a new agreement for the performance of reclamation services for Disturbances at the SJCC Site Area;

7.3.3 Establish goals, timelines and procedures with respect to Reclamation Costs Reviews and perform related functions, as provided for in Section 5.2;

7.3.4 Establish goals, timelines and procedures with respect to the Surveys;

7.3.5 Require reports or updates from the Reclamation Trust Funds Operating Agent and the Participant Representatives on negotiations and discussions with SJCC concerning reclamation activities;

7.3.6 Review, provide input on and act on proposed RSA Annual Operating Plans (including SJCC's budget for Reclamation Costs) as forwarded to the Reclamation Oversight Committee by the Reclamation Trust Funds Operating Agent;

7.3.7 Approve revisions to a previously-approved budget;

7.3.8 Perform other tasks delegated to the Reclamation Oversight Committee by this Mine Reclamation Agreement; and

7.3.9 Such other tasks as the Parties will from time-to-time by unanimous agreement assign to the Reclamation Oversight Committee.

7.4 Decisions of Reclamation Oversight Committee. Any actions or determinations brought before the Reclamation Oversight Committee will require the affirmative vote of the representatives on the Reclamation Oversight Committee as set out in Sections 7.4.1 and 7.4.2. Matters approved by the requisite majority of the Reclamation Oversight Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default such Party will not have a right to vote, and the requisite majorities for actions or determinations of the Reclamation Oversight Committee will be adjusted in proportion to the number of Reclamation Oversight Committee members whose right to vote has not been suspended. The outcome of any vote of the Reclamation Oversight Committee properly conducted in accordance with this Mine Reclamation Agreement will not be subject to the dispute resolution provisions of Section 13.

7.4.1 Except as provided for in Section 7.4.2, approval of any actions or determinations brought before the Reclamation Oversight Committee will require the following affirmative vote:

7.4.1.1 If the matter involves purely Pre-2017YE Reclamation Liability issues or purely Post-2017YE Reclamation Liability issues: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Reclamation Shares of the Parties as set out in Section 3.3; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties with Reclamation Shares of greater than zero percent (0%).

7.4.1.2 If the matter involves both Pre-2017YE Reclamation Liability issues and Post-2017YE Reclamation Liability issues: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Composite Reclamation Shares of the Parties as set out in Exhibit 8; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties.

7.4.2 Approval of any actions or determinations brought before the Reclamation Oversight Committee regarding: (i) an amendment of any provisions of the RSA; or (ii) a new agreement for the provision of reclamation services, will require the following affirmative vote:

7.4.2.1 If such amendment or new agreement involves purely Pre-2017YE Reclamation Liability issues or purely Post-2017YE Reclamation Liability issues: (i) more than an eighty-two percent (82%) majority of the Reclamation Shares of the Parties as set out in Section 3.3; and (ii) a minimum of sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties with Reclamation Shares of greater than zero percent (0%).

7.4.2.2 If such amendment or new agreement involves both Pre-2017YE Reclamation Liability issues and Post-2017YE Reclamation Liability issues: (i) more than an eighty two percent (82%) majority of the Composite Reclamation Shares of the Parties as set out in Exhibit 8; and (ii) a minimum of sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties.

7.5 Meetings of Reclamation Oversight Committee. The Reclamation Oversight Committee will meet no less frequently than twice a year. Special meetings will be held promptly at the written request of any Party, such request to be delivered to the chairperson of the Reclamation Oversight Committee. The Reclamation Oversight Committee will keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Reclamation Oversight Committee will be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Reclamation Oversight Committee. Reclamation Oversight Committee representatives may, by prior arrangement with the chairperson of the Reclamation Oversight Committee, attend a meeting of the Reclamation Oversight Committee by conference call or video conferencing. A Reclamation

Oversight Committee representative who is unable to attend a meeting of the Reclamation Oversight Committee may vote in absentia by delivering to the chairperson of the Reclamation Oversight Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

8.0 RECLAMATION TRUST FUNDS OPERATING AGENT

8.1 Selection of Reclamation Trust Funds Operating Agent.

8.1.1 The Parties agree to the selection of a Reclamation Trust Funds Operating Agent to carry out the responsibilities assigned to the Reclamation Trust Funds Operating Agent hereunder. The Reclamation Trust Funds Operating Agent will be the agent of the Parties and will exercise only such authority as is conferred upon it by this Mine Reclamation Agreement.

8.1.2 Through December 31, 2017, the functions and responsibilities of the Reclamation Trust Funds Operating Agent will be performed by the Operating Agent; all references herein to the Reclamation Trust Funds Operating Agent will, through December 31, 2017, be deemed to refer to the Operating Agent and all costs and expenses provided hereunder to be incurred by the Reclamation Trust Funds Operating Agent before December 31, 2017 will be billed under the SJPPA to the Parties as work of the Operating Agent. After December 31, 2017, the Reclamation Trust Funds Operating Agent will invoice Parties for the costs of Reclamation Work and Reclamation A&G Expenses in accordance with this Mine Reclamation Agreement.

8.2 PNM as Initial Reclamation Trust Funds Operating Agent. The Parties hereby appoint PNM as the initial Reclamation Trust Funds Operating Agent, and PNM agrees to undertake, as the agent of the Parties, and as principal on its own behalf, the performance of the responsibilities assigned herein to the Reclamation Trust Funds Operating Agent.

8.3 Responsibilities of the Reclamation Trust Funds Operating Agent. The Reclamation Trust Funds Operating Agent will have the following responsibilities (the "Reclamation Work"):

8.3.1 Serve as liaison for the coordination of all interchanges and discussions among the Parties in connection with matters arising under this Mine Reclamation Agreement;

8.3.2 If the Reclamation Trust Funds Operating Agent is a party to the RSA, conduct negotiations and discussions with SJCC in connection with matters arising under the RSA, with participation of Participant Representatives as provided for in Section 9.1, and communicate with the Parties in relation thereto; if PNM is no longer the Reclamation Trust Funds Operating Agent, but is a party to the RSA, PNM will perform the functions provided for in this Section 8.3.2;

8.3.3 Review all reclamation cost information and estimates from SJCC, including quarterly reports provided pursuant to RSA Section 3.4, and provide to the Parties quarterly appropriate summaries of such information as well as summaries of any other cost information or analysis from third-party contractors of the Reclamation Trust Funds Operating Agent;

8.3.4 Upon the delivery of an Adjustment Request by a Party pursuant to Section 5.3, perform (or cause to be performed) a Reclamation Costs Review and prepare a Final Reclamation Report for submission to the Reclamation Oversight Committee;

8.3.5 Monitor the operations of SJCC;

8.3.6 Receive invoices for Reclamation Costs associated with the Reimbursement Obligation submitted to PNM by SJCC, review the form, content and cost distribution of such invoices and, where appropriate, approve such invoices for payment;

8.3.7 Issue Reclamation Costs invoices to each Party (categorized by Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs) for payment either directly from other funds or, if permitted by this Mine Reclamation Agreement, out of each Party's Reclamation Trust pursuant to the terms of each Party's Reclamation Trust Agreement; appropriate back-up information will accompany each invoice, and the Reclamation Trust Funds Operating Agent will provide any additional back-up information that a Party may reasonably request;

8.3.8 Provide summaries and reports to the Parties and to SJCC by February 10 of each year during the term hereof concerning the total amount of funds in the Parties' Reclamation Trusts (Principal Reclamation Trust Fund and any Make-up Reclamation Trust Funds) as of December 31 of the previous calendar year;

8.3.9 Subject to Section 8.1.2, issue invoices to the Parties for their share of expenses incurred by the Reclamation Trust Funds Operating Agent in the performance of the Reclamation Work and for Reclamation A&G Expenses;

8.3.10 Furnish from its own resources or contract for the procurement of goods or services necessary for the performance of the Reclamation Work;

8.3.11 Administer, perform and enforce all contracts entered into by the Reclamation Trust Funds Operating Agent;

8.3.12 Comply with all Law applicable to its performance of the Reclamation Work;

8.3.13 Maintain in the name of the Parties and for the purposes of this Mine Reclamation Agreement an operating account for monies collected in connection with the Reclamation Work;

8.3.14 Keep and maintain records of monies expended and received, obligations incurred, credits accrued and contracts entered into in the performance of Reclamation Work hereunder, and provide an annual report of such records to the Parties;

8.3.15 Cooperate with the Reclamation Investment Committee in the conduct of any audits of a Party's compliance with its funding of its Reclamation Share of the Reclamation Funding Curves (and, if applicable, Make-up Funding Curves), and to otherwise carry into effect policies established by the Reclamation Investment Committee and the Reclamation Oversight Committee;

8.3.16 Prepare recommendations covering the matters that may be reviewed and acted upon by the Parties, the Reclamation Investment Committee and the Reclamation Oversight Committee;

8.3.17 Keep the Parties fully and promptly advised of material changes in conditions or other material developments affecting the implementation of this Mine Reclamation Agreement and of any Defaults under this Mine Reclamation Agreement;

8.3.18 Provide the Reclamation Investment Committee and the Reclamation Oversight Committee with all records, information and reports that may be relevant to such committees in the perfomance of their respective responsibilities;

8.3.19 As provided in Section 10, provide copies of any Default Notice, Notification of Intent or Default Declaration to the representatives on the Reclamation Oversight Committee, the persons identified in Section 28.1, and the Trustee of a defaulting Party's Reclamation Trust;

8.3.20 Enforce the obligations of each Party to fund its Reclamation Share of the Reclamation Funding Curves, make Reclamation Recovery Deposits or Reclamation Correcting Deposits, fund any required Make-up Reclamation Trust Fund, or to pay invoices submitted hereunder to the Parties or to their Trustees;

8.3.21 Perform all other obligations and duties that the Parties or the Reclamation Oversight Committee may from time-to-time delegate to the Reclamation Trust Funds Operating Agent;

8.3.22 Conduct, or cause to be conducted the Surveys and promptly provide Survey results to the Parties; and

8.3.23 Perform all other obligations and duties that are assigned herein to the Reclamation Trust Funds Operating Agent or that are reasonably necessary in connection with the performance of its obligations and duties hereunder.

8.4 Annual Budgets.

8.4.1 Not fewer than two hundred (200) days prior to the beginning of each calendar year, the Reclamation Trust Funds Operating Agent will provide to the Reclamation Oversight Committee for its review and approval the proposed RSA Annual Operating Plan from SJCC setting forth SJCC's budget for Reclamation Costs for such calendar year. The Reclamation Oversight Committee will vote on the proposed budget for Reclamation Costs not fewer than one hundred (100) days before the beginning of such calendar year. In the event the budget for Reclamation Costs is not approved by the Reclamation Oversight Committee, the Reclamation Trust Funds Operating Agent will not approve the RSA Annual Operating Plan, but will direct SJCC to continue to efficiently and economically perform reclamation services while resolving any dispute over the approval of the RSA Annual Operating Plan pursuant to Section 3.3 of the RSA.

8.4.2 Reclamation Costs will be allocated to Pre-2017YE Reclamation Liability Costs and Post-2017YE Reclamation Liability Costs in accordance with this Mine Reclamation Agreement.

8.4.3 Not fewer than ninety (90) days prior to January 1, 2018, and not fewer than ninety (90) days prior to the beginning of each calendar year thereafter, the Reclamation Trust Funds Operating Agent will provide to the Reclamation Oversight Committee for its review and approval a budget for the performance of Reclamation Work and Reclamation A&G Expenses for such calendar year. The Reclamation Oversight Committee will vote on the budget for Reclamation Work and Reclamation A&G Expenses not fewer than sixty (60) days after its submission. In the event the budget for Reclamation Work and Reclamation A&G Expenses is not approved, the Reclamation Trust Funds Operating Agent will nevertheless continue to perform Reclamation Work in an efficient and economical manner until a budget has been approved and the Parties will continue to pay such costs as invoiced.

8.4.4 Cost of Reclamation Work and Reclamation A&G Expenses will be budgeted based on the ratios of: (i) Pre-2017YE Reclamation Liability Costs to Reclamation Costs and (ii) Post-2017YE Reclamation Liability Costs to Reclamation Costs, or as otherwise provided in this Mine Reclamation Agreement.

8.5 Reimbursement of Costs and Expenses. Beginning January 1, 2018, the Parties will reimburse the Reclamation Trust Funds Operating Agent for all its reasonable costs and expenses incurred in its performance of the Reclamation Work. The Reclamation Trust Funds Operating Agent will invoice the Parties for such costs and expenses, including Reclamation A&G Expenses, by the end of the month following the month in which such costs and expenses were incurred, and the Parties will pay such invoices within ten (10) Business Days of receipt of the invoice. Except as provided in Section 5.4, the cost and expenses of Reclamation Work and Reclamation A&G Expenses will be allocated as provided in Section 8.4.4 and will be apportioned to the Parties in accordance with the Reclamation Shares set out in Section 3.3.

8.6 Reclamation Administrative and General Expenses. Beginning January 1, 2018, Reclamation A&G Expenses will include administrative and general expenses directly chargeable to FERC Accounts 920, 921, 923, 926, 930.2, 931 and 935, will include payroll loads for administrative and general expenses, payroll taxes, injuries and damages and pension and benefits, and will be added to the monthly billings in proportion to the dollars of direct labor billed. The Reclamation Trust Funds Operating Agent will prepare, for the approval of the Reclamation Oversight Committee, operating procedures for the accounting of Reclamation A&G Expenses in its performance of the Reclamation Work and will recommend updates thereof no fewer than every three (3) years. An annual true-up of Reclamation A&G Expenses will be made each year once such expenses have been recorded.

8.7 Payment of Reclamation Cost Invoices. To assure timely payment of Reclamation Costs by Parties directly or by Parties' Trustees, the Reclamation Trust Funds Operating Agent will bill the Parties, in writing, for Reclamation Costs invoiced by SJCC at least ten (10) Business Days prior to the date that payment is due SJCC. Parties may begin withdrawing funds from their Reclamation Trusts to pay Reclamation Costs beginning with the billing of January 2018 Reclamation Costs.

8.8 No Fee. The Reclamation Trust Funds Operating Agent will receive no fee or profit hereunder, unless otherwise agreed unanimously by the Parties.

8.9 Liability of Reclamation Trust Funds Operating Agent.

8.9.1 The provisions of this Section 8.9 are intended to address limitations on the liability of the Reclamation Trust Funds Operating Agent acting solely in the capacity of Reclamation Trust Funds Operating Agent; to the extent the actions of the Reclamation Trust Funds Operating Agent are carried out in its capacity as a party to the RSA or a Party or in any other capacity, the limitation of liability provisions in this Section 8.9 are not applicable.

8.9.2 Except for any judgment debt for damage resulting from Willful Action or as necessary to enforce an Arbitration Award, each Party hereby extends to the Reclamation Trust Funds Operating Agent, its employees, officers, directors and agents, its covenant not to execute, levy or otherwise enforce a judgment obtained against the Reclamation Trust Funds Operating Agent, including recording or effecting a judgment lien, for any direct, indirect or consequential damage, claim, cost, charge or expense, whether or not resulting from the negligence of the Reclamation Trust Funds Operating Agent, its employees, officers, directors or agents, or any person or entity whose negligence would be imputed to the Reclamation Trust Funds Operating Agent arising out of its performance or non-performance hereunder. With respect to the Reclamation Trust Funds Operating Agent's liability for Willful Action, such liability will in no event exceed (i) a total of ten million dollars ($10,000,000) per occurrence before the Exit Date; and (ii) a total of fourteen million dollars ($14,000,000) per occurrence on and after the Exit Date. The Parties extend to the Reclamation Trust Funds Operating Agent, its employees, officers, directors and agents, their covenant not to execute, levy or otherwise enforce a judgment against any of them for any such liability for Willful Action in excess

of amounts set out in the previous sentence. In the event that Parties' claims made or judgments obtained against the Reclamation Trust Funds Operating Agent or its employees, officers, directors and agents exceed ten million dollars ($10,000,000) or fourteen million dollars ($14,000,000), as applicable, per occurrence, such claims or judgments will be prorated among the successful Parties consistent with the limitation on Willful Action liability established herein.

8.10 Resignation of Reclamation Trust Funds Operating Agent. Subject to Section 8.11, the Reclamation Trust Funds Operating Agent will serve during the term of this Mine Reclamation Agreement unless it resigns as Reclamation Trust Funds Operating Agent by giving notice to the Parties at least one (1) year in advance of the effective date of the resignation. Upon receipt of such notice, the Reclamation Oversight Committee must convene promptly to address the selection of a replacement Reclamation Trust Funds Operating Agent which may, but need not, be a Party.

8.11 Removal of Reclamation Trust Funds Operating Agent. The Reclamation Trust Funds Operating Agent may be removed by the Parties, if, in the judgment of the Parties, their best interests require such removal. Any Party seeking the removal of the Reclamation Trust Funds Operating Agent will serve a notice on the Reclamation Trust Funds Operating Agent and on each of the Parties, detailing the reasons why, in the judgment of the initiating Party, the Reclamation Trust Funds Operating Agent should be removed. Within thirty (30) days after receipt by the Reclamation Trust Funds Operating Agent of this written statement, the Reclamation Trust Funds Operating Agent will prepare and serve upon the Parties its response, which will contain a detailed rebuttal of the allegations made in the initiating statement. Within the same thirty (30) day period, any other Party may also serve upon the Reclamation Trust Funds Operating Agent and the Parties a statement responding to the allegations in the initiating statement. Within twenty (20) days after service of all such response statements, the Parties will meet to consider what actions, if any, to take in regard to the removal of the Reclamation Trust Funds Operating Agent. The Reclamation Trust Funds Operating Agent may be removed by the vote of more than a sixty-six and two thirds percent (66 2/3%) majority of the Pre-2017YE Reclamation Shares of the Parties and more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties; provided, however, that a Party that is the Reclamation Trust Funds Operating Agent will not be entitled to vote on the issue of its own removal, and the requisite voting percentages will be based upon the number of eligible voting Parties other than the Reclamation Trust Funds Operating Agent and their respective Reclamation Shares. If the Reclamation Trust Funds Operating Agent is removed by vote of the Parties, the Reclamation Oversight Committee will convene promptly to address the selection of a replacement Reclamation Trust Funds Operating Agent which may, but need not, be a Party.

9.0 CERTAIN RIGHTS OF PARTIES

9.1 Participant Representatives. Parties not signatories to the RSA are granted (i) the right to review all materials exchanged in the negotiations and discussions with SJCC conceming reclamation activities, subject to the obligation to execute and abide by a confidentiality agreement protecting the materials exchanged and (ii) the collective right to have two (2) representatives ("Participant Representatives"), one selected by and representing the Exiting

Participants and one selected by and representing the Remaining Participants, present at negotiations and discussions with SJCC concerning reclamation activities. The following special procedures will apply to all negotiations or discussion with SJCC concerning reclamation activities.

9.1.1 No Participant Representative will engage in bilateral negotiations or discussions with SJCC regarding reclamation activities for the San Juan Project; provided, however, that nothing herein will be construed to prevent the Operating Agent, the Reclamation Trust Funds Operating Agent, or the Parties that are signatories to the UG-CSA (for as long as such agreement is in effect), or the RSA, in the conduct of its or their day-to-day operational responsibilities, from performing Reclamation Work, engaging in either business contacts and communications with SJCC or the administration of the RSA.

9.1.2 Participant Representatives will be designated in writing to PNM. Participant Representatives may be changed by written notice to PNM.

9.1.3 Participant Representatives will agree in writing to: (i) avoid any conflict of interest with SJCC or providers of reclamation services that would be detrimental to SJCC reclamation activities; and (ii) maintain all proprietary information obtained through such discussions and negotiations in confidence pursuant to the terms of a confidentiality agreement to be prepared by PNM.

9.2 Opt-out Right. For Defaults occurring after December 31, 2017, a Party not wishing to pay for a defaulting Party's obligations to pay for Reclamation Costs may elect to "opt out" of such payment (each such Party, an "Opt-out Participant"). Opt-out Participants will have no obligation for a defaulting Party's Reclamation Trust shortfall or for the failure of a Party's Trustee to pay an invoice for Reclamation Costs for Defaults occurring after December 31, 2017. All Parties except PNM are deemed to be Opt-out Participants unless they deliver written notice of their election to become Opt-in Participants; such notice must be delivered to the Reclamation Trust Funds Operating Agent and to the other Parties, no later than seventy-five (75) days after the Effective Date.

10.0 DECLARATION OF DEFAULT

10.1 Definition of Default. A Party's failure to perform any of the following obligations is a Default under this Mine Reclamation Agreement: (i) fund its Reclamation Trust under the terms of this Mine Reclamation Agreement (including making only Permitted Investments in its Reclamation Trust) and consistent with its Reclamation Trust Agreement; (ii) make any required Reclamation Recovery Deposits or Reclamation Correcting Deposits; (iii) establish and fund any Make-up Reclamation Trust Fund required by this Mine Reclamation Agreement to be established and funded; (iv) cause the payment of its Reclamation Share of the Reimbursement Obligation pursuant to invoices for Reclamation Costs, costs of Reclamation Work and Reclamation A&G Expenses rendered to the Party consistent with this Mine Reclamation Agreement; and (v) carry out all other performances, duties and obligations agreed to be paid or performed by it pursuant to this Mine Reclamation Agreement.

10.2 Default Notice. If the Reclamation Trust Funds Operating Agent (either on its own motion or at the suggestion of a Party or SJCC) deems a Party to be in Default, the Reclamation Trust Funds Operating Agent will serve upon the defaulting Party a written notice of default (the "Default Notice"). The Reclamation Trust Funds Operating Agent will also serve a copy of the Default Notice on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Party's Reclamation Trust. The Default Notice will specify the existence, nature and extent of the Default.

10.3 Cure of Default. Upon receipt of the Default Notice, the defaulting Party will: (a) pay any monies due under this Mine Reclamation Agreement (including funding of its Reclamation Trust (Principal Reclamation Trust Fund and any Make-up Reclamation Trust Fund(s) and making any required Reclamation Recovery Deposits or Reclamation Correcting Deposits) within fifteen (15) days; or (b) commence within fifteen (15) days the performance of any non-monetary obligation and continue thereafter the diligent completion of such non-monetary obligation.

10.4 Protest of Default. If the defaulting Party disputes a Default Notice, such Party will nonetheless pay the disputed payment or commence performance of the disputed obligation, but may do so under protest (the "Protest"). The Protest will be in writing, will accompany the disputed payment or precede the commencement of performance of the disputed obligation(s), and will specify the reason upon which the Protest is based. Copies of the Protest will be served by the defaulting Party on the Reclamation Trust Funds Operating Agent and also on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Party's Reclamation Trust. Within seven (7) days after the service of the Protest, authorized representatives of the Parties will meet, in person or by conference call or video conference, to address the Protest and to determine what actions, if any, to take as a result of the Protest.

10.5 Declaration of Default. If the defaulting Party fails to cure the Default pursuant to Section 10.3, or protests the Default Notice pursuant to Section 10.4 but fails to timely pay the disputed payment or commence performance of the disputed obligation, the Reclamation Trust Funds Operating Agent will notify the defaulting Party in writing of the Reclamation Trust Funds Operating Agent's intent to declare the defaulting Party in Default unless there is a prompt cure of the Default ("Notification of Intent"). The Notification of Intent will afford the defaulting Party a minimum of fifteen (15) additional days after the giving of the Notification of Intent to cure the Default. The pendency of a Protest will not prevent the Reclamation Trust Funds Operating Agent from issuing a Notification of Intent. If the Default has not been cured within the period of time identified in the Notification of Intent, the Reclamation Trust Funds Operating Agent may give written notice to the defaulting Party declaring that the defaulting Party is in Default (the "Default Declaration"). The Reclamation Trust Funds Operating Agent will serve a copy of the Notification of Intent and of the Default Declaration on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Party's Reclamation Trust. The pendency of a Protest will not prevent the Reclamation Trust Funds Operating Agent from making a Default Declaration.

10.6 Consequences of Default. Upon delivery of the Default Declaration, the Party in Default under this Mine Reclamation Agreement will lose all its rights but retain its obligations under this Mine Reclamation Agreement, the Decommissioning Agreement (if the Decommissioning Agreement is in effect), and the Restructuring Agreement so long as the Default is in effect. This consequence of Default is in addition to and cumulative of any other remedy to which the Party in Default may be subject, including the loss of the right to vote on the Reclamation Investment Committee and the Reclamation Oversight Committee. If and when the Party in Default remedies the Default, its rights under such agreements will be restored.

10.7 No Stay for Arbitration. A demand for arbitration or other dispute resolution procedure will not stay: (i) the right of the Reclamation Trust Funds Operating Agent to issue a Default Notice, a Notification of Intent or a Default Declaration; or (ii) the suspension of the rights of a defaulting Party.

10.8 Termination of Default. The Default will be terminated, and the full rights of the defaulting Party restored when: (i) the Default has been cured and all costs incurred by the non-defaulting Parties resulting from the Default of the defaulting Party, including monies placed by non-defaulting Parties into Make-up Reclamation Trust Funds and expended by the Trustee, have been reimbursed in full by the defaulting Party, with interest thereon at the Prime Rate plus two percent (2%) per annum or the maximum legal rate of interest, whichever is less, from the date of payment to the date of reimbursement; (ii) other arrangements acceptable to the non-defaulting Parties have been made; or (iii) the defaulting Party prevails in an arbitration or other legal proceeding in which the default status of the defaulting Party is at issue.

10.9 Other Rights. Subject to Sections 13.1.3, 13.8 and 33, the rights and remedies provided in this Mine Reclamation Agreement will be in addition to any rights and remedies the Reclamation Trust Funds Operating Agent and the non-defaulting Parties have in law or equity.

10.10 No Waiver. The Reclamation Trust Funds Operating Agent will not waive any of its rights with respect to a Default under this Mine Reclamation Agreement without the approval of the Reclamation Oversight Committee.

11.0 FAILURE TO FUND RECLAMATION TRUST THROUGH DECEMBER 31, 2017

11.1 Shortfall in Trust Funds. If a Participant fails, during the period through December 31, 2017, to fund its Reclamation Trust to the Reclamation Target Funding Amount and such failure results in a Default Declaration, then each non-defaulting Participant will fund a share of the defaulting Participant's shortfall in a Make-up Reclamation Trust Fund within the non-defaulting Participant's Reclamation Trust based upon the relation of the Reclamation Share of each such non-defaulting Participant to the Reclamation Shares of all non-defaulting Participants. The Make-up Reclamation Trust Fund will be funded by each non-defaulting Participant as provided in Sections 4.1, 4.8 and 11.2.

11.2 Make-up Reclamation Trust Funds. Make-up Reclamation Trust Funds are segregated sub-accounts to be funded in a non-defaulting Party's Reclamation Trust in a manner

consistent with each Party's Reclamation Trust Agreement. When a Default has resulted in a shortfall in the defaulting Party's Reclamation Trust, the Reclamation Investment Committee will act promptly to develop and provide to the non-defaulting Parties appropriate Make-up Funding Curves for the Make-up Reclamation Trust Funds, as provided in Section 6.4. Within thirty (30) days of receipt of a Make-up Funding Curve from the Reclamation Investment Committee, each non-defaulting Party, if required under Sections 6.4 and 11.1, will fund its Make-up Reclamation Trust Fund to its share of the Make-up Funding Curve target amount for the calendar year in which the Default Declaration was issued. If a defaulting Party cures its Default in accordance with Section 10.8, monies in a non-defaulting Party's Make-up Reclamation Trust Fund may be returned to the non-defaulting Party under Section 4.9 and the terms of that Party's Reclamation Trust Agreement.

11.3 Payment of Defaulting Party's Invoices for Reclamation Costs. Reclamation Costs accrued after December 31, 2017, that are the responsibility of a Party that defaulted under Section 11.1, will be paid by such Party's Trustee until the defaulting Party's Reclamation Trust has been exhausted. Once the defaulting Party's Reclamation Trust has been exbausted, the non-defaulting Parties' Trustees will pay any Reclamation Costs remaining unpaid based upon the relation of the Reclamation Share of each such non-defaulting Party to the Reclamation Shares of all non-defaulting Parties from (i) any Make-up Reclamation Trust Funds established pursuant to Section 11.2; or (ii) any other source of funds outside the Reclamation Trust. Upon the exhaustion of any Opt-out Participant's Make-up Reclamation Trust Fund, the Opt-out Participant's share of the defaulting Party's unpaid Reclamation Cost responsibilities will be allocated to the Opt-in Participants.

11.4 Failure to Pay Other Costs. If the Default Declaration arises from the defaulting Party's failure to pay costs hereunder other than Reclamation Costs, such as the costs of the Reclamation Work and Reclamation A&G Expenses, such costs will be borne by the non-defaulting Parties in proportion to their Reclamation Shares, subject to all legal rights of non-defaulting Parties to require repayment of such costs from the defaulting Party.

12.0 FAILURE TO FUND RECLAMATION TRUST AFTER DECEMBER 31, 2017

12.1 Opt-in Participants. If a Party fails, after December 31, 2017, to fund its Reclamation Trust to the post-2017 Reclamation Funding Target Amount and such failure results in a Default Declaration, then each Opt-in Participant will fund a share of the defaulting Party's shortfall in a Make-up Trust Fund within the non-defaulting Party's Reclamation Trust Fund based upon the relation of the Reclamation Share of each such non-defaulting Opt-in Participant to the Reclamation Shares of all non-defaulting Opt-in Participants. The Reclamation Investment Committee will act promptly to develop and provide to the Opt-in Participants appropriate Make-up Funding Curves for the Make-up Reclamation Trust Funds, as provided for in Section 6.4. Upon receipt of a Make-up Funding Curve from the Reclamation Investment Committee, each Opt-in Participant will promptly fund its Make-up Reclamation Trust Fund to its share of the Make-up Funding Curve target amount for the calendar year in which the Default Declaration was issued. If a defaulting Party cures its Default in accordance with Section 10.8, monies in an Opt-in Participant's Make-up Reclamation Trust Fund may be returned to the Opt-in Participant under Section 4.9 and the terms of that Party's Reclamation Trust Agreement.

12.2 Payment of Defaulting Party's Invoices for Reclamation Costs. Reclamation Costs incurred after December 31, 2017, that are the responsibility of a Party that defaulted under Section 12.1, will be paid first by the defaulting Party's Trustee until the defaulting Party's Reclamation Trust has been exhausted; once the defaulting Party's Reclamation Trust has been exhausted, the Opt-in Participants will pay any Reclamation Costs remaining unpaid based upon the relation of the Reclamation Share of each such non-defaulting Opt-in Participant to the Reclamation Shares of all non-defaulting Opt-in Participants from its (i) Make-up Reclamation Trust Funds; or (ii) any other source of funds outside the Reclamation Trust.

12.3 Opt-out Participants. For Defaults occurring after December 31, 2017, Opt-out Participants will have no obligation for a defaulting Party's failure to fund its Reclamation Trust as required herein, including the defaulting Party's failure to make any required Make-up Reclamation Trust Fund payments, Reclamation Recovery Deposits or Reclamation Correcting Deposits or for any unpaid Reclamation Cost responsibilities of a defaulting Party.

12.4 Failure to Pay Other Costs. If the Default Declaration arises from the defaulting Party's failure to pay costs hereunder other than Reclamation Costs, such as the costs of Reclamation Work and Reclamation A&G Expenses, such costs will be borne by the non-defaulting Parties in proportion to their Reclamation Shares, subject to all legal rights of non-defaulting Parties to require repayment of such costs from the defaulting Party.

13.0 DISPUTE RESOLUTION

13.1 Amicable Resolution. If a dispute between or among any of the Parties should arise under this Mine Reclamation Agreement, or in relation to the rights or obligations of the Parties under this Mine Reclamation Agreement, executive representatives of the Parties with authority to resolve the dispute will first seek to resolve the dispute as set forth in this Section 13.1.

13.1.1 The dispute process will be initiated by the delivery of a written notice by a Party ("Noticing Party") of the dispute ("Notice of Dispute") to the Party with which a dispute is claimed. The Notice of Dispute will specify the existence, nature and extent of the dispute. Copies of the Notice of Dispute will be served on all other Parties. The Notice of Dispute will specifically state the sums allegedly due, any non-monetary obligation allegedly not performed, or both if applicable.

13.1.2 Within fifteen (15) Business Days of receipt of the Notice of Dispute, the Party alleged not to be performing may protest in writing any or all of the matters set forth in the Notice of Dispute ("Dispute Protest"), specifying the basis of the Dispute Protest. Copies of the Dispute Protest will be served by the protesting Party ("Protesting Party") on all other Parties.

13.1.3 Within fifteen (15) Business Days of the giving of a Notice of Dispute under Section 13.1.1 or within ten (10) Business Days after the service of a Dispute Protest under Section 13.1.2, the executive representatives of the Parties involved in the dispute will meet at a mutually agreeable time and place to attempt to negotiate a timely

and amicable resolution of the dispute. If an executive of a Party intends to be accompanied by counsel, the other Parties will be given at least five (5) Business Days' written notice of such intent and may also be accompanied by counsel. All negotiations will be confidential and will be treated as compromise and settlement negotiations under New Mexico Law. If the executive representatives of the Parties are unable to resolve the dispute within sixty (60) days of the Notice of Dispute (or such other period as they may agree to), any Party involved in the dispute may call for submission of the dispute to arbitration, which call will be binding upon all of the other affected Parties except as provided in Section 13.8.

13.2 Call for Arbitration. The Party calling for arbitration will give written notice to all other Parties ("Arbitration Notice"), setting forth in the Arbitration Notice in adequate detail the entity against whom relief is sought, the nature of the dispute, the amount, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, which may include monetary, equitable and declaratory relief. Within twenty (20) Business Days after receipt of the Arbitration Notice, any other Party may submit its own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated with copies of such notice provided to all other Parties. Thereafter, the Party calling for arbitration will have ten (10) Business Days in which to submit a written rebuttal statement, copies of which will be provided to all other Parties.

13.3 Selection of Arbitrators.

13.3.I The Parties involved in the arbitration will seek to agree upon a panel of three (3) neutral arbitrators as follows. Within ten (I0) days after service of the written rebuttal statement, the Parties representing each side of the dispute will provide to the Parties representing the other side of the dispute a list of up to five (5) suggested arbitrators having the qualifications required by Section 13.3.2 and a summary of each such suggested arbitrator's experience and qualifications. Within five (5) Business Days thereafter, the Parties involved in the arbitration will meet and confer by telephone or in person to seek to agree upon a panel of three (3) neutral arbitrators from the lists that have been exchanged. If such agreement is not reached as the result of such meeting, the Parties representing each side of the dispute will provide a second list of suggested arbitrators to one another, and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon a panel of three (3) neutral arbitrators. If such agreement on arbitrators is reached, the Parties will proceed to arbitration as further set forth in this Section 13.

13.3.2 If the Parties involved in the arbitration are not able to agree upon a complete panel of three (3) neutral arbitrators, such Parties will select the arbitrators upon which agreement has not been reached as follows. The Parties will request from the American Arbitration Association ("AAA") (or similar organization as the arbitrating Parties agree upon) ("Arbitration Organization") a list of seven (7) arbitrators with names and biographical sketches and specific qualifications relating to the case to be heard. All arbitrators will be persons skilled and experienced in the field that gives rise to the dispute, and no person will be eligible for appointment as an arbitrator who is an officer or employee of any of the Parties to the dispute or is otherwise interested in the matter to

be arbitrated. The Parties involved in the arbitration will each advise the Arbitration Organization of its order of preference of such arbitrators by numbering from one (1) to seven (7) each name on the list (with one (1) being the most preferred arbitrator) and submitting the numbered lists in writing to the Arbitration Organization. Depending upon the number of arbitrators to be selected, the name or names with the lowest combined numbers will be appointed as the remaining neutral arbitrator(s). In the event more than one name on the list has the same lowest combined score, the tie will be broken by lot. Should the Parties agree that one list of seven (7) is insufficient to obtain a total of three (3) neutral arbitrators with the required qualifications, an additional list of arbitrators may be requested from the Arbitration Organization.

13.4 Arbitration Procedures. Except as otherwise provided in this Section 13 or otherwise agreed by the Parties to the dispute, the Parties will utilize in the arbitration the AAA's Commercial Arbitration Rules and Mediation Procedures including Procedures for Large, Complex Commercial Disputes or similar rules and practices of another Arbitration Organization from time-to-time in force, except that if such rules and practices, as modified herein, conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico law then in force which are specifically applicable to arbitration proceedings, such New Mexico law will govern. The arbitration will be conducted at a location in Albuquerque, New Mexico, unless otherwise agreed by the affected Parties.

13.5 Decision of Arbitrators. The arbitrators will hear evidence submitted by the respective Parties or group or groups of Parties and may call for additional information, which additional information will be furnished by the Parties having such information. The decision of a majority of the arbitrators ("Arbitration Award") will be rendered no later than twenty (20) days after the conclusion of the arbitration hearing and will be binding upon all the Parties and will be based on the provisions of this Mine Reclamation Agreement and applicable New Mexico or federal Law. The Arbitration Award must be in writing and must explain in reasonable detail the basis of the award.

13.6 Enforcement of Arbitration Award. This agreement to arbitrate is specifically enforceable, and the Arbitration Award will be final and binding upon the Parties to the extent provided by the laws of the State of New Mexico. Any Arbitration Award may be filed with a court of competent jurisdiction in New Mexico and upon motion of a Party the court shall enter a judgment in conformity therewith as provided by the New Mexico Uniform Arbitration Act. Said judgment is enforceable in other States and Territories of the United States under the Full Faith and Credit provisions of the United States Constitution and other Laws.

13.7 Fees and Expenses. Fees and expenses of the arbitrators will be paid by the non-prevailing Party, unless the Arbitration Award specifies some other apportionment of such fees and expenses. All other expenses and costs of the arbitration, including attorney fees and expert witness fees, will be borne by the Party incurring the same.

13.8 Legal Remedies. Nothing in this Section 13 will be deemed to prevent a Party from commencing judicial action: (i) to obtain a provisional remedy to protect the effectiveness of the arbitration proceeding; (ii) to confirm, enforce, modify, correct, vacate or challenge an

Arbitration Award on grounds provided for in the New Mexico Uniform Arbitration Act; (iii) to obtain relief in instances where the arbitrators are unable or unwilling to act within the time provided for in Section 13.10; (iv) where, as the result of the unreasonable or dilatory conduct of another Party, a Party is not able to obtain a timely valid and enforceable Arbitration Award; or (v) if a Party is prohibited by Law from participating in binding arbitration.

13.9 Rights of SJCC. No arbitration as between the Parties or the Reclamation Trust Funds Operating Agent will affect the rights of SJCC or the obligations of parties under the CSA or the RSA.

13.10 Prompt Resolution. The Parties acknowledge the importance of prompt dispute resolution. Accordingly, it is agreed that any arbitration proceeding hereunder will be scheduled and conducted in such a manner that the decision of the arbitrators is rendered no later than two hundred and seventy (270) days after an Arbitration Notice is served pursuant to Section 13.2.

14.0 POWER AND AUTHORITY

14.1 Requisite Power and Authority. Each Party represents and warrants to the other Parties that it has the requisite power and authority to execute this Mine Reclamation Agreement and to perform its obligations set out in this Mine Reclamation Agreement. The execution and delivery of this Mine Reclamation Agreement and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party. The obligations set out herein will, upon execution hereof by each Party, be valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions hereof, except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at Law.

14.2 No Violation. Each Party, to the best of its knowledge and upon reasonable inquiry, represents and warrants to the other Parties that the execution and delivery of this Mine Reclamation Agreement by such Party, and the performance by such Party of all of its obligations hereunder, will not violate any term, condition or provision of its charter documents; any applicable Law by which the Party is bound; any applicable court or administrative order or decree; or any agreement or contract to which it is a party. Further, each Party represents and warrants to the other Parties that, to the best of its knowledge and upon reasonable inquiry, there is no claim pending or threatened against it which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Mine Reclamation Agreement or which could result in the filing of any mechanic's or materialman's lien against the SJGS Plant Site.

15.0 RELATIONSHIP OF PARTIES

15.1 Several Obligations. The covenants, obligations and liabilities of the Parties are, except as otherwise specifically provided herein, intended to be several and not joint or collective.

Each Party will be individually responsible for its own covenants, obligations and liabilities as herein provided.

15.2 No Joint Venture or Partnership. Nothing in this Mine Reclamation Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties. No Party or group of Parties will be under the control of or will be deemed to control any other Party or the Parties as a group. Except as provided in this Mine Reclamation Agreement, the Restructuring Agreement and the Decommissioning Agreement, no Party will be the agent of or have a right or power to bind any other Party without its express written consent.

15.3 Parental Guaranty. As provided in the Restructuring Agreement, PNM Resources, Inc., will guarantee the obligations of PNMR-D under this Mine Reclamation Agreement.

16.0 SUCCESSORS AND ASSIGNS

16.1 Successors and Assigns. This Mine Reclamation Agreement will be binding upon and inures to the benefit of the Parties and their respective authorized successors and assigns.

16.2 Third Party Beneficiaries. SJCC is an intended third party beneficiary under this Mine Reclamation Agreement; provided, however, that if another party assumes SJCC's reclamation obligations, then SJCC will cease to be a third party beneficiary hereunder. Except as provided in the previous sentence, nothing in this Mine Reclamation Agreement will create or be deemed to create any third party beneficiary rights in any person not a party to this Mine Reclamation Agreement.

16.3 No Right to Mortgage. No Party will have the right to mortgage, create or provide for a security interest in or convey in trust its rights, titles and interests in a Reclamation Trust created pursuant to this Mine Reclamation Agreement, or in funds held in a Reclamation Trust created pursuant to this Mine Reclamation Agreement, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for their present or future bonds or other obligations or securities, and to any successors or assigns thereof.

16.4 Prior Written Consent. No Party may assign its rights, or delegate its obligations, under this Mine Reclamation Agreement, including as provided for in Section 17, without the prior written consent of the other Parties, which consent will not be unreasonably delayed or denied. Such prior consent of the other Parties will not be required in the event of the transfer or assignment by a Party of its interest in the Project to a duly authorized successor; provided, however, that such successor has agreed in writing with the remaining Parties to fully perform and discharge all of the obligations hereunder of the Assigning Party and the remaining Parties have agreed in writing to the substitution of the successor, in place of the Assigning Party, which consent will not be unreasonably delayed or denied.

17.0 OPT-IN/OPT-OUT ELECTION OF SUCCESSORS AND ASSIGNS

17.1 Protection of Parties' Rights. The Parties acknowledge that an Assigning Party's ("Assigning Party") assignee may not wish to elect the same status, of an Opt-in Participant or an Opt-out Participant, as the Assigning Party. The assignee of an Opt-in Participant (other than PNM) may elect to become an Opt-out Participant; or the assignee of an Opt-out Participant may elect to become an Opt-in Participant. The Parties desire to accommodate such assignee elections in a manner that will: (i) not unduly restrict or interfere with an Assigning Party's ability to transfer or assign its rights, titles and interests in the Project and under this Mine Reclamation Agreement; and (ii) assure that the rights and expectations of the non-assigning Parties, as well as SJCC and PNM, are fully protected by providing for appropriate levels of funding of a Reclamation Trust established by the assignee of the Assigning Party.

17.2 Assignee's Right of Election. An assignee of an Assigning Party will have the right to elect to become an Opt-in Participant or an Opt-out Participant, irrespective of the Assigning Party's status as an Opt-in Participant or an Opt-out Participant, subject to compliance with the provisions of Sections 17.3, 17.4 and 17.5; provided, however, that the assignee of PNM must he an Opt-in Participant. As a condition of the consummation of any transaction in which the Assigning Participant assigns its rights, titles and interests in the Project and under this Mine Reclamation Agreement to an assignee (a "Purchase Transaction"), the assignee will execute all legal instruments necessary to become, and to assume the rights, obligations and responsibilities of, an Opt-in Participant or an Opt-out Participant, as applicable. Among the contracts that the assignee must have executed in connection with a Purchase Transaction is a Reclamation Trust Agreement with a financial institution, consistent with the requirements of this Mine Reclamation Agreement. Pursuant to such Reclamation Trust Agreement, the assignee will establish and fund a Reclamation Trust with a Principal Reclamation Trust Fund and one or more Make-up Reclamation Trust Funds, as applicable.

17.3 Assignee's Funding of Principal Reclamation Trust Fund. The assignee will, effective as of the date of the consummation of the Purchase Transaction, fully fund its Principal Reclamation Trust Fund to the appropriate Reclamation Funding Target Amount. If the assignee elects to become an Opt-in Participant, it will satisfy its Reclamation Share of the Reclamation Funding Target Amount set out in Exhibit 1A and Exhibit 1D, as applicable, for December 31 of the year in which the consummation of the Purchase Transaction takes place. If the assignee elects to become an Opt-out Participant, it will satisfy its Reclamation Share of the Reclamation Funding Target Amount set out in Exhibit 1C and/or Exhibit 1F, as applicable, for December 31 of the year in which the consummation of the Purchase Transaction takes place. After the consummation of the Purchase Transaction, the assignee will maintain such Principal Reclamation Trust Fund in the same manner as would have been required of the Assigning Party if the Assigning Participant had originally held the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4 Assignee's Funding of Make-up Reclamation Trust Fund(s). The assignee will establish the same number of Make-up Reclamation Trust Fund(s) as held by the Assigning Party and will fund and maintain such Make-up Reclamation Trust Fund(s) as follows:

17.4.1 For any assignment effective on or before December 31, 2017, by an Assigning Party to an assignee that elects to change or not to change from the Assigning Party's status as an Opt-in Participant or an Opt-out Participant, the assignee will, on the effective date of the Purchase Transaction, fully fund its Make-up Reclamation Trust Fund to the Make-up Funding Curve that would have been applicable to the Assigning Party under the status of an Opt-in Participant or an Opt-out Participant elected by the assignee for December 31 of the year in which the Purchase Transaction is effective; and will maintain such Make-up Reclamation Trust Fund in the same manner as would have been required of the Assigning Party if the Assigning Party had originally held the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4.2 For any assignment effective at any time after December 31, 2017 (i) by an Assigning Party that is an Opt-in Participant to an assignee that elects to become an Opt-in Participant; or (ii) by an Assigning Party to an assignee that elects to change from the Assigning Party's status as either an Opt-in Participant or an Opt-out Participant, the assignee will, on the effective date of the Purchase Transaction, fully fund its Make-up Reclamation Trust Fund to the Make-up Funding Curve that would be applicable to the Assigning Party under the status (of an Opt-in Participant or an Opt-out Participant) elected by the assignee for December 31 of the year in which the Purchase Transaction is effective; and will maintain such Make-up Reclamation Trust Fund in the same manner as would have been required of the Assigning Party if the Assigning Party had originally held the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4.3 For any assignment effective at any time after December 31, 2017, by an Assigning Party that is an Opt-out Participant to an assignee that elects to become an Opt-out Participant, the assignee will, on the effective date of the Purchase Transaction, fund its Make-up Reclamation Trust Fund to the level of the Assigning Party's Make-up Reclamation Trust Fund on the effective date of the Purchase Transaction; and will maintain such Make-up Reclamation Trust Fund in the same manner that the Assigning Party was required to maintain such fund.

17.5 Assigning Party's Right of Refund. Upon an assignee's having: (i) executed all legal instruments necessary to become an Opt-in Participant or an Opt-out Participant, as applicable, as provided for in Section 17.2; (ii) fully funded its Principal Reclamation Trust Fund to its Reclamation Share of the applicable Reclamation Funding Target Amount consistent with Section 17.3; and (iii) fully funded its Reclamation Share of any applicable Make-up Reclamation Trust Fund consistent with Section 17.4, the Assigning Party will be: (x) released from further obligations under this Mine Reclamation Agreement; and (y) entitled to a return of all monies remaining in its Principal Reclamation Trust Fund and Make-up Reclamation Trust Fund.

18.0 AUDIT RIGHTS; RELATED DISPUTES

18.1 Right of Audit. The Reclamation Trust Funds Operating Agent will maintain complete and accurate records of all expenses and transactions for which a Party may have cost

responsibility under this Mine Reclamation Agreement. Such records will be maintained from the date an expense is billed to a Party hereunder for a period of the longer of: (i) the expiration of the statute of limitations for actions based on contract; or (ii) the date the records may be destroyed under the Reclamation Trust Funds Operating Agent's document retention policy. Any Party (an "Initiating Party") may, upon reasonable advance written notice to the Reclamation Trust Funds Operating Agent, conduct an audit of all records, invoices, costs, expenses or liabilities charged to the Initiating Party or for which the Initiating Party has or may have cost responsibility. Parties desiring to perform an audit will cooperate with one another so as to minimize the number of audits and any undue burden upon the Reclamation Trust Funds Operating Agent. Each such audit will be carried out by an auditor of the Initiating Party's choosing and at the expense of the Initiating Party, except as provided in Section 18.3. The Reclamation Trust Funds Operating Agent will cooperate with the Initiating Party and the Initiating Party's auditor and will make available its relevant business records at reasonable times and places, upon reasonable advance notice. A copy of the audit report will be provided to all Parties by the Initiating Party within fifteen (15) days of receipt of the audit report.

18.2 Dispute Resolution. If any Party disagrees with an audit finding from an audit conducted under Section 18.1, the Party may within fifteen (15) Business Days of the receipt of the audit report request in writing that the audit be reviewed by providing such request to all of the Parties. After any such request, the affected Parties will review the expenditure and will endeavor to agree upon whether an over- or under-billing occurred. If, after the review, the affected Parties determine that the expenditure was over- or under-billed, an adjustment to the billing that is the subject of the audit finding will be made to eliminate the over- or under-billing and an adjusted bill will be sent as provided for in Section 18.3. Each Party that receives a payment as a result of under- or over-billing will reimburse the Initiating Party as provided for in Section 18.3. If within thirty (30) Business Days of the date of the mailing of the written request for review the affected Parties are unable to agree in writing on a modification of the expenditure to eliminate the over- or under-billing, the matter will be submitted to dispute resolution pursuant to Section 13.

18.3 Adjusted Billing Procedures. If as the result of an audit and any related dispute resolution procedures under Section 13.1 or Section 13.2 it is determined that there was an under- or over-billing, the Reclamation Trust Funds Operating Agent will issue invoices to correct the under- or over-billing with interest at the Prime Rate (or any successor to that rate). Interest will be calculated from the due date for payments on the prior invoices that included the under-or over-billed amounts to the date of the revised billings. The owing Party will pay any amounts owed on the corrected invoices within twenty (20) Business Days after receipt of the revised billing reflecting the result of the audit report. Each Party (other than an Initiating Party) that receives a payment or credit as a result of an audit report will reimburse the Initiating Party for the cost of the audit based on the amount received by such Party as a percentage of the total amount of payments and credits received by Parties; provided, that if the amount received by a Party is less than the lower of (i) $5,000 or (ii) ten percent (10%) of the amount of the disputed billing, no reimbursement for the audit costs will be required.

18.4 Audit of Reclamation A&G Expenses. To the extent practicable, any audit of Reclamation A&G Expenses will be coordinated with audits of A&G expenses under any other San Juan Project-related agreements.

18.5 Effectiveness. The provisions of this Section 18 will become effective as of the Exit Date. Matters requiring audit arising before the Exit Date will be addressed in a manner consistent with the audit provisions of the SJPPA.

19.0 UNCONTROLLABLE FORCES

No Party will be considered to be in Default in the performance of any of its obligations hereunder (other than obligations of a Party to pay costs and expenses and to fully fund its Reclamation Trust (Principal Reclamation Trust Fund and any Make-up Reclamation Trust Fund)) if failure of performance is due to Uncontrollable Forces. The term "Uncontrollable Forces" means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, fire, lightning, epidemic or pandemic, war, riot, civil disturbance, labor dispute, sabotage or terrorism, restraint by court order or public authority, or failure to obtain approval from a necessary Governmental Authority which by exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it is unable to overcome. Nothing contained herein requires a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces will promptly provide notice to the other Parties and will exercise due diligence to remove such inability with all reasonable dispatch.

20.0 INVALID PROVISIONS

If any provision of this Mine Reclamation Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Mine Reclamation Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Mine Reclamation Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Mine Reclamation Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and the Parties will negotiate in good faith to attempt to agree upon a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

21.0 APPLICABLE LAW AND VENUE

21.1 Compliance with Law. The Parties will comply with all applicable Law in the performance of their respective obligations under this Mine Reclamation Agreement.

21.2 New Mexico Law. This Mine Reclamation Agreement is made under and will be governed by New Mexico law, without regard to any conflicts of Law or choice of Law principles that would require the application of the Law of a different jurisdiction.

21.3 Venue. Venue with respect to any judicial proceeding arising out of or relating to this Mine Reclamation Agreement will lie exclusively in the state or federal courts in Albuquerque, New Mexico and the Parties irrevocably consent and submit to the exclusive jurisdiction of such courts for such purpose and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner recognized by such courts. A final judgment of the state or federal court will be enforceable in other states under applicable Law.

22.0 ENTIRE AGREEMENT

22.1 Entire Agreement. This Mine Reclamation Agreement, together with all schedules and exhibits hereto and the Reclamation Trust Agreements, supersede all prior negotiations, agreements and understandings among the Parties with respect to the covenants and obligations agreed upon in this Mine Reclamation Agreement.

22.2 Amendment and Modification. Except as otherwise provided herein, the Parties may, at any time, amend, modify or supplement this Mine Reclamation Agreement in a writing executed by all the Parties.

22.3 Prior Obligations Unaffected. Except as otherwise provided herein, nothing in this Mine Reclamation Agreement will be deemed to relieve the Parties of their obligations in effect prior to the Effective Date and such obligations will continue in full force and effect until satisfied or as otherwise mutually agreed.

23.0 WAIVER

No waiver by the Reclamation Trust Funds Operating Agent or by any Party of any term or condition of this Mine Reclamation Agreement will be effective unless the Reclamation Trust Funds Operating Agent or Party granting such waiver does so in writing, and no such waiver or failure to insist upon strict compliance with any obligation, covenant, agreement or condition will operate as a waiver of, or estoppel with respect to, any other previous or subsequent default or matter. No delay short of the statutory period of limitations in asserting or enforcing any right hereunder will be deemed a waiver of such right.

24.0 NO INTERPRETATION AGAINST DRAFTER

This Mine Reclamation Agreement has been drafted with the full participation by all of the Parties and their counsel of choice, and no provision of this Mine Reclamation Agreement will be construed against any Party on the ground that such Party or its counsel was the author of such provision. All of the provisions of this Mine Reclamation Agreement will be construed in a reasonable manner to give effect to the intentions of the Parties in executing this Mine Reclamation Agreement.

25.0 INDEPENDENT COVENANTS

The covenants and obligations contained in this Mine Reclamation Agreement are independent covenants, not dependent covenants, and the obligation of a Party to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by another Party of all of the covenants and obligations to be kept and performed by it. Nothing in this Section 25 affects the rights of the Parties under the dispute resolution and default provisions of Sections 10.1 through 10.10.

26.0 OTHER DOCUMENTS

Each Party agrees, upon request by another Party, to make, execute and deliver any and all documents and instruments reasonably required to carry into effect the terms of this Mine Reclamation Agreement; provided that such documents and instruments will not increase or expand the obligations of a Party hereunder.

27.0 NOTICES

27.1 Manner of Giving of Notice. Any notice, demand or request provided for in this Mine Reclamation Agreement, or served, given or made in connection with it, will be deemed properly served, given or made (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day after mailing if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next Business Day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

27.1.1 Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

with a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

27.1.2 Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

27.1.3 City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

with a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

27.1.4 M-S-R Public Power Agency
c/o General Manager
1231 11th Street
Modesto, CA 95354

27.1.5 Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

27.1.6 City of Anaheim
c/o City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

27.1.7 Incorporated County of
Los Alamos, New Mexico
c/o County Clerk
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of
Los Alamos, New Mexico

c/o Utilities Manager
P.O Drawer 1030
170 Central Park Square
Suite 130
Los Alamos, NM 87544

27.1.8 Utah Associated Municipal Power Systems
c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

27.1.9 Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

27.1.10 PNMR Development and Management Corporation
c/o Corporate Secretary
PNM Resources
Corporate Headquarters
414 Silver Ave. SW
Albuquerque, NM 87158-1245

27.2 Notices to SJCC. Any notices provided hereunder to be delivered or given to SJCC will be provided to the persons specified below:

27.2.1 San Juan Coal Company
300 West Arrington, Suite 200
Farmington, NM 87401
Attn: President

with a copy addressed as follows:

San Juan Coal Company
P.O. Box 155
Fruitland, NM 87416
Attn: San Juan Mine Manager

27.3 Changes in Designation. A Party or SJCC may, at any time or from time-to-time, by written notice to the other Parties and SJCC, change the designation or address of the person so specified as the one to receive notices pursuant to this Mine Reclamation Agreement.

28.0 CAPTIONS AND HEADINGS

The captions and headings appearing in this Mine Reclamation Agreement are inserted merely to facilitate reference and have no bearing upon the interpretation of the provisions hereof.

29.0 EFFECT OF MUNICIPAL LAW

29.1 Farmington and Los Alamos. Farmington (and the Farmington Electric Utility System) and Los Alamos are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington or the Farmington Electric Utility System or Los Alamos in this Mine Reclamation Agreement will be limited by the provisions of the New Mexico Tort Claims Act. Notwithstanding any other provision of this Mine Reclamation Agreement, the payment for all purchases, fees or charges made by Farmington and Los Alamos under this Mine Reclamation Agreement will be made from the legally-available revenues of Farmington's and/or Los Alamos's Electric Utility System. In no event will the obligation to pay under this Mine Reclamation Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or Los Alamos.

29.2 Anaheim and M-S-R. Anaheim (which includes its Public Utilities Department) and M-S-R are governmental entities whose liability is limited by the California Government Claims Act (Government Code §§ 810 – 998.3) and any liability or indemnity assumed by Anaheim or M-S-R in this Mine Reclamation Agreement will be limited by the provisions of the California Government Claims Act. Nothing in this Mine Reclamation Agreement is intended to create or will be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend which is against public policy, void and unenforceable. Notwithstanding any other provision of this Mine Reclamation Agreement, the payment for all purchases, fees or charges made by Anaheim or M-S-R under this Mine Reclamation Agreement will be made from the legally-available revenues of M-S-R or the legally-available revenues of the Anaheim Electric System. In no event will the obligation to pay under this Mine Reclamation Agreement be considered an obligation against the general faith and credit or general taxing power of Anaheim or of M-S-R or any of the members of M-S-R.

29.3 Southern California Public Power Authority. SCPPA is a joint exercise of powers agency organized under the laws of the State of California, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of SCPPA.

29.4 Utah Associated Municipal Power Systems. UAMPS is a joint action agency organized under the laws of the State of Utah, created to acquire, construct, finance, operate and

maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit or taxing power of any member of UAMPS.

30.0 PARTIES' COST RESPONSIBILITIES

Except for costs incurred by the Reclamation Trust Funds Operating Agent in its capacity as Reclamation Trust Funds Operating Agent, each Party will be solely responsible for its own costs and expenses, including fees and costs of counsel, incurred in connection with the negotiation of this Mine Reclamation Agreement and with any actions associated with the implementation of this Mine Reclamation Agreement.

31.0 CONFIDENTIALITY

31.1 Confidentiality of Negotiations. The Parties' discussions and negotiations that led to the development of this Mine Reclamation Agreement, the Restructuring Agreement, the Decommissioning Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment, including discussions taking place in the context of mediation, were conducted in confidence and will remain confidential; provided, that nothing herein will prevent a Party from making disclosures pursuant to a requirement of Law (including Laws related to the inspection of public records and securities), including subpoena or discovery request. If any Party determines that it is legally obligated to make a disclosure, the Party obligated to make such disclosure will make reasonable efforts to notify the other Parties prior to such disclosure and will reasonably cooperate with any other Party in seeking an order of a Governmental Authority preventing or limiting such disclosure; provided further, however, that the Party seeking any such order to prevent or limit disclosure will be responsible for all costs for seeking such an order. Prior to making disclosure, a Party will, as available or appropriate, attempt to utilize a confidentiality agreement to protect the confidentiality of the information disclosed.

31.2 Non-confidentiality of Mine Reclamation Agreement. While negotiations were and remain confidential as addressed in Section 32.1, neither this Mine Reclamation Agreement nor any version of it publicly disposed pursuant to applicable Law is confidential.

32.0 ORIGINAL TRUST FUNDS AGREEMENT

Upon the Effective Date of this Mine Reclamation Agreement, the Original Trust Funds Agreement is superseded by this Mine Reclamation Agreement.

33.0 LIMITATIONS ON DAMAGES

In no event will any Party be liable under any provision of this Mine Reclamation Agreement for any indirect, punitive or incidental damages or costs of any other Party (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and the Parties hereby waive, release and discharge one another from all such indirect, punitive and incidental damages and costs.

34.0 EXECUTION IN COUNTERPARTS

This Mine Reclamation Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the Parties to the aggregated counterparts had signed the same instrument. Any signature page of this Mine Reclamation Agreement may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon and may be attached to any other counterpart of this Mine Reclamation Agreement identical in form thereto but having attached to it one or more additional pages. Electronic or pdf signatures will have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties have caused this Mine Reclamation Agreement to be executed on their behalf, and the signatories hereto represent that they have been duly authorized to enter into this Mine Reclamation Agreement on behalf of the Party for whom they signed.

[Signatures on succeeding pages]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Its: _____
Dated: _____

TUCSON ELECTRIC POWER COMPANY

By: _____
Its: _____
Dated: _____

THE CITY OF FARMINGTON, NEW MEXICO

By: _____
Its: _____
Dated: _____

M-S-R PUBLIC POWER AGENCY

By: _____
Its: _____
Dated: _____

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Its: _____
Dated: _____

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Its: _____
Dated: _____

CITY OF ANAHEIM

By: _____
Its: _____
Dated: _____

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: _____
Its: _____
Dated: _____

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

By: _____
Its: _____
Dated: _____

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

By: _____
Its: _____
Dated: _____

EXHIBIT 1A: RECLAMATION FUNDING CURVES FOR 70%/30% EQUITY/FIXED INCOME PORTFOLIO

Note: Exhibit 1A is subject to adjustment as provided for in this Mine Reclamation Agreement.

Year	Funding Target Curve	Funding Target Floor
2014	$ 11,150,315	$ 8,920,252
2015	$ 21,122,757	$ 16,898,206
2016	$ 30,430,895	$ 24,344,716
2017	$ 40,517,946	$ 32,414,357
2018	$ 51,449,093	$ 43,217,238
2019	$ 63,294,968	$ 55,699,572
2020	$ 76,132,118	$ 70,041,549
2021	$ 90,043,494	$ 86,441,754
2022	$ 105,118,988	$ 105,118,988
2023	$ 91,366,063	$ 91,366,063
2024	$ 75,838,282	$ 75,838,282
2025	$ 56,074,220	$ 56,074,220
2026	$ 42,109,553	$ 42,109,553
2027	$ 26,681,069	$ 26,681,069
2028	$ 9,073,047	$ 9,073,047
2029	$ 8,609,561	$ 8,609,561
2030	$ 8,070,609	$ 8,070,609
2031	$ 7,448,774	$ 7,448,774
2032	$ 6,735,987	$ 6,735,987
2033	$ 5,923,471	$ 5,923,471
2034	$ 5,001,676	$ 5,001,676
2035	$ 3,960,221	$ 3,960,221
2036	$ 2,787,815	$ 2,787,815
2037	$ 1,472,188	$ 1,472,188
2038	$ (0)	$ (0)

Exhibit 1B: Reclamation Funding Curves for Fixed Income Portfolio

Note: Exhibit 1B is subject to adjustment as provided in this Mine Reclamation Agreement.

Year	Funding Target Curve	Funding Target Floor
2014	$ 22,287,687	$ 19,613,164
2015	$ 52,248,092	$ 48,068,244
2016	$ 93,217,851	$ 89,489,137
2017	$ 135,135,334	$ 135,135,334
2018	$ 131,259,095	$ 131,259,095
2019	$ 128,320,382	$ 128,320,382
2020	$ 128,128,506	$ 128,128,506
2021	$ 127,921,529	$ 127,921,529
2022	$ 126,823,566	$ 126,823,566
2023	$ 107,846,902	$ 107,846,902
2024	$ 87,824,949	$ 87,824,949
2025	$ 64,486,169	$ 64,486,169
2026	$ 47,849,570	$ 47,849,570
2027	$ 30,541,256	$ 30,541,256
2028	$ 11,969,273	$ 11,969,273
2029	$ 11,058,072	$ 11,058,072
2030	$ 10,090,150	$ 10,090,150
2031	$ 9,063,126	$ 9,063,126
2032	$ 7,974,532	$ 7,974,532
2033	$ 6,821,809	$ 6,821,809
2034	$ 5,602,305	$ 5,602,305
2035	$ 4,313,272	$ 4,313,272
2036	$ 2,951,862	$ 2,951,862
2037	$ 1,515,124	$ 1,515,124
2038	$ 0	$ 0

Exhibit 1C: Fixed Income Portfolio Reclamation Funding Curve with 3% Risk Adjustment

Note: Exhibit 1C is subject to adjustment as provided in this Mine Reclamation Agreement.

Year	Funding Target Curve	Funding Target Floor
2014	$ 22,287,687	$ 19,613,164
2015	$ 52,248,092	$ 48,068,244
2016	$ 93,217,851	$ 89,489,137
2017	$ 139,189,394	$ 139,189,394
2018	$ 135,196,868	$ 135,196,868
2019	$ 132,169,994	$ 132,169,994
2020	$ 131,972,361	$ 131,972,361
2021	$ 131,759,174	$ 131,759,174
2022	$ 130,628,273	$ 130,628,273
2023	$ 111,082,309	$ 111,082,309
2024	$ 90,459,697	$ 90,459,697
2025	$ 66,420,754	$ 66,420,754
2026	$ 49,285,057	$ 49,285,057
2027	$ 31,457,494	$ 31,457,494
2028	$ 12,328,352	$ 12,328,352
2029	$ 11,389,814	$ 11,389,814
2030	$ 10,392,854	$ 10,392,854
2031	$ 9,335,020	$ 9,335,020
2032	$ 8,213,768	$ 8,213,768
2033	$ 7,026,463	$ 7,026,463
2034	$ 5,770,374	$ 5,770,374
2035	$ 4,442,670	$ 4,442,670
2036	$ 3,040,418	$ 3,040,418
2037	$ 1,560,577	$ 1,560,577
2038	$ 0	$ 0

EXHIBIT 2

PERMITTED INVESTMENTS

Consistent with Section 4.2 of the Mine Reclamation Agreement, the following Permitted Investments standards are established for investments in the Parties' Trusts. These standards will apply until such time as they may be amended as provided for in the Mine Reclamation Agreement.

Each Party will invest the funds in its Trust pursuant to its investment objectives, risk tolerance and policies, if any. To the extent the Party exercises discretion in the investment of such funds, the investments must be prudent, reasonably diversified, and must be demonstrably capable of liquidation to provide funds for the payment of Reclamation Costs hereunder. Trust funds will be maintained and invested only in Permitted Investments. Permitted Investments include any of the following:

A. Opt-out Participants' Fund Investments Criteria and Permitted Investments

1. Cash and Cash Equivalents. Cash and cash equivalents will include (i) legal tender of the United States of America and (ii) deposits in federally insured national or state banks that are payable on demand.

2. Acceptable Debt Securities. Acceptable debt securities include:
Obligations of the United States of America, which are taken into consideration for purposes of determining the public debt limit of the United States of America;

   a. Obligations issued or guaranteed by a person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America, including, without limitation, obligations of the Federal National Mortgage Association, Federal Intermediate Credit Bank, Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation and Government National Mortgage Association;

   b. Commercial paper maturing within two hundred seventy (270) days of the highest ranking or of the highest letter and number rating as provided for by at least two Nationally Recognized Statistical Rating Organizations ("NRSRO");

   c. Deposit accounts (which may be represented by certificates of deposit) payable on demand or maturing within three hundred ninety-seven (397) days, in federally insured national or state banks; provided, however, if the aggregate amount of such deposit accounts in a bank is one million dollars ($1,000,000) or more, such bank will have combined capital and surplus, as of its last report of condition, exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of investment grade;

d. Repurchase agreements, fully secured [and delivery accepted] by any of the foregoing obligations or securities, maturing within ninety-two (92) days with any federally insured national or state bank or any other financial institution that is a nationally recognized dealer that reports to the Market Reports Division of the Federal Reserve Bank of New York; provided, however, if the aggregate face amount of such repurchase agreements with an issuer is one million dollars ($1,000,000) or more, the issuer will have combined capital and surplus exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of investment grade;

e. Bonds issued by any state, any possession of the United States of America, the District of Columbia, or any political subdivision thereof, any state agency or any municipal corporation that are rated A2/A/A or better by Moody's Investor Service ("Moody's"), Standard & Poor's Corporation ("S&P"), Fitch Ratings ("Fitch") or other NRSRO or, if not rated by any such service, are given a rating comparable to or better than the aforementioned ratings by the investment manager engaged by a Party to manage the investments of its Trust;

f. Bankers acceptances with a maximum maturity of one hundred eighty (180) days issued by qualified banks which have a long term debt rating of A2/A/A or higher by Moody's, S&P or Fitch; and

g. Forward delivery agreements (sometimes referred to as guaranteed investment contracts) with a federally-insured national or state bank, and such bank will have combined capital and surplus, as of its last report of condition, exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of A2/A/A or higher by Moody's, S&P or Fitch.

3. Pooled Funds. Acceptable pooled funds are funds that are invested in what are otherwise considered Permitted Investments listed above for an Opt-out Participant and that are Securities and Exchange Commission ("SEC")-registered mutual funds, bank commingled funds, or pooled funds of registered investment advisors whose portfolio is designed to track a fixed income market index.

4. Interests in Property. Acceptable interests in property are those debt securities issued by any governmental agency secured by real and/or personal property pledged as collateral.

5. Other Permitted Investments. Other Permitted Investments are those investments not included in the foregoing paragraphs 1 through 4, above, that the Reclamation Investment Committee will have approved.

B. Opt-in Participants' Fund Investments Criteria and Permitted Investments
In addition to the Permitted Investments in Section A, above, for Opt-out Participants, Opt-in Participants may also be invested in the following:

1. Equity Securities. Equity securities are high-quality equity securities (i.e., common, preferred or preference stock) listed on a major domestic or international stock exchange or traded on a nationally recognized trading network.

2. Corporate Debt Securities. Bonds issued by a private corporation rated A2/A/A or better by Moody's, S&P, Fitch or other NRSRO or, if not rated by any such service, are given a rating comparable to or better than the aforementioned ratings by the investment manager engaged by a Party to manage the investments in its Trust.

3. Derivatives. Derivative instruments, defined as financial instruments whose value is derived, in whole or in part, from the value of any one or more underlying securities or assets, an index of securities or assets, or a risk factor.

   a. Derivatives include futures contracts, forward contracts, swaps and all forms of options, but will not include a broader range of securities including mortgage backed securities, structured notes, convertible bonds, and exchange traded funds ("ETFs").
   b. The management of the derivatives instrument(s) must be outside the administrative control of the Party.
   c. Any counterparty in an "over-the-counter" derivative transaction with the Trust must have a credit rating no lower than A2/A/A from Moody's, S&P or Fitch, respectively. Should the credit rating of a counterparty be downgraded below the aforementioned ratings, the total effective exposure of a derivative position will be excluded from the Trust's liquidation value.
   d. The use of derivatives will not be used for speculation but with the intent to hedge risk in portfolios or to implement investment strategies more effectively and at a lower cost than would be possible in the cash markets.
   e. Derivative transactions, which result in the creation of economic leverage, are prohibited. Economic leverage is defined as a net dollar exposure to assets in excess of the dollar amount of invested capital as measured by current market value.

4. Private Real Estate Investments. Trusts may invest in real estate assets, either directly or through a fund-of-funds, limited partnership, joint venture or other pooled investment funds.

5. Commodities. Trusts are prohibited from investing directly in commodity assets. Trusts may invest in commodity assets through a common or collective fund, ETF, or with the use of derivatives.

6. Pooled Funds. Pooled Funds are funds that are invested in what are otherwise considered permitted investments and that are SEC-registered mutual funds, bank commingled funds, or pooled funds of registered investment advisors whose portfolio is designed to track an equity or fixed income market index and which may include the use of derivatives.

C. Exclusions from Permitted Investments. Investments in the following securities are not permitted by either Opt-out Participants or Opt-in Participants:

1. Securities of any nature issued by any Party or any parent or affiliated company of any Party;

2. Securities of any nature issued by any governmental agency or public or private corporation which is in default on the payment of the principal or interest of any outstanding debt or has discontinued the payment of dividends on any of its outstanding equity securities; and

3. Securities of any nature issued by any governmental agency or public or private corporation which has been declared bankrupt or which is the subject of a petition for bankruptcy pending in any court.

D. Restrictions and Prohibitions. Subject to the foregoing, Parties will adhere to the following restrictions and prohibitions in their Trust investments:

1. Transactions with current or prospective related parties ("self dealing"), including individuals employed by a Party, and a parent or affiliated company of a Party, are prohibited. Securities lending will not be considered a "self dealing" transaction.

2. The average credit quality of a Trust's fixed income securities will be rated an equivalent "A2/A/A" or higher by Moody's, S&P, or Fitch respectively. If all three rating agencies rate a security, the middle rating will be used. When two agencies rate a security, the lower rating will be used. If the security is not rated by one of the three rating agencies listed above, the investment manager's internal rating will be used. The market value of unrated securities cannot exceed 5% of the aggregate market value of a Trust's fixed income allocation. Cash and cash equivalent securities will be rated an equivalent "Aaa/AAA/AAA" or "P-1, A-1, F1" by Moody's, S&P, or Fitch respectively.

3. Securities lending is permitted, provided that the program's collateral investment vehicle complies with the standards for Permitted Investments contained herein.

EXHIBIT 3

MANDATORY PROVISIONS

Trust provisions substantially as shown below are considered to be the "Mandatory Provisions" for the individual Party Reclamation Trust Agreements (each a "Trust Agreement"), as required by Section 4.1 of the Amended and Restated Mine Reclamation Agreement among the San Juan Project Participants and PNMR Development and Management Corporation (for purposes of this Exhibit 3, the "Mine Reclamation Agreement"). This language (and the utilized defined terms and section numbers and references) is excerpted from a generic form of Trust Agreement approved by the Parties. For purposes of this Exhibit 3, "Party A" refers to the Party that is a party to a Trust Agreement entered into pursuant to the terms of the Mine Reclamation Agreement.

1.2 Purpose. The purpose of this Agreement is to provide funding for the payment to SJCC of certain coal mine reclamation costs, in accordance with Party A's obligations as set out in the Mine Reclamation Agreement.

2.1 Identification of Beneficiary. The beneficiary of this Trust ("Beneficiary") is SJCC.

2.2 Settlor's Relinquishment of Beneficial Interest. Party A, as settlor of the Trust, retains no beneficial interest in the funds held in trust, except: (i) the right to a return of any funds that may remain in the Principal Trust Fund after the purposes of the Trust have been accomplished; and (ii) the right to a return of any funds remaining in a Make-up Reclamation Trust Fund after the purposes of the Make-up Reclamation Trust Fund have been accomplished.

3.1 Principal Trust Fund. Party A hereby establishes and is funding herewith the Principal Trust Fund in accordance with the Mine Reclamation Agreement. Funds may be disbursed from the Principal Trust Fund for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Trust Account, including the fees and expenses of the Trustee; and (b) to pay Party A's Reclamation Share (as defined in Section 3.3 of the Mine Reclamation Agreement) of reclamation costs pursuant to invoices rendered to Party A by the Reclamation Trust Funds Operating Agent (as that term is defined in the Mine Reclamation Agreement) and approved for payment by Party A. The Trustee will pay funds out of the Principal Trust Fund in accordance with the following procedures. The Reclamation Trust Funds Operating Agent will bill Party A, in writing, for reclamation costs invoiced by SJCC at least ten (10) Business Days prior to the date that payment is due SJCC. Party A will promptly review such invoice and, upon Party A's review and approval of such invoice from the Reclamation Trust Funds Operating Agent, will direct the Trustee to pay such invoice by making payment out of the assets of the Principal Trust Fund, in immediately available funds, to SJCC. Upon the making of such payment, the Trustee will provide notice of such payment to Party A and to the Reclamation Trust Funds Operating Agent. Party A will provide the Trustee with appropriate wiring instructions for the making of payments in immediately available funds to SJCC. Party A will notify the Trustee of the identity of the Reclamation Trust Funds Operating

Agent and of any changes in the Trust Fund Operating Agent. Subject to and in accordance with the terms and conditions hereof, the Trustee agrees that it will receive, hold in trust, invest, reinvest, and release, disburse or distribute the funds in the Trust Account ("Trust Funds"). All interest and other earnings on the Trust Funds will become a part of the Trust Account and the Trust Funds for all purposes, and all losses resulting from the investment or reinvestment thereof from time to time, and all amounts charged thereto to compensate or reimburse the Trustee for amounts owing to it hereunder from time to time, will be set off against the Trust Funds, from the time of such loss or charge, and thereafter no longer will constitute part of the Trust Funds.

3.2 Make-up Reclamation Trust Fund(s). In the event of certain defaults by another Party under the Mine Reclamation Agreement, Party A is required by the Mine Reclamation Agreement to establish a separate segregated portion of the Trust Account (which will be unique for each defaulting Party) under the Mine Reclamation Agreement, to be denominated the "Make-up Reclamation Trust Fund", to provide funding for Party A's Reclamation Share of the shortfall created by such default in the defaulting Party's trust account. Except as herein otherwise provided, the funds in the Make-up Reclamation Trust Fund will be treated identically with funds in the Principal Trust Fund and will be available for payment of reclamation costs by the Trustee to the extent insufficient funds are available in Party A's Principal Trust Fund; provided, however, if the defaulting Party cures its default, and notice thereof is provided to the Trustee and Party A by the Reclamation Trust Funds Operating Agent, then the funds in Party A's Make-up Reclamation Trust Fund will be returned by the Trustee to Party A upon written request to the Trustee from Party A.

3.3 Funding Provisions. Party A will fund the Trust Account (including the Principal Trust Fund and any Make-up Reclamation Trust Fund(s)) according to the terms set forth in the Mine Reclamation Agreement. The Trustee will have no obligation to take any action whatsoever in connection with Participant A's funding of the Trust, or to enforce any obligations that Participant A has, or may have, under the Mine Reclamation Agreement with respect to the funding of the Trust.

4.1 Modifications. A Trust created pursuant to this Agreement is irrevocable and will not be modified by Party A in a manner that (i) is inconsistent with the Mine Reclamation Agreement; or (ii) will adversely affect the interests of the Beneficiary. It will be a condition to any modification of this Agreement that Party A will have certified to the Trustee that such modification is not inconsistent with the Mine Reclamation Agreement and will not adversely affect the interests of the Beneficiary. In no circumstance will this Agreement be modified in a way that impacts the Trustee's rights or duties, without the Trustee's prior written consent.

5.1 Good Faith Duties of Administration. The Trustee will exercise reasonable care, skill and caution in the administration of the Trust and will administer the Trust in good faith, in accordance with the terms of this Agreement. The Trustee will take reasonable steps to protect the Trust Property.

5.2 No Conflicts of Interest. The Trust will be administered solely in the interests of the Beneficiary. The Trustee will not permit to exist a conflict of interest between its duties

under this Agreement and its personal interests and will keep the Trust property separate from the Trustee's own property.

6.1(k) Trustee Records and Reports. The Trustee will keep or cause to be kept and maintained accurate books and records reflecting all income, principal and expense transactions, which books and records will be open at all reasonable times for inspection by Party A or its duly authorized representatives, upon at least two (2) Business Days' prior written notice to the Trustee. The Trustee will furnish statements to Party A and PNM at least as often as annually, as directed by Party A. The Trustee will promptly respond to requests for information related to the administration of the Trust from Party A. When applicable and required by applicable regulations, the Trustee will issue annual IRS Form 1099.

6.1(l) Scope of Undertaking. The Trustee [, as a fiduciary] [Party A and the Trustee may insert this language or omit it] will be subject to and will perform all duties in accordance with [this Agreement] [all rules of law relating to fiduciaries and trustees] [Party A and the Trustee may insert either of the bracketed phrases.]. The Trustee will perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants, agreements or duties will be read into this Agreement against the Trustee. The Trustee will have no duty to perform, cause the performance of, manage, monitor, evaluate or approve the reclamation work. The Trustee is not a principal, participant, or beneficiary in any transaction underlying this Agreement and will have no duty to inquire beyond the terms and provisions of this Agreement except as specifically provided herein. The Trustee will not be required to deliver the Trust Funds or any part thereof, or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold in trust, invest, reinvest, and release, disburse or distribute the Trust Funds as herein provided. The Trustee will not be required to notify or obtain the consent, approval, authorization or order of any court or governmental body to perform its obligations under this Agreement, except as expressly provided herein. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the Parties that, unless otherwise provided herein, the Trustee will not be required to exercise any discretion hereunder and will have no investment or management responsibility and, accordingly, will have no duty to, or liability for its failure to, provide investment recommendations or investment advice to Party A. The Trustee will not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, subject, however, to Section 6.1(m) (if applicable), and its own willful misconduct or [negligence] [gross negligence] [Party A and the Trustee may agree upon either standard]. It is the intention of the Parties that the Trustee will not be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

7.1 Termination of Trust and of this Agreement. The Trust and this Agreement will terminate upon satisfaction of Party A's obligations under the Mine Reclamation Agreement; provided, however, that in the event all fees, expenses, costs and other amounts required to be paid to the Trustee hereunder are not fully and finally paid prior to termination, the provisions of Section 9.1 will survive the termination hereof, and provided further, that the provisions of Section 6.1(n) and Section 6.1(p) if applicable) will, in any event, survive the termination hereof. Notice of termination of the Trust and of this Agreement will be provided to the Trustee in the following manner: The Trust Funds Operating Agent will give written notice to Party A, to each

of the other Parties, and to the Trustee that Party A's obligations under the Mine Reclamation Agreement have been satisfied.

7.2 Distribution of Assets. Until satisfaction of Party A's obligations under the Mine Reclamation Agreement, Party A will have no right of return of any of the Trust Assets; provided, however, that consistent with the provisions and requirements of Section 3.2, the Trustee will, after payment of the fees and expenses of the Trustee, return funds in Party A's Make-up Reclamation Trust Account upon written request of Party A if the default by a Party to the Mine Reclamation Agreement that led to the creation of the Make-up Reclamation Trust Account has been cured. Upon the termination of this Agreement, the Trustee will distribute any remaining assets in the Trust Account to Party A.

11.2 Spendthrift Clause. The interest of the Beneficiary is held subject to a spendthrift trust. No interest in the Trust Funds established pursuant to this Agreement will be transferable or assignable, voluntarily or involuntarily, or be subject to the claims of Party A or its creditors, PNM or its creditors or SJCC or its creditors other than as provided in the Mine Reclamation Agreement.

11.3 Tax Matters. Party A will provide the Trustee with its taxpayer identification number documented by an appropriate Form W8 or W9 (or other appropriate identification information for tax purposes) upon execution of this Agreement. Failure to provide such form may prevent or delay disbursements from the Trust Funds and may also result in the assessment of a penalty and the requirement that the Trustee withhold tax on any interest or other income earned on the Trust Funds. The Parties agree that, for all tax purposes, all interest or other income, gain, or loss from investment of the Trust Funds, as of the end of each calendar year and to the extent required by the Internal Revenue Service or other taxing authority, will be reported as having been earned or lost, as the case may be, by Party A. Any payments of income will be subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable.

11.15 Third Party Beneficiaries. Nothing in this Agreement will entitle any person other than the Parties and SJCC to any claim, cause of action, remedy, or right of any kind, except the rights expressly provided to the persons described in Section 6.1(p) (if applicable).

EXHIBIT 4

ASSUMPTIONS, PROCEDURES AND PRINCIPLES FOR REVISIONS TO EXHIBITS 1A, 1B, 1C, 1D, 1E AND 1F

1. General Principles and Assumptions for Reclamation Funding Curve Revision Calculations:

    a. Contributions of principal and all expenses due to Reclamation Costs are assumed to occur annually at mid-year.
    b. Compounding of Reclamation Trust investment earnings is modeled to occur on a semi-annual basis using the beginning balance for each semi-annual period.
    c. The starting balance for revised Reclamation Funding Curves will be the Reclamation Funding Target Amount of the respective Reclamation Funding Curves being replaced for the calendar year immediately preceding the year in which the Reclamation Costs Review to which the curve is being revised is approved by the Reclamation Oversight Committee.
    d. Revised Reclamation Funding Curves will become effective during the calendar year of their approval.
    e. Any taxes due on Reclamation Trust income were assumed to be paid with funds originating outside of the Trust.
    f. Exhibits 1A, 1B & 1C will be based on the Pre-2017YE Reclamation Liability Costs
    g. Exhibits 1D, 1E & 1F will be based on the Post-2017YE Reclamation Liability Costs
    h. The Reclamation Funding Floor Curves for all Reclamation Funding Curves will be calculated as per §5 of this Exhibit 4.

2. Assumptions Pertaining Only for Purposes of Calculating Opt-in Reclamation Funding Curves:

    a. Investment returns for Opt-in Reclamation Funding Curves will be modeled using an appropriate return rate for a 70%/30% equity/fixed income portfolio return as evidenced in third party return rate studies as exemplified in Exhibit 5.
    b. Full Principal Funding Date:
        i. Revisions to Opt-in Reclamation Funding Curves (Exhibit 1A and Exhibit 1D) for a Reclamation Costs Review that is approved prior to the expiration of the CSA, its successor or replacement agreement, will be calculated with a Full Principal Funding Date equal to the expiration date of the CSA, its successor or replacement agreement, except that, for PNM, prior to January 1, 2018, the Full Principal Funding Date will remain as year-end 2022.
        ii. Revisions to Opt-in Reclamation Funding Curves (Exhibit 1A and Exhibit 1D) for a Reclamation Costs Review that is approved after the expiration of the CSA, its successor or replacement agreement, will be calculated

with a Full Principal Funding Date of December 31 of the calendar year in which the Reclamation Costs Review was approved by the Reclamation Oversight Committee.

c. All expenses due to Reclamation Costs that are due prior to the expiration of the CSA, its successor or replacement agreement, are assumed to be paid for by funds originating outside the Reclamation Trust.

3. Assumptions Pertaining Only for Purposes of Calculating Opt-out Reclamation Funding Curves

   a. Investment returns for Opt-out Reclamation Funding Curves will be modeled using an appropriate return rate for long term fixed income investments as evidenced in third party return rate studies as exemplified in Exhibit 5.
   b. Full Principal Funding Date: Revisions to Opt-out Reclamation Funding Curves made before December 31, 2017 will have a Full Principal Funding Date of December 31, 2017. Revisions to Opt-out Reclamation Funding Curves that are made after December 31, 2017 will have a Full Principal Funding Date of December 31 of the calendar year in which the Reclamation Costs Review upon which the revisions are based was approved.
   c. For calculating Opt-out Funding Curves, all expenses due to Reclamation Costs that are due prior to December 31, 2017 are assumed to be paid for by funds external to the Reclamation Trust.
   d. All expenses due to Reclamation Costs that are due after December 31, 2017 are assumed to be paid for by funds originating from the Reclamation Trust.
   e. A risk adjustment factor of 3% will be added to the Reclamation Funding Target Amounts of the revised Exhibits 1B and 1E for each year after 2016 in order to create revisions to Exhibits 1C and 1F respectively.

4. Calculation of Reclamation Funding Curves:

   a. The revision of Reclamation Funding Curves begins when an updated Reclamation Costs Review has been approved by the Reclamation Oversight Committee. The constant dollar, annual reclamation expenditures that were identified through the Reclamation Costs Review are converted to nominal dollars using escalation/inflation assumptions provided by the Reclamation Investment Committee resulting in a stream of costs for Reclamation Costs through Reclamation Bond Release. This stream of costs forms the basis for calculation of the revised Opt-in or Opt-out Reclamation Funding Target Curves.

   b. For purposes of calculating revised Reclamation Funding Target Curves, the starting balance will be the respective (Opt-in vs. Opt-out) precedent funding curve's Reclamation Funding Target Amount for the calendar year immediately preceding that in which the Reclamation Costs Review was approved. Note that, for revisions of the Opt-out Reclamation Funding Target Curves (Exhibit 1C and Exhibit 1F) the appropriate value for Exhibit 1B and Exhibit 1E must be used for this calculation. This is because the 3% risk adjustment factor is added to the

resulting Exhibit 1B or 1E Reclamation Funding Target Amounts that occur on or after the Full Principal Funding Date in order to create Exhibits 1C and 1F respectively.

c. By definition, the respective Reclamation Funding Target Amounts at the Full Principal Funding Date, for Exhibits 1A, 1B, 1D and 1E, is equal to the net present value (NPV) of all future cash flows associated with the Reclamation Trust when discounted at the appropriate return rate and assuming no additional contributions of principal capital. Once the Reclamation Funding Target Amount of the Full Principal Funding Date has been determined for a given Reclamation Funding Target Curve, a solution for the capital contribution(s) can be determined by assuming one equal capital contribution for each calendar year between the year of the starting balance of the revised Reclamation Funding Target Curve and the Full Principal Funding Date. To calculate a revised Reclamation Funding Target Curve, the beginning balance of each year in the revised Reclamation Funding Target Curve is netted with all cash flows associated with the Reclamation Trust in each respective year, including principal capital contributions; the stream of Reclamation Costs; and Reclamation Trust investment income to determine an ending balance for each year. The resulting respective (Opt-in or Opt-out) schedule of year-end balances for the period in question is the Reclamation Funding Target Curve for Fxhibit 1A and 1B (for Pre-2017YE Reclamation Liability Costs) or, Exhibit 1D and 1E (for Post 2017YE Liability Costs). Exhibit 1C is computed by adding 3% to the Reclamation Funding Target Amount of each year of Exhibit 1B after 2016. Exhibit 1F is computed by adding 3% to the Reclamation Funding Target Amount of each year of Exhibit 1E after 2016.

5. Calculation of Reclamation Funding Floor Curves:

The Reclamation Funding Floor Curve is calculated by multiplying each Reclamation Funding Target Amount by the applicable Funding Floor Percentage shown in Table 1 of this Exhibit 4 for each respective year. In general the Reclamation Funding Floor Curve rises to 100% of the Reclamation Funding Target Curve over the five years immediately prior to the Full Principal Funding Date. Prior to the five year period during which the Funding Floor Percentage increases to 100%, the Funding Floor Percentage is equal to 80% of the Reclamation Funding Target Curve. For purposes of clarity, the Funding Floor Percentages are shown in Table 1 of this Exhibit 4:

Years Before Full Principal Funding	Funding Floor Percentage
>4	80%
4<3	84%
3<2	88%
2<1	92%
1<0	96%
0	100%

Exhibit 4: Table 1

EXHIBIT 5

EXAMPLE OF RETURN RATE STUDY

Assumptions – Asset Classes

- Asset classes are described by their returns, volatility, and correlation with other asset classes
- Expectations for individual asset classes were developed by the Watson Wyatt Investment Consulting Global Asset Model as of January 2010
- Return assumptions are net of fees assuming passive management (or minimum risk)
- Return distributions incorporate fat tails
- Correlations between return-seeking asset classes increase when fat-tail events occur
- Simulated government yield curves and simulated corporate spreads are used in developing liability discount rates and returns on fixed income

Summary assumptions for January 1, 2010 Watson Wyatt Investment Consulting Asset Model						
	1st Year Returns		10th Year Returns		10 Year Returns	
	Arithmetic Mean	Standard Deviation	Arithmetic Mean	Standard Deviation	Geometric Mean	Standard Deviation
Equity Investments						
Global (unhedged)	9.6%	23.6%	8.9%	16.3%	7.6%	5.8%
Global (hedged)	9.2%	23.0%	8.7%	15.3%	7.5%	5.5%
US Equity	9.2%	24.6%	8.6%	16.3%	7.3%	5.9%
US Large Cap	**9.0%**	**24.8%**	**8.5%**	**16.2%**	**7.1%**	**6.0%**
US Small Cap	**10.1%**	**30.0%**	**9.2%**	**21.2%**	**7.0%**	**7.5%**
International (unhedged)	9.9%	27.6%	9.2%	15.3%	7.4%	6.9%
International (hedged)	9.2%	24.6%	8.7%	16.4%	7.3%	6.0%
International Developed	**9.7%**	**27.4%**	**9.0%**	**18.7%**	**7.2%**	**6.7%**
International Developed (hedged)	8.8%	24.2%	8.4%	15.8%	7.1%	5.8%
Emerging Market Equity	12.3%	40.3%	11.0%	31.4%	6.6%	10.6%
Private Equity	**10.8%**	**37.0%**	**9.6%**	**28.0%**	**6.0%**	**9.6%**
REITs	8.0%	23.0%	7.7%	14.0%	6.7%	4.9%
Fixed Income						
US Investment Grade	2.7%	5.6%	5.3%	4.6%	4.3%	0.7%
International Developed	4.0%	11.0%	5.0%	11.0%	4.3%	3.4%
International Developed (hedged)	3.5%	6.5%	4.5%	6.5%	4.1%	2.1%
High Yield	5.4%	12.1%	7.2%	10.1%	6.4%	3.3%
Inflation-Indexed	3.2%	5.9%	4.7%	5.9%	4.0%	2.0%
Long Government	5.6%	11.0%	5.0%	9.0%	4.6%	1.2%
Long Credit	7.8%	17.3%	6.5%	13.4%	5.7%	1.4%
Long Government/Credit	**6.7%**	**13.4%**	**5.8%**	**10.2%**	**5.3%**	**1.3%**
Bank Loans	4.0%	7.8%	6.2%	6.2%	5.5%	1.6%
Emerging Market Debt	4.8%	12.0%	6.0%	10.0%	5.3%	3.3%
Cash	1.6%	1.3%	4.0%	2.3%	3.6%	1.4%
Alternatives						
Real Estate	**6.3%**	**11.5%**	**7.2%**	**10.0%**	**6.8%**	**3.2%**
Hedge Fund-of-Funds	**6.1%**	**8.4%**	**6.5%**	**7.2%**	**6.3%**	**2.7%**
Inflation	1.5%	1.5%	2.5%	2.5%	2.3%	1.6%

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12

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Investment Beliefs and Capital Market Assumptions

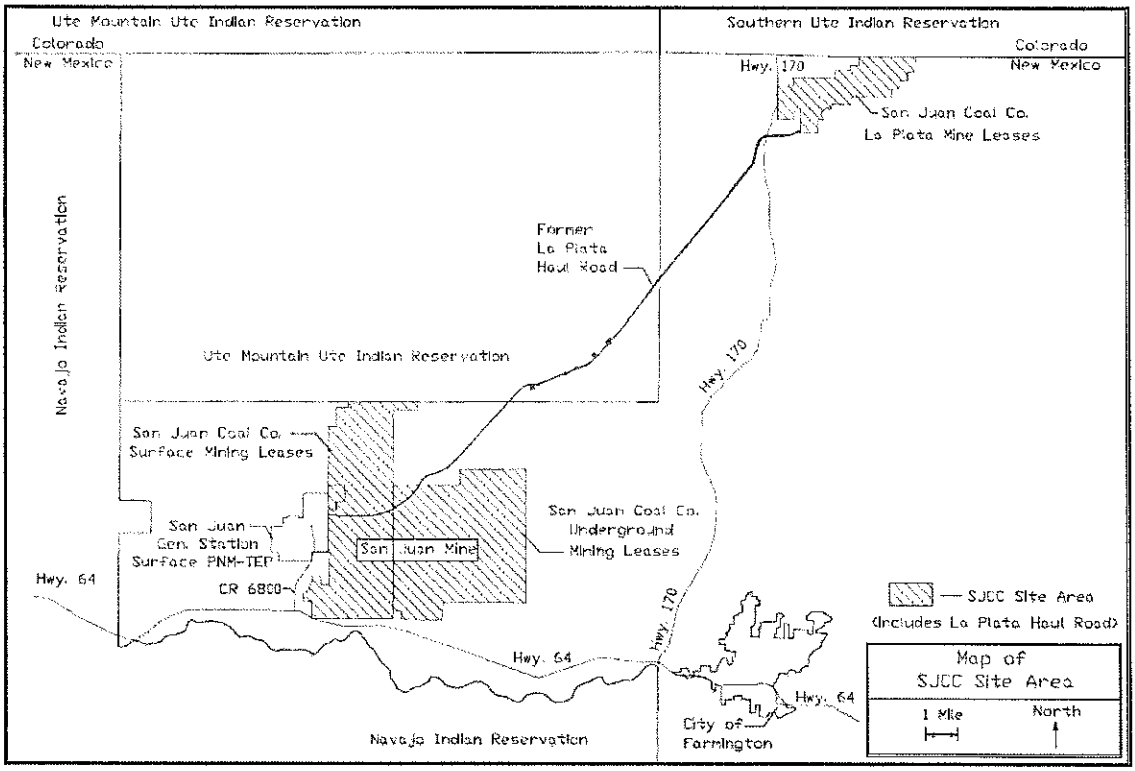
- Economic conditions are highly uncertain over the near-term and do not in our view reflect equilibrium conditions
  - Our capital market assumptions reflect this instability and as a result are highly time-sensitive
  - Advice that is dependent on this set of investment beliefs is thus also time-sensitive
  - Alternative beliefs might well lead to different conclusions; thus it is important that PNM Resources, Inc. consider whether their beliefs and ours are aligned
- Highlight of key changes in our capital market assumptions:
  - Our inflation assumption is 1.5% for the 12 months following January 1, 2010, trending up over 3 years to a 2.5% ultimate rate
  - Our bond assumptions reflect rising short term nominal yields
  - Our short-term equity volatility assumption is 25% for US equities and the short-term volatility period is three years. Our long-term volatility assumption is also maintained at 16%
- The result of these assumptions is to make certain strategies more or less attractive over the short- to mid-term
  - Dollar-duration matching strategies based on a LIBOR underpin will look less attractive than usual
- A natural outcome of our assumptions is to increase the time-dependency of our advice; we suggest that more frequent revisiting of the investment strategy will be necessary

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EXHIBIT 6

SJCC SITE AREA

Detailed descriptions are attached[1]



[1] PNM is continuing to validate SJCC Site Area description.

Site Area Description

SAN JUAN MINE

NMSF 071448 – Federal Coal Lease

Township 29 North, Range 15 West, NMPM, approx. 40.00 acres
Section 4: SW¼NW¼

NM 045196 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 2,409.14acres
Section 2: N½NW¼, NW¼NE¼
Section 3: NE¼NE¼
Section 9: W½NW¼
Section 10: W½
Section 21: All
Section 28: All
Section 33: Lots 1 (38.90), 2 (37.51),
3 (36.11), 4 (34.72), N½, N½S½;
Township 29 North, Range 15 West, NMPM, approx. 154.10acres
Section 3: Lots 7 (37.84), 8 (38.15), and 9 (38.11)
Section 4: SE¼NE¼

Except a tract of land in the NW¼NW¼
Section 21, T30N-R15W identified as the
'PNM Pond' and more particularly described
as follows:

Commencing at the Point of Beginning
from which the northwest corner of said Section 21,
bears N06°07'47"W, 590.47 feet;
thence S85°50'42"E, a distance of 397.22 feet;
thence N52°45'07"E, a distance of 51.53 feet;
thence S60°41'12"E, a distance of 937.42 feet;
thence S00°25'43"E, a distance of 315.45 feet;
thence N87°44'41"W, a distance of 670.35 feet;
thence N49°57'34"W, a distance of 71.49 feet;
thence N01°32'04"W, a distance of 381.28 feet;
thence N83°15'01"W, a distance of 554.64 feet;
thence N06°26'49"E, a distance of 254.89 feet to
the Point of Beginning, and

NM 045196 – Federal Coal Lease (Con't)

Except a tract of land in the NW¼ Section 33, T30N-R15W, identified as the **'Red Clinker Area'** and more particularly described as follows:
Tract 1: Beginning at the East 1/4 corner of Section 32;
thence N, 1,160 feet to the Point of Beginning:
thence S90°00'00"E, a distance of 2,200.00 feet;
thence N00°00'00"E, a distance of 770.00 feet;
thence N90°00'00"W, a distance of 2,196.92 feet;
thence S00°13'45"W, a distance of 770.01 feet
to the Point of Beginning and containing 38.86 acres, m/l.
Tract 2: Beginning at the Southeast corner of Tract 1 above;
thence N00°00'00"E, a distance of 770.00 feet;
thence S49°26'01"E, a distance of 134.57 feet;
thence S31°34'17"E, a distance of 287.40 feet;
thence S25°57'11"E, a distance of 157.99 feet;
thence S15°16'44"W, a distance of 260.60 feet;
thence S20°43'35"W, a distance of 370.06 feet;
thence S48°32'59"W, a distance of 162.71 feet;
thence S83°09'58"W, a distance of 141.30 feet;
thence N46°12'10"W, a distance of 106.54 feet;
thence N05°33'34"W, a distance of 232.04 feet;
thence N27°18'24"E, a distance of 89.70 feet;
thence N60°33'23"W, a distance of 85.58 feet;
thence S90°00'00"E, a distance of 272.80 feet
to the Point of Beginning and containing 7.45 acres, m/l.

NM 045197 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 2,565.60 acres
Section 15: All
Section 22: All
Section 27: All
Section 34: Lots 1 (42.75), 2 (41.85), 3 (40.95), 4 (40.05), N½, N½S½
Township 29 North, Range 15 West, NMPM, approx. 77.52acres
Section 3: Lot 6 (37.52), SE¼NE¼
{Note: There is no surface agreement on the SW¼NE¼ Sec. 15, T30N-R15W with surface owner}

NM 045217 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 1,800.00 acres
Section 3: NW¼NE¼, S½NE¼, NW¼, S½
Section 4: SE¼NE¼, SW¼SW¼, E½SW¼, SE¼
Section 9: E½NW¼, E½, SW¼
Section 10: E½

NM 28093 – Federal Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 3,855.60 acres
Section 13: S½
Section 14: S½
Section 23: All
Section 24: All
Section 25: All
Section 26: All
Section 35: Lots 1 (44.33), 2 (44.07),
3 (43.73), 4 (43.37), N½, N½S½
{Note: There is no surface agreement on the N½SW¼ Sec. 13, T30N-R15W with surface owner}

NM 99144 – Federal Coal Lease

Township 30 North, Range 14 West, NMPM, approx. 4,483.88 acres
Section 17: All
Section 18: All
Section 19: All
Section 20: All
Section 29: All
Section 30: All
Section 31: Lots 1 (41.70), 2 (41.21),
3 (40.73), 4 (40.24), N½, N½S½

MC 0037 – State of New Mexico Coal Lease

Township 30 North, Range 15 West, NMPM, approx. 309.04 acres.
Section 32: Lots 1 (34.82), 2 (36.31), 3 (37.91),
N½SE¼, NE¼SW¼, NW¼NW¼,
SW¼NE¼
{Note: The State Land Office is in the process of terminating MC 0037 and replacing it by issuing a Surface Use Lease due to the tract being mined out and now in the reclamation phase.}

MC 0083 – State of New Mexico Coal Lease
Township 30 North, Range 15 West, NMPM, approx. 520.00 acres
Section 16: E½NE¼, SW¼NE¼, W½NW¼,
S½

MC 0084 – State of New Mexico Coal Lease
Township 30 North, Range 15 West, NMPM, approx. 120.00 acres
Section 16: E½NW¼, NW¼NE¼

MC 0087 – State of New Mexico Coal Lease
Township 30 North, Range 14 West, NMPM, approx. 650.80 acres
Section 32: Lots 1 (43.27), 2 (42.89),
3 (42.51), 4 (42.13), N½,
N½S½

MC 0088 – State of New Mexico Coal Lease
Township 30 North, Range 15 West, NMPM, approx. 649.20 acres
Section 36: Lots 1 (40.57, 2 (41.73),
3 (42.87), 4 (44.03), N½,
N½S½

Crook, Bonnie V. Kennedy, et al – 8 Fee Coal Leases
Township 29 North, Range 15 West, NMPM, approx. 237.16 acres
Section 4: Tract A: Lots 3 (40.01), 4 (40.21),
SE¼NW¼, SW¼NE¼
Tract B: Lots 1 (39.61), 2 (39.81)
except the easterly 1/32 of Lot 1
The coal rights under the easterly
1/32 of Lot 1 are owned by San
Juan Coal Company, approx. 2.5 acres

Bannowsky, Mary Irene, et al – 5 Fee Coal Leases
Township 29 North, Range 15 West, NMPM, approx. 159.97 acres
Section 5: Lots 1 (40.15), 2 (39.82), S½NE¼

Brimhall, Ralph L., et al – Fee Coal Lease
Township 29 North, Range 15 West, NMPM, approx. 80.00 acres
Section 3: SW¼NE¼, SE¼NW¼

Palmer, Barton L., et al – 5 Fee Coal Leases
Township 29 North, Range 15 West, NMPM, approx. 40.00 acres
Section 3: SW¼NW¼

Walker, Vietor H. et al – 6 Fee Coal Leases

Township 29 North, Range 15 West, NMPM, approx. 15.82 acres

Section 3: All of the E½NW¼SE¼ lying North of U. S. Highway 64

Brimhall, Karen, Trustee, et al – 11 Fee Coal Leases

Township 29 North, Range 15 West, NMPM, approx. 45.36 acres

Section 3: That part of the W½NW¼SE¼ and NE¼SW¼ lying North of Highway 64, excepting a parcel in the W½NE¼SW¼ desc. in Book 314, Page 361;

That parcel in the W½NE¼SW¼ desc. In Book 314, Page 361, approx. 1.84 acres

{Note: 50% of the coal rights under B314, P361 (1.84 acres) are owned by San Juan Coal Company}

Smouse, Samuel T. and Mollie Frances – Fee Coal Lease

Township 29 North, Range 15 West, NMPM, approx. 15.40 acres

Section 3: That part of the NW¼SW¼ lying North of Highway 64 desc. as follows:

Beginning at the West ¼ corner of said Section 3, thence N89°44'E 1305.70' along the North line of said NW¼SW¼; thence S00°37'06"E 502 feet; thence S89°44'W 1,306 feet, m/l, to the West side of said NW¼SW¼; thence N00°33'01"W 502' to the Point of Beginning.

NM 80733 (Water Impoundment and Haulroad Right-of-Way)

Township 30 North, Range 15 West, NMPM, approx. 113.75 acres

Section 4: S½S½N½NE¼NE¼, S½NE¼NE¼, S½S½NE¼NW¼NE¼, S½SW¼NW¼NE¼, SE¼NW¼NE¼, E½SE¼SW¼NE¼NW¼, E½SE¼NW¼, S½SE¼NE¼NW¼, E½E½W½SE¼NW¼, SW¼NE¼

NM 26441 (69 kv Powerline Easement)

Township 29 North, Range 15 West, NMPM, approx. .86 acres

Section 2: Pt. of Lot 4 described more particularly as follows:

Beginning at the southwest corner of Section 35, T30N, R15W, NMPM, being a BLM brass cap marked T30N, R15W 35 2 3 34 T29N, R15W 1966; thence along the northerly section line of said Section 2 S89°10'54"E 345.24 feet to a point on the centerline of a 30 foot electrical easement and being the "True Point of Beginning":
thence continuing along the centerline S20°27'05"E 39.30 feet;
thence continuing along the centerline S20°54'52"E 516.11 feet;
thence continuing along the centerline S51°46'42"W 325.55 feet;
thence continuing along the centerline S55°38'08"W 363.77 feet.

Plant and Maintenance Facilities Area

(formerly Ground Lease Agreement - PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. 95.93 acres

Sections 20 and 29:

A tract described as commencing at the Point of Beginning from which the West ¼ corner of Section 28, T30N, R15W, NMPM, bears S00°13'17"W, 1974.83 feet;
thence N89°41'50"W, a distance of 653.95 feet;
thence N00°13'44"E, a distance of 632.31 feet;
thence N86°54'45"W, a distance of 656.83 feet;
thence N00°06'28"W, a distance of 956.78 feet;
thence N50°38'05"W, a distance of 266.86 feet;
thence N63°31'14"W, a distance of 154.86 feet;
thence N67°51'36"W, a distance of 372.42 feet;
thence N76°04'25"W, a distance of 527.90 feet;
thence S61°06'21"W, a distance of 100.19 feet;

Plant and Maintenance Facilities Area (Con't)

thence N10°28'32"W, a distance of 166.18 feet;
thence S69°25'46"E, a distance of 93.01 feet;
thence S81°03'35"E, a distance of 894.85 feet to
a chain link fence corner;
thence N00°08'08"E, a distance of 242.07 feet
along the fence to another fence corner;
thence N81°46'30"E, a distance of 754.68 feet to
another chain link fence;
thence S72°57'52"E, 657.05 feet along a fence line;
thence N01°40'04"E, 90.06 feet along a fence line;
thence N07°14'12"W, 336.64 feet along a fence line;
thence N09°34'59"W, 186.57 feet along a fence line;
thence N89°06'56"E, 120.41 feet along a fence line;
thence N11°34'22"W, 663.23 feet along a fence line;
thence N89°39'56"W, 41.21 feet along a fence line;
thence N10°31'33"W, 70.30 feet along a fence line;
thence N17°19'55"W, 89.42 feet along a fence line;
thence N20°23'16"W, 60.02 feet along a fence line;
thence N23°34'29"W, 522.44 feet along a fence line;
thence N09°18'43"W, 28.92 feet along a fence line;
thence N02°15'30"E, 82.24 feet along a fence line;
thence N48°50'18"E, 179.70 feet along a fence line;
thence N31°46'05"E, 177.25 feet along a fence line;
thence N14°04'54"E, 420.06 feet along a fence line;
thence N56°09'23"E, 130.00 feet along a fence line;
thence N64°24'31"E, 100.08 feet along a fence line;
thence S89°52'45"E, 119.13 feet along a fence line;
thence N06°47'31"E, 355.76 feet along a fence line;
thence N00°14'57"E, 477.00 feet along a fence line;
thence N50°13'45"E, 15.25 feet to the northwest
corner of Section 22, T30N, R15W, NMPM;
thence S00°15'17"W, 5265.48 feet to the
southwest corner of said Section 22;
thence S00°13'17"W, 660.88 feet to the
Point of Beginning.

Gypsum Haulage Easement (PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. 1.70 acres

Sections 17 and 20: A tract described as

Commencing at the Point of Beginning from
which the northwest corner of Section 21
bears S00°15'31"W, 170.63 feet;
thence S77°04'32"W, 325.26 feet;
thence S76°27'03"W, 427.17 feet;
thence S66°38'30"W, 254.62 feet;
thence N02°22'16"W, 129.69 feet;
thence N81°24'59"E, 219.70 feet;
thence N76°09'13"E, 440.11 feet;
thence N76°12'46"E, 336.91 feet to the
west line of Section 16;
thence S00°15'30"W, 74.19 feet along said
west line to the Point of Beginning.

Water Pipeline Easement (Raw Water Pipeline – PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. 1.974 acres

Section 29: Pt. of NE¼ described as follows:

An easement 35 feet wide being 17.5 feet on
each side of the following described centerline:
Beginning at raw waterline tapping point,
coordinates N 2,106,588.74, E 322,801.08,
whence the one-quarter (¼) corner common to
Sections 28 and 29, T30N-R15W, NMPM,
coordinates N 2,105,578.62, E 325,065.37 bears
S65°57'29"E 2,479.39 feet distant; running thence
as an easement S73°27'11"E 207.51 feet to an
angle point, coordinates N 2,106,529.64, E 323,000.00;
thence S57°48'13"E 984.76 feet to an angle
point, coordinates N 2,106,004.94, E 323,833.33;
thence S89°17'22"E 1,230.94 feet to a point in
the east boundary line of said Section 29,
coordinates N 2,105,989.68, E325,064.18.

Easement for Waterline (Underground Waterline – PNM/TEP to SJCC)

Township 30 North, Range 15 West, NMPM, approx. .775 acres

Section 29: Pt. of NE¼ described as follows:

Beginning at a point on PNM's water pipeline
from which the East ¼ corner of Section 29,
T30N-R15W, NMPM bears S50°52'55"E
2,923.13 ft. Thence, N79°25'46"E
1,644.52 ft. to the west edge of the PNM
Ground Lease. Said easement being 20 ft.
either side of this line.

LA PLATA MINE

NM 0315559 – Federal Coal Lease

Township 32 North, Range 12 West, NMPM, approx. 1,964.15 acres
Section 7: Lots 1 (44.18), 2 (44.12),
3 (44.08), SE¼SW¼
Section 8: Lots 5 (34.60), 6 (36.22), 7 (33.60),
8 (33.52)
Section 17: Lots 3 (38.31), 4 (39.18), 5 (38.70)
Section 18: Lots 1 (39.68), 3 (39.18), SE¼NE¼,
NE¼SW¼, N½SE¼

Township 32 North, Range 13 West, NMPM
Section 13: Lots 3 (41.86), 4 (42.21),
5 (42.34), 6 (41.98), 7 (41.57),
8 (41.19), 9 (41.34), 10 (41.72),
11 (42.11), 12 (42.46), S½NW¼
Section 14: S½NE¼, SE¼NW¼, S½
Section 15: That portion of the SE¼ lying
East of State Highway 170
Section 22: E½NE¼
Section 23: N½N½, SW¼NW¼

Chamberlain, Lenore T. Trust, et al Fee Coal Lease

Township 32 North, Range 12 West, NMPM, approx. 490.90 acres
Section 7: S½SE¼
Section 8: Lots 2 (43.58), 3 (43.82), 4 (44.06),
SW¼SW¼
Section 18: E½NW¼, Lot 2 (39.42), SW¼NE¼,
N½NE¼

NM 95280 Right-of-Way (Pits to Stockpile Spoil Area)

Township 32 North, Range 12 West, NMPM, approx. 234.93 acres
Section 7: Lot 5 (39.82)
Section 17: Lots 2 (35.17), 6 (37.83), 12 (38.31)

Township 32 North, Range 13 West, NMPM
Section 13: Lots 1 (42.08), 2 (41.72)

{Note: Right-of-Way document describes 230 acres
whereas, GLO lot acreages calculates to 234.93 acres.
NM 95280 is outside the leased area but within the permitted area.}

LA PLATA TRANSPORTATION CORRIDOR

NM 55331 Right-of-Way Parcel #1 (Facilities Site)

Township 32 North, Range 13 West, NMPM, approx. 309.19 acres
Sections 23 and 24: A tract of land more specifically described as follows:

Beginning
at a point which is the southeast corner of
Section 23, thence N00°37'03"W, 573.34 feet
which is the true point of beginning;

thence N89°04'50"W 2868.91 feet;
thence N00°18'26"W 605.88 feet;
thence N00°18'26"W 2776.13 feet;
thence N89°50'32"W 1103.93 feet;
thence N00°01'46"W 500.00 feet;
thence S89°50'32"E 1320.30 feet;
thence S89°29'38"E 2627.89 feet;
thence N01°11'54"W 1329.93 feet;
thence S86°08'05"E 2555.17 feet;
thence S71°13'08"W 619.48 feet;
thence S32°25'20"E 407.64 feet;
thence S34°28'08"E 95.13 feet;
thence S57°51'16"W 495.49 feet;
thence N32°21'19"W 500.44 feet;
thence S44°17'46"W 1525.10 feet;
thence S27°25'53"E 934.13 feet;
thence S54°16'49"W 235.52 feet;
thence N86°39'05"W 669.49 feet;
thence S00°23'38"E 2079.72 feet to
the true Point of Beginning.

{Note: Right-of-Way document describes Parcel #1 as having 309.19 acres, whereas the plat and description describes 306.6 acres.}

NM 55331 Right-of-Way Parcel #2

Township 32 North, Range 13 West, NMPM, approx. 24.78 acres
Sections 23 and 26: A tract of land in the SW¼ of Section 23 and the NW¼ Section 26 more specifically described as follows:

Beginning
at a point which is the SW corner of said
Section 23;
thence N00°19'53"E, a distance of 8.31 feet
which is the true Point of Beginning:
thence N00°19'53"E, a distance of 340.26 feet;
thence N73°10'58"E, a distance of 106.41 feet;

NM 55331 Right-of-Way Parcel #2 (con't.)

thence S60°42'49"E, a distance of 187.74 feet;
thence N73°19'36"E, a distance of 1,239.90 feet;
thence N63°59'44"E, a distance of 328.36 feet;
thence N66°19'35"E, a distance of 354.39 feet;
thence N58°17'56"E, a distance of 262.08 feet;
thence N54°26'57"E, a distance of 103.78 feet;
thence N51°54'04"E, a distance of 96.96 feet;
thence S00°18'26"E, a distance of 605.88 feet;
thence N89°04'52"W, a distance of 522.47 feet;
thence S69°01'24"W, a distance of 154.53 feet;
thence S77°06'06"W, a distance of 308.34 feet;
thence S72°04'10"W, a distance of 573.03 feet;
thence S40°52'01"W, a distance of 119.77 feet;
thence S73°06'14"W, a distance of 811.96 feet;
thence N46°58'26"W, a distance of 82.00 feet;
thence S73°05'57"W, a distance of 35.85 feet to
the true Point of Beginning.

{Note: Right-of-Way document describes Parcel #1 as having 24.78 acres, whereas the plat and description describes 16.43 acres.}

NM 55331 Right-of-Way Parcel #3

Township 32 North, Range 13 West, NMPM, approx. 23.13 acres
Section 33: A tract of land in the NE¼SW¼
and the W½NE¼ which is more specifically
described as follows:

Beginning at a point
whence the NW corner of said Section 33
bears N81°22'47"W a distance of 3,941.63 feet;
thence S00°47'13"E, a distance of 351.70 feet;
thence S38°59'10"W, a distance of 1,059.06 feet;
thence S51°00'50"E, a distance of 160.00 feet;
thence S38°59'10"W, a distance of 600.00 feet;
thence N51°00'50"W, a distance of 160.00 feet;
thence S38°59'10"W, a distance of 596.51 feet to
a point of tangency with a curve to the left,
thence 1,328.35 feet along the arc of said curve which
has a radius of 8,457.18 feet, a central angle of
08°59'58" and a long chord which bears S34°29'11"W
a distance of 1,326.98 feet;
thence S29°59'12"W, a distance of 252.01 feet;
thence N88°56'54"W, a distance of 257.09 feet;

NM 55331 Right-of-Way Parcel #3 (Con't.)

thence N29°59'12"E, a distance of 376.39 feet to
a point of tangency with a curve to the right,

thence 1,363.69 feet along the arc of said curve which has a radius of 8,682.18 feet, a central angle of 08°59'58" and a long chord which bears N34°29'11"E a distance of 1,362.29 feet;
thence N38°59'10"E, a distance of 2,525.88 feet to the Point of Beginning.

NM 55331 Right-of-Way Parcel #4

Township 31 North, Range 13 West, NMPM, approx. 100.68 acres
Section 7: Pt. SW¼ and N½SE¼
Section 8: Pt. NW¼NE¼, SE¼NW¼, and NW¼SW¼
Section 18: Pt. NW¼NW¼ (Lots 5, 6, and 7)
which is more specifically described as follows:

Beginning at a point on the West boundary of said Section 18 whence the Northwest corner of said Section 18 bears N00°55'17"E a distance of 794.74 feet;
thence 460.45 feet along the arc of a curve which has a radius of 6,893.89 fee, a central angle of 03°49'37" and a long chord which bears N49°41'02"E a distance of 460.37 feet to a point of tangency with a curve to the left;
thence 1,527.76 feet along the arc of a curve which has a radius of 4,466.65 feet, a central angle of 19°35'50" and a long chord which bears N41°47'55"E a distance of 1,520.32 feet;
thence N32°00'00"E a distance of 1,022.45 feet to a point of tangency with a curve to the right;
thence 1,109.66 feet along the arc of said curve which has a radius of 2,346.90 feet, a central angle of 27°05'26" and a long chord which bears N45°32'43" a distance of 1,099.35 feet;
thence N30°54'34"W a distance of 50.00 feet to a non-tangent point of intersection with a curve concave to the southeast;
thence 977.91 feet along the arc of said curve

NM 55331 Right-of-Way Parcel #4 (Con't.)

which has a radius of 2,396.90 feet, a central angle of 23°22'34"E and a long chord which bears N70°46'43"E and a distance of 971.14 feet;
thence S07°32'00"E, a distance of 50.00 feet;
thence N82°28'00"E, a distance of 292.16 feet to a point of tangency with a curve to the left;
thence 1,703.31 feet along the arc of said curve which has a radius of 2,082.99 feet, a central angle of 46°51'07" and a long chord which bears N59°02'27"E a distance of 1,656.25 feet;
thence N35°36'53"E, a distance of 2,143.56 feet;
thence S89°29'19"E, a distance of 550.04 feet;
thence S35°36'53"W, a distance of 2,459.87 feet to a point of tangency with a curve to the right;
thence 2,071.28 feet along the arc of said curve which has a radius of 2,532.99 feet, a central angle of 46°51'07" and a long chord which bears S59°02'27"W a distance of 2,014.05 feet;
thence S82°28'00"W a distance of 292.16 feet to a point of tangency with a curve to the left;
thence 1,670.81 feet along the arc of said curve which has a radius of 1,896.90 feet, a central angle of 50°28'00" and a long chord which bears S57°14'00"W a distance of 1,617.32 feet;
thence S32°00'00"W a distance of 1,022.45 feet to a point of tangency with a curve to the right;
thence 1,681.67 feet along the arc of said curve which has a radius of 4,916.65 feet, a central angle of 19°35'50" and a long chord which bears S41°47'55"W a distance of 1,673.49 feet to a point of tangency with a curve to the left;
thence 866.41 feet along the arc of said curve which has a radius of 6,443.89 feet, a central angle of 07°42'13" and a long chord which bears S47°44'43"W a distance of 865.75 feet;
thence N00°55'17"E, a distance of 637.03 feet to the Point of Beginning.

NM 55331 Right-of-Way, there is not a Parcel #5

NM 55331 Right-of-Way Parcel #6

Township 30 North, Range 14 West, NMPM, approx. 69.58 acres
Section 7: A tract of land in the NW¼SW¼
Township 30 North, Range 15 West, NMPM
Section 12: A tract of land in the SE¼ which

tracts are more specifically described as follows:

Beginning at a point whence the West ¼
Corner of said Section 7, T30N, R14W bears
N89°40'49"W a distance of 75.79 feet;
thence S89°40'49"E, a distance of 1,396.85 feet;
thence S43°51'50"W, a distance of 3,629.37 feet;
thence N89°38'48"W, a distance of 287.20 feet;
thence North a distance of 1,160.56 feet;
thence N43°51'50"E a distance of 2,028.05
feet to the Point of Beginning.

NM 55331 Right-of-Way Pareel #7

Township 30 North, Range 15 West, NMPM, approx. 16.37 acres
Section 13: A tract of land in the N½NW¼,
and the NW¼NE¼ which is more specifically
described as follows:

Beginning at a point whence the Northwest
Corner of said Section 13 bears N00°25'29"E
A distance of 994.58 feet;
thence 772.26 feet along the arc of a curve which
has a radius of 2,404.33 feet, a central angle of
18°24'12" and a long chord which bears
N69°03'46"E a distance of 768.95 feet;
thence N78°15'52"E a distance of 1,064.12 feet
to a point of tangency with a curve to the left;
thence 1,103.42 feet along the arc of said curve
which has a radius of 2,752.29 feet, a central
angle of 22°58'13" and a long chord which bears
N66°46'46"E a distance of 1.096.04 feet;
thence S89°38'49"E a distance of 365.47 feet
to a non-tangent point intersection with a curve
which is concave to the northwest;
thence 1,493.28 feet along the arc of said curve
which has a radius of 2,977.29 feet, a central angle
of 28°44'14" and a long chord which bears
S63°53'45"W a distance of 1,477.68 feet;
thence S78°15'52"W a distance of 1,064.12 feet

NM 55331 Right-of-Way Parcel #7(Con't.)

to a point of tangency with a curve to the left;
thence 835.44 feet along the arch of said curve which has a radius of 2,179.33 feet, a central angle of 21°57'51" and a long chord which bears S67°16'57"W a distance of 830.33 feet;
thence N00°25'30"E a distance of 266.19 feet to the Point of Beginning.

NM 55331 Right-of-Way Parcel #8

Township 30 North, Range 15 West, NMPM, approx. 27.30 acres
Section 14: Pt. SE¼SW¼ and W½SE¼
Section 23: Pt. NW¼NW¼ which is more specifically described as follows:

Beginning at a point whence the Northwest corner of said Section 23 bears N00°20'11"E a distance of 948.01 feet;
thence 613.40 feet along the arc of a curve which has a radius of 5,199.51 feet, a central angle of 06°45'33" and a long chord which bears N59°44'19"E a distance of 613.04 feet;
thence N56°21'32"E a distance of 1,032.68 feet to a point of tangency with a curve to the left;
thence 1,969.96 feet along the arc of said curve which has a radius of 9,618.05 feet, a central angle of 11°44'07" and a long chord which bears N50°29'29"E a distance of 1,966.52 feet;
thence N44°37'25"E a distance of 196.98 feet to a point of tangency with a curve to the left;
thence 1,545.89 feet along the arc of said curve which has a radius of 5,617.08 feet, a central angle of 15°46'07" and a long chord which bears N36°44'22"E a distance of 1,541.02 feet;
thence S00°24'38" a distance of 444.86 feet to a non-tangent point of intersection with a curve which is concave to the northwest;
thence 1,216.37 feet along the arc of said curve which has a radius of 5,842.08 feet, a central angle of 11°55'46" and a long chord which bears S38°39'32"W a distance of 1,214.17 feet;
thence S44°37'25"W a distance of 196.98 feet to a point of tangency with a curve to the right;

NM 55331 Right-of-Way Parcel #8 (Con't.)
thence 2,016.05 feet along the arc of said curve which has a radius of 9,843.05 feet, a central angle of 11°44'07" and a long chord which bears S50°29'29"W a distance of 2,012.52 feet;
thence S56°21'32"W a distance of 1,032.68 feet to a point of tangency with a curve to the right;
thence 755.04 feet along the arc of said curve which has a radius of 5,424.51 feet, a central angle of 07°58'30" and a long chord which bears S60°20'48"W a distance of 754.44 feet;
thence N00°20'11"E a distance of 252.30 feet to the Point of Beginning.

NM 55331 Right-of-Way there is not a Parcel #9

NM 55331 Right-of-Way Parcel #10
Township 30 North, Range 15 West, NMPM, approx. 49.99 acres
Section 22: Pt. N½ which is more specifically described as follows:
Beginning at a point whence the Northwest corner of said Section 22 bears N00°09'05"E a distance of 1,002.94 feet;
thence N87°23'54"E a distance of 349.28 feet to a point of tangency with a curve to the right;
thence 685.78 feet along the arc of said curve which has a radius of 1,402.66 feet, a central angle of 28°00'46" and a long chord which bears S78°35'43"E a distance of 678.97 feet;
thence S64°35'20"E a distance of 767.42 feet to a point of tangency with a curve to the left;
thence 693.64 feet along the arc of said curve which has a radius of 1,505.37 feet, a central angle of 26°24'02" and a long chord which bears S77°47'21"E a distance of 687.52 feet;
thence N89°00'38"E a distance of 524.24 feet to a point of tangency with a curve to the left;
thence 533.69 feet along the arc of said curve which has a radius of 1,733.70 feet, a central angle of 17°38'15" and a long chord which bears N80°11'31"E a distance of 531.58 feet;
thence N71°22'23"E a distance of 1,152.22 feet to a point of tangency with a curve to the left;

NM 55331 Right-of-Way Parcel #10 (Con't.)

thence 781.60 feet along the arc of said curve
which has a radius of 5,112.01 feet, a central
angle of 08°45'37" and a long chord which bears
N66°59'34"E a distance of 780.84 feet;
thence S00°20'11"W a distance of 447.43 feet to
a non-tangent point of intersection with a curve
which is concave to the southwest;
thence 634.56 feet along the arc of said curve
which has a radius of 5,512.01 feet, a central angle
of 06°35'46" and a long chord which bears S68°04'30"W
a distance of 634.21 feet; thence S71°22'23"W a distance
of 1,152.22 feet to a point of tangency with a curve to the right;
thence 656.82 feet along the arc of said curve
which has a radius of 2,133.70 feet, a central angle
of 17°38'15" and a long chord which bears
S80°11'31"W a distance of 654.23 feet;
thence S89°00'38"W a distance of 524.24 feet
to a point of tangency with a curve to the right;
thence 877.95 feet along the arc of said curve
which has a radius of 1,905.37 feet, a central angle
of 26°24'02" and a long chord which bears
N77°47'21"W a distance of 870.20 feet;
thence N64°35'20"W a distance of 767.42 feet to
a point of tangency with a curve to the left;
thence 490.22 feet along the arc of said curve which
has a radius of 1,002.66 feet, a central angle of
28° 00'46" and a long chord which bears
N78°35'43"W a distance of 485.35 feet;
thence S87°23'54"W a distance of 368.52 feet;
thence N00°09'05"E a distance of 400.45 feet to the
Point of Beginning.

NM 55331 Right-of-Way Parcel #11

Township 30 North, Range 15 West, NMPM, approx. 30.02 acres
Section 21: Pt. NW¼ which is more specifically
described as follows:

Beginning at a point whence the North ¼
corner of said Section 21 bears N00°10'14"E
a distance of 1,179.71 feet;
thence S82°18'16"W a distance of 319.81 feet
to a point of tangency with a curve to the right;
thence 502.06 feet along the arc of said curve
which has a radius of 624.60 feet, a central angle
of 46°03'18" and a long chord which bears
N74°40'07"W a distance of 488.65 feet;

NM 55331 Right-of-Way Parcel #11 (Con't.)

thence N51°38'24"W, a distance of 666.92 feet;
thence S00°13'07"W, a distance of 508.59 feet;
thence S51°38'30"E, a distance of 536.01 feet;
thence S51°55'57"W, a distance of 1,779.10 feet;
thence S89°36'20"E, a distance of 643.11 feet;
thence N51°55'57"E, a distance of 1,398.79 feet to a point of tangency with a curve to the right;
thence 390.59 feet along the arc of said curve which has a radius of 736.84 feet, a central angle of 30°22'19" and a long chord which bears N67°07'07"E a distance of 386.03 feet;
thence N82°18'16"E a distance of 194.00 feet;
thence N00°10'14"E a distance of 403.80 feet to the Point of Beginning.

NM 55331 Right-of-Way Parcel #12

Township 30 North, Range 15 West, NMPM, approx. 2.74 acres
Section 21: Pt. SW¼NW¼ which is more specifically described as follows:

Beginning at a point whence the Northwest corner of said Section 21 bears N00°16'00"E a distance of 1,318.35 feet;
thence S89°34'10"E a distance of 147.02 feet;
thence S05°38'47"W a distance of 927.76 feet;
thence S00°18'47"W a distance of 394.39 feet;
thence N89°36'20"W a distance of 59.71 feet;
thence N00°16'00"E a distance of 1,318.35 feet to the Point of Beginning.

FEE SURFACE LANDS OWNED BY SAN JUAN COAL COMPANY

(Transportation 'Haulroad' Corridor)

Township 32 North, Range 13 West, NMPM, approx. 240.00 acres
Section 22: Pt. S½SE¼SE¼
Section 27: Pt. N½NE¼NE¼, NW¼NE¼ NE¼NW¼, W½NW¼, NW¼SW¼

Steward, Chester E., et ux
(Transportation 'Haulroad' Corridor)

Township 32 North, Range 13 West, NMPM, approx. 13.13 acres
Section 27: Pt. SW¼SW¼
Section 28: Pt. SE¼SE¼
Section 33: Pt. NE¼NE¼ which is more
specifically described as follows:

Beginning at a point on the west line of NE¼NE¼
Section 33 from which the NW corner of
said Section 33 bears N81°22'47"W a distance
of 3,941.63 feet;
thence N38°59'10"E a distance of 1,956.98 feet
to a point of tangency with a curve to the left;
thence 308.66 feet along the arc of said curve
which has a radius of 456.86 feet, a central angle
of 38°42'36" and a long chord which bears
N19°37'52"E a distance of 302.82 feet;
thence S89°43'26"E a distance of 360.98 feet
along the North line of SW¼SW¼ Section 27
to a point of intersection with the north right-of-way
of County Road 1191;
thence S38°39'26"W a distance of 275.58 feet along
the north right-of-way of County Road 1191 to a non-
tangent point of intersection with a curve which is
concave to the southwest;
thence 240.86 feet along the arc of said curve which has
a radius of 681.86 feet, a central angle of 20°14'21"
and a long chord which bears S28°52'02"W a distance
of 239.61 feet;
thence S38°59'10"W a distance of 2,227.29 feet to a
point on the west line of the NE¼NE¼ Section 33;
thence N00°47'13"W a distance of 351.70 feet to the
Point of Beginning.

Harris, John E., Trustee, et al
(Transportation 'Haulroad' Corridor)

Township 32 North, Range 13 West, NMPM, approx. 81.00 acres
Section 33: Pt. SW¼
Township 31 North, Range 13 West, NMPM
Section 4: Pt. NW¼NW¼
Section 5: Pt. NE¼, S½ which is more specifically described as follows:

Beginning at a point on the south line of said Section 5, from which the SW corner of said Section 5 bears N88°04'38"W a distance of 2,397.63 feet;
thence N35°36'53"E a distance of 2,884.97 feet to a point of tangency with a curve to the left;
thence 1,176.93 feet along the arc of said curve which has a radius of 11,981.46 feet, a central angle of 5°37'41" and a long chord which bears N32°48'03"E a distance of 1,176.46 feet;
thence N29°59'12"E a distance of 3,972.34 feet to the east line of the W½SW¼ of the aforesaid Section 33;
thence S00°22'48"E along said east line a distance of 176.54 feet to the north line of the S½SW¼ of said Section 33;
thence S88°56'54"E along said North line a distance of 412.21 feet;
thence S29°59'12"W a distance of 4,019.46 feet to a point of tangency with a curve to the right;
thence 1,221.14 feet along the arc of said curve which has a radius of 12,431.76 feet, a central angle of 5°37'41" and a long chord which bears S32°48'03"W a distance of 1,220.65 feet;
thence S35°36'53"W a distance of 2,568.66 feet to the South line of the aforesaid Section 5;
thence N89°29'19"W along said South line a distance of 550.04 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Transportation 'Haulroad' Corridor

Township 31 North, Range 14 West, NMPM, approx. 116.95 acres

A tract of land which is more specifically described as follows:

Beginning at a point on the East boundary of said Range 14 West whence the Northwest Corner of Section 18, T31N, R13W, NMPM bears N00°55'17"E a distance of 853 feet;
thence S00°55'17"W a distance of 412.00 feet along said range line;
thence S40°09'02"W a distance of 2,370.92 feet;
thence S37°44'32"W a distance of 185.50 feet;
thence S52°15'28"E a distance of 165.00 feet;
thence S37°44'32"W a distance of 500.00 feet;
thence N52°15'28"W a distance of 165.00 feet
thence S37°44'32"W a distance of 200.00 feet;
thence S52°15'28"E a distance of 75.00 feet;
thence S37°44'32"W a distance of 700 feet;
thence N52°15'28"W a distance of 75.00 feet;
thence S37°44'32"W a distance of 1,564.50 feet to a point of tangency with a curve to the left;
thence 1,002.04 feet along the arc of said curve which has radius of 40,798.56 feet, a central angle of 01°24'26" and a long chord which bears S37°02'19"W a distance of 1,002.01 feet;
thence S36°20'06"W a distance of 2,806.94 feet to a point of tangency with a curve to the right;
thence 1,005.56 feet along the arc of said curve which has a radius of 9,736.73 feet, a central angle of 05°55'02" and a long chord which bears S39°17'37"W a distance of 1,005.11 feet;
thence S42°15'08"W a distance of 1,425.81 feet;
thence S47°44'52"E a distance of 25.00 feet;
thence S42°15'08"W a distance of 500.00 feet;
thence N47°44'52"W a distance of 25.00 feet;
thence S42°15'08"W a distance of 924.19 feet;
thence S47°44'52"E a distance of 165.00 feet;
thence S42°15'08"W a distance of 650.00 feet;
thence N47°44'52"W a distance of 165.00 feet;
thence S42°15'08"W a distance of 2,655.18 feet to a point of tangency with a curve to the right;
thence 2,192.00 feet along the arc of said curve

Ute Mountain Ute Tribe (Con't.)

which has a radius of 5,206.62 feet, a central angle of 24°07'18" and a long chord which bears S54°18'47"W a distance of 2,175.85 feet;
thence S23°37'47"E a distance of 25.00 feet to a non-tangent point of intersection with a curve which is concave to the Northwest;
thence 291.66 feet along the arc of said curve which has a radius of 5,231.62, a central angle of 3°11'39" and a long chord which bears S67°58'16"W a distance of 291.62 feet;
thence S69°34'05"W a distance of 218.11 feet;
thence N20°25'55"W a distance of 25.00 feet;
thence S69°34'05"W a distance of 1,168.74 feet;
thence S68°07'53"W a distance of 1,579.63 feet;
thence S21°52'07"E a distance of 25.00 feet;
thence S68°07'53"W a distance of 250.00 feet;
thence N21°52'07"W a distance of 25.00 feet;
thence S68°07'53"W a distance of 3,738.70 feet to a point of tangency with a curve to the right;
thence 855.55 feet along the arc of said curve which has a radius of 4,973.25 feet, a central angle of 09°51'24" and a long chord which bears S73°03'35"W a distance of 854.50 feet;
thence S12°00'43"E a distance of 165.00 feet to a non-tangent point of intersection with a curve which is concave to the Northwest;
thence 672.27 feet along the arc of said curve which has a radius of 5,138.25 feet; a central angle 07°29'47" and a long chord which bears S81°44'10"W a distance of 671.79 feet;
thence N04°30'56"W a distance of 165.00 feet a non-tangent point of intersection with a curve which is concave to the northwest;
thence 100.01 feet along the arc of said curve which has a radius of 4,973.25 feet, a central angle of 01°09'08" and a long chord which bears S86°03'39"W a distance of 100.01 feet;

Ute Mountain Ute Tribe (Con't.)

thence S86°38'12"W a distance of 318.57 feet
to a point of tangency with a curve to the left;
thence 1,859.59 feet along the arc of said curve
which has a radius of 2,491.00 feet, a central
angle of 42°46'21" and a long chord which
bears S65°15'01"W a distance of 1,816.70 feet;
thence S43°51'50"W a distance of 1,800.42 feet;
thence S46°08'10"E a distance of 25.00 feet;
thence S43°51'50"W a distance of 500.00 feet;
thence N46°08'10"W a distance of 25.00 feet;
thence S43°51'50"W a distance of 111.93 feet
to a point of intersection with the south
boundary of said Township 31 North;
thence N89°45'09"W a distance of 172.66 feet
along said South boundary;
thence N43°51'50"E a distance of 231.04 feet;
thence N46°08'10"W a distance of 25.00 feet;
thence N43°51'50"E a distance of 500.00 feet;
thence S46°08'10"E a distance of 25.00 feet;
thence N43°51'50"E a distance of 1,800.42 feet
to a tangency with a curve to the right;
thence 1,952.90 feet along the arc of said curve
which has a radius of 2,616.00 feet, a central
angle of 42°46'21" and a long chord which
bears N65°15'01"E a distance of 1,907.87 feet;
thence N86°38'12"E a distance of 318.57 feet
to a point of tangency with a curve to the left;
thence 1,565.88 feet along the arc of said curve
which has a radius of 4,848.25 feet, a central
angle of 18°30'19" and a long chord which
bears N77°23'02"E a distance of 1,559.08 feet;
thence N68°07'53"E a distance of 3,708.70 feet;
thence N21°52'07"W a distance of 100.00 feet;
thence N68°07'53"E a distance of 250.00 feet;
thence S21°52'07"E a distance of 100.00 feet;
thence N68°07'53"E a distance of 1,611.10 feet;
thence N20°25'55"W a distance of 165.00 feet;

Ute Mountain Ute Tribe (Con't.)

thence N69°34'05"E a distance of 500.00 feet;
thence S20°25'55"E a distance of 165.00 feet;
thence N69°34'05"E a distance of 670.47 feet;
thence N20°25'55"W a distance of 25.00 feet;
thence N69°34'05"E a distance of 218.11 feet
to a point of tangency with a curve to the left;
thence 281.90 feet along the arc of said curve
which has a radius of 5,056.62 feet, a central
angle of 3°11'39" and a long chord which bears
N67°58'16"E a distance of 281.86 feet;
thence S23°37'47"E a distance of 25.00 feet;
thence 2,139.38 feet along the arc of said curve
which has a radius of 5,081.62 feet, a central
angle of 24°07'18" and a long chord which
bears N54°18'47"E a distance of 2,123.61 feet;
thence N42°15'08"E a distance of 4,229.37 feet;
thence N47°44'52"W a distance of 25.00 feet;
thence N42°15'08"E a distance of 500.00 feet;
thence S47°44'52"E a distance of 25.00 feet;
thence N42°15'08"E a distance of 1,425.81 feet
to a point of tangency with a curve to the left;
thence 992.66 feet along the arc of said curve
which has a radius of 9,611.78 feet, a central
angle of 05°55'02" and a long chord which
bears N39°17'37"E a distance of 992.22 feet;
thence N36°20'06"E a distance of 575.02 feet;
thence N53°39'54"W a distance of 165.00 feet;
thence N36°20'06"E a distance of 650.00 feet;
thence S53°39'54"E a distance of 165.00 feet;
thence N36°20'06"E a distance of 1,581.92 feet
to a point of tangency with a curve to the right;
thence 252.56 feet along the arc of said curve
which has a radius of 40,923.56 feet, a central
angle of 00°21'13" and a long chord which
bears N36°30'43"E a distance of 252.57 feet;
thence N53°18'41"W a distance of 25.00 feet
to a non-tangent point of intersection with a

Ute Mountain Ute Tribe (Con't.)

curve which is concave to the southeast;
thence 500.28 feet along the arc of said curve
which has a radius of 40,948.56 feet, a central
angle of 00°42'00" and a long chord which
bears N37°02'19"E a distance of 500.28 feet;
thence S52°36'41"E a distance of 25.00 feet
to a non-tangent point of intersection with a
curve which is concave to the southeast;
thence 252.56 feet along the arc of said curve
which has a radius of 40,923.56 feet, a central
angle of 00°21'13" and a long chord which
bears N37°33'56"E a distance of 252.57 feet;
thence N37°44'32"E a distance of 1,464.50 feet;
thence N52°15'28"W a distance of 50.00 feet;
thence N37°44'32"E a distance of 650.00 feet;
thence S52°15'28"E a distance of 50.00 feet;
thence N37°44'32"E a distance of 450.00 feet;
thence N52°15'28"W a distance of 80.00 feet;
thence N37°44'32"E a distance of 400.00 feet;
thence S52°15'28"E a distance of 80.00 feet;
thence N37°44'32"E a distance of 185.50 feet;
thence N33°05'30"E a distance of 1,541.72 feet;
thence N42°47'37"E a distance of 1,166.53 feet
to the Point of Beginning.

Ute Mountain Ute Tribe, Borrow Area No. 6

Township 31 North, Range 14 West, NMPM, approx. 8.02 acres

Section 33: Pt. SW¼, which is more particularly described as follows:

Beginning S75°25'58"E 522.87 feet from t he West Quarter Corner of said Section 33, said point of beginning being a point on the Southerly right-of-way line of the proposed San Juan Coal Company Haul Road;
thence N85°44'05"E 78.12 feet (chord distance) along said right-of-way;
thence N86°38'12"E 318.57 feet along said right-of-way;
thence N86°03'39"E 100.01 feet (chord distance) along said right-of-way;
thence S04°30'56"E 165.00 feet;
thence S03°21'48"E, 535.00 feet;
thence S86°38'12"W 500.00 feet;
thence N03°21'48"W 697.74 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Borrow Area No. 7

Township 31 North, Range 14 West, NMPM, approx. 9.64 acres

Section 26: Pt. SW¼
Section 27: Pt. SE¼, said tracts being more particularly described as follows:

Beginning S15°28'16"W 208.17 feet from the East Quarter Corner of said Section 27;
thence S47°44'52"E 700.00 feet to a point on the Westerly right-of-way line of proposed San Juan Coal Company Haul Road;
thence S42°15'08"W 400.01 feet along said right-of-way;
thence S43°21'33"W 200.04 feet along said right-of-way;
thence N47°44'52"W 696.14 feet;
thence N42°15'08"E 600.00 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Borrow Area No. 8

Township 31 North, Range 14 West, NMPM, approx. 10.33 acres

Section 26: N½, more particularly described as follows:

Beginning S08°01'26"E 257.69 feet from the North Quarter Corner of said Section 26;
thence S47°44'52"E 450.00 feet to a point on the Westerly right-of-way line of the proposed San Juan Coal Company Haul Road;
thence S42°15'08"W 1,000.00 feet along said right-of-way;
thence N47°44'52"W 450.00 feet;
thence N42°15'08"E 1,000.00 feet to the Point of Beginning.

Ute Mountain Ute Tribe, Drainage Control Right-of-Way

Township 31 North, Range 14 West, NMPM, approx. 31.27 acres

A tract of land which is more specifically described as follows:

Using the bearing North between the West Quarter Corner and the NW corner of Section 33, T31N, R14W, NMPM, as the basis of bearing and beginning at a point from which the West Quarter Corner of said Section 33 bears S53°01'21"E a distance of 1,318.25 feet;
thence S86°38'12"W a distance of 500.00 feet;
thence N03°21'48"W a distance of 697.74 feet tangency with a curve to the left;
thence 100.14 feet along the arc of said curve which has a radius of 2,490.98 feet, an angle of 2-18-12 and a long chord which bears S83°41'27"W a distance of 100.13 feet;
thence S03°21'48"E a distance of 789.84 feet;
thence N86°38'12"E a distance of 708.14 feet;
thence N03°21'48"W a distance of 535.00 feet to a non-tangent point of intersection with a curve which is concave to the northwest;

Ute Mountain Ute Tribe, Drainage Control Right-of-Way (Con't.)

thence 685.36 feet along the arc of said curve
which has a radius of 5,238.25 feet, an angle
of 07°29'47" and a long chord which bears
N80°34'24"E a distance of 684.86 feet;
thence N13°09'50"W a distance of 165.40 feet
to a non-tangent point of intersection with a
curve which is concave to the northwest;
thence 769.76 feet along the arc of said curve
which has a radius of 5,073.25 feet, a central
angle of 08°41'37" and a long chord which
bears N72°28'42"E a distance of 769.04 feet;
thence N68°07'53"E a distance of 3,638.70 feet;
thence S21°52'07"E a distance of 175.00 feet;
thence N68°07'53"E a distance of 450.00 feet;
thence N21°52'07"W a distance of 175.00 feet;
thence N68°07'53"E a distance of 1,484.96 feet;
thence N69°34'30"E a distance of 1,053.97 feet;
thence S20°25'30"E a distance of 25.00 feet;
thence N69°34'30"E a distance of 325.00 feet to
a non-tangent point of intersection with a curve
which is concave to the northeast;
thence 399.15 feet along the arc of said curve
which has a radius of 5,331.62 feet, a central
angle of 04°17'22" and a long chord which bears
N67°25'24"E a distance of 399.06 feet;
thence N24°43'17"W a distance of 25.00 feet to
a non-tangent point of intersection with a curve
which is concave to the northeast;
thence 1,080.36 feet along the arc of said curve
which has a radius of 5,306.62 feet, a central
angle of 11°39'53" and a long chord which
bears N59°26'47"E a distance of 1,078.88 feet;
thence N36°23'10"W a distance of 100.36 feet
to a non-tangent point of intersection with a
curve which is concave to the northwest;
thence 1,159.54 feet along the arc of said curve
which has a radius of 5,206.62 feet, a central
angle of 12°45'36" and a long chord which
bears S59°59'38"W a distance of 1,157.14 feet;

Ute Mountain Ute Tribe, Drainage Control Right-of-Way (Con't.)

thence S23°37'47"E a distance of 25.00 feet to
a non-tangent point of intersection with a curve
which is concave to the northwest;
thence 291.66 feet along the arc of said curve
which has a radius of 5,231.62 feet, a central
angle of 03°11'39" and a long chord which
bears S67°58'16"W a distance of 291.62 feet;
thence S69°34'05"W a distance of 218.11 feet;
thence N20°25'55"W a distance of 25.00 feet;
thence S69°34'05"W a distance of 1,168.74 feet;
thence S68°07'53"W a distance of 1,579.63 feet;
thence S21°52'07"E a distance of 25.00 feet;
thence S68°07'53"W a distance of 250.00 feet;
thence N21°52'07"W a distance of 25.00 feet;
thence S68°07'53"W a distance of 3,738.70 feet
to a point of tangency with a curve to the right;
thence 855.55 feet along the arc of said curve
which has a radius of 4,973.25 feet, a central
angle of 09°51'24" and a long chord which
bears S73°03'35"W a distance of 854.50 feet;
thence S12°00'43"E a distance of 165.00 feet
to a non-tangent point of intersection with a
curve which is concave to the northwest;
thence 672.27 feet along the arc of said curve
which has a radius of 5,138.25 feet, a central
angle of 07°29'47" and a long chord which
bears S81°44'10"W a distance of 671.79 feet;
thence S03°22'21"E a distance of 535.00 feet.

Foutz, Joel W., et al (now Wagon Rod Ranch)
(Transportation 'Haulroad' Corridor)

Township 30 North, Range 14 West, NMPM, approx. 56.34 acres
Section 5: Pt. of the NW¼SW¼, NW¼
Section 6: Pt. of the SE¼, SE¼NE¼
Section 7: Pt. of the N½. Said easement shall be 225 feet wide, lying 112.5 feet on each side of a center line more particularly described as follows:

Beginning at a point from which the southwest corner of Section 7 bears S05°18'19"W 2,641.32 ft;
thence from said Point of Beginning N43°51'58"E 10,908.22 ft, more or less, to the North line of Section 5.

Mangis, Robert A., et al
(Transportation 'Haulroad' Corridor)

Township 30 North, Range 15 West, NMPM, approx. 7.27 acres
Section 12: Pt. SW¼SE¼ more particularly described as follows:

Beginning at a point on the West line of the E½SE¼ of said Section 12 whence the Southeast Corner of said Section 12 bears S57°20'00"E a distance of 1,563.64 feet;
thence S43°51'51"W a distance of 872.48 feet to a point of tangency with a curve to the right;
thence 294.29 ft, more or less, along the arc of said curve which has a radius of 2977.29 feet, a central angle of 05°39'48" and a long chord which bears S46°41'44"W a distance of 294.17 feet to the South line of said Section 12;
thence N89°38'49"W along said South line of Section 12, a distance of 365.47 feet to a non-tangent point of intersection with a curve which is concave to the Northwest;
thence 549.07 feet along the arc of said curve which has a radius of 2,752.29 feet, a central angle of 11°25'49" and a long chord which bears N49°34'45"E a distance of 548.16 feet;
thence N43°51'50"E a distance of 1,106.59 feet, more or less, to the West line of the E½SE¼ of said Section 12;
thence S00°00'00"E along said West line of the E½SE¼ of said Section 12, a distance of 324.70 feet, more or less, to the Point of Beginning.

Wagon Rod Ranch Limited Liability Co.
(Transportation 'Haulroad' Corridor)

Township 30 North, Range 15 West, NMPM, approx. 11.74acres
Section 14: Pt. E½NE¼, NE¼SE¼
more particularly described as follows:

Beginning at a point on the East line of said Section 14 from which the Northeast corner of said Section 14 bears N00°25'30"E a distance of 994.58 feet;
thence S00°25'30"W a distance of 266.19 feet to a non-tangent point of intersection with a curve which is concave to the southeast;
thence 1,060.43 feet along the arc of said curve which has a radius of 2,179.33 feet, a central angle of 27°52'46" and a long chord which bears S42°21'39"W a distance of 1,050.00 feet;
thence S28°25'16"W a distance of 839.51 feet to a point of tangency with a curve to the right;
thence 435.70 feet, more or less, along the arc of said curve which has a radius of 5,842.08 feet, a central angle of 04°16'23" and a long chord which bears S30°33'28"W a distance of 435.60 feet, to the West line of the E½SE¼ of said Section 14;
thence N00°24'38"E along the West line of the E½SE¼ of said Section 14, a distance of 444.86 feet to a non-tangent point of intersection with a curve which is concave to the northwest;
thence 42.55 feet along the arc of said curve which has a radius of 5,617.08 feet, a central angle of 00°26'02" and a long chord which bears N28°38'18"E a distance of 42.54 feet;
thence N28°25'17"E a distance of 839.51 feet to a point of tangency with a curve to the right;
thence 1,319.34 feet, more or less, along the arc of said curve which has a radius of 2,404.33 feet, a central angle of 31°26'25" and a long chord which bears N44°08'29"E a distance of 1,302.85 ft, to the Point of Beginning.

EXHIBIT 7

DISTURBANCE/RECLAMATION SURVEYS OF THE SJCC SITE AREA

Capitalized terms not otherwise defined herein shall have the meanings assigned in this Mine Reclamation Agreement.

Surveys 1, 2 and 3 will be conducted of the SJCC Site Area at specific points in time as hereinafter set forth to identify and catalog Disturbances (see description below) and to categorize and to establish baselines for each Disturbance Area. Additional Surveys may be performed as directed by the Reclamation Oversight Committee. Surveys 1, 2 and 3 will include all Disturbances.

Surveys 1, 2 and 3 will be conducted as close to the following dates as practicable: Survey 1, which is intended to be high-level, will be conducted as of the Effective Date; Survey 2 will be conducted as of December 31, 2017 and will define each Disturbance Area; Survey 3 will be conducted as of the date CCR disposal ceases in the SJCC Site Area. The reports for Surveys 2 and 3 will identify each Disturbance Area and propose a classification as a Pre-2017YE Reclamation Liability or a Post-2017YE Reclamation Liability. For example, the Juniper Pit in the SJCC Site Area is considered a Disturbance Area, as it is a discrete area, the nature of the Disturbance throughout the area is similar, and the Disturbance Area can be classified a Pre-2017YE Reclamation Liability as of Survey 1. The scope and timing of other Surveys will be as directed by the Reclamation Oversight Committee.

The Surveys will be conducted by an independent contractor (the "Surveyor") in coordination with the Reclamation Trust Funds Operating Agent and SJCC under the RSA. The Surveyor will be independent of the Parties and will have appropriate expertise in coal mining operations and mined land reclamation in arid climates, and be knowledgeable in legal, regulatory and permitting requirements for coal mining operations in New Mexico. The Reclamation Trust Funds Operating Agent will propose a Surveyor, and scope of work for each Survey, which will be voted on by the Reclamation Oversight Committee. Upon completion of each Survey, the Reclamation Trust Funds Operating Agent will present each Survey report to the Reclamation Oversight Committee for its approval. If a Survey report is not approved, the Survey and classifications may be subject to dispute resolution under the terms of this Mine Reclamation Agreement.

Survey 1

The Surveyor will identify and document with aerial photography or other means all of the Disturbances within the SJCC Site Area. Each significant instance of Disturbance will be catalogued and given a Catalogue ID along with its location, and the nature of the Disturbance, including current status of reclamation, and the area (acreage) affected.

Surveys 2 and 3

The Surveyor will identify all significant instances of Disturbance within the SJCC Site Area. Each significant instance of Disturbance will be catalogued with a Catalogue ID and (i) its location; (ii) the nature of the disturbance and the area (acreage) affected; (iii) the status of any reclamation activities previously conducted or being conducted at each Disturbance Area; (iv) the bond release status of each Disturbance Area; and (v) whether such Disturbance Area results in a Pre-2017YE Reclamation Liability or a Post-2017YE Reclamation Liability.

The Surveyor will develop a listing of all Disturbance Areas. The Surveyor will be advised by the Reclamation Trust Funds Operating Agent that certain Disturbance Areas may have to be reclassified or subdivided based on activities that have taken place between Surveys. Certain Disturbance Areas may require allocation between Pre-2017YE Reclamation Liability and Post-2017YE Reclamation Liability. In such event, the Surveyor will recommend a percentage allocation, including a description of the rationale and basis regarding methodologies or processes for making such allocations. For example, if a particular Disturbance Area is modified in some way between Surveys to facilitate post-2017 coal supply activities in a manner that increases its reclamation cost, the increase will be allocated as a Post-2017YE Reclamation Liability.

Final Reports

In addition to providing the detail described above, the Surveyor will provide maps showing the location and areal extent of each Disturbance Area, and such other information as may be useful or informative.

Copies of the written survey report will be provided to the Parties and SJCC in electronic and hard copy formats.

EXHIBIT 8

COMPOSITE RECLAMATION SHARES

For purposes of committee voting as set forth in Sections 6.5 and 7.4 and for the Review Cost allocation set forth in Section 5.4 of the Mine Reclamation Agreement, the Composite Reclamation Shares of the Parties will be determined as set out below.

Upon the approval of any new Reclamation Costs Review, the Parties' Composite Reclamation Shares will be determined by prorating a Party's Reclamation Shares (both Pre-2017YE Reclamation Share and Post-2017YE Reclamation Share) by the weighting of the total unescalated cost estimates for the Pre-2017 YE Reclamation Liability Costs and the Post-2017 YE Reclamation Liability Costs. An example follows:

> Assume a new Reclamation Costs Review results in constant year dollar estimates of $90 of Pre-2017YE Reclamation Liability Costs (or 90% of the total estimate) and $10 of Post-2017YE Reclamation Liability Costs (or 10% of the total estimate). The Composite Reclamation Shares will be determined per the methodology set out in the following table:

Column	A	B	C = A x B	D	E	F = D x E	G = C + F
Owner	Pre-2017YE Reclamation Shares	Pre-2017YE Cost Estimate Percentage	Pre-2017YE Weighting	Post-2017YE Reclamation Shares	Post-2017YE Cost Estimate Percentage	Post-2017YE Weighting	Total Weighting
PNM	46.297	0.90	41.6673	58.671	0.10	5.8671	47.5344
PNMR-D	0.000	0.90	0.0000	7.673	0.10	0.7673	0.7673
TEP	19.800	0.90	17.8200	20.068	0.10	2.0068	19.8268
M-S-R	8.700	0.90	7.8300	0.000	0.10	0.0000	7.8300
Farmington	2.559	0.90	2.3031	5.076	0.10	0.5076	2.8107
Tri-State	2.490	0.90	2.2410	0.000	0.10	0.0000	2.2410
Los Alamos	2.175	0.90	1.9575	4.309	0.10	0.4309	2.3884
SCPPA	12.710	0.90	11.4390	0.000	0.10	0.0000	11.4390
Anaheim	3.100	0.90	2.7900	0.000	0.10	0.0000	2.7900
UAMPS	2.169	0.90	1.9521	4.203	0.10	0.4203	2.3724
	100.000		90.0000	100.000		10.0000	100.0000

Column G would show the Composite Reclamation Shares of each Party in the example. From the time of the Effective Date of the Mine Reclamation Agreement until the next Reclamation Costs Review is approved, each Party's Composite Reclamation Share will be taken from column A above.

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FINAL VERSION 06/18/2015
(SUBJECT TO CONFORMING CHANGES)

SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT

AMONG

PUBLIC SERVICE COMPANY OF NEW MEXICO

TUCSON ELECTRIC POWER COMPANY

THE CITY OF FARMINGTON, NEW MEXICO

M-S-R PUBLIC POWER AGENCY

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

CITY OF ANAHEIM

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

July ____, 2015

SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT

TABLE OF CONTENTS

RECITALS 1
1.0 Term and Termination 2
1.1 Effective Date 2
1.2 Termination 2
2.0 Definitions and Rules of Interpretation 2
2.1 Definitions 2
2.2 Rules of Interpretation 8
3.0 Decommissioning Committee and Decommissioning Agent 9
3.1 Decommissioning Committee 9
3.2 Decommissioning Agent 11
4.0 Activities During Interim Period 15
4.1 Initial Decommissioning Work 16
4.2 Interim Decommissioning Work 16
4.3 Items not Part of Decommissioning 17
4.4 Use of Equipment Located at Units 2 and 3; Salvage Revenue 18
5.0 Decommissioning Plan 18
5.1 Decommissioning Study 18
5.2 Selection of Decommissioning Plan 19
5.3 Payment for Decommissioning 19
5.4 Payment Procedures 19
6.0 Decommissioning Trust Funds 19
6.1 Establishment of Decommissioning Trusts 19
6.2 Decommissioning Trust Funding Obligations. 20
6.3 Projected Decommissioning Costs Reviews and Adjustment of Decommissioning Trust Funding Obligations. 20
6.4 Investment of Decommissioning Trust Funds 21
6.5 Mandatory Provisions for Decommissioning Trust Agreements 21
6.6 Only Purposes 22
6.7 Decommissioning Correcting Deposits. 22
6.8 Return of Funds in Decommissioning Trust 23

6.9 Status Reports 23
6.10 Compliance 23
7.0 Decommissioning Investment Committee 23
7.1 Establishment of Decommissioning Investment Committee 23
7.2 Decommissioning Investment Committee Membership 23
7.3 Functions and Responsibilities of the Decommissioning Investment Committee 24
7.4 Decisions of the Decommissioning Investment Committee 25
7.5 Meetings of the Decommissioning Investment Committee 25
8.0 Default 25
8.1 Definition of Default 25
8.2 Default Notice 25
8.3 Cure of Default 26
8.4 Protest of Default 26
8.5 Declaration of Default 26
8.6 Consequences of Default 26
8.7 No Stay for Arbitration 27
8.8 Termination of Default 27
8.9 Other Rights 27
8.10 No Waiver 27
9.0 Dispute Resolution 27
9.1 Amicable Resolution 27
9.2 Call for Arbitration 28
9.3 Selection of Arbitrators 28
9.4 Arbitration Procedures 29
9.5 Decision of Arbitrators 29
9.6 Enforcement of Arbitration Award 29
9.7 Fees and Expenses 30
9.8 Prompt Resolution 30
9.9 Legal Remedies 30
10.0 Power and Authority 30
10.1 Requisite Power and Authority 30
10.2 No Violation 30
11.0 Relationship of Parties 30
11.1 Several Obligations 31

11.2 No Joint Venture or Partnership 31
12.0 Assignments 31
12.1 Successors and Assigns 31
12.2 No Right to Mortgage 31
12.3 Prior Written Consent 31
12.4 Assignee's Obligation to Establish and Fund Decommissioning Trust 31
12.5 Parties not Relieved of Obligations 32
12.6 Assigning Party's Right of Refund 32
13.0 Audit Rights; Related Disputes 32
13.1 Right of Audit 32
13.2 Audit Dispute Resolution 32
13.3 Adjusted Billing Procedures 33
13.4 Audit of Decommissioning A&G Expenses 33
14.0 Uncontrollable Forces 33
15.0 Invalid Provisions 33
16.0 Applicable Law and Venue 33
16.1 Compliance with Law 34
16.2 Governing Law 34
16.3 Venue 34
17.0 Entire Agreement 34
17.1 Entire Agreement 34
17.2 Amendment and Modification 34
17.3 Prior Obligations Unaffected 34
18.0 No Interpretation Against Drafter 34
19.0 Independent Covenants 34
20.0 Other Documents 35
21.0 Notices 35
21.1 Manner of Giving of Notice 35
21.2 Changes in Designation 37
22.0 Captions and Headings 37
23.0 Effect of Municipal Law 37
23.1 Anaheim and M-S-R 37
23.2 Southern California Public Power Authority 38
23.3 Farmington and Los Alamos 38

23.4 Utah Associated Municipal Power Systems 38
24.0 Parties' Cost Responsibilities 38
25.0 No Third Party Beneficiaries 38
26.0 No Admission of Liability 38
27.0 Confidentiality 39
27.1 Confidentiality of Negotiations 39
27.2 Non-confidentiality of Decommissioning Agreement 39
28.0 Damages 39
29.0 Execution in Counterparts 39

List of Exhibits

Exhibit A	Decommissioning Shares
Exhibit B	Decommissioning Trust Agreement Mandatory Provisions
Exhibit C	SJGS Plant Site
Exhibit D	Initial Decommissioning Work
Exhibit E	Retirement in Place
Exhibit F	Equipment Required for On-going Operation of Units 1 and 4

SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT

This SAN JUAN DECOMMISSIONING AND TRUST FUNDS AGREEMENT ("Decommissioning Agreement"), dated as of July __, 2015, is entered into by PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation ("TEP"); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Farmington"); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California ("M-S-R"); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico ("Los Alamos"); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California ("SCPPA"); CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California ("Anaheim"); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"); TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation ("Tri-State"); and PNMR DEVELOPMENT AND MANAGEMENT CORPORATION, a New Mexico corporation ("PNMR-D"). The parties to this Decommissioning Agreement are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

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

A. The San Juan Project is a four-unit, coal-fired electric generation plant located in San Juan County, near Farmington, New Mexico, also known as the San Juan Generating Station ("SJGS", "San Juan Project" or "Project"). On the execution date, the owners of the Project are: PNM, TEP, Farmington, M-S-R, Los Alamos, SCPPA, Anaheim, UAMPS and Tri-State.

B. Concurrently herewith, the Parties are executing: (i) the San Juan Project Restructuring Agreement ("Restructuring Agreement"); (ii) the Amended and Restated Mine Reclamation and Trust Funds Agreement ("Mine Reclamation Agreement"); (iii) the SJPPA Restructuring Amendment; and (iv) the SJPPA Exit Date Amendment, all of which were agreed upon pursuant to a mediation among the Parties. The Restructuring Agreement, among other things, provides for the amendment of certain provisions of the Amended and Restated San Juan Project Participation Agreement dated March 23, 2006 (the "SJPPA") regarding rights and obligations in respect of the ownership and operation of the San Juan Project.

C. One disagreement subject to negotiation and mediation concerned obligations under Section 40.0 of the SJPPA, which provides:

> The Participants acknowledge the appropriateness of incorporating in a future amendment to this Agreement, or in another appropriate contractual

instrument, provisions which address the decommissioning of the San Juan Project and/or of one or more Units. It is recognized, however, that the resolution of issues associated with San Juan Project decommissioning will require protracted study. The Participants therefore agree to establish a task force or other forum for the careful and deliberate consideration of decommissioning issues so that these issues may be addressed and resolved in a timely manner. The Operating Agent shall propose to the Participants a methodology and a schedule for addressing decommissioning issues.

The Parties desire by this Decommissioning Agreement to settle and resolve such disagreements and to establish a methodology for planning and approving Decommissioning Work and funding and allocating the cost of Decommissioning Work.

D. The Parties desire, by this Decommissioning Agreement, the Mine Reclamation Agreement, the Restructuring Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment to establish a comprehensive set of agreements with respect to the restructuring of San Juan Project ownership interests, rights and cost responsibilities.

E. The foregoing Recitals are included to provide background regarding this Decommissioning Agreement, and while certain Recitals may be referenced in this Decommissioning Agreement, they are neither part of nor incorporated into the terms, covenants and conditions of this Decommissioning Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises and obligations reflected in the covenants, terms and conditions in this Decommissioning Agreement, all of which together provide the consideration for this Decommissioning Agreement, the Parties agree as follows:

1.0 Term and Termination

1.1 Effective Date. As provided for in the Restructuring Agreement, this Decommissioning Agreement will become effective on the Exit Date.

1.2 Termination. This Decommissioning Agreement will continue in full force and effect until twenty-four (24) months after completion of Decommissioning Work.

2.0 Definitions and Rules of Interpretation

2.1 Definitions. The following terms, when used herein with initial capitalization, have the meanings specified below:

2.1.1 Affiliate means, with respect to any person: (i) each person that, directly or indirectly, controls or is controlled by or is under common control with such designated person; (ii) any person that beneficially owns or holds 50% or more of any class of voting securities of such designated person or 50% or more of the equity interest in such designated person; and (iii) any person of which such designated person beneficially owns or holds

50% or more of any class of voting securities or in which such designated person beneficially owns or holds 50% or more of the equity interest; provided, however, that members of a Party will not be deemed to be Affiliates of each such Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise; PNM and PNMR-D are Affiliates.

2.1.2 Arbitration Award means an award of the arbitrators as provided for in Section 9.5.4

2.1.3 Arbitration Organization has the meaning provided for in Section 9.3.2.

2.1.4 Assigning Party means a Party making a transfer or assignment as described in Section 12.

2.1.5 Board means the governing body of a Party.

2.1.6 Business Day means any day other than a Saturday, Sunday or federal holiday.

2.1.7 Charter Documents means with respect to any Party, the certificate or articles of incorporation or organization and by-laws, the limited partnership agreement, the partnership agreement, the limited liability company agreement or trust agreement, or other organizational documents of such Party.

2.1.8 Credit Rating means the rating publicly assigned to a Party's senior, unsecured long-term debt obligations (not supported by a third party credit enhancement), by a Rating Agency or, if a Party does not have a public rating for its senior, unsecured long-term debt, the rating publicly assigned to the Party by a Rating Agency as its corporate credit rating, or long-term issuer rating, as applicable.

2.1.9 Decommissioning Correcting Deposits means deposits to a Party's Decommissioning Trust as required by Section 6.7.

2.1.10 Decommissioning Correction Period means the time in which Decommissioning Correcting Deposits must be completed as provided for in Section 6.7.2.1.

2.1.11 Decommission, Decommissioned or Decommissioning means, subject to the provisions set forth in Section 4.3, removal of the San Juan Project facilities from service in conjunction with retirement of facilities or closure of the Project in accordance with either the requirements of applicable Law, if any, or Prudent Cost Avoidance. Possible Decommissioning activities include the dismantlement, demolition, removal, retirement in place, salvage, remediation and/or reclamation of the San Juan Project or a portion thereof

(but not of the San Juan Mine), including any planning and administrative activities incident thereto and related reporting and monitoring requirements.

2.1.12 Decommissioning A&G Expenses means administrative and general expenses of the Decommissioning Agent incurred for Decommissioning as provided for in Section 3.2.4.

2.1.13 Decommissioning Agent means the agent of the Parties, selected in accordance with Section 3.2.1, who will perform the Decommissioning Work and other tasks assigned to the Decommissioning Agent under this Decommissioning Agreement under the oversight of the Decommissioning Committee.

2.1.14 Decommissioning Agreement means this San Juan Decommissioning and Trust Funds Agreement.

2.1.15 Decommissioning Committee means the committee established in Section 3.1.1.

2.1.16 Decommissioning Contractor means a non-Party who is hired to perform Decommissioning Work.

2.1.17 Decommissioning Costs means the costs for San Juan Project Decommissioning, including Decommissioning A&G Expenses.

2.1.18 Decommissioning Funding Target Amount means, the initial Decommissioning Funding Target Amount established in Sections 6.2 and 6.3, and thereafter, the respective dollar amounts as determined by the Decommissioning Investment Committee pursuant to Section 6.2.1.

2.1.19 Decommissioning Investment Committee means the committee established in Section 7.1.

2.1.20 Decommissioning Plan means the decommissioning plan as described in Section 5.

2.1.21 Decommissioning Share means a Party's share of Decommissioning funding and cost responsibility, as specified for a given year in Section 5.3 and **Exhibit A**, as calculated by the Decommissioning Committee.

2.1.22 Decommissioning Study means an analysis of processes and associated costs for Decommissioning performed pursuant to Section 5.1.

2.1.23 Decommissioning Trust means a trust maintained by a Party with a Trustee pursuant to Section 6.1.

2.1.24 Decommissioning Trust Agreement means a trust agreement entered into between a Party and its Trustee for the purpose of satisfying the Party's responsibilities under this Decommissioning Agreement to fund and pay for Decommissioning Costs.

2.1.25 Decommissioning Work means all activities for planning and conducting Decommissioning.

2.1.26 Default means a default in performance of a Party's obligations under this Decommissioning Agreement, as defined more particularly in Section 8.1.

2.1.27 Default Declaration means a declaration of default as defined in Section 8.5.

2.1.28 Default Notice means a notice of default as defined in Section 8.2.

2.1.29 Dispute Protest has the meaning provided for in Section 9.1.2.

2.1.30 Effective Date means the date established in Section 1.1 for the effectiveness of this Decommissioning Agreement.

2.1.31 Exit Date means the date upon which the Exiting Participants transfer all of their respective rights, titles and interests in and to their ownership interests in SJGS to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of the SJGS, except as expressly provided for in the Restructuring Agreement, the Mine Reclamation Agreement and this Decommissioning Agreement; the Exit Date is anticipated to be on or about December 31, 2017.

2.1.32 Exiting Participants means those Parties that will transfer all of their respective rights, titles and interests in and to their ownership interests in SJGS to PNM and PNMR-D as provided in the Restructuring Agreement and terminate their active involvement in the operation of SJGS on the Exit Date, except as expressly provided for in the Restructuring Agreement, the Mine Reclamation Agreement and this Decommissioning Agreement; the Exiting Participants are M-S-R, Anaheim, SCPPA and Tri-State.

2.1.33 Final Decommissioning Report means a report prepared by the Decommissioning Contractor describing how Decommissioning was completed in accordance with requirements of Law and the Decommissioning Plan and provided by the Decommissioning Agent to the Decommissioning Committee pursuant to Section 3.2.2.8.

2.1.34 Governmental Authority means any federal, state, tribal, local, municipal or foreign governmental or regulatory authority, department, agency, commission, body, court or other governmental authority other than a Party.

2.1.35 Initiating Party means the Party initiating an audit as provided for in Section 13.1.

2.1.36 Interim Period has the meaning described in Section 4.2.

2.1.37 Law means statutes, rules, regulations, ordinances, orders and codes of federal, state and local Governmental Authorities.

2.1.38 Mandatory Provisions means those provisions which must be included in each Party's Decommissioning Trust Agreement, as described in **Exhibit B**.

2.1.39 Mine Reclamation Agreement means the Amended and Restated Mine Reclamation and Trust Funds Agreement, executed concurrently herewith.

2.1.40 Notice of Dispute has the meaning provided for in Section 9.1.1.

2.1.41 Notice means a notification given in accordance with Section 21.1.

2.1.42 Noticing Party has the meaning provided for in Section 9.1.1.

2.1.43 Notification of Intent means a notification of intent to declare a Party in default, as defined in Section 8.5.

2.1.44 Party means any one of the signatories to this Decommissioning Agreement.

2.1.45 Prime Rate means the interest rate per annum (sometimes referred to as the base rate) for large commercial loans to creditworthy entities announced from time-to-time by Wells Fargo Bank, N.A. (New York) or its successor bank or, if such rate is not announced, the rate published in The Wall Street Journal as the "prime rate" from time-to-time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay arises.

2.1.46 Project has the meaning provided for in Recital A.

2.1.47 Project Assets means equipment or facilities of any kind at the San Juan Project that are not being used for current operations, including all components, spare equipment and inventory of any Unit which has ceased operations.

2.1.48 Projected Decommissioning Costs Review means a review of the projected costs of completing Decommissioning Work, as adjusted from time-to-time pursuant to Section 6.3.

2.1.49 Protest means a protest made under Section 8.4.

2.1.50 Protesting Party has the meaning provided for in Section 9.1.2.

2.1.51 Prudent Cost Avoidance means a discretionary action approved by the Decommissioning Committee in accordance with Section 4.2.3, even though not required by then-current Law.

2.1.52 Rating Agency means Moody's Investors, Inc. or Standard & Poor's Financial Services, LLC (a subsidiary of McGraw-Hill Companies).

2.1.53 Remaining Participants means those Parties that will continue participation, or acquire an ownership interest, in the Project on or after the Exit Date; the Remaining Participants are PNM, TEP, Farmington, Los Alamos, UAMPS and PNMR-D.

2.1.54 Required Plan has the meaning provided for in Section 5.1.1.

2.1.55 Restructuring Agreement means the San Juan Project Restructuring Agreement among the Parties, executed concurrently herewith.

2.1.56 Retirement Order means a proposal for the expenditure of certain funds as described in Section 4.2.3.

2.1.57 Salvage Revenue means proceeds, net of cost of removal, received from the sale or disposition of any Project Assets, as provided for in this Decommissioning Agreement.

2.1.58 SJGS has the meaning provided for in Recital A.

2.1.59 SJGS Plant Site means the parcels identified as Parcels A, B, D, E and F in **Exhibit C.**

2.1.60 SJPPA means the Amended and Restated San Juan Project Participation Agreement among the Participants dated March 23, 2006.

2.1.61 SJPPA Exit Date Amendment has the meaning provided for in Section 1.2.2 of the Restructuring Agreement.

2.1.62 SJPPA Restructuring Amendment has the meaning provided for in Section 1.2.1 of the Restructuring Agreement.

2.1.63 Status Report means a status report prepared and provided to Parties in accordance with Section 6.9.

2.1.64 Threshold Amount means five hundred thousand dollars ($500,000).

2.1.65 Trustee means a financial institution selected by a Party at which the Party's Decommissioning Trust is or will be held.

2.1.66 Uncontrollable Forces has the meaning provided for in Section 14.

2.1.67 Unit means Unit 1, Unit 2, Unit 3 or Unit 4 of the San Juan Project.

2.1.68 Willful Action means (i) action taken or not taken by a Party (or the Decommissioning Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance under this Decommissioning Agreement, which 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 (ii) action taken or not taken by a Party (or the Decommissioning Agent) at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default hereunder and which action occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default, or if no time to cure is specified therein, occurs or continues beyond

a reasonable time to cure such default; or (iii) action taken or not taken by a Party (or the Decommissioning Agent), at the direction of its directors, members of its Board, officers or employees having management or administrative responsibility affecting its performance hereunder, which action is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default hereunder. The phrase "employees having management or administrative responsibility," as used in this Section 2.1.68, means employees of a Party who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Decommissioning Agreement; provided, however, that, with respect to employees of the Decommissioning Agent acting in its capacity as such and not in its capacity as a Party, but only during such time as any one of Unit 1, 2, 3 or 4 is commercially producing electrical power, such phrase refers only to: (x) the senior employee of the Decommissioning Agent on duty at the Project who is responsible for the operation of the Units, and (y) anyone in the organizational structure of the Decommissioning Agent between such senior employee and an officer. After such time as none of Unit 1, 2, 3 or 4 is commercially producing electrical power, the phrase "employees having management or administrative responsibility" as used in this Section 2.1.68 will mean employees of any Party (including the Decommissioning Agent), who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Party's performance under this Decommissioning Agreement. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

2.2 Rules of Interpretation. Unless a clear contrary intention appears, this Decommissioning Agreement will be construed and interpreted as follows:

2.2.1 Any reference to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization, governmental entity or other entity;

2.2.2 Any reference to a day, week, month or year is to a calendar day, week, month or year, unless otherwise specified as a Business Day;

2.2.3 Any act required to occur by or on a certain day is required to occur before or on that day unless the day falls on a Saturday, Sunday or federal holiday, in which case the act must occur before or on the next Business Day;

2.2.4 The singular includes the plural and *vice versa*;

2.2.5 Reference to the feminine, masculine or neutral gender includes reference to all other genders;

2.2.6 Reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Decommissioning Agreement;

2.2.7 Unless expressly stated otherwise, reference to any agreement (including this Decommissioning Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended, supplemented, replaced or modified and in effect from time-to-time;

2.2.8 Reference to any Law means such Law as amended, modified, codified, supplemented or reenacted, in whole or in part, and in effect from time-to-time, including, if applicable, rules and regulations promulgated thereunder;

2.2.9 Unless expressly stated otherwise, reference to any article, section, exhibit or appendix means such article, section, exhibit or appendix of this Decommissioning Agreement, as the case may be;

2.2.10 "Hereunder," "hereof," "herein," "hereto" and words of similar import are deemed references to this Decommissioning Agreement as a whole and not to any particular provision hereof;

2.2.11 "Including," "include" and "includes" are deemed to be followed by the phrase "without limitation" and will not be construed to mean the examples given constitute an exclusive list of the matters covered;

2.2.12 Relating to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; and

2.2.13 Whenever an act is required to be performed by a particular time of day, prevailing Mountain Time will be the standard by which performance is measured.

3.0 Decommissioning Committee and Decommissioning Agent

3.1 Decommissioning Committee.

3.1.1 Establishment of the Decommissioning Committee. The Parties hereby establish a Decommissioning Committee. The Decommissioning Committee will remain in existence during the term of this Decommissioning Agreement. The Decommissioning Committee will have no authority to modify any of the provisions of this Decommissioning Agreement.

3.1.2 Decommissioning Committee Membership. The Decommissioning Committee will consist of one representative from each Party who must be an officer or other designated representative of a Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Decommissioning Committee in the absence of the regular representative on the Decommissioning Committee or to act on specified occasions or with respect to specified matters. Each Party must notify the other Parties promptly, in writing, of the designation of its representative and alternate representative on the Decommissioning Committee and of any subsequent changes in such designations. The chairperson of the Decommissioning Committee will be the representative of the

Decommissioning Agent if the Decommissioning Agent is a Party. If the Decommissioning Agent is not a Party, the chairperson will be elected by a majority of the individual representatives on the Decommissioning Committee. Each Party will be responsible for the costs of its Decommissioning Committee representative, including fees and travel reimbursement.

3.1.3 Functions and Responsibilities of the Decommissioning Committee. The responsibilities of the Decommissioning Committee include the following:

3.1.3.1 Oversee the performance of the Decommissioning Agent, including the Decommissioning Work;

3.1.3.2 Review and oversee ongoing Decommissioning A&G Expenses including Decommissioning A&G loadings and the methodology for determining Decommissioning A&G as described in Section 3.2.4;

3.1.3.3 Vote as to matters assigned to the Decommissioning Committee;

3.1.3.4 Establish goals, timelines and procedures with respect to Projected Decommissioning Costs Reviews and perform related functions, as provided for in Section 6.3;

3.1.3.5 Identify activities that constitute Decommissioning Work;

3.1.3.6 Determine when the Decommissioning Work and Decommissioning have been completed;

3.1.3.7 Establish budgets and schedules for Decommissioning Work and approve all proposed changes to the budgets or schedules for Decommissioning Work;

3.1.3.8 Determine contracting procedures for entry into third party agreements for Decommissioning Work;

3.1.3.9 Recalculate the Decommissioning Shares as set forth in footnote 1 of **Exhibit A;** and

3.1.3.10 Perform other tasks delegated to the Decommissioning Committee by this Decommissioning Agreement.

3.1.4 Decisions of the Decommissioning Committee. Except as provided for in the third sentence of this Section 3.1.4, any actions or determinations brought before the Decommissioning Committee require the following vote: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Decommissioning Shares of the Parties then in effect as set out in Section 5.3 and as defined in **Exhibit A**; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties. Matters approved by the requisite majority of the Decommissioning Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default, such Party

will not have a right to vote under either subsection (i) or subsection (ii) of this Section 3.1.4, and the requisite majorities for actions or determinations of the Decommissioning Committee will be sixty-six and two thirds percent (66 2/3%) of the members eligible to vote under either subsection (i) or (ii) of this Section 3.1.4. The outcome of any vote of the Decommissioning Committee properly conducted in accordance with this Decommissioning Agreement will not be subject to the dispute resolution provisions of Section 9.

3.1.5 Meetings of the Decommissioning Committee. The Decommissioning Committee must meet no less frequently than annually. Special meetings will be held promptly at the written request of any Party, such request to be delivered in writing to the chairperson of the Decommissioning Committee. The Decommissioning Committee must keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Decommissioning Committee must be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Decommissioning Committee as specified in Section 3.1.4(i) and (ii). Decommissioning Committee representatives will be permitted, by prior notification to the chairperson of the Decommissioning Committee, to attend a meeting of the Decommissioning Committee by conference call or video conferencing. A Decommissioning Committee representative who is unable to attend a meeting of the Decommissioning Committee will be permitted to vote in absentia by delivering to the chairperson of the Decommissioning Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

3.2 Decommissioning Agent.

3.2.1 Selection of the Decommissioning Agent.

3.2.1.1 Subject to Sections 3.2.7 and 3.2.8, the Parties will appoint a Decommissioning Agent to carry out the responsibilities assigned to the Decommissioning Agent hereunder. The Decommissioning Agent will be the agent of the Parties and may exercise only such authority as is conferred upon it by this Decommissioning Agreement.

3.2.1.2 The Parties hereby appoint PNM as the initial Decommissioning Agent, and PNM agrees to undertake, as the agent of the Parties, and as principal on its own behalf, the performance of the responsibilities assigned herein to the Decommissioning Agent.

3.2.2 Responsibilities of the Decommissioning Agent. The Decommissioning Agent will have the following responsibilities:

3.2.2.1 Serve as liaison and focal point for the coordination of interchanges and discussions among the Parties in connection with matters arising under this Decommissioning Agreement;

3.2.2.2 Propose to the Decommissioning Committee plans, budgets and schedules for Decommissioning Work;

3.2.2.3 As and when it considers necessary, propose modifications to plans, budgets or schedules for Decommissioning Work to the Decommissioning Committee;

3.2.2.4 Pursuant to Section 6.3, perform (or cause to be performed) a Projected Decommissioning Costs Review and prepare a report on such review for submission to the Decommissioning Committee;

3.2.2.5 Furnish from its own resources or contract for the procurement of goods or services necessary for the implementation of this Decommissioning Agreement, pursuant to the procedures established by the Decommissioning Committee;

3.2.2.6 Issue requests for proposals from qualified vendors for performance of Decommissioning Work;

3.2.2.7 Monitor and supervise the performance of Decommissioning Work;

3.2.2.8 Prepare, or provide for preparation of, reports for the Decommissioning Committee at such intervals as the Decommissioning Committee may direct on the progress of the Decommissioning Work, including a Final Decommissioning Report;

3.2.2.9 Review the form and content of all invoices received from vendors for performance of Decommissioning Work, approve invoices for payment as appropriate and issue payments to vendors for approved invoices;

3.2.2.10 Issue invoices to the Parties for their Decommissioning Shares of expenses incurred by the Decommissioning Agent in the performance of any Decommissioning Work and for Decommissioning A&G Expenses;

3.2.2.11 Upon commencement of Decommissioning Work, issue periodic invoices to each Party, at such intervals as directed by the Decommissioning Committee, for payment of such Party's Decommissioning Share of Decommissioning Work;

3.2.2.12 Prepare recommendations for the Decommissioning Committee for the procurement of goods or services necessary for the performance of Decommissioning Work;

3.2.2.13 Administer, perform and enforce all contracts entered into by the Decommissioning Agent subject to the direction of the Decommissioning Committee;

3.2.2.14 Comply with all Laws applicable to its performance, monitoring and supervision of the Decommissioning Work;

3.2.2.15 Maintain in the name of the Parties and for the purposes of this Decommissioning Agreement an operating account for monies collected in connection with the implementation of this Decommissioning Agreement; such operating account must be maintained separately from any and all other accounts related to the San Juan Project;

3.2.2.16 Keep and maintain records of monies expended and received, obligations incurred, credits accrued, Project Assets disposed of, and contracts entered into in the implementation of this Decommissioning Agreement and provide reports of such records to the Parties at such intervals as the Decommissioning Committee directs, but no less frequently than thirty (30) calendar days before each annual meeting of the Decommissioning Committee;

3.2.2.17 Cooperate with the Decommissioning Investment Committee in the conduct of any review or audit of a Party's compliance with its funding of its Decommissioning Share of Decommissioning Costs and to otherwise carry into effect policies established by the Decommissioning Investment Committee;

3.2.2.18 Prepare recommendations covering the matters that may be reviewed and acted upon by the Parties and the Decommissioning Committee and the Decommissioning Investment Committee;

3.2.2.19 Keep the Parties fully and promptly advised of material changes in conditions or other material developments affecting the implementation of this Decommissioning Agreement and of any Defaults under this Decommissioning Agreement;

3.2.2.20 Provide the Decommissioning Committee and the Decommissioning Investment Committee with all records, information and reports that may be relevant to such committees in the performance of their responsibilities under this Decommissioning Agreement;

3.2.2.21 As provided in Section 8, provide copies of any Default Notice, Notification of Intent, or Default Declaration to the representatives on the Decommissioning Committee, the Decommissioning Investment Committee, the persons identified in Section 21.1, and the Trustee of a defaulting Party's Decommissioning Trust;

3.2.2.22 Enforce the obligations of each Party to fund its Decommissioning Share of the Decommissioning Costs and to pay invoices submitted hereunder to the Parties or to their Trustees;

3.2.2.23 Procure appropriate insurance covering Decommissioning Work to provide coverage for risks for which the Parties have or may have responsibility under this Decommissioning Agreement;

3.2.2.24 Perform all other obligations and duties that the Parties, the Decommissioning Committee, or the Decommissioning Investment Committee may from time-to-time delegate to the Decommissioning Agent; and

3.2.2.25 Perform all other obligations and duties that are assigned herein to the Decommissioning Agent or that are reasonably necessary in connection with the performance of its obligations and duties hereunder.

3.2.3 Reimbursement of Costs and Expenses. Subject to Section 11.1, each Party will reimburse the Decommissioning Agent, based on the Party's Decommissioning Share then in effect, for all of the reasonable costs and expenses incurred by the Decommissioning Agent in its performance of its responsibilities pursuant to this Decommissioning Agreement.

3.2.4 Decommissioning Administrative and General Expenses. Beginning January 1, 2018, Decommissioning A&G Expenses will include administrative and general expenses directly chargeable to FERC Accounts 920, 921, 923, 926, 930.2, 931 and 935, will include payroll loads for administrative and general expenses, payroll taxes, injuries and damages and pension and benefits, and will be added to the periodic billings in proportion to the dollars of direct labor billed. The Decommissioning Agent will prepare, for the approval of the Decommissioning Committee, operating procedures for the accounting of Decommissioning A&G Expenses in its performance of the Decommissioning Work and will recommend updates thereof no fewer than every three (3) years. An annual true-up of Decommissioning A&G Expenses will be made each year once such expenses have been recorded.

3.2.5 No Fee. The Decommissioning Agent will receive no fee or profit hereunder, unless otherwise agreed unanimously by the Parties.

3.2.6 Liability of the Decommissioning Agent.

3.2.6.1 The provisions of this Section 3.2.6 are intended to address limitations on the liability of the Decommissioning Agent acting solely in the capacity of Decommissioning Agent; to the extent the actions of the Decommissioning Agent are carried out in its capacity as a Party or in any other capacity, the limitation of liability provisions in this Section 3.2.6 are not applicable.

3.2.6.2 Except for any judgment debt for damage resulting from Willful Action or as necessary to enforce an Arbitration Award, each Party hereby extends to the Decommissioning Agent, its employees, officers, directors and agents, its covenant not to execute, levy or otherwise enforce a judgment obtained against the Decommissioning Agent, including recording or effecting a judgment lien, for any direct, indirect or consequential, damage, claim, cost, charge or expense, whether or

not resulting from the negligence of the Decommissioning Agent, its employees, officers, directors or agents, or any person or entity whose negligence would be imputed to the Decommissioning Agent arising out of its performance or non-performance hereunder. With respect to the Decommissioning Agent's liability for Willful Action, such liability will in no event exceed a total of fourteen million dollars ($14,000,000) per occurrence. The Parties extend to the Decommissioning Agent, its employees, officers, directors and agents, their covenant not to execute, levy or otherwise enforce a judgment against any of them for any such liability for Willful Action in excess of the amounts set forth in the previous sentence. In the event that Parties' claims made or judgments obtained against the Decommissioning Agent or its employees, officers, directors and agents exceed fourteen million dollars ($14,000,000) per occurrence, such claims or judgments will be prorated among the successful Parties consistent with the limitation on Willful Action liability established herein.

3.2.7 Resignation of the Decommissioning Agent. Subject to Section 3.2.8, the Decommissioning Agent will serve during the term of this Decommissioning Agreement unless it resigns as Decommissioning Agent by giving notice to the Parties at least one (1) year in advance of the effective date of the resignation. Following such a notice, the Decommissioning Committee must convene promptly to address the selection of a replacement Decommissioning Agent which may, but need not, be a Party.

3.2.8 Removal of the Decommissioning Agent. The Decommissioning Agent may be removed by the Parties, if, in the judgment of the Parties, their best interests require such removal. Any Party seeking the removal of the Decommissioning Agent must serve a notice on the Decommissioning Agent and on each of the Parties, detailing the reasons why, in the judgment of the initiating Party, the Decommissioning Agent should be removed. Within thirty (30) days after receipt by the Decommissioning Agent of this written statement, the Decommissioning Agent will prepare and serve upon the Parties its response, which will contain a detailed rebuttal of the allegations made in the initiating statement. Within the same thirty (30) day period, any other Party may also serve upon the Decommissioning Agent and the Parties a statement responding to the allegations in the initiating statement. Within twenty (20) days after service of all such response statements, the Parties must meet to consider what actions, if any, to take in regard to the removal of the Decommissioning Agent. The Decommissioning Agent may be removed by the vote of more than a sixty-six and two thirds percent (66 2/3%) majority of the Decommissioning Shares of the Parties and more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties; provided, however, that a Party that is the Decommissioning Agent will not be entitled to vote on the issue of its own removal and the requisite voting percentages will be based upon the number of eligible voting Parties, other than the Party that is the Decommissioning Agent, and their respective Decommissioning Shares. If the Decommissioning Agent is removed by vote of the Parties, the Decommissioning Committee must convene promptly to address the selection of a replacement Decommissioning Agent which may, but need not, be a Party.

4.0 Activities During Interim Period

4.1 Initial Decommissioning Work.

4.1.1 Three specific one-time tasks constituting initial Decommissioning Work for Units 2 and 3, and the estimated costs of such tasks, are set forth in **Exhibit D** hereto. The cost of the initial Decommissioning Work set forth in **Exhibit D** will be paid by all Parties based on the following percentages:

4.1.1.1	PNM:	46.297%
4.1.1.2	TEP:	19.8%
4.1.1.3	M-S-R:	8.7%
4.1.1.4	Farmington:	2.559%
4.1.1.5	Tri-State:	2.49%
4.1.1.6	Los Alamos:	2.175%
4.1.1.7	SCPPA:	12.71%
4.1.1.8	Anaheim:	3.10%
4.1.1.9	UAMPS:	2.169%
4.1.1.10	PNMR-D:	0.000 %

4.1.2 Other tasks related to requirements for the retirement-in-place of Units 2 and 3, and their estimated cost, are set forth in **Exhibit E** hereto. The costs of such tasks will be paid for as operating and maintenance costs by the Remaining Participants based on the following percentages:

4.1.2.1	PNM:	58.671%
4.1.2.2	TEP:	20.068%
4.1.2.3	Farmington:	5.076%
4.1.2.4	Los Alamos:	4.309%
4.1.2.5	UAMPS:	4.203%
4.1.2.6	PNMR-D:	7.673%
4.1.2.7	Exiting Participants:	0.000%

4.2 Interim Decommissioning Work. Other Decommissioning Work undertaken during the period between the Exit Date and the complete cessation of commercial production of electrical power at all four Units ("Interim Period") will be addressed as set forth in this Section 4.2.

4.2.1 The Decommissioning Agent will report each year during the Interim Period addressing Decommissioning Work, if any, to take place in the following calendar year and provide that report to the Decommissioning Committee no later than ninety (90) days prior to the beginning of the next calendar year. The Decommissioning Committee will review the Decommissioning Agent's report as to whether a particular project exceeds or is less than the Threshold Amount.

4.2.2 The Decommissioning Committee will refer projects for Decommissioning Work which it determines will have a cost below the Threshold Amount to the Engineering

and Operating Committee established in the SJPPA. Such projects will be paid for as if they were operations and maintenance activities in accordance with the SJPPA, not Decommissioning Work. The Parties having an ownership interest in the Project at the time such Decommissioning Work below the Threshold Amount is performed will be responsible for the costs of such projects in accordance with the SJPPA.

4.2.3 If the report identifies any project for Decommissioning Work with an estimated cost above the Threshold Amount, the Decommissioning Agent will prepare a Retirement Order that will include a description of the project, a determination as to whether the project is required by Law or is being proposed for purposes of Prudent Cost Avoidance, a schedule of the estimated timing for performance of the project and a budget based on the estimated cost of the project, including the Decommissioning Agent's reasonable Decommissioning A&G Expenses. The Decommissioning Agent will not aggregate unrelated projects or separate related projects for the purpose of avoiding or exceeding the Threshold Amount. If a project for Decommissioning Work is proposed for the purposes of Prudent Cost Avoidance, the Retirement Order will also include a cost-benefit analysis which explains why the Decommissioning Agent recommends performance of the project.

4.2.3.1 For projects for Decommissioning Work above the Threshold Amount determined by the Decommissioning Agent to be required by Law to be commenced within the next year, the Decommissioning Committee will vote pursuant to the provisions of Section 3.1.4 whether to adopt the Retirement Order and proceed with the project. If such a project required by Law is not approved, the Decommissioning Agent will perform or procure performance of the Decommissioning Work for such project in an efficient and economical manner until a budget has been approved by the Decommissioning Committee and the cost for such project will be paid pursuant to Sections 5.3 and 5.4.

4.2.3.2 For projects for Decommissioning Work above the Threshold Amount recommended by the Decommissioning Agent on the basis of Prudent Cost Avoidance, the Decommissioning Committee will vote pursuant to the provisions of Section 3.1.4 whether to adopt the Retirement Order and proceed with the project. Such a project not approved by the Decommissioning Committee will not be performed.

4.2.4 Each Party will be responsible to pay for the costs of approved projects above the Threshold Amount performed under this Section 4.2 based on its then-current Decommissioning Share for the year in which the majority of project expenditures are expected to be spent.

4.3 Items not Part of Decommissioning. During the Interim Period, expenditures related to use, operation or maintenance of any Unit or common facility of the SJGS are not part of Decommissioning. Attached as **Exhibit F** is an illustrative list of equipment, facilities and systems potentially required or that may be used for the ongoing operation of Units 1 and/or 4 during the Interim Period, and expenditures on such equipment, facilities and systems are not part of Decommissioning. Decommissioning does not include (i) any activities primarily to protect the health and welfare of the SJGS plant workers during continued operation of Unit 1 and/or 4 until

all Units cease operations; (ii) any activities required because equipment and/or facilities from Unit 2 or 3 or common facilities, such as equipment identified in **Exhibit F**, are being used for ongoing operations; or (iii) any activities resulting from equipment and/or facilities from Unit 2 or 3 or common facilities being removed for reuse by Unit 1 and/or 4. In case of doubt, the Decommissioning Committee will determine expenditures above the Threshold Amount that are for the ongoing operation of Units 1 and 4 and are not Decommissioning. The following facilities owned by either or both of PNM or TEP located at or adjacent to the SJGS Plant Site are not facilities or equipment that will be Decommissioned pursuant to this Section 4.3:

4.3.1 The San Juan switchyard;

4.3.2 Any gas plant or any other generating or fuel facility added to the SJGS Plant Site that is not part of the San Juan Project, or any new facility constructed on the SJGS Plant Site; and

4.3.3 Any other property or facilities that PNM and/or TEP notifies the other Parties, within fifteen (15) days after the decision is made to retire the last Unit, either or both wish to retain and not Decommission under this Decommissioning Agreement.

4.4 Use of Equipment Located at Units 2 and 3; Salvage Revenue. During the Interim Period, the Remaining Participants will be entitled to use equipment from Units 2 and 3 in the operation of either or both of Units 1 and 4 without compensation to the Exiting Participants. However, any Salvage Revenue obtained during the Interim Period will be distributed to all Parties based on each Party's Decommissioning Share in effect in the year in which the right to obtain the Salvage Revenue arises.

5.0 Decommissioning Plan

5.1 Decommissioning Study. Within thirty (30) days after the decision is made to retire the last Unit, the Decommissioning Agent will commence a Decommissioning Study which will compare altemative Decommissioning Plan scenarios.

5.1.1 The Decommissioning Study will: (i) determine the current federal and state requirements under Law, if any, for Decommissioning a coal-fired electric generation plant in the state of New Mexico; (ii) estimate the cost of Decommissioning Work to the level required by Law, which may include ongoing monitoring of the SJGS Plant Site ("Required Plan"); and (iii) estimate the cost of other approaches proposed by either the Decommissioning Committee or the Decommissioning Agent.

5.1.2 All Decommissioning Plans included in the Decommissioning Study will: (i) include provisions to dispose of any remaining fly ash; (ii) subject to the provisions of Section 19 of the Restructuring Agreement, provide for the identification and remediation of any environmental concerns existing at the time Decommissioning begins; (iii) include provisions addressing security, risk management and insurance; and (iv) describe the Decommissioning Work proposed to be performed.

5.1.3 The facilities identified in Section 4.3.1, 4.3.2 and 4.3.3 are not facilities or equipment that will be Decommissioned pursuant to this Section 5 and will not be considered in the Decommissioning Study or Decommissioning Plans. The costs of Decommissioning any new facility constructed, or equipment installed, on the SJGS Plant Site or on the Project after the Exit Date, unless such facility or equipment is a replacement or betterment of existing facilities or equipment, will be the sole responsibility of the Parties that own such new facility or equipment.

5.1.4 The Decommissioning Study will be completed within six (6) months unless the Decommissioning Committee has extended the completion date.

5.2 Selection of Decommissioning Plan. The Decommissioning Committee will review the Decommissioning Study and vote to select a Decommissioning Plan. Unless the Decommissioning Committee unanimously votes to select any plan other than the Required Plan, the Required Plan will become the selected Decommissioning Plan. The selected Decommissioning Plan will be implemented, and the Decommissioning Costs paid pursuant to Sections 5.3 and 5.4 based on the Decommissioning Shares in effect during the year in which commercial production of electrical power has ceased at all four Units.

5.3 Payment for Decommissioning. The Parties will pay for Decommissioning Costs based on the Decommissioning Shares set forth in **Exhibit A**. All Parties will start with eighteen (18) years of ownership at their current capacity as of December 31, 2017, and then their percentages will increase or decrease in the years after 2017, based on the total of each individual Party's megawatt-years in SJGS divided by the total of all Parties' megawatt-years, as shown in **Exhibit A.**

5.4 Payment Procedures. Prior to paying an invoice for Decommissioning Work, including costs for Projected Decommissioning Costs Reviews, the Decommissioning Agent will invoice the Parties for such costs, and the Parties will pay the invoice within ten (10) Business Days of receipt. Payments of an invoice issued to a Party will be paid as determined by each Party from such Party's Decommissioning Trust or by payment made directly by such Party. Appropriate supporting information must accompany each invoice, and the Decommissioning Agent will provide any additional supporting information that a Party may reasonably request.

6.0 Decommissioning Trust Funds

6.1 Establishment of Decommissioning Trusts. Within ninety (90) days after the Effective Date of this Decommissioning Agreement, each Party must execute a separate trust fund agreement ("Decommissioning Trust Agreement") between that Party and a financial institution in good standing selected by that Party ("Trustee") for the establishment of an irrevocable trust ("Decommissioning Trust") to carry out the purposes of this Decommissioning Agreement. The Trustee may not be an Affiliate of a Party. A copy of each Decommissioning Trust Agreement must upon execution be provided to each other Party. Each Decommissioning Trust must be funded as provided for in this Section 6. Each Party will notify each other Party of the name and contact information of its Trustee.

6.2 Decommissioning Trust Funding Obligations.

6.2.1 Each Party must maintain a balance in its Decommissioning Trust sufficient to fund its Decommissioning Share, as established pursuant to Section 5, of the Decommissioning Funding Target Amount as specified by the Decommissioning Investment Committee during the term hereof. The initial Decommissioning Funding Target Amount is thirty million dollars ($30 million), and each Party must fund its Decommissioning Share of the initial Decommissioning Funding Target Amount by December 31, 2022. Any adjustment to a Decommissioning Funding Target Amount pursuant to Section 6.3 or the dates by which Parties must fund their respective Decommissioning Shares of the Decommissioning Funding Target Amount will not be deemed an amendment to this Decommissioning Agreement but rather will be considered an element of the administration and implementation of this Decommissioning Agreement; upon approval of a Decommissioning Funding Target Amount adjustment, as provided for herein, such adjusted Decommissioning Funding Target Amount will replace the Decommissioning Funding Target Amount previously in effect. Except as provided in Section 6.2.2, no additional funding of a Decommissioning Trust will be required of a Party if the funds in its Decommissioning Trust are sufficient, by December 31, 2022 and by December 31 of each subsequent year during the term hereof, to satisfy the Party's Decommissioning Share of the Decommissioning Funding Target Amount for that year.

6.2.2 If a Party's Credit Rating drops below investment grade, the Decommissioning Investment Committee may increase the funding obligation for that Party up to one hundred ten percent (110%) of the otherwise applicable funding obligation of that Party. The percentage increase in that Party's funding obligation will remain in effect until that Party's Credit Rating is restored to investment grade. If a Party whose Credit Rating is determined to be below investment grade has its Credit Rating restored to investment grade, the additional amounts paid into the Decommissioning Trust will be a credit toward future funding obligations to the Decommissioning Trust. This Section 6.2.2 will not apply to a Party that does not have a current Credit Rating if the Party's most recent Credit Rating was investment grade.

6.3 Projected Decommissioning Costs Reviews and Adjustment of Decommissioning Trust Funding Obligations.

6.3.1 The Parties acknowledge the appropriateness of adjusting, from time-to-time, the Decommissioning Funding Target Amounts for all Parties based on updated estimates for Decommissioning Work pursuant to a Projected Decommissioning Costs Review as provided for in this Section 6.3.

6.3.2 The Decommissioning Agent will perform (or cause to be performed) a technical reassessment of estimated costs for Decommissioning Work at a level of Decommissioning determined by the Decommissioning Committee to be appropriate (a "Projected Decommissioning Costs Review") during the year 2022 and every five (5) years thereafter. A Party desiring to request a Projected Decommissioning Costs Review more frequently than every five (5) years must do so by serving a written request upon the

Decommissioning Agent and the members of the Decommissioning Committee. A request for a Projected Decommissioning Costs Review must set out in detail the facts relied on by the Party making the request. The Decommissioning Committee may approve such a request, and may vote to conduct a Projected Decommissioning Costs Review at any time.

6.3.3 The Decommissioning Committee will establish reasonable goals, timelines and procedures with respect to the manner in which the required Projected Decommissioning Costs Review is to be conducted. The costs of a Projected Decommissioning Costs Review will be Decommissioning Costs and will be invoiced and paid pursuant to Section 5, whether or not the cost of a Projected Decommissioning Costs Review is below the Threshold Amount.

6.3.4 The Decommissioning Agent will present a report resulting from a Projected Decommissioning Costs Review to the Decommissioning Committee.

6.3.5 The Decommissioning Committee will promptly either approve the report of the Projected Decommissioning Costs Review provided by the Decommissioning Agent or direct that further study or revisions be made to the Projected Decommissioning Costs Review report. In the event the Decommissioning Committee directs further study or revisions, the Decommissioning Agent must submit a new Projected Decommissioning Costs Review report to the Decommissioning Committee upon completion of such further study or revisions.

6.3.6 Except for funding of the initial Decommissioning Funding Target Amount of thirty million dollars ($30 million) by the end of 2022, the Decommissioning Investment Committee will thereafter adjust the Decommissioning Funding Target Amounts for the Decommissioning Trusts based on the approved Projected Decommissioning Costs Review report.

6.4 Investment of Decommissioning Trust Funds. Each Party may implement its own policies in relation to the investment of funds in its Decommissioning Trust. Each Party may, at its discretion, appoint one or more investment managers to direct the investment of all or parts of funds held in its Decommissioning Trust.

6.5 Mandatory Provisions for Decommissioning Trust Agreements.

6.5.1 Each Decommissioning Trust Agreement must contain and maintain certain mandatory provisions ("Mandatory Provisions"). The Mandatory Provisions are contained in **Exhibit B**. The Decommissioning Investment Committee will review the initial Decommissioning Trust Agreement for each Party for compliance with **Exhibit B**.

6.5.2 Proposed amendments to any Mandatory Provision in a Party's Decommissioning Trust Agreement are subject to review and approval by the Decommissioning Investment Committee. A Party desiring to amend a Mandatory Provision must submit such proposed amendment to the Decommissioning Investment Committee for prior review in accordance with procedures established by the Decommissioning Investment Committee.

6.5.3 If the Decommissioning Investment Committee representatives (other than the representative representing any Party whose compliance is under review) conclude that a Party's initial Decommissioning Trust Agreement is inconsistent with **Exhibit B**, or that a proposed amendment to a Mandatory Provision is inconsistent with the purposes of this Decommissioning Agreement, the Decommissioning Investment Committee must inform the Party of the reasons why, in the judgment of the Decommissioning Investment Committee, the Mandatory Provisions of its initial Decommissioning Trust Agreement are inconsistent with **Exhibit B** or why the proposed amendment to the Mandatory Provision is inconsistent with this Decommissioning Agreement. No Party may amend a Mandatory Provision in its Decommissioning Trust Agreement in a manner contrary to a determination of the Decommissioning Investment Committee.

6.6 Only Purposes. Prior to termination, funds held in a Decommissioning Trust may be utilized for the following and no other purposes: (i) to pay the costs and fees associated with the maintenance of the Decommissioning Trust, including the fees and expenses of the Trustee; and (ii) to pay the Party's Decommissioning Share (as defined in Section 5 and **Exhibit A**) of Decommissioning Costs, as provided for in this Decommissioning Agreement. During the term hereof, no Party will be permitted to withdraw funds from its Decommissioning Trust, including net earnings on accumulations in the Trust, except as provided in this Decommissioning Agreement.

6.7 Decommissioning Correcting Deposits.

6.7.1 In the event that, as of December 31 of any year after 2022 during the term hereof, the value of funds in a Party's Decommissioning Trust is less than its Decommissioning Share of the Decommissioning Funding Target Amount for such year, then the Party must make one or more Decommissioning Correcting Deposits. The amount and timing of such Decommissioning Correcting Deposits must comply with policies established by the Decommissioning Investment Committee consistent with Section 6.7.2.

6.7.2 Decommissioning Correcting Deposits in the aggregate must be sufficient to ensure that the value of funds in a Party's Decommissioning Trust is equal to or greater than such Party's Decommissioning Share of the Decommissioning Funding Target Amount at the end of the applicable Decommissioning Correction Period determined as provided in Section 6.7.2.1.

6.7.2.1 The applicable Decommissioning Correction Period during which one or more Decommissioning Correcting Deposits must be made pursuant to Section 6.7.1 is two (2) years.

Example:

If the value of funds in Party A's Decommissioning Trust is less than the Decommissioning Funding Target Amount for Party A at the end of 2025, the Decommissioning Correction Period expires December 31, 2027.

6.7.3 If any Party fails to make any Decommissioning Correcting Deposit when due, then, within ten (10) days after the applicable due date, the chairperson of the Decommissioning Investment Committee will report such failure by the Party to each representative on the Decommissioning Investment Committee.

6.8 Return of Funds in Decommissioning Trust. Any funds remaining in a Party's Decommissioning Trust after the completion of the Decommissioning Work as determined by the Decommissioning Committee and full payment of the Party's Decommissioning Share of the Decommissioning Work will be returned to the Party pursuant to the Party's Decommissioning Trust Agreement.

6.9 Status Reports. Each Party will prepare on an annual basis a funding Status Report regarding the funds in its Decommissioning Trust as of December 31 of each year during the term hereof and provide such annual funding Status Report to each of the other Parties. The funding Status Report will include a detailed summary of the investments made by the Party in its Decommissioning Trust during the period covered by the Status Report. The funding Status Report will be prepared and provided to the other Parties no later than thirty (30) days following the end of a calendar year unless otherwise directed by the Decommissioning Investment Committee. In addition to such annual funding Status Reports, on the written request of any other Party for reasonable cause *(e.g.,* changes in market conditions that could significantly affect the value of funds in a Decommissioning Trust), each Party will provide special funding Status Reports, in the same format and content as annual funding Status Reports, to the other Parties; provided, that such special reports will not be required of any Party more frequently than once in any calendar quarter.

6.10 Compliance. A Party whose funding of its Decommissioning Trust has been determined by the Decommissioning Investment Committee not to be in compliance with the requirements of this Decommissioning Agreement must act promptly to bring itself into compliance therewith. A Party, the Mandatory Provisions of whose Decommissioning Trust Agreement have been determined by the Decommissioning Investment Committee not to be in compliance with the requirements of this Decommissioning Agreement, must act promptly to bring itself into compliance therewith and must promptly inform the Decommissioning Investment Committee of actions taken to bring itself into compliance.

7.0 Decommissioning Investment Committee

7.1 Establishment of Decommissioning Investment Committee. The Parties hereby establish a Decommissioning Investment Committee. The Decommissioning Investment Committee will remain in existence during the term of this Decommissioning Agreement. The Decommissioning Investment Committee will have no authority to modify any of the provisions of this Decommissioning Agreement.

7.2 Decommissioning Investment Committee Membership. The Decommissioning Investment Committee will consist of one representative from each Party who must be an officer or other authorized representative of the Party. Any of the Parties may designate an alternate or substitute to act as its representative on the Decommissioning Investment Committee in the absence of the regular representative on the Decommissioning Investment Committee or to act on specified

occasions or with respect to specified matters. Each Party must notify the other Parties promptly, in writing, of the designation of its representative and altemate representative on the Decommissioning Investment Committee and of any subsequent changes in such designations. The chairperson of the Decommissioning Investment Committee will be a representative of the Decommissioning Agent if the Decommissioning Agent is a Party. If the Decommissioning Agent is not a Party, the chairperson will be elected by a majority of the individual representatives on the Decommissioning Investment Committee. Each Party will be responsible for the costs of its Decommissioning Investment Committee representative, including fees and travel reimbursement.

7.3 Functions and Responsibilities of the Decommissioning Investment Committee. The Decommissioning Investment Committee will have the following functions and responsibilities:

7.3.1 Within six (6) months of the Effective Date, establish the format and content to be used for each Party's annual funding Status Report;

7.3.2 Review each Party's annual and special funding Status Report(s) and determine and, as to each Party, report to the Decommissioning Committee and the Decommissioning Agent whether the amount of funds in a Party's Decommissioning Trust is in compliance with Sections 5, 6 and **Exhibit A;**

7.3.3 Upon receipt from the Decommissioning Committee of a copy of a Projected Decommissioning Costs Review, as provided for in Section 6.3, establish and provide to each of the Parties new Decommissioning Funding Target Amounts for the Decommissioning Trusts;

7.3.4 Establish, consistent with Section 6.7, policies regarding the number and timing of Decommissioning Correcting Deposits;

7.3.5 Audit, or cause to be audited, compliance of Parties in meeting their obligations under Section 6;

7.3.6 Under procedures to be established in a timely fashion by the Decommissioning Investment Committee, (i) promptly upon execution of each Party's Decommissioning Trust Agreement, review the Mandatory Provisions of each such Decommissioning Trust Agreement to assure that the Mandatory Provisions of each such Decommissioning Trust Agreement conform to the requirements of Section 6.5 and of **Exhibit B**; and (ii) review any proposed amendment to a Mandatory Provision in a Party's Decommissioning Trust Agreement;

7.3.7 Perform such other tasks as the Decommissioning Committee from time-to-time assigns to the Decommissioning Investment Committee; and

7.3.8 Perform such other tasks as may be delegated under this Decommissioning Agreement to the Decommissioning Investment Committee.

7.4 Decisions of the Decommissioning Investment Committee. Except as provided for in the third sentence of this Section 7.4, any actions or determinations brought before the Decommissioning Investment Committee will require the following vote: (i) more than a sixty-six and two thirds percent (66 2/3%) majority of the Decommissioning Shares of the Parties as set out in Section 5.3 and as defined in **Exhibit A**; and (ii) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Parties. Matters approved by the requisite majority of the Decommissioning Investment Committee will be binding on all Parties. If a Party's right to vote has been suspended because of a Default, such Party will not have a right to vote under either subsection (i) or subsection (ii) of this Section 7.4, and the requisite majorities for actions or determinations of the Decommissioning Investment Committee will be sixty-six and two thirds percent (66 2/3%) of the members eligible to vote under either subsection (i) or (ii) of this Section 7.4. The outcome of any vote of the Decommissioning Investment Committee properly conducted in accordance with this Decommissioning Agreement will not be subject to the dispute resolution provisions of Section 9.

7.5 Meetings of the Decommissioning Investment Committee. The Decommissioning Investment Committee will meet no less frequently than annually. Special meetings will be held promptly at the written request of any Party, such request to be delivered to the chairperson of the Decommissioning Investment Committee. The Decommissioning Investment Committee will keep written minutes and records of all meetings, the draft of which minutes will be distributed for review within forty-five (45) days. Any action or determination made by the Decommissioning Investment Committee will be reduced to writing and will become effective when signed by the representatives of the Parties entitled to vote thereon, representing a voting majority of the members of the Decommissioning Investment Committee. Decommissioning Investment Committee representatives will be permitted, by prior notification to the chairperson of the Decommissioning Investment Committee, to attend a meeting of the Decommissioning Investment Committee by conference call or video conferencing. A Decommissioning Investment Committee representative who is unable to attend a meeting of the Decommissioning Investment Committee will be permitted to vote in absentia by delivering to the chairperson of the Decommissioning Investment Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

8.0 Default

8.1 Definition of Default. Each Party must: (i) fund its Decommissioning Trust under the terms of this Decommissioning Agreement and consistent with its Decommissioning Trust Agreement; (ii) make any required Decommissioning Correcting Deposits; (iii) cause the timely payment of its Decommissioning Share of Decommissioning Work pursuant to invoices for Decommissioning Costs rendered to the Party; and (iv) carry out all other performances, duties and obligations agreed to be paid or performed by it pursuant to this Decommissioning Agreement. A failure to perform any of items (i) through (iv) above is a Default under this Decommissioning Agreement.

8.2 Default Notice. If the Decommissioning Agent (either on its own motion or at the suggestion of a Party) deems a Party to be in Default, the Decommissioning Agent must serve upon the defaulting Party a written notice of default (the "Default Notice"). The Decommissioning Agent

must also serve a copy of the Default Notice on: (i) the representatives on the Decommissioning Committee; (ii) the representatives on the Decommissioning Investment Committee; (iii) all persons entitled to receive notices under Section 21.1; and (iv) the Trustee of the defaulting Party's Decommissioning Trust. The Default Notice must specify the existence, nature and extent of the Default.

8.3 Cure of Default. Upon receipt of the Default Notice, the defaulting Party must: (i) pay any monies due under this Decommissioning Agreement (including funding of its Decommissioning Trust and making any required Decommissioning Correcting Deposits) within fifteen (15) days; or (ii) commence within fifteen (15) days the performance of any non-monetary obligation and continue thereafter the diligent completion of such non-monetary obligation.

8.4 Protest of Default. If the defaulting Party disputes a Default Notice, such Party must nonetheless pay the disputed payment or commence performance of the disputed obligation, but may do so under protest (the "Protest"). The Protest must be in writing, must accompany the disputed payment or precede the commencement of performance of the disputed obligation, and must specify the reason upon which the Protest is based. Copies of the Protest must be served by the defaulting Party on the Decommissioning Agent and also on: (i) the representatives on the Decommissioning Committee; (ii) the representatives on the Decommissioning Investment Committee; (iii) all persons entitled to receive notices under Section 21.1; and (iv) the Trustee of the defaulting Party's Decommissioning Trust. Within seven (7) days after the service of the Protest, authorized representatives of the Parties must meet, in person or by conference call or video conference, to address the Protest and to determine what actions, if any, to take as a result of the Protest.

8.5 Declaration of Default. If the defaulting Party fails to cure the Default pursuant to Section 8.3, or protests the Default Notice pursuant to Section 8.4 but fails to timely pay the disputed payment or commence performance of the disputed obligation, the Decommissioning Agent must notify the defaulting Party in writing of the Decommissioning Agent's intent to declare the defaulting Party in Default unless there is a prompt cure of the Default ("Notification of Intent"). The Notification of Intent must afford the defaulting Party a minimum of fifteen (15) additional days after the giving of the Notification of Intent to cure the Default. The pendency of a Protest will not prevent the Decommissioning Agent from issuing a Notification of Intent. If the Default has not been cured within the period of time identified in the Notification of Intent, the Decommissioning Agent may give written notice to the defaulting Party declaring that the defaulting Party is in Default (the "Default Declaration"). The Decommissioning Agent must serve a copy of the Notification of Intent and of the Default Declaration on: (i) the representatives on the Decommissioning Committee; (ii) the representatives on the Decommissioning Investment Committee; (iii) all persons entitled to receive notices under Section 21.1; and (iv) the Trustee of the defaulting Party's Decommissioning Trust. The pendency of a Protest will not prevent the Decommissioning Agent from making a Default Declaration.

8.6 Consequences of Default. Upon delivery of the Default Declaration, the Party in Default under this Decommissioning Agreement will lose all its rights but retain its obligations under this Decommissioning Agreement, the Mine Reclamation Agreement and the Restructuring Agreement so long as the Default is in effect. This consequence of Default is in addition to and

cumulative of any other remedy to which the Party in Default may be subject, including the loss of the right to vote on the Decommissioning Investment Committee and the Decommissioning Committee. If and when the Party in Default remedies the Default, its rights under such agreements will be restored.

8.7 No Stay for Arbitration. A demand for arbitration or other dispute resolution procedure will not stay: (i) the right of the Decommissioning Agent to issue a Default Notice, a Notification of Intent or a Default Declaration; or (ii) the suspension of the rights of a defaulting Party.

8.8 Termination of Default. The Default will be terminated, and the full rights of the defaulting Party restored when: (i) the Default has been cured and all costs incurred by the non-defaulting Parties resulting from the Default of the defaulting Party have been reimbursed in full by the defaulting Party, with interest thereon at the Prime Rate plus two percent (2%) per annum or the maximum legal rate of interest, whichever is less, from the date of payment to the date of reimbursement; (ii) other arrangements acceptable to the non-defaulting Parties have been made; or (iii) the defaulting Party prevails in an arbitration or other legal proceeding in which the default status of the defaulting Party is at issue.

8.9 Other Rights. Subject to the limitations set forth in Section 28, the rights and remedies provided in this Decommissioning Agreement will be in addition to any other rights and remedies the Decommissioning Agent and the non-defaulting Parties have in law or equity.

8.10 No Waiver. No waiver by the Decommissioning Agent or by a non-defaulting Party of its rights with respect to a Default under this Decommissioning Agreement or with respect to any other matter arising in connection with this Decommissioning Agreement, will be effective unless the Decommissioning Agent or the non-defaulting Party waives in writing its rights and no such waiver will be deemed a waiver with respect to any subsequent Default or matter. No delay short of the statutory period of limitations in asserting or enforcing any right hereunder will be deemed a waiver of such right. The Decommissioning Agent will not waive any of its rights with respect to a Default under this Decommissioning Agreement without the approval of the Decommissioning Committee.

9.0 Dispute Resolution

9.1 Amicable Resolution. If a dispute between or among any of the Parties should arise under this Decommissioning Agreement, or in relation to the rights or obligations of the Parties under this Decommissioning Agreement, executive representatives of the Parties with authority to resolve the dispute will first seek to resolve the dispute as set forth in this Section 9.1.

9.1.1 The dispute process will be initiated by the delivery of a written notice by a Party ("Noticing Party") of the dispute ("Notice of Dispute") to the Party with which a dispute is claimed. The Notice of Dispute will specify the existence, nature and extent of the dispute. Copies of the Notice of Dispute will be served on all other Parties. The Notice of Dispute will specifically state the sums allegedly due, any non-monetary obligation allegedly not performed, or both if applicable.

9.1.2 Within fifteen (15) Business Days of receipt of the Notice of Dispute, the Party alleged not to be performing may protest in writing any or all of the matters set forth in the Notice of Dispute ("Dispute Protest"), specifying the basis of the Dispute Protest. Copies of the Dispute Protest will be served by the protesting Party ("Protesting Party") on all other Parties.

9.1.3 Within fifteen (15) Business Days of the giving of a Notice of Dispute under Section 9.1.1 or within ten (10) Business Days after the service of a Dispute Protest under Section 9.1.2, the executive representatives of the Parties involved in the dispute will meet at a mutually agreeable time and place to attempt to negotiate a timely and amicable resolution of the dispute. If an executive of a Party intends to be accompanied by counsel, the other Parties will be given at least five (5) Business Days' written notice of such intent and may also be accompanied by counsel. All negotiations will be confidential and will be treated as compromise and settlement negotiations under New Mexico Law. If the executive representatives of the Parties are unable to resolve the dispute within sixty (60) days of the Notice of Dispute (or such other period as they may agree to), any Party involved in the dispute may call for submission of the dispute to arbitration, which call will be binding upon all of the other affected Parties except as provided in Section 9.9.

9.2 Call for Arbitration. The Party calling for arbitration must give written notice to all other Parties ("Arbitration Notice"), setting forth in the Arbitration Notice in adequate detail the entity against whom relief is sought, the nature of the dispute, the amount, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, which may include monetary, equitable and declaratory relief. Within twenty (20) Business Days after receipt of the Arbitration Notice, any other Party may submit its own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated, with copies of such notice provided to all other Parties. Thereafter, the Party calling for arbitration will have ten (10) Business Days in which to submit a written rebuttal statement, copies of which must be provided to all other Parties.

9.3 Selection of Arbitrators.

9.3.1 The Parties involved in the arbitration will seek to agree upon a panel of three (3) neutral arbitrators as follows. Within ten (10) days after service of the written rebuttal statement, the Parties representing each side of the dispute will provide to the Parties representing the other side of the dispute a list of up to five (5) suggested arbitrators having the qualifications required by Section 9.3.2 and a summary of each such suggested arbitrator's experience and qualifications. Within five (5) Business Days thereafter, the Parties involved in the arbitration will meet and confer by telephone or in person to seek to agree upon a panel of three (3) neutral arbitrators from the lists that have been exchanged. If such agreement is not reached as the result of such meeting, the Parties representing each side of the dispute will provide a second list of suggested arbitrators to one another and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon a panel of three (3) neutral arbitrators. If such agreement on arbitrators is reached, the Parties will proceed to arbitration as further set forth in this Section 9.

9.3.2 If the Parties involved in the arbitration are not able to agree upon a complete panel of three (3) neutral arbitrators, such Parties will select the arbitrators upon which agreement has not been reached as follows. The Parties will request from the American Arbitration Association (or similar organization as the arbitrating Parties agree upon) ("Arbitration Organization") a list of seven (7) arbitrators with names and biographical sketches and specific qualifications relating to the case to be heard. The proposed arbitrators will be persons skilled and experienced in the field that gives rise to the dispute, and no person will be eligible for appointment as an arbitrator who is an officer or employee of any of the Parties to the dispute or is otherwise interested in the matter to be arbitrated. The Parties involved in the arbitration will each advise the Arbitration Organization of its order of preference of such arbitrators by numbering from one (1) to seven (7) each name on the list (with one (1) being the most preferred arbitrator) and submitting the numbered lists in writing to the Arbitration Organization. Depending upon the number of arbitrators to be selected, the name or names with the lowest combined numbers will be appointed as the remaining neutral arbitrator(s). In the event more than one name on the list has the same lowest combined score, the tie will be broken by lot. Should the Parties agree that one list of seven (7) is insufficient to obtain a total of three (3) neutral arbitrators with the required qualifications, an additional list of arbitrators may be requested from the Arbitration Organization.

9.4 Arbitration Procedures. Except as otherwise provided in this Section 9 or otherwise agreed by the Parties to the dispute, the Parties will utilize in the arbitration the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Commercial Disputes) or similar rules and practices of another Arbitration Organization from time-to-time in force, except that if such rules and practices, as modified herein, conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico law then in force that are specifically applicable to arbitration proceedings, such New Mexico laws will govern. The arbitration will be conducted at a location in Albuquerque, New Mexico, unless otherwise agreed by the affected Parties.

9.5 Decision of Arbitrators. The arbitrators will hear evidence submitted by the respective Parties or group or groups of Parties and may call for additional information, which additional information must be furnished by the Party having such information. The decision of a majority of the arbitrators ("Arbitration Award") must be rendered no later than twenty (20) days after the conclusion of the arbitration hearing and will be binding upon all the Parties and must be based on the provisions of this Decommissioning Agreement and applicable New Mexico or federal Law. The Arbitration Award must be in writing and must explain in reasonable detail the basis of the award.

9.6 Enforcement of Arbitration Award. This agreement to arbitrate is specifically enforceable, and the Arbitration Award will be final and binding upon the Parties to the extent provided by the laws of the State of New Mexico. Any Arbitration Award may be filed with a court of competent jurisdiction in New Mexico and upon motion of a Party the court shall enter a judgment in conformity therewith as provided by the New Mexico Uniform Arbitration Act. Said judgment is enforceable in other States and Territories of the United States under the Full Faith and Credit provisions of the United States Constitution and other Laws.

9.7 Fees and Expenses. Fees and expenses of the arbitrators will be paid by the non-prevailing Party, unless the Arbitration Award specifies some other apportionment of such fees and expenses. All other expenses and costs of the arbitration, including attorney fees and expert witness fees, will be borne by the Party incurring the same.

9.8 Prompt Resolution. The Parties acknowledge the importance of prompt dispute resolution. Accordingly, it is agreed that any arbitration proceeding hereunder must be scheduled and conducted in such a manner that the Arbitration Award is rendered no later than two hundred and seventy (270) days after the Arbitration Notice is served.

9.9 Legal Remedies. Nothing in this Section 9 will be deemed to prevent a Party from commencing judicial action: (i) to obtain a provisional remedy to protect the effectiveness of the arbitration proceeding; (ii) to confirm, enforce, modify, correct or vacate or challenge an Arbitration Award on grounds provided for in the New Mexico Uniform Arbitration Act; (iii) to obtain relief in instances where the arbitrators are unable or unwilling to act within the time provided for in Section 9.8; (iv) where, as the result of the unreasonable or dilatory conduct of another Party, a Party is not able to obtain a timely valid and enforceable Arbitration Award; or (v) if a Party is prohibited by Law from participating in binding arbitration.

10.0 Power and Anthority

10.1 Requisite Power and Authority. Each Party represents and warrants to the other Parties that it has the requisite power and authority to execute this Decommissioning Agreement and to perform its obligations set out in this Decommissioning Agreement. The execution and delivery of this Decommissioning Agreement and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party. The obligations set out herein will, upon execution hereof by each Party, be valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions hereof, except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at Law.

10.2 No Violation. Each Party, to the best of its knowledge and upon reasonable inquiry, represents and warrants to the other Parties that the execution and delivery of this Decommissioning Agreement by such Party, and the performance by such Party of all of its obligations hereunder, will not violate any term, condition or provision of its Charter Documents; any applicable Law by which the Party is bound; any applicable court or administrative order or decree; or any agreement or contract to which it is a party. Further, each Party represents and warrants to the other Parties that, to the best of its knowledge and upon reasonable inquiry, there is no claim pending or threatened against it which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Decommissioning Agreement or which could result in the filing of any mechanic's or materialman's lien against the SJGS Plant Site.

11.0 Relationship of Parties

11.1 Several Obligations. All covenants, obligations and liabilities of the Parties are, except as otherwise specifically provided herein, intended to be several and not joint or collective. At no time will a non-defaulting Party be responsible for making payments required under this Decommissioning Agreement on behalf of any other Party. Each Party will be individually responsible for its own covenants, obligations and liabilities as provided for herein.

11.2 No Joint Venture or Partnership. Nothing in this Decommissioning Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties. No Party or group of Parties will be under the control of or will be deemed to control any other Party or the Parties as a group. Except as provided in this Decommissioning Agreement, the Restructuring Agreement or the Mine Reclamation Agreement, no Party will be the agent of or have a right or power to bind any other Party without its express written consent.

12.0 Assignments

12.1 Successors and Assigns. This Decommissioning Agreement is binding upon and inures to the benefit of the Parties and their respective authorized successors and assigns.

12.2 No Right to Mortgage. No Party will have the right to mortgage, create or provide for a security interest in or convey in trust its rights, titles and interests in a Decommissioning Trust created pursuant to this Decommissioning Agreement, or in funds held in a Decommissioning Trust created pursuant to this Decommissioning Agreement, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for their present or future bonds or other obligations or securities, and to any successors or assigns thereof.

12.3 Prior Written Consent. No Party may assign its rights, or delegate its obligations, under this Decommissioning Agreement without the prior written consent of all of the other Parties, which consent will not be unreasonably delayed or denied; provided, however, that consent will not be granted unless (i) the assignee has first agreed in writing with the non-assigning Parties to fully perform and discharge all of the obligations hereunder of the Assigning Party; and (ii) the assignee demonstrates to the Decommissioning Committee it has creditworthiness equal to or higher than that of the assigning Party. Such prior consent of the other Parties will not be required in the event of the transfer or assignment by a Party of its interest in the Project to a duly authorized successor; provided, however, that such successor has agreed in writing with the remaining Parties to fully perform and discharge all of the obligations hereunder of the Assigning Party and the remaining Parties have agreed in writing to the substitution of the successor, in place of the Assigning Party, which consent will not be unreasonably delayed or denied.

12.4 Assignee's Obligation to Establish and Fund Decommissioning Trust. Among the contracts that the assignee must have executed in connection with any assignment is a Decommissioning Trust Agreement with a financial institution, consistent with the requirements of this Decommissioning Agreement. Pursuant to such Decommissioning Trust Agreement, the assignee must establish and fully fund its Decommissioning Trust to its then-required share of the Decommissioning Funding Target Amount in accordance with Section 6.2. Such Decommissioning

Trust Fund Agreement must be provided to the Decommissioning Agent for review and approval by the Decommissioning Committee before the assignment becomes effective.

12.5 Parties not Relieved of Obligations. No Party will be relieved of any of its obligations and duties to the other Parties by a transfer or assignment under this Section I2 without the express prior written consent of the remaining Parties, which consent will not be unreasonably withheld, conditioned or delayed.

12.6 Assigning Party's Right of Refund. Upon receipt of the written consents provided for in Sections 12.3 and 12.5, and the assignee having fully funded its Decommissioning Trust as required in Section I2.4, the Assigning Party will be: (i) released from further obligations under this Decommissioning Agreement; and (ii) entitled to a return of all monies remaining in its Decommissioning Trust.

13.0 Audit Rights; Related Disputes

I3.1 Right of Audit. The Decommissioning Agent will maintain complete and accurate records of all expenses and transactions for which a Party may have cost responsibility under this Decommissioning Agreement. Such records will be maintained from the date an expense is billed to a Party hereunder for a period of the longer of: (i) the expiration of the statute of limitations for actions based on contract; or (ii) the date the records may be destroyed under the Decommissioning Agent's document retention policy. Any Party (an "Initiating Party") may, upon reasonable advance written notice to the Decommissioning Agent, conduct an audit of all records, invoices, costs, expenses or liabilities charged to the Initiating Party or for which the Initiating Party has or may have cost responsibility. Parties desiring to perform an audit will cooperate with one another so as to minimize the number of audits and any undue burden upon the Decommissioning Agent. Each such audit will be carried out by an auditor of the Initiating Party's choosing and at the expense of the Initiating Party, except as provided in Section 13.3. The Decommissioning Agent will cooperate with the Initiating Party and the Initiating Party's auditor and will make available its relevant business records at reasonable times and places, upon reasonable advance notice. A copy of the audit report will be provided to all Parties by the Initiating Party within fifteen (15) days of receipt of the audit report.

13.2 Audit Dispute Resolution. If any Party disagrees with an audit finding from an audit conducted under Section I3.1, the Party may within fifteen (15) Business Days of the receipt of the audit report request in writing that the audit be reviewed by providing such request to all of the Parties. After any such request, the affected Parties will review the expenditure and will endeavor to agree upon whether an over- or under-billing occurred. If, after the review, the affected Parties determine that the expenditure was over- or under-billed, an adjustment to the billing that is the subject of the audit finding will be made to eliminate the over- or under-billing and an adjusted bill will be sent as provided for in Section 13.3. Each Party that receives a payment as a result of under- or over-billing will reimburse the Initiating Party as provided for in Section 13.3. If within thirty (30) Business Days of the date of the mailing of the written request for review the affected Parties are unable to agree in writing on a modification of the expenditure to eliminate the over- or under-billing, the matter will be submitted to dispute resolution pursuant to Section 9.

13.3 Adjusted Billing Procedures. If as the result of an audit and any related dispute resolution procedures under Section 13.1 or Section 13.2 it is determined that there was an under- or over-billing, the Decommissioning Agent will issue invoices to correct the under- or over-billing with interest at the Prime Rate. Interest will be calculated from the due date for payments on the prior invoices that included the under-or over-billed amounts to the date of the revised billings. The owing Party will pay any amounts owed on the corrected invoices within twenty (20) Business Days after receipt of the revised billing reflecting the result of the audit report. Each Party (other than an Initiating Party) that receives a payment or credit as a result of an audit report will reimburse the Initiating Party for the cost of the audit based on the amount received by such Party as a percentage of the total amount of payments and credits received by Parties; provided that if the amount received by a Party is less than the lower of (i) $5,000 or (ii) ten percent (10%) of the amount of the disputed billing, no reimbursement for the audit costs will be required.

13.4 Audit of Decommissioning A&G Expenses. To the extent practicable, any audit of Decommissioning A&G Expenses will be coordinated with audits of A&G expenses under any other San Juan Project-related agreements.

14.0 Uncontrollable Forces. No Party will be considered to be in default in the performance of any of its obligations hereunder (other than obligations of a Party to pay costs and expenses and to fully fund its Decommissioning Trust) if failure of performance is due to Uncontrollable Forces. The term "Uncontrollable Forces" means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, fire, lightning, epidemic or pandemic, war, riot, civil disturbance, labor dispute, sabotage or terrorism, restraint by court order or public authority, or failure to obtain approval from a necessary Governmental Authority which by exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it is unable to overcome. Nothing contained herein requires a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces will promptly provide notice to the other Parties and exercise due diligence to remove such inability with all reasonable dispatch.

15.0 Invalid Provisions. If any provision of this Decommissioning Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Decommissioning Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Decommissioning Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Decommissioning Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and the Parties will negotiate in good faith to attempt to agree upon a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

16.0 Applicable Law and Venue

16.1 Compliance with Law. The Parties will comply with all applicable Law in the performance of their respective obligations under this Decommissioning Agreement.

16.2 Governing Law. This Decommissioning Agreement is made under and will be governed by New Mexico law, without regard to conflicts of Law or choice of Law principles that would require the application of the Laws of a different jurisdiction.

16.3 Venue. Venue with respect to any judicial proceeding arising out of or relating to this Decommissioning Agreement will lie exclusively in the state or federal courts in Albuquerque, New Mexico, and the Parties irrevocably consent and submit to the exclusive jurisdiction of such courts for such purpose and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner recognized by such courts. A final judgment of the state or federal court will be enforceable in other states under applicable Law.

17.0 Entire Agreement

17.1 Entire Agreement. This Decommissioning Agreement, together with the schedules and exhibits hereto and the Decommissioning Trust Agreements, supersede all prior negotiations, agreements and understandings between the Parties with respect to the covenants and obligations agreed upon in this Decommissioning Agreement.

17.2 Amendment and Modification. Except as otherwise provided herein, this Decommissioning Agreement may be amended, modified or supplemented only by written instrument executed by all of the Parties with the same formality as this Decommissioning Agreement.

17.3 Prior Obligations Unaffected. Except as otherwise provided herein, nothing in this Decommissioning Agreement will be deemed to relieve the Parties of their obligations in effect prior to the Effective Date and such obligations will continue in full force and effect until satisfied or as otherwise mutually agreed.

18.0 No Interpretation Against Drafter. This Decommissioning Agreement has been drafted with the full participation by all of the Parties and their counsel of choice, and no provision of this Decommissioning Agreement will be construed against any Party on the ground that such Party or its counsel was the author of such provision. All of the provisions of this Decommissioning Agreement will be construed in a reasonable manner to give effect to the intentions of the Parties in executing this Decommissioning Agreement.

19.0 Independent Covenants. The covenants and obligations set forth in this Decommissioning Agreement are independent covenants, not dependent covenants, and the obligation of a Party to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by another Party of all the covenants and obligations to be kept and performed by it. Nothing in this Section

19 affects the rights of the Parties under the dispute resolution and default provisions of Sections 8 and 9.

20.0 Other Documents. Each Party agrees, upon request of another Party, to make, execute and deliver any and all documents and instruments reasonably required to carry into effect the terms of this Decommissioning Agreement; provided, that such documents and instruments will not increase or expand the obligations of a Party hereunder.

21.0 Notices

21.1 Manner of Giving of Notice. Any notice, demand or request provided for in this Decommissioning Agreement, or served, given or made in connection with it, will be deemed properly served, given or made (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day after mailing if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next Business Day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

21.1.1 Public Service Company of New Mexico
Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

With a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

21.1.2 Tucson Electric Power Company
88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

21.1.3 City of Farmington
c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

with a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

21.1.4 M-S-R Public Power Agency
c/o General Manager
1231 11th Street
Modesto, CA 95354

21.1.5 Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

21.1.6 City of Anaheim
c/o City Clerk
200 South Anaheim Boulevard
Anaheim, CA 92805

with a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

21.1.7 Incorporated County of
Los Alamos, New Mexico
c/o County Clerk
P.O. Drawer 1030
170 Central Park Square
Suite 240
Los Alamos, NM 87544

with a copy to:

Incorporated County of
Los Alamos, New Mexico
c/o Utilities Manager
P.O. Drawer 1030
Suite 130
170 Central Park Square
Los Alamos, NM 87544

21.1.8 Utah Associated Municipal Power Systems

c/o General Manager
155 North 400 West
Suite 480
Salt Lake City, UT 84103

21.1.9 Tri-State Generation and Transmission
Association, Inc.
c/o Chief Executive Officer
1100 West 116th Avenue
Westminster, CO 80234
Or P. O. Box 33695
Denver, CO 80233

For purposes of overnight courier service, Tri-State's address will be:

Tri-State Generation and Transmission Association, Inc.
c/o Chief Executive Officer
3761 Eureka Way
Frederick, CO 80516

21.1.10 PNMR Development and Management Corporation
c/o Corporate Secretary
PNM Resources
Corporate Headquarters
414 Silver Ave. S.W.
Albuquerque, NM 87102

21.2 Changes in Designation. A Party may, at any time or from time-to-time, by written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Decommissioning Agreement.

22.0 Captions and Headings. The captions and headings appearing in this Decommissioning Agreement are inserted merely to facilitate reference and will have no bearing upon the interpretation of the provisions hereof.

23.0 Effect of Municipal Law

23.1 Anaheim and M-S-R. Anaheim (which includes its Public Utilities Department) and M-S-R are governmental entities whose liability is limited by the California Government Claims Act (Government Code §§ 810 – 998.3) and any liability or indemnity assumed by Anaheim or M-S-R in this Decommissioning Agreement will be limited by the provisions of the California Government Claims Act. Nothing in this Decommissioning Agreement is intended to create or will be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend which is against public policy, void and unenforceable. Notwithstanding any other provision of this Decommissioning Agreement, the payment for all purchases, fees or charges made by Anaheim or M-S-R under this Decommissioning Agreement will be made from the legally

available revenues of M-S-R or the legally available revenues of the Anaheim Electric System. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or general taxing power of Anaheim or of M-S-R or any of the members of M-S-R.

23.2 Southern California Public Power Authority. SCPPA is a joint exercise of powers agency organized under the laws of the State of California, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or taxing power of any member of SCPPA.

23.3 Farmington and Los Alamos. Farmington (and the Farmington Electric Utility System) and Los Alamos are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington and the Farmington Electric Utility System or Los Alamos in this Decommissioning Agreement will be limited by the provisions of the New Mexico Tort Claims Act. Notwithstanding any other provisions of this Decommissioning Agreement, the payment for all purchases, fees or charges made by Farmington and Los Alamos under this Decommissioning Agreement will be made from the legally available revenues of Farmington's and/or Los Alamos's Electric Utility System. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or Los Alamos.

23.4 Utah Associated Municipal Power Systems. UAMPS is a joint action agency organized under the laws of the State of Utah, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Decommissioning Agreement be considered an obligation against the general faith and credit or taxing power of any member of UAMPS.

24.0 Parties' Cost Responsibilities. Except for costs incurred by the Decommissioning Agent in its capacity as Decommissioning Agent, each Party will be solely responsible for its own costs and expenses, including fees and costs of counsel, incurred in connection with the negotiation of this Decommissioning Agreement and with any actions associated with the implementation of this Decommissioning Agreement.

25.0 No Third Party Beneficiaries. The terms and provisions of this Decommissioning Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

26.0 No Admission of Liability. The terms of this Decommissioning Agreement are the product of compromise between and among the Parties. Neither any conduct nor statements made in its negotiation, nor entry by the Parties into it, will constitute evidence of, or an admission of, liability; provided, however, nothing in this Section 26 will be construed or interpreted to excuse any Party from, or be used by any Party

to argue against, that Party's performance of any of its obligations under this Decommissioning Agreement.

27.0 Confidentiality

27.1 Confidentiality of Negotiations. The Parties' discussions and negotiations that led to the development of this Decommissioning Agreement, the Restructuring Agreement, the Mine Reclamation Agreement, the SJPPA Restructuring Amendment and the SJPPA Exit Date Amendment, including discussions taking place in the context of mediation, were conducted in confidence and will remain confidential; provided, that nothing herein will prevent a Party from making disclosures pursuant to a requirement of Law (including laws related to the inspection of public records and securities), including a subpoena or discovery request. If any Party determines that it is legally obligated to make a disclosure, the Party obligated to make such disclosure will make reasonable efforts to notify the other Parties prior to such disclosure and will reasonably cooperate with any other Party in seeking an order of a Governmental Authority preventing or limiting such disclosure; provided further, however, that the Party seeking any such order to prevent or limit disclosure will be responsible for all costs for seeking such an order. Prior to making disclosure, a Party will, as available or appropriate, attempt to utilize a confidentiality agreement to protect the confidentiality of the information disclosed.

27.2 Non-confidentiality of Decommissioning Agreement. While negotiations were and remain confidential as addressed in Section 27.1, neither this Decommissioning Agreement nor any version of it publicly disclosed pursuant to applicable Law is confidential.

28.0 Damages. In no event will any Party be liable under any provision of this Decommissioning Agreement for any indirect, punitive or incidental damages or costs of any other Party (including loss of revenue, cost of capital and loss of business reputation or opportunity), whether based in contract, tort (including negligence or strict liability), or otherwise, and the Parties hereby waive, release and discharge one another from all such indirect, punitive and incidental damages and costs.

29.0 Execution in Counterparts. This Decommissioning Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the Parties to the aggregated counterparts had signed the same instrument. Any signature page of this Decommissioning Agreement may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon and may be attached to any other counterpart of this Decommissioning Agreement identical in form thereto but having attached to it one or more additional pages. Electronic or pdf signatures will have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties have caused this Decommissioning Agreement to be executed on their behalf and the signatories hereto represent that they have been duly authorized to enter into this Decommissioning Agreement on behalf of the Party for whom they sign.

[Signatures on succeeding pages]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Its: _____
Date: _____

TUCSON ELECTRIC POWER COMPANY

By: _____
Its: _____
Date: _____

THE CITY OF FARMINGTON, NEW MEXICO

By: _____
Its: _____
Date: _____

M-S-R PUBLIC POWER AGENCY

By: _____
Its: _____
Date: _____

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Its: _____
Date: _____

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Its: _____
Date: _____

CITY OF ANAHEIM

By: _____
Its: _____
Date: _____

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: _____
Its: _____
Date: _____

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

By: _____
Its: _____
Date: _____

PNMR DEVELOPMENT AND MANAGEMENT CORPORATION

By: _____
Its: _____
Date: _____

EXHIBIT A

DECOMMISSIONING SHARES[1]

	Pre 2018	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
PNM	46.6%	46.9%	47.2%	47.5%	47.8%	48.0%	48.3%	48.5%	48.8%	49.0%	49.2%	49.4%
PNMR	-	0.2%	0.4%	0.6%	0.8%	0.9%	1.1%	1.3%	1.4%	1.5%	1.7%	1.8%
TEP	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%
MSR	8.7%	8.4%	8.2%	8.0%	7.8%	7.6%	7.4%	7.3%	7.1%	6.9%	6.8%	6.6%
COF	2.6%	2.6%	2.7%	2.7%	2.8%	2.9%	2.9%	3.0%	3.0%	3.1%	3.1%	3.1%
Tri State	2.4%	2.4%	2.3%	2.2%	2.2%	2.1%	2.1%	2.0%	2.0%	1.9%	1.9%	1.8%
LAC	2.2%	2.2%	2.3%	2.3%	2.4%	2.4%	2.5%	2.5%	2.6%	2.6%	2.6%	2.7%
5CPPA	12.3%	12.0%	11.7%	11.4%	11.1%	10.8%	10.5%	10.3%	10.1%	9.8%	9.6%	9.4%
COA	3.0%	2.9%	2.9%	2.8%	2.7%	2.7%	2.6%	2.5%	2.5%	2.4%	2.4%	2.3%
UAMPS	2.1%	2.2%	2.2%	2.3%	2.3%	2.4%	2.4%	2.5%	2.5%	2.5%	2.6%	2.6%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
PNM	49.6%	49.8%	50.0%	50.1%	50.3%	50.5%	50.6%	50.8%	50.9%	51.0%	51.2%	51.3%
PNMR	1.9%	2.0%	2.2%	2.3%	2.4%	2.5%	2.6%	2.7%	2.8%	2.8%	2.9%	3.0%
TEP	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.2%	20.1%	20.1%	20.1%	20.1%	20.1%
MSR	6.5%	6.4%	6.2%	6.1%	6.0%	5.9%	5.8%	5.7%	5.6%	5.5%	5.4%	5.3%
COF	3.2%	3.2%	3.3%	3.3%	3.3%	3.4%	3.4%	3.4%	3.5%	3.5%	3.5%	3.5%
Tri State	1.8%	1.8%	1.7%	1.7%	1.7%	1.6%	1.6%	1.6%	1.6%	1.5%	1.5%	1.5%
LAC	2.7%	2.7%	2.8%	2.8%	2.8%	2.9%	2.9%	2.9%	2.9%	3.0%	3.0%	3.0%
SCPPA	9.2%	9.0%	8.8%	8.7%	8.5%	8.3%	8.2%	8.0%	7.9%	7.8%	7.6%	7.5%
COA	2.3%	2.2%	2.2%	2.1%	2.1%	2.0%	2.0%	2.0%	1.9%	1.9%	1.9%	1.8%
UAMPS	2.6%	2.7%	2.7%	2.7%	2.8%	2.8%	2.8%	2.8%	2.9%	2.9%	2.9%	2.9%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	20S1	20S2	20S3
PNM	51.4%	51.5%	51.7%	51.8%	51.9%	52.0%	52.1%	52.2%	52.3%	52.4%	52.5%	52.5%	52.6%
PNMR	3.1%	3.2%	3.2%	3.3%	3.4%	3.4%	3.5%	3.6%	3.6%	3.7%	3.7%	3.8%	3.8%
TEP	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%
MSR	5.2%	5.1%	5.0%	4.9%	4.9%	4.8%	4.7%	4.6%	4.6%	4.5%	4.4%	4.4%	4.3%
COF	3.6%	3.6%	3.6%	3.6%	3.7%	3.7%	3.7%	3.7%	3.7%	3.8%	3.8%	3.8%	3.8%
Tri State	1.4%	1.4%	1.4%	1.4%	1.4%	1.3%	1.3%	1.3%	1.3%	1.3%	1.2%	1.2%	1.2%
LAC	3.0%	3.0%	3.1%	3.1%	3.1%	3.1%	3.1%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
SCPPA	7.4%	7.2%	7.1%	7.0%	6.9%	6.8%	6.7%	6.6%	6.5%	6.4%	6.3%	6.2%	6.1%
COA	1.8%	1.8%	1.8%	1.7%	1.7%	1.7%	1.6%	1.6%	1.6%	1.6%	1.5%	1.5%	1.5%
UAMP5	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

[1] Assumes Units 1 and 4 retire at the same time and there is no change in ownership or Unit rating. Should any of the assumptions change, the Decommissioning Committee will recalculate the Decommissioning Shares.

EXHIBIT B

MANDATORY PROVISIONS

Trust provisions substantially as shown below are considered to be the "Mandatory Provisions" for the individual Party Decommissioning Trust Agreements as required by Section 6.1 of the San Juan Decommissioning and Trust Funds Agreement (for purposes of this Exhibit B, the "Decommissioning Agreement"). For purposes of this Exhibit B, "Party A" refers to the Party that is a party to a Decommissioning Trust Agreement entered into pursuant to the terms of the Decommissioning Agreement. The numbering provisions in this form are for purposes of convenience and need not correspond to the actual section numbers in the actual Decommissioning Trust Agreement.

1. Purpose. The purpose of this Decommissioning Trust Agreement is to provide funding for the payment of Decommissioning Costs for the San Juan Project in accordance with Party A's obligations as set out in the Decommissioning Agreement.

2. Identification of Beneficiaries. The beneficiaries of this Decommissioning Trust ("Beneficiaries") are: (i) Party A, as the settlor; (ii) each of the other Parties to the San Juan Decommissioning and Trust Funds Agreement ("Decommissioning Agreement"); and (iii) the Decommissioning Agent as provided for in the Decommissioning Agreement. At the time of the establishment of Party A's Trust, Party A will notify the Trustee of the names and contact information of all of the Parties to the Decommissioning Agreement and the Decommissioning Agent.

3. Settlor's Relinquishment of Beneficial Interest. Party A, as settlor of the Trust, retains no beneficial interest in the funds held in trust except to utilize funds in the Trust as set forth in Section 4 and to receive a return of any funds that may remain in the Trust after the purposes of the Trust have been accomplished and the Trust has been terminated.

4. Decommissioning Trust Fund. Party A hereby establishes and is funding herewith the Decommissioning Trust Fund in accordance with the Decommissioning Agreement. Prior to termination, funds may be disbursed from the Decommissioning Trust Fund for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Decommissioning Trust Account, including the fees and expenses of the Trustee; and (b) to pay Party A's Decommissioning Share (as defined in Section 5.3 and Exhibit A of the Decommissioning Agreement) of Decommissioning Costs pursuant to invoices rendered to Party A by the Decommissioning Agent (as that term is defined in the Decommissioning Agreement) and approved for payment by Party A. The Trustee will pay funds out of the Decommissioning Trust Fund in accordance with the following procedures. The Decommissioning Agent must bill Party A, in writing, for Decommissioning Costs at least ten (10) Business Days prior to the date that payment is due. Party A must promptly review such invoice and, upon Party A's review and approval of such invoice from the Decommissioning Agent, must direct the Trustee to pay such invoice by making payment out of the assets of the Decommissioning Trust, in immediately available funds, to the Decommissioning Agent. Upon the making of such payment, the Trustee must provide notice of such payment to Party A. Party A must provide the Trustee with appropriate

wiring instructions for the making of payments in immediately available funds to the Decommissioning Agent. Party A must notify the Trustee of the identity of the Decommissioning Agent and of any changes in the Decommissioning Agent. Subject to and in accordance with the terms and conditions hereof, the Trustee agrees that it will receive, hold in trust, invest, reinvest, and release, disburse or distribute the funds in the Decommissioning Trust Account ("Decommissioning Trust Funds"). All interest and other earnings on the Decommissioning Trust Funds will become a part of the Decommissioning Trust Account and the Decommissioning Trust Funds for all purposes, and all losses resulting from the investment or reinvestment thereof from time to time, and all amounts charged thereto to compensate or reimburse the Trustee for amounts owing to it hereunder from time to time, will be set off against the Decommissioning Trust Funds, from the time of such loss or charge, and thereafter no longer will constitute part of the Decommissioning Trust Funds.

5. Funding Provisions. Party A must fund the Decommissioning Trust Account according to the terms set forth in the Decommissioning Agreement. The Trustee will have no obligation to take any action whatsoever in connection with Party A's funding of the Decommissioning Trust, or to enforce any obligations that Party A has, or may have, under the Decommissioning Agreement with respect to the funding of the Decommissioning Trust.

6. Modifications. A Decommissioning Trust created pursuant to this Agreement is irrevocable and may not be modified by Party A in a manner that (i) is inconsistent with the Decommissioning Agreement; or (ii) will adversely affect the ability of any Beneficiary to perform its obligations under the Decommissioning Agreement. It will be a condition to any modification of this Agreement that Party A has certified to the Trustee that such modification is not inconsistent with the Decommissioning Agreement and will not adversely affect the ability of any Beneficiary to perform its obligations under the Decommissioning Agreement. In no circumstance will this Agreement be modified in a way that impacts the Trustee's rights or duties, without the Trustee's prior written consent.

7. Good Faith Duties of Administration. The Trustee must exercise reasonable care, skill and caution in the administration of the Decommissioning Trust and must administer the Decommissioning Trust in good faith, in accordance with the terms of this Agreement. The Trustee must take reasonable steps to protect the Decommissioning Trust property.

8. No Conflicts of Interest. The Decommissioning Trust will be administered solely in the interests of the Beneficiaries. The Trustee may not permit to exist a conflict of interest between its duties under this Agreement and its personal interests and must keep the Decommissioning Trust property separate from the Trustee's own property.

9. Trustee Records and Reports. The Trustee must keep or cause to be kept and maintained accurate books and records reflecting all income, principal and expense transactions, which books and records will be open at all reasonable times for inspection by Party A or its duly authorized representatives, upon at least two (2) Business Days prior written notice to the Trustee. The Trustee must furnish statements to Party A and the Decommissioning Agent at least as often as annually, as directed by Party A. The Trustee must promptly respond to requests for information related to the administration of the Decommissioning Trust from Party A. When applicable and required by applicable regulations, the Trustee will issue annual IRS Form 1099.

10. Scope of Undertaking. The Trustee [, as a fiduciary] [Party A and the Trustee may insert this language or omit it] will be subject to and must perform all duties in accordance with [this Agreement] [all rules of law relating to fiduciaries and trustees] [Party A and the Trustee may insert either of the bracketed phrases.]. The Trustee will perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants, agreements or duties will be read into this Agreement against the Trustee. The Trustee will have no duty to perform, cause the performance of, manage, monitor, evaluate or approve the Decommissioning Work. The Trustee is not a principal, participant, or beneficiary in any transaction underlying this Agreement and will have no duty to inquire beyond the terms and provisions of this Agreement except as specifically provided herein. The Trustee will not be required to deliver the Decommissioning Trust Funds or any part thereof, or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold in trust, invest, reinvest, and release, disburse or distribute the Decommissioning Trust Funds as herein provided. The Trustee will not be required to notify or obtain the consent, approval, authorization or order of any court or governmental body to perform its obligations under this Agreement, except as expressly provided herein. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the Parties that, unless otherwise provided herein, the Trustee will not be required to exercise any discretion hereunder and will have no investment or management responsibility and, accordingly, will have no duty to, or liability for its failure to, provide investment recommendations or investment advice to Party A. The Trustee will not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, subject, however, to its own willful misconduct or [negligence] [gross negligence] [Party A and the Trustee may agree upon either standard]. It is the intention of the Parties that the Trustee will not be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

11. Termination of Decommissioning Trust and of this Agreement. The Decommissioning Trust and this Agreement will terminate no earlier than twenty-four (24) months after the Decommissioning Committee determines that the Decommissioning Work is complete; provided, however, that in the event all fees, expenses, costs and other amounts required to be paid to the Trustee hereunder are not fully and finally paid prior to termination, the provisions of Section ___ [concerning payment of Trustee] will survive the termination hereof, and provided further, that the provisions of Section ___ [concerning interpleader] and Section ___ [concerning indemnity] if applicable) will, in any event, survive the termination hereof. Notice of termination of the Decommissioning Trust and of this Agreement must be provided to the Trustee in the following manner: the Decommissioning Agent, at the direction of the Decommissioning Committee, must give written notice to Party A and to each of the other Parties that the Decommissioning Work was completed , and Party A must, in turn, give written notice to the Trustee of the satisfaction of Party A's obligations under the Decommissioning Agreement.

12. Distribution of Assets. Until satisfaction of Party A's obligations under the Decommissioning Agreement, Party A will have no right of return of any of the Decommissioning Trust Funds. Upon the termination of this Agreement, the Trustee must distribute any remaining assets in the Decommissioning Trust Account to Party A.

13. Spendthrift Clause. The interests of the Beneficiaries are held subject to a spendthrift trust. No interest in the Decommissioning Trust Funds established pursuant to this Agreement will be transferable or assignable, voluntarily or involuntarily, or be subject to the claims of Party A or its creditors other than as provided in the Decommissioning Agreement.

14. Tax Matters. Party A must provide the Trustee with its taxpayer identification number documented by an appropriate Form W8 or W9 (or other appropriate identification information for tax purposes) upon execution of this Agreement. Failure to provide such form may prevent or delay disbursements from the Decommissioning Trust Funds and may also result in the assessment of a penalty and the requirement that the Trustee withhold tax on any interest or other income earned on the Trust Funds. The Parties agree that, for all tax purposes, all interest or other income, gain, or loss from investment of the Trust Funds, as of the end of each calendar year and to the extent required by the Internal Revenue Service or other taxing authority, will be reported as having been earned or lost, as the case may be, by Party A. Any payments of income will be subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable.

15. Third Party Beneficiaries. Nothing in this Agreement will entitle any person other than the Parties to any claim, cause of action, remedy, or right of any kind, except the rights expressly provided to the persons described in Section ___ (if applicable).

EXHIBIT C

SJGS PLANT SITE

The SJGS Plant Site consists of Parcels A, B, D, E and F in the property descriptions below.

PARCEL A

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 16: SW 1/4
Section 20: NE 1/4, N 1/2 SE 1/4, SW 1/4SE 1/4
Section 21: NW 1/4 NW 1/4
Section 29: NE 1/4

PARCEL B

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SW 1/4, SW 1/4 SE 1/4
Section 20: E 1/2 NW 1/4, NE 1/4 SW 1/4
Section 29: NW 1/4, N 1/2 SW 1/4
Section 30: NE 1/4, E 1/2 NW 1/4, N 1/2 SE 1/4

PARCEL D

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 17: SE 1/4 SW 1/4, S1/2 SE 1/4

PARCEL E

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 19: SE 1/4 SE 1/4
NE 1/4 SE 1/4

E 1/2 NW 1/4 SE 1/4
S 1/2 S 1/2 SE 1/4 NE 1/4

Section 20: SE 1/4 SW 1/4
SW 1/4 SW 1/4
NW 1/4 SW 1/4
S 1/2 SW 1/4 SW 1/4 NW 1/4

Containing 235 acres, more or less.

PARCEL F

The following portions of Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico:

Section 20: SE 1/4 SE 1/4

EXHIBIT D

INITIAL DECOMMISSIONING WORK

Equipment	Scope	Decommissioning Cost Estimates	
		Unit 2	Unit 3
Cleanup ash/coal residual	Remove ash and coal from external and internal areas following unit shutdown.	$400,000	$400,000
Unit 2 Cooling Tower	Unit 2 Cooling Tower is a wood structure that would be demolished for safety and to eliminate the need for periodic inspections.	$400,000	NA

EXHIBIT E

RETIREMENT IN PLACE

Equipment	Scope	Costs	
		Unit 2	Unit 3
Mercury switches	Identify, remove, and dispose of instrumentation containing Mercury, Estimated 132 Instruments on U3 and 120 Instruments on U2.	$25,000	$25,000
Freon refrigerant	Included in other costs estimates	Included	Included
Lighting Fixture PCB's	Several lighting fixtures contain PCB's. Would isolate and remove those and dispose of PCB's.	$100,000	$195,000
Nuclear sources	Remove and dispose of all nuclear source instrumentation. Highest cost is disposal requirements. 51 sources associated with Unit 3, 20 sources associated with Unit 2 - potential for early disposal prior to 2017.	$112,200	$44,000
Purge Generator of Hydrogen	Normal shutdown activity	$0	$0
Other chemicals (Acid/ Caustic/etc.)	Plans would be to decrease and suspend feed rates in last few weeks and flush in last few days to clean out tanks and equipment.	$0	$0
Oil filled equipment	Drain and dispose of oil/fuel from Fans, BFP, AH, CT gearboxes, Mills, Turbine LO, Diesel Generators, EHC fluid, MOVs, LC transformers, motors, HVAC units, sootblowers, hoists, fuel oil, etc.	$60,000	$60,000
Resins (Stator Cooling, etc.)	Removal and disposal of resins	$2,000	$2,000
Baghouse bags	Remove excess ash from bags	$5,000	$5,000

Batteries	Unit 2 - Battery Charger 2C and Batteries 2C, Unit 3 Battery Charger 2B and Batteries 2B (Systems power EBOP & ESOP motors)	$15,000	$15,000
DC & UPS System	Disconnect DC circuits and UPS circuits no longer in use	$15,000	$15,000
Precipitator T/R sets	Remove oil in Precipitator T/R sets	$5,000	$5,000
Safety Surveys	Setup periodic safety survey. Perform walkdown of remaining structures and equipment to identify potential hazards. Make minor remedies.	$25,000	$25,000
Ductwork and Misc. Equipment Stabilization	Follow-up from safety survey and other identified items to ensure equipment remains in safe condition	$75,000	$75,000
Review of Major Stand Alone Structures			
Stacks	Maintain minimum maintenance to defer tear down costs	$25,000	$25,000
Stacks - install stack caps	Install cap on top of stack to protect stack liner and pooling of water internal to the stack.	$25,000	$25,000
Stacks	Maintain minimum maintenance to defer tear down costs	* Aircraft light maint - $5k per year *Elevator PM until obsolete - $5k per year * Period stack structural inspection $10k every 2 years-- Light maintenance for caulking up to $50k over stack life	* Aircraft light maint - $5k per year *Elevator PM until obsolete - $5k per year * Period stack structural inspection $10k every 2years Light maintenance for caulking up to $50k over stack life.

Unit 3 Cooling Tower	Unit 3 Cooling Tower is a metal structure. Philosophy would be same as baghouse to leave in place until structural issues, if any, are identified. Plan would be to drain all equipment and leave in place.	$0	$5,000
Other Plant Structures	Typically steel structures that are anticipated to be able to stand until final decommissioning with little maintenance and periodic inspections.	$5,000	$5,000
Common Building Dismantle (Southside waste water building, ...)	A number of common unit buildings are no longer necessary. Dismantlement is preference for several of these - undetermined at this time.	$50,000	$50,000
Blank off chemical feeds	Blank off feeds to Unit 2 & 3 equipment to ensure no inadvertent filling of equipment or tanks from common chemical systems.	$20,000	$20,000
Physical Barriers	Setup physical barriers to prevent access to unmaintained areas.	$25,000	$25,000
Boiler	Secure/Close bottom of boiler to prevent draft through system - potentially fill seal tough	$10,000	$10,000
Misc. Structural and Environmental Issues	Address any emergent structural integrity or environmental conditions, if any, with equipment and facilities.	TBD	TBD
DCS Logic Changes	Changes to align DCS to two unit operation - logic changes	$50,000	$50,000
Medium Voltage Motors	Disconnect 4160V/6900V motors at the switchgear. Label cubicles as spare.	$20,000	$20,000
480V Motors	Disconnect 480V motor at the LC/MCC. Label cubicles as spare.	$30,000	$30,000
De-energize/disconnect Cooling Tower	De-energize electrical equipment. Potential physical disconnect to remove potential for inadvertently re-energizing.	$10,000	$10,000

LC/MCC's etc.			
Electrical disconnect from substation	Physical removal high voltage wire between the Generator MOD and the GSU Xfmrs. Physical removal of the potential backfeeds from medium voltage switchgear bus to the Aux Xfmrs and Generator, also included the Aux feeds to the SO2 Switchgear.	$50,000	$50,000
Coal Connection	Physically separate coal system so no inadvertent coal added back into Units 2 & 3 silos, etc.	$15,000	$15,000
Fire Protection	Insurance provider recommends maintaining fire detection in areas with oil storage or energized electrical equipment. May cap and drain non-operational areas.	$50,000	$50,000
Building elevators	Board up unit elevators - will need to transfer ownership on some to remaining owners to allow access to common piping runs, etc. - need better assessment	$0	$0
Property Taxes	Review/address continuing obligations, if any, on property taxes.		
Insurance Requirements	Review/address continuing obligations on required insurance.		
Aux Power Requirements	Aux power requirements for freeze protection, FAA warning lights, and other lighting equipment for the retired units.		
Building winter enclosures	Cover and repair vents, louvers, etc. in areas for heat loss and freeze protection in winter and air ventilation in the summer.	$10,000	$10,000

EXHIBIT F

EQUIPMENT REQUIRED FOR ON-GOING OPERATION OF UNITS 1 AND 4

Unit Needing Support	Unit Providing Support	Common System	Power Source Feeding	Notes
1	2	Sootblowing Air Compressors #1,2, and 3	2C 480 breakers	
1	2	Unit Plant Air compressor #1	2A 4160	
1	2	Unit Plant Air compressor #2 and 3	2B 4160	
4	3	Sootblowing Air Compressors A and B	U3 6900	
4	3	Bearing Cooling Water Pumps A and B	3A and 3B load centers	
1 and 4	2	Lake Station	U2 4160 A Bus	
1 and 4	2	U1 and U2 Ash Water	U2 4160	
1 and 4		Coal System		
1	2	Baghouse Air Compressor	U2	
4	3	Baghouse Air Compressor	U3 6900	
1		Demineralizer System		
4		Demineralizer System		
1	2	Bearing Cooling Water Pumps	U2	
1	2	Boiler Blowdown		Manual Valves
1 and 4	4	Oxidation Air Blowers	U3 and U4 01 MCC	
Common		Limestone Slurry System C Huff Tank		
4	3 and 4	Aux Cooling System	Switchyard	Blank off U3 Piping
1	1 and 2	Raw Water Supply	U2	
4	3 and 4	Raw Water Supply	U3	Heat Trace and Structure
4	3 and 4	HVAC	U3	
1	1 and 2	Control Room	U2	
4	3 and 4	Control Room	U3	
Common	2	Potable Water	U2	
1	1 and 2	Relay Room	U2	
4	3 and 4	Relay Room	U3	
Common	2	Lab and 1 and 2 Maintenance Shop	U2	
Common		Building Steam		Isolation

Unit Needing Support	Unit Providing Support	Common System	Power Source Feeding	Notes
1	1 and 2	ME Wash 01 Area		Common Tank and Pumping System
4	3 and 4	ME Wash 01 Area		Common Tank and Pumping System
1	1 and 2	Fuel Oil Pumping	U2	
4	3 and 4	Start-Up Boiler Feedpump	U3	
Common	2 and 3	Cranes and Elevators	U2 and U3	
4	3 and 4	CT Chemical Injection	U3	
1	1 and 2	Stack Relay, DCS, and LOTO Area	U3	
1	1 and 2	U1 and U2 FP Booster Pump	U2	
4	3 and 4	U3 and U4 FP Booster Pump	U3	
1	1 and 2	CO2 System	U2	
4	3 and 4	CO2 System	U3	
Common		Control System AC Power		Backup Sources from Sister Unit
1	1 and 2	Sample Panel	U2	
4	3 and 4	Sample Panel	U3	
1	1 and 2	Hydrogen Panels		Valving or Capping
4	3 and 4	Hydrogen Panels		Valving or Capping
Common		DBA Tank and Piping	U3	
1	1 and 2	Cathodic Protection	U2	
4	3 and 4	Cathodic Protection	U3	
Common		Aux Steam		
1	1 and 2	Tripper Deck Exhaust Fans	U2	
4	3 and 4	Tripper Deck Exhaust Fans	U3	
1	1 and 2	Lighting	U2	
4	3 and 4	Lighting	U3	
1	2	Stack Lighting	U2	Needed if Stack not Demolished
4	3	Stack Lighting	U3	Needed if Stack not Demolished
Common	2 and 3	Radio repeater System	U2 and U3	
Common		Contractor Support Shop	U2 and U3	

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AGENDA

REPORT OF OFFICERS

DATE: **July 14, 2015**

TO: **City Council**

FROM: **Dean Martin, Interim City Manager**

SUBJECT: **Adopt Resolutions 2015-72, 2015-01PA, 2015-05SA, and 2015-73**

RECOMMENDATION: That the City Council;

1) Adopt Resolution No. 2015-72, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DECLARING THAT THERE IS A NEED FOR A PARKING AUTHORITY TO FUNCTION IN THE CITY, DECLARING THAT THE CITY COUNCIL SHALL BE THE PARKING AUTHORITY, AND DESIGNATING AN INTERIM CHAIRMAN OF THE PARKING AUTHORITY

2) Adopt Resolution No. 2015-01PA A RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

3) Adopt Resolution No. 2015-05SA, RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITHand

4) Adopt Resolution No. 2015-73, RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

BACKGROUND: On November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of Califomia (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law.

On July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority" and, together with the Financing Authority, the "Authorities"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system

On February 1, 2012, the City became the successor agency to the Agency (the "Successor Agency") by operation of State legislation.

Recently in California, certain parties have challenged the legal autbority of a joint powers authority that has a former redevelopment agency as a member to exercise certain powers authorized under the Act, including the issuance of bonds. These challenges have resulted in delayed or abandoned financings by public entities, and, in certain cases, legal action against the joint power authorities and its constituent public entity members.

The City has identified certain outstanding debt obligations (the "Prior Obligations") that it currently desires to refund to achieve financial benefits for the City and its residents. To this end, the City intends to seek the assistance of the Authorities in connection with the refunding of the Prior Obligations through the issuance of lease revenue refunding bonds (the "Bonds").

In light of the recent challenges to joint powers authorities discussed above and to avoid unnecessary costs to the City stemming from the defense of any legal action with regards to the issuance of the Bonds, each of the City and the Successor Agency desire to remove the Successor Agency as a member of the Authority and add as a member a parking authority formed by the City (the "Parking Authority").

The California Parking law of 1949, Streets and Highways Code Section 32500, et seq. (the "Law") authorizes tbe formation and activation of a parking authority in every city and county. The Law empowers a parking authority to carry out a broad range of activities, such as transferring, leasing, managing or improving property, issuing bonds and receiving and expending revenues.

Under the Law, the formation of a parking authority involves the City Council consideration and adoption of a resolution stating there is a need for a parking authority in the City. Once formed, the Parking Authority would be a distinct legal entity from the City (similar to a redevelopment agency prior to dissolution) witb a separate governing board. The City Council would serve as the governing board for the Parking Authority. The Mayor would serve as Chair and the Mayor Pro Tem would serve as Vice Chair.

To meet the objectives of the City with regards to the refunding of the Prior Obligations and to facilitate the issuance of the Bonds by the Authorities, the Agreement will be amended to (i) add the Parking Authority as a member and (ii) remove the Successor Agency as a member.

JUSTIFICATION: The formation of the Parking Authority would provide a public entity that is a distinct legal entity from the City that can replace the Successor Agency as the member of the Authorities. The replacement of the Successor Agency with the Parking Authority should avoid any litigation challenging the legal authority of the Authorities to issue the Bonds on the basis previously discussed, which in turn would avoid the costs of legal fees associated with the defense of such ligation by the City, as well allowing the City to realize the fiscal benefits of issuing the Bonds within its contemplated timeframe without delay due to litigation.

RECOMMENDATION: That the City Council approves the recommended Resolutions and authorizes the amendment to the Agreements attached to this item and proposed for adoption.

RECOMMENDED BY:



Dean Martin
Interim City Manager

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RESOLUTION NO. 2015-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DECLARING THAT THERE IS A NEED FOR A PARKING AUTHORITY TO FUNCTION IN THE CITY, DECLARING THAT THE CITY COUNCIL SHALL BE THE PARKING AUTHORITY, AND DESIGNATING AN INTERIM CHAIRMAN OF THE PARKING AUTHORITY

WHEREAS, the Parking Law of 1949 is codified in California Streets & Highways Code Sections 32500, *et seq.* ("Law"); and

WHEREAS, Section 32651 of the Law provides that in every city, including the City of Banning ("City"), there is a public body corporate and politic known as the parking authority of the city ("Parking Authority"); and

WHEREAS, Section 32651 of the Law additionally provides that the Parking Authority shall not transact business or exercise its power unless the City Council, as the governing body of the City, declares by Resolution that there is a need for a Parking Authority to function in the City; and

WHEREAS, Section 32661.1 of the Law provides that the City Council may declare by Resolution that the members of the City Council shall be the members of the Parking Authority; and

WHEREAS, Section 32658 of the Law provides that the Mayor of the City shall designate an interim chairman of the Parking Authority from among the members of the Parking Authority, and thereafter the Parking Authority shall select the successor chairman from among its members.

NOW, THEREFORE, the City Council of the City of Banning, California does hereby resolve as follows:

SECTION 1. Findings. The City Council finds and declares that there is a need for a Parking Authority to function in the City, and the Parking Authority hereby is established and permitted to transact any business and exercise any power inferred thereon by the provisions of the Law.

SECTION 2. City Councilmembers to Serve as Members of the Parking Authority. Pursuant to Section 32661.1 of the Law, the City Council finds that the appointment of the members of the City Council as the members of the Parking Authority will serve the public interest and promote the public safety and welfare in an effective manner and, therefore, the members of the City Council are hereby declared to be members of the Parking Authority and all the rights, powers, duties, privileges and immunities that are vested by the Law in such a Parking Authority shall be vested in such members, except as otherwise provided by the Law.

SECTION 3. Designation of Interim Chair and Vice-Chair. The Mayor of the City shall serve as the interim Chair of the Parking Authority, until a permanent Chair is selected. The Mayor Pro-Tem shall serve as the interim Vice-Chair.

PASSED AND ADOPTED by the City Council of the City of Banning, California, at a regular meeting held on the __ day of _____ 2015.

CITY OF BANNING, CALIFORNIA

_____
Debbie Franklin, Mayor

ATTEST

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM

_____
[_____]
City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Marie A. Calderon, City Clerk of the City of Banning, DO HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council held on the ___ day of _____ 2015, by the following vote to wit:

AYES:

NOES:

ABSENT:

_____
Marie A. Calderon
CITY CLERK

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RESOLUTION NO. 2015-01 PA

A RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, on November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, on July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the Agency was dissolved effective February 1, 2012, pursuant to Assembly Bill x1 26 (as subsequently amended from time to time, the "Dissolution Act"); and

WHEREAS, the City elected to serve as the "successor agency" to the Agency ("Successor Agency") by operation of the Dissolution Act, and the Successor Agency is a separate and independent legal entity from the City charged with expeditiously "winding down" the affairs of the Agency; and

WHEREAS, the City and the Successor Agency desire to amend the Financing Agreement pursuant to Section 8.05 thereof to add the Parking Authority of the City of Banning (the "Parking Authority") as a Member thereunder; and

WHEREAS, the City and the Successor Agency desire to amend the Utility Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member thereunder; and

WHEREAS, the Parking Authority desires to become a Member of the Financing Authority and the Utility Authority.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Parking Authority of the City of Banning, as follows:

SECTION 1. Amendment to City of Banning Financing Authority Joint Exercise of Powers Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Financing Authority, the Parking Authority and the Successor Agency (the "Financing Amendment"), in substantially the form attached hereto as Exhibit A, is hereby approved by the Board. The Chair of the Parking Authority or the Executive Director and their respective

designees (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the Parking Authority to execute and deliver the Financing Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Financing Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Financing Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 2. Amendment to Banning Utility Authority Joint Exercise of Powers Agreement The Amendment to Joint Exercise of Powers Agreement, by and among the Utility Authority, the Parking Authority and the Successor Agency (the "Utility Amendment"), in substantially the form attached hereto as Exhibit B, is hereby approved by the Board. The Chair of the Parking Authority or the Executive Director (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the Parking Authority to execute and deliver the Utility Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Utility Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Utility Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 3. Other Actions. The Authorized Representatives hereby authorized, individually and collectively, to take all actions and execute any and all documents, certificates and other instruments which they may deem necessary or advisable to consummate the execution and delivery of the Financing Amendment and the Utility Amendment and to carry out, give effect to and comply with the terms and intent of this Resolution. All actions heretofore taken by the Authorized Representatives, the Parking Authority's other officers, or their respective designees, and the employees and agents of the Parking Authority, in connection with the matters described in this Resolution, the Financing Amendment and the Utility Amendment is hereby ratified, approved and confirmed.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the governing body of the Parking Authority of the City of Banning on the __ day of _____ 2015.

_____
Debbie Franklin,
Chairman of the Parking Authority of
the City of Banning

ATTEST:

_____
Secretary of the Parking Authority of the
City of Banning

APPROVED AS TO FORM:

_____
Counsel to the Parking Authority of the City of
Banning

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RESOLUTION NO. 2015-05 SA

RESOLUTION OF THE GOVERNING BOARD OF THE SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, on November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, on July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the Agency was dissolved effective February 1, 2012, pursuant to Assembly Bill x1 26 (as subsequently amended from time to time, the "Dissolution Act"); and

WHEREAS, the City elected to serve as the "successor agency" to the Agency ("Successor Agency") by operation of the Dissolution Act, and the Successor Agency is a separate and independent legal entity from the City charged with expeditiously "winding down" the affairs of the Agency; and

WHEREAS, the City and the Successor Agency desire to amend the Financing Agreement pursuant to Section 8.05 thereof to add the Parking Authority of the City of Banning (the "Parking Authority") as a Member thereunder; and

WHEREAS, the City and the Successor Agency desire to amend the Utility Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member thereunder; and

WHEREAS, following amendments of the Financing Agreement and the Utility Agreement, to add the Parking Authority as a Member, respectively, the Successor Agency desires to be removed as a member of the Financing Authority and the Utility Authority.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, FOUND AND ORDERED by the Governing Board of the Successor Agency (the "Board"), as follows:

SECTION 1. **Recitals**. All of the above recitals are true and correct and the Board so finds.

SECTION 2. Amendment to Joint Exercise of Powers Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Financing Authority, the Parking Authority and the Successor Agency (the "Financing Amendment"), in substantially the form attached hereto as Exhibit A, is hereby approved by the Board. The Chair or Executive Director and their respective designees (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the Successor Agency to execute and deliver the Financing Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Financing Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Financing Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 3. The Amendment to Joint Exercise of Powers Agreement, by and among the Utility Authority, the Parking Authority and the Successor Agency (the "Utility Amendment"), in substantially the form attached hereto as Exhibit B, is hereby approved by the Board. The Authorized Representative is hereby authorized and directed, for and in the name of the Successor Agency to execute and deliver the Utility Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Utility Amendment, such execution to be conclusive evidence of such approval. The Board hereby authorizes the delivery and performance of the Utility Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 4. Other Aetions. The Authorized Representatives are hereby authorized, individually and collectively, to take all actions and execute any and all documents, certificates and other instruments which they may deem necessary or advisable to consummate the execution and delivery of the Financing Amendment and the Utility Amendment and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution. All actions heretofore taken by the Authorized Representatives, the Successor Agency's other officers, or their respective designees, and the employees and agents of the Successor Agency, in connection with the matters described in this Resolution, the Financing Amendment and the Utility Amendment are hereby ratified, approved and confirmed.

SECTION 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of the Successor Agency for the Community Redevelopment Agency of the City of Banning on the __ day of _____ 2015.

_____
Debbie Franklin, Chairman

ATTEST:

_____
Marie A. Calderon, Secretary of the Board

APPROVED AS TO FORM:

_____
[_____]
Counsel to the Successor Agency

EXHIBIT A

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

BANNING UTILITY AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated July 12, 2005 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the Banning Utility Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

"Members" means the City, the Parking Authority and any other Member under the Agreement.

ARTICLE II

ADDITION OF PARKING AUTHORITY OF THE CITY OF BANNING AS A MEMBER

Section 2.01. Addition of Member. The Parking Authority of the City is hereby made a Member under the Agreement for all purposes thereof.

ARTICLE III

REMOVAL OF SUCCESSOR AGENCY AS A MEMBER

Section 3.01. Removal of Member. Upon execution by the Parking Authority of this Amendment, the Successor Agency shall be and is hereby removed as a Member of the Agreement for all purposes thereof. All references to "Agency" in the Agreement are hereby removed and replaced with "Parking Authority."

ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

BANNING UTILITY AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT B

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

CITY OF BANNING FINANCING AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated November 12, 2003 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the City of Banning Financing Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

"Members" means the City, the Parking Authority and any other Member under the Agreement.

ARTICLE II

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Section 2.01. Addition of Member. The Parking Authority of the City is hereby made a Member under the Agreement for all purposes thereof.

ARTICLE III

REMOVAL OF SUCCESSOR AGENCY AS A MEMBER

Section 3.01. Removal of Member. Upon execution by the Parking Authority of this Amendment, the Successor Agency shall be and is hereby removed as a Member of the Agreement for all purposes thereof. All references to "Agency" in the Agreement are hereby removed and replaced with "Parking Authority."

ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

CITY OF BANNING FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

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RESOLUTION NO. 2015-73

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE EXECUTION AND DELIVERY OF TWO SEPARATE AMENDMENTS TO JOINT EXERCISE OF POWERS AGREEMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, on November 12, 2003, the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency"), entered into a Joint Exercise of Powers Agreement, (the "Financing Agreement") creating the City of Banning Financing Authority (the "Financing Authority"), pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Act") for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, on July 12, 2005, the City and the Agency, entered into a Joint Exercise of Powers Agreement (the "Utility Agreement") creating the Banning Utility Authority (the "Utility Authority"), pursuant to the Act for the purpose of, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the Agency was dissolved effective February 1, 2012, pursuant to Assembly Bill x1 26 (as subsequently amended from time to time, the "Dissolution Act"); and

WHEREAS, the City elected to serve as the "successor agency" to the Agency ("Successor Agency") by operation of the Dissolution Act, and the Successor Agency is a separate and independent legal entity from the City charged with expeditiously "winding down" the affairs of the Agency; and

WHEREAS, the City and the Successor Agency desire to amend the Financing Agreement pursuant to Section 8.05 thereof to add the Parking Authority of the City of Banning (the "Parking Authority") as a Member thereunder; and

WHEREAS, the City and the Successor Agency desire to amend the Utility Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member thereunder; and

WHEREAS, following amendments of the Financing Agreement and the Utility Agreement, to add the Parking Authority as a Member, respectively, the Successor Agency desires to be removed as a member of the Financing Authority and the Utility Authority.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, FOUND AND ORDERED by City Council of the City of Banning (the "City Council"), as follows:

SECTION 1. Recitals. All of the above recitals are true and correct and the City Council so finds.

SECTION 2. Amendment to Financing Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Financing Authority, the Parking Authority and the Successor Agency (the "Financing Amendment"), in substantially the form attached hereto as Exhibit A, is hereby approved by the City Council. The Mayor, the Administrative Servies Director, or the Interim Administrative Services Director and their respective designees (each, an "Authorized Representative") is hereby authorized and directed, for and in the name of the City to execute and deliver the Financing Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Financing Amendment, such execution to be conclusive evidence of such approval. The City Council hereby authorizes the delivery and performance of the Financing Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 3. Amendment to Utility Agreement. The Amendment to Joint Exercise of Powers Agreement, by and among the Utility Authority, the Parking Authority and the Successor Agency (the "Utility Amendment"), in substantially the form attached hereto as Exhibit B, is hereby approved by the City Council. The Authorized Representative is hereby authorized and directed, for and in the name of the City to execute and deliver the Utility Amendment in such form, together with such changes, insertions and omissions as may be approved by the Authorized Representative executing the Utility Amendment, such execution to be conclusive evidence of such approval. The City Council hereby authorizes the delivery and performance of the Utility Amendment and all actions necessary or advisable in connection with the execution and delivery thereof.

SECTION 4. Other Actions. The Authorized Representatives are hereby authorized, individually and collectively, to take all actions and execute any and all documents, certificates and other instruments which they may deem necessary or advisable to consummate the execution and delivery of the Financing Amendment and the Utility Amendment and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution. All actions heretofore taken by the Authorized Representatives, the City's other officers, or their respective designees, and the employees and agents of the City, in connection with the matters described in this Resolution, the Financing Amendment and the Utility Amendment are hereby ratified, approved and confirmed.

SECTION 5. Costs and Expenses of the City. The Parking Authority shall be responsible for all costs and expenses incurred by the City in connection with the Financing Amendment and the Utility Amendment.

SECTION 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Banning, California, at a regular meeting held on the __ day of _____ 2015.

CITY OF BANNING, CALIFORNIA

_____
Debbie Franklin, Mayor

ATTEST

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM

_____
[_____]
City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF)

I, Marie A. Calderon, City Clerk of the City of Banning, DO HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council held on the ___ day of _____ 2015, by the following vote to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

_____
CITY CLERK

EXHIBIT A

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

BANNING UTILITY AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated July 12, 2005 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for public capital improvements of the City's utility system; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the Banning Utility Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

"Members" means the City, the Parking Authority and any other Member under the Agreement.

ARTICLE II

ADDITION OF PARKING AUTHORITY OF THE CITY OF BANNING AS A MEMBER

Section 2.01. Addition of Member. The Parking Authority of the City is hereby made a Member under the Agreement for all purposes thereof.

ARTICLE III

REMOVAL OF SUCCESSOR AGENCY AS A MEMBER

Section 3.01. Removal of Member. Upon execution by the Parking Authority of this Amendment, the Successor Agency shall be and is hereby removed as a Member of the Agreement for all purposes thereof. All references to "Agency" in the Agreement are hereby removed and replaced with "Parking Authority."

ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

BANNING UTILITY AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT B

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

CITY OF BANNING FINANCING AUTHORITY

This AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 1, 2015 (this "Amendment"), is made by and among the City of Banning, California (the "City"), the City as successor to the Community Redevelopment Agency of the City of Banning (the "Successor Agency") and the Parking Authority of the City (the "Parking Authority"), each duly organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, the City and the Community Redevelopment Agency of the City of Banning entered into that certain Joint Exercise of Powers Agreement, dated November 12, 2003 (the "Agreement"), for the purpose, among other things, of issuing its bonds to be used to provide financing and refinancing for any purposes which are authorized by law; and

WHEREAS, the City and the Successor Agency desire to amend the Agreement pursuant to Section 8.05 thereof to add the Parking Authority as a Member under the Agreement; and

WHEREAS, adding the Parking Authority as a Member will facilitate the issuance of refunding revenue bonds by the City of Banning Financing Authority (the "Authority"); and

WHEREAS, after the Parking Authority is a Member of the Authority hereby, the Members desire to remove the Successor Agency as a Member;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Definitions. Section 1.01 of the Agreement is hereby amended and restated with respect to the following definitions:

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ARTICLE IV

MISCELLANEOUS

Section 4.01. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Amendment, effective as of the day and year first above written.

CITY OF BANNING, CALIFORNIA

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

CITY OF BANNING, CALIFORNIA, as Successor Agency for the Community Redevelopment Agency of the City of Banning

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

PARKING AUTHORITY OF THE CITY OF BANNING

By: _____
Name: _____
Title: _____

ATTEST:

_____
Secretary

ACKNOWLEDGED AND ACCEPTED

CITY OF BANNING FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

CITY COUNCIL / BANNING UTILITY AUTHORITY AGENDA
CONSENT ITEM

Date: **July 14, 2015**

TO: **Banning Utility Authority**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Banning Utility Authority Resolution No. 2015-10 UA, "Approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and Annual Membership Dues"**

RECOMMENDATION: Banning Utility Authority adopt Resolution No. 2015-10 UA:

I. Approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and the City's membership.

II. Authorizing the disbursement of membership fees in the amount of $500.00 annually.

JUSTIFICATION: The purpose of the Memorandum of Understanding ("MOU") is to establish the mutual understandings of San Gorgonio Pass Regional Water Alliance ("SGPRWA") with respect to certain voluntary joint efforts towards regional coordination, collaboration and communication of water resource programs.

BACKGROUND: The San Gorgonio Pass Area local governments and water districts understand that regular coordination, collaboration, and communication can result in improved management of water resources at local and regional levels. Water is a limited resource, and in May 2013, County Supervisor Marion Ashley appointed, with the approval of the entire County Board of Supervisors, a Pass Water Policy Panel ("Panel"). The Panel is made up of representatives in the San Gorgonio Pass Area. The Panel, known as SGPRWA, is responsible for identifying challenges in water supply and water quality for the region and to develop mutually beneficial solutions that include coordinating plans and infrastructure development that ultimately delivers clean, reliable, and affordable water supplies for the citizens of the San Gorgonio Pass area for the foreseeable future.

FISCAL DATA: Membership fees will be funded by Account No. 600-6300-471.23-03 (Dues/Subscriptions) on an annual basis under the approval of this resolution.

RECOMMENDED BY:

Art Vela
Acting Director of Public Works

REVIEWED/APPROVED BY:

Dean Martin
Interim City Manager/
Administrative Services Director

Attachments: Memorandum of Understanding San Gorgonio Pass Regional Water Alliance

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BANNING UTILITY AUTHORITY RESOLUTION NO. 2015-10 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE SAN GORGONIO PASS REGIONAL WATER ALLIANCE MEMORANDUM OF UNDERSTANDING AND ANNUAL MEMBERSHIP DUES

WHEREAS, the purpose of the Memorandum of Understanding ("MOU") is to establish the mutual understandings of San Gorgonio Regional Water Alliance ("SGPRWA") with respect to certain voluntary joint efforts towards regional coordination, collaboration, and communication of water resource programs; and

WHEREAS, the San Gorgonio Pass Area local governments and water districts understand that regular coordination, collaboration, and communication can result in improved management of water resources at local and regional levels; and

WHEREAS, water is a limited resource, and in May 2013, County Supervisor Marion Ashley appointed, with the approval of the entire County Board of Supervisors, a Pass Water Policy Panel and the Panel is made up of representatives in the San Gorgonio Pass Area; and

WHEREAS, the SGPRWA is responsible for identifying challenges in water supply and water quality for the region and to develop mutually beneficial solutions that include coordinating plans and infrastructure development that ultimately delivers clean, reliable, and affordable water supplies for the citizens of the San Gorgonio Pass area for the foreseeable future; and

WHEREAS, membership fees will be funded by Account No. 600-6300-471.23-03 (Dues/Subscriptions) on an annual basis under the approval of this resolution.

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. 2015-10 UA approving the San Gorgonio Pass Regional Water Alliance Memorandum of Understanding and Annual Membership Dues.

PASSED, ADOPTED AND APPROVED this 14th day of July, 2015.

_____
Deborah Franklin, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary

APPROVED AS TO FORM AND LEGAL CONTENT:

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

CERTIFICATION:

I, Marie Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-10 UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at a Regular Meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

Memorandum of Understanding
San Gorgonio Pass Regional Water Alliance

Memorandum of Understanding

San Gorgonio Pass Regional Water Alliance

A Coordination of Regional Water Providers

1. Background

The San Gorgonio Pass Area local governments and water districts understand that regular coordination, collaboration, and communication can result in improved management of water resources at local and regional levels. Water is a limited resource, and in May 2013, County Supervisor Marion Ashley appointed, with the approval of the entire County Board of Supervisors, a Pass Water Policy Panel. The Panel is made up of representatives in the San Gorgonio Pass Area. The Panel, known as the San Gorgonio Pass Regional Water Alliance ("SGPRWA") is to identify challenges in water supply and water quality for the region, to develop mutually beneficial solutions that include coordinating plans and infrastructure development that ultimately delivers clean, reliable, and affordable water supplies for the citizens of the San Gorgonio Pass area for the foreseeable future.

2. Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish the mutual understandings of SGPRWA with respect to certain voluntary joint efforts towards regional coordination, collaboration, and communication of water resource programs.

3. Goals

The goals of the SGPRWA are:

3.1 To improve coordination, collaboration, and communication among local government water agencies in the San Gorgonio regional area, to achieve greater efficiency and effectiveness in delivering water supplies. Services are local control.

3.2 To develop and promote common water strategies that will, when implemented, fulfill the water demands of the regional area for the foreseeable future.

4. Definitions

4.1 San Gorgonio Pass Regional Water Alliance. Participating county, local governments, and water agencies in the San Gorgonio Regional area.

4.2 Signatories. The parties signing this MOU (Signatories) constitute the current participants.

5. Mutual Understandings

5.1 Alliance Agreements. Principal idea of non-binding collaborative is so that we do not overstate supplies in area. The collaborative is to share resources and opportunities that can benefit our area that we might not qualify for individually. Agreements of the Alliance members:

1) Water supply is a regional need

2) Affordable quality water is a regional need
3) We, the Alliance, are interested in obtaining affordable quality water supply for our individual districts
4) Regional collaboration allows for an opportunity for us to obtain #3 above

As we agree on these four points, we also agree to explore opportunity of an integrated water management plan for the area.

5.2 Participation. Participation is strictly voluntary and may be terminated at any time without recourse. San Gorgonio local governments and water agencies will be invited to become Signatories.

5.3 Activities. Efforts pursued under this agreement will remain consistent with and will not exceed the current authority for any individual participating local government and water agency. Efforts will include information dissemination and sharing between local governments, water agencies, public outreach, and education and other activities as mutually agreed upon from time to time among the Signatories.

5.3.1 It is anticipated that the Signatories will meet at least monthly with subcommittee meeting happening in between full Alliance meetings.

5.4 Funding. Individual Signatories are not required to commit funding to any other Signatory of the Alliance. Recognizing this is a voluntary, non- binding agreement, Signatories agree to commit such resources as are required to implement actions agreed upon per Section 5.4 herein within their individual service areas, subject to approval and direction of the governing bodies of each Signatory.

5.5 Decision Making. Consensus will be sought when the need for decisions arises. Decisions lacking consensus may be implemented by such individual Signatories that choose to do so, but said decisions may not be considered activities of the Alliance.

5.6 Non-binding Nature. This document and participation under this MOU are non-binding, and in no way suggest that a local municipal government or water agency may not continue its own activities as each government and water agency is expected to continue its own policies and procedures , and undertake efforts to secure project funding from any source . A local government or water agency may withdraw from participation at any time.

5.7 Termination. Signatories may terminate their involvement at any time with no recourse.

6. Signatories to the Memorandum of Understanding

We, the undersigned representatives of our respective governing bodies, acknowledge the above as our understanding of how the SGPRWA Coordination, Collaboration, and Communication MOU will be implemented.

This MOU will be revisited annually.

Signatures on the following page

CITY COUNCIL MEETING
CONSENT

DATE: **July 14, 2015**

TO: **Banning Utility Authority**

FROM: **Art Vela, Acting Director of Public Works**

SUBJECT: **Banning Utility Authority Resolution No. 2015-12UA, "Approving an Amendment to the Professional Services Agreement with Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study"**

RECOMMENDATION: Adopt Banning Utility Authority Resolution No. 2015-12UA:

I. Approving an Amendment to the Professional Services Agreement with Willdan Financial Services in the amount of $9,975.00 for additional services required to complete the Water, Wastewater and Reclaimed Water Rate Study contract from 2013.

II. Authorizing the Interim Administrative Services Director to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with Willdan Financial Services, for a total contract amount not to exceed $68,938.00.

III. Authorizing the Interim City Manager to execute contract documents.

JUSTIFICATION: The approval of these services is necessary in order to complete the Water, Wastewater and Reclaimed Water Rate Study that was started in 2013.

BACKGROUND: The City Council last approved Water and Wastewater Rates in 2010, which increased the Water and Wastewater Rates each year over four years from October 2010 to September 2013. October 2010 was the first time rates had been approved since 2003. Although operating expenditures were reduced to address the decline in revenues due to the economic downturn, it became critical to increase the rates to meet bond covenant requirements. The rate increases provided stabilization to the operating funds while major capital projects were put on hold. The slowdown in development activity in the city removed some urgency to implement the capital projects. However, with the economy showing signs of improving and with the regulatory challenges facing the utilities, there is a need to strategically address these demands on the utilities

In order to understand whether rate increases were needed, the City determined a study should be completed on the existing rate structure, service levels, consumption, regulatory demands and capital requirements.

On June 20, 2013, Requests for Proposals (RFPs) were sent to several consulting firms with known experience in performing rate studies. In addition, the RFP was posted to the City website and other sites. On July 26, 2013, seven proposals were received by the Public Works Department. The proposals were evaluated by an Evaluation/Selection Committee.

On October 8, 2013, The City Council adopted Banning Utility Authority Resolution No. 2013-18UA awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed $58,963.00.

In January 2014, Willdan provided staff with a status report of their progress on the Water Rate Study. They explained there are three phases to the analysis that Willdan was contracted to complete; Revenue Sufficiency Analysis, Cost of Service Analysis and Rate Design. At that time they required the following additional information to integrate into their process and complete the study:

Revenue Sufficiency Analysis
Draft or Final FY 13 Annual Report

Cost of Service Analysis
Balance Sheet (Breakout of Costs associated with Treatment or Transmission)

Rate Design
Detailed Billing Data File

Unfortunately, the requested items were not provided in 2014 and the study ultimately came to a halt. Therefore, in order to resume work, bring the study current and complete the work, an amendment to the original agreement is required.

FISCAL DATA: Additional professional services required to be provided Willdan Financial Services in order to resume work on the previously approved Water Rate Study is proposed to result in an additional $9,975.00 and would be paid from the Waste Water Fund, Account 680-800-454.33-11

RECOMMENDED BY:

Art Vela,
Acting Public Works Director

REVIEWED/APPROVED BY:

Dean Martin
Interim Administrative Services
Director/Interim City Manager

Attachments:
1.) Resolution 2015-12UA
2.) Attachment 1: Exhibit "A"-Professional Services Agreement approved under Resolution No. 2013-18UA
3.) Attachment 2: Exhibit "B"- Proposal dated October 8, 2013 for professional services related to the Water, Wastewater and Reclaimed Water Rate Study

RESOLUTION NO. 2015-12UA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENT WITH WILLDAN FINANCIAL SERVICES RELATED TO THE WATER, WASTEWATER AND RECLAIMED WATER RATE STUDY

WHEREAS, on October 8, 2013, City Council approved Resolution No. 2013-18UA awarding an agreement to Willdan Financial Services for the Water, Wastewater, and Reclaimed Water Rate Study in the amount of $58,963.00 attached as Exhibit "A"; and

WHEREAS, in order to complete services related to the Water Rate Study, additional work and funding is required in the amount of $9,975.00; and

WHEREAS, as part of this resolution staff is requesting the approval of an amendment, which will increase the total contract amount by $9,975.00 for a total contract amount of $68,938.00; and

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

SECTION 1. The City Council adopts Resolution No. 2015-12UA, "Approving Amendments to the Professional Services Agreement with Willdan Financial Services for services related to the Water, Wastewater, and Reclaimed Water Rate Study."

SECTION 2. The City Council approves an amendment to the Professional Services Agreement with Willdan Financial Services in amount of $9,975.00 for services required to bring the Water Rate Study current in order to complete the study.

SECTION 3. The Interim Administrative Services Director is authorized to make necessary adjustments and appropriations as it relates to the Professional Services Agreement with Willdan Financial Services for a total contract amount not to exceed $68,938.00.

SECTION 4. The Interim City Manager is authorized to execute contract documents referred to herein.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, Chairman
Banning Utility Authority

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, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-12UA was duly adopted by the Banning Utility Authority of the City of Banning at a regular meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 1

EXHIBIT "A"
PROFESSIONAL SERVICES AGREEEMENT APPROVED UNDER RESOLUTION NO. 2013-18UA

ORIGINAL

(375)

CONTRACT SERVICES AGREEMENT

By and Between

THE CITY OF BANNING,
A MUNICIPAL CORPORATION

and

WILLDAN Financial Services

AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
WILLDAN Financial Services

THIS AGREEMENT FOR CONTRACT SERVICES (herein" Agreement") is made and entered into this 11th day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and WILLDAN Financial Services , ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." "). (The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services

contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents,

plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty. (NOT APPLICABLE)

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewbere in tbe Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any otber warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the rigbt to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 **Prevailing Wages. (NOT APPLICABLE)**

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide

Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and barmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No sucb extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Contractor that tbe provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. Tbe total compensation, including reimbursement for

actual expenses, shall not exceed $58,963 (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COMPENSATION AND METHOD OF PAYMENT

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Chris Fisher	Group Manager
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any

loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and, except for professional liability insurance and workers compensation insurance, shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by first class mail , postage prepaid, to the City, ten (10) days notice if cancellation is due to nonpayment of premium. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates except for professional liability insurance and workers compensation insurance shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN, TEN (10) DAYS NOTICE IF CANCELLATION IS DUE TO NONPAYMENT OF PREMIUM.

[to be initialed] _____

Agent Initials

With the exception of professional liability insurance and workers compensation insurance, City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnitors' negligent performance of or

failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance Bond. (NOT APPLICABLE)

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best

Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim

for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other

appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds. (NOT APPLICABLE)

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

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. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions 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.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party

of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 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.

7.7 Liquidated Damages. (NOT APPLICABLE)

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of _____ ($_____) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may he such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate

such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take

affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 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 sball 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 hercunder unless the invalid provision is so material that its invalidity deprives either party of tbe basic benefit of their bargain or renders this Agreement meaningless.

9.6 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 Agrecment shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

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

CONTRACTOR:

Willdan Financial Services, a California Corporation

By:
Name: ~~Chris~~ Robert C Fisher
Title: Vice President

By:
Name: Roy Gill
Title: Corporate Secretary

Address: 27368 Via Industria, Suite 110
Temecula, CA 92590

Two signatures are required if a corporation.

NOTE: CONSULTANT'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 DEVELOPER'S BUSINESS ENTITY UNLESS PREVIOUSLY PROVIDED TO THE CITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On Oct 11, 13 before me, Cathaleen D Steele personally appeared Roy L Hall proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Cathaleen D Steele

CATHALEEN D. STEELE
Commission # 1972267
Notary Public - California
Orange County
My Comm. Expires Apr 13, 2016

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 — Secretary — TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
Weldon Financial Services

DESCRIPTION OF ATTACHED DOCUMENT

Contract Services Agreement
TITLE OR TYPE OF DOCUMENT

59
NUMBER OF PAGES

October 11, 2013
DATE OF DOCUMENT

Robert C. Fisher
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Riverside

On October 8, 2013 before me, Joan E Sater, Notary Public, personally appeared Robert C. Fisher, 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: J E Sater

JOANIE E. SATER
Commission # 1906691
Notary Public - California
Riverside County
My Comm Expires Oct 3, 2014

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
  Vice President and Group Manager
  TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
Walldan Financial Services

DESCRIPTION OF ATTACHED DOCUMENT

Contract Services Agreement
TITLE OR TYPE OF DOCUMENT

59 pages
NUMBER OF PAGES

To be Determined
DATE OF DOCUMENT

Ray Gill
SIGNER(S) OTHER THAN NAMED ABOVE

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EXHIBIT "A"
SCOPE OF SERVICES

See attached

ATTACHMENT 2

EXHIBIT "B"
WILLDAN FINANCIAL SERVICES PROPOSAL FOR SERVICES RELATED TO THE WATER, WASTEWATER AND RECLAIMED WATER RATE STUDY

BANNING, CA
STAGECOACH TOWN USA
ESTABLISHED 1913

City of Banning



Proposal for

Water, Wastewater and Reclaimed Water Rate Study

WILLDAN
Financial Services

27368 Via Industria, Suite 110, Temecula, California 92590-4856
T 951.587.3500 800.755.6864 | F 951.587.3510 888.326.6864
www.willdan.coma



Table of Contents

Table of Contents i

Qualifications of Firm / Project Team 1

- Willdan 1
- Project Team 3
- Sub Consultants 3
  - Chris Fisher 4
  - Jonathan Varnes 5
  - Tony Thrasher 6
  - Jeffrey McGarvey 7

References 8

Strategy and Implementation Plan 12

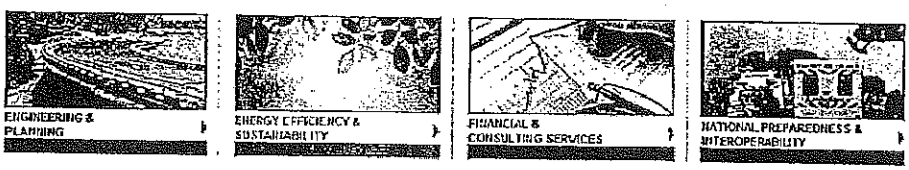
- Executive Summary 12
- Approach to the Project 13
- Willdan Models GUIDE You to Your Optimal Solutions 14
- Willdan's GUIDE Suite of Financial Models – Description of Product Features 15
- Work Plan 16
- City Staff Responsibilities 24
- Schedule 25

Proposed Quality Assurance Program (QA/QC) 27

Qualifications of Firm / Project Team

Willdan

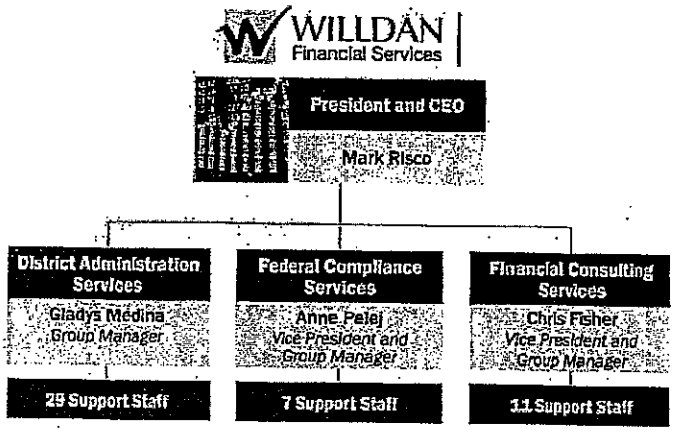
Willdan Financial Services is one of four operating divisions within Willdan Group, Inc. ("WGI"). WGI provides technical and consulting services that ensure the quality, value and security of our nation's infrastructure, systems, facilities, and environment. The firm has been a consistent industry leader in providing all aspects of municipal and infrastructure engineering, public works contracting, public financing, planning, building and safety, construction management, homeland security, and energy efficiency and sustainability services. Today, WGI has hundreds of employees operating from offices located throughout California, as well as in Arizona, District of Columbia, Florida, Illinois, New Jersey, New York, Ohio, and Texas.



Willdan Financial Services is one of the largest public sector financial consulting firms in the United States. The firm was established on June 24, 1988. Since that time, we have helped over 800 public agencies successfully address a broad range of financial challenges, such as financing the costs of growth and generating revenues to fund desired services. Willdan assists local public agencies by providing the following services:

- Real estate economic analysis;
- Economic development plans and strategies;
- Tax increment finance district formation and amendment;
- Housing development and implementation strategies;
- Financial consulting;
- Real estate acquisition;
- Classification/compensation surveys and analysis;
- Development impact fee establishment and analysis;
- Utility rate and cost of service studies;
- Feasibility studies;
- Debt issuance support;
- Long-term financial plans and cash flow modeling;
- Cost allocation studies; and
- Property tax audits.

Our staff of over 50 full-time employees supports our clients by conducting year-round workshops and on-site training to assist them in keeping current with the latest developments in our areas of expertise. The organizational chart below outlines Willdan's basic structure.



Utility Rate Experience



Willdan's professional staff has provided professional consulting services, including financial planning; rate and cost-of-service studies; alternative and feasibility analyses; and operational and management studies for water, reclaimed water, sewer, solid waste, and stormwater utility clients across the United States. Additionally, Willdan staff possesses a thorough understanding of the rate-setting methodologies set forth in the American Water Works Association (AWWA) M-1 manual "Principles of Water Rates, Fees and Charges," and the AWWA M34 manual, "Water Rate Structures and Pricing." Willdan is nationally recognized for its expertise with its staff frequently being called upon to speak or instruct on utility financial matters, as subject matter experts, including the AWWA Utility Management conference.

Willdan staff is experienced in a broad range of utility planning services; and we understand the importance of an approach that integrates elements of utility planning, engineering, and finance. The Willdan Team members have considerable experience in utility rate and cost-of-service studies and have performed these services for hundreds of utilities throughout the country. Our team includes staff with public sector experience spanning 30 years, and staff on the forefront of utility rate-making and rate-modeling. Members of our team have been on your side as finance directors, deputy city managers, and auditors and understand the financial, operational and political realities faced by public sector staff and management and we craft solutions which are sensitive to this.

Our expertise spans across the following utility financial planning services:

- Retail and Wholesale Rate Studies;
- Revenue Sufficiency Analyses;
- Utility Management and Policy Assistance;
- Connection Fee / System Development Charge Studies;
- Miscellaneous Fee and Charge Studies;
- Bond Feasibility Reports;
- Renewal and Replacement Sufficiency Analyses;
- Comprehensive Alternatives Analyses;
- Interactive Rate Model Development with Dashboards Showing Key Performance Indicators;
- Capital Project Funding Studies;
- Capital Improvement Plan (CIP) Financial Scenario Planning;
- Rate Ordinance Drafting;
- Billing System Validation/Rate Testing;
- Valuation/Divestiture Studies; and
- Life Cycle Costs Analyses.

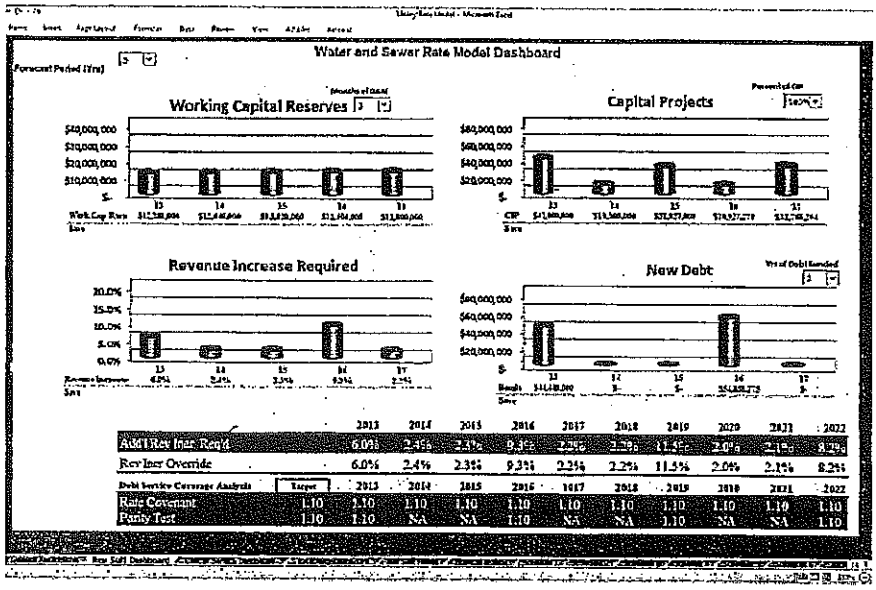
Willdan will work with the City of Banning ("City") to identify and prioritize operational and fiscal objectives and match these to specific rate attributes; and use this information throughout the engagement to develop a comprehensive financial plan and design utility rates that effectively meet these goals. The culmination of our analyses will be rate policies that guide the rate setting process, and a financial management plan that develops projected system operating results for the water, wastewater, and reclaimed water utilities for the forecasted period. Willdan will employ its proven interactive approach, coupled with advanced financial modeling techniques to design rates and a financial plan that meet established goals and performance criteria. These modeling techniques serve as a powerful decision-making tool and provide the City with genuine business solutions and recommendations as to the strategic direction of its utilities.

During rate and financial planning projects we employ tools and techniques which focus on consensus-building among stakeholders to ensure the team understands the future financial implications of current management decisions. Our extensive project expertise is bolstered by our unique interactive financial planning process and model.

Our utility rate Excel-based model is user friendly, comprehensive and well-designed, providing our experienced consultants with a powerful tool to develop ideas, scenarios and approaches collaboratively with staff, and effectively and immediately provide analysis and feedback to facilitate meaningful policy discussions and assist effective and informed decision making. Through a live projected-model, we review the data, assumptions and results with City staff, allowing us to cycle through various alternatives, test "what if" questions which typically arise during our interactive team meetings, and build consensus toward the rate and financial plan which best addresses your needs.

Features of our model include the ability to incorporate line-item data and assumptions which are then summarized in our dashboard, which presents key financial indicators for your utility. This allows us to demonstrate capital project funding (including system repair and replacement requirements). Therefore, the City understands where funds are generated to fund the capital plan -- new bond issues for instance.

A sample dashboard is presented in the right-hand column which shows how we summarize the data, assumptions and calculations into an easy-to-understand graphical interface which updates with each alternative scenario evaluated.



Project Team

Our management and supervision of the project team is very simple: staff every position with experienced, capable personnel in sufficient numbers to deliver a superior product to the City, on time and on budget. With that philosophy in mind, we have selected experienced professionals for this engagement. We are confident that our team possesses the depth of experience that will successfully fulfill the desired work performance.

With more than 14 years of professional consulting experience, Mr. **Chris Fisher** will serve as **project manager** and will work closely with the City and to ensure the satisfaction of the City. In this role, Mr. Fisher will attend meetings and presentations, produce the key elements of any analyses developed for the City, and will be responsible for the deliverables.

Mr. **Jonathan Varnes** will serve as **task manager**, working closely with Mr. Fisher to develop the analyses under the City's scope of services and lead the design of the financial model.

Mr. **Tony Thrasher** will serve as **financial analyst**, collecting, interpreting and analyzing the data necessary for the study, and working with the team to develop and tailor the financial model to the City's specific needs and objectives, and incorporate the City's data.

With more than 20 years of comprehensive utility financial and rate experience, Mr. **Jeffrey McGarvey** will serve as **quality assurance/quality control (QA/QC) and policy and technical advisor** and will work closely with Mr. Fisher and the City in developing policy objectives and utility *Best Management Practices* to lead to a strong and healthy financial outlook for the District.

Resumes for the above-noted key personnel are presented on the following pages, which highlight projects of similar nature in which they had hands-on experience, and also include each member's length of time with the firm, title and phone number.

Sub Consultants

For the commitments outlined in the City's Request for Proposal (RFP), Willdan staff will perform tasks described herein, and will not be utilizing the services of any Sub Consultants.

Chris Fisher

Project Manager

Education
Bachelor of Science, Finance, San Francisco State University

Areas of Expertise
Multi-disciplinary Team Management

Rate Studies

Cost of Service Studies

Special District Formations

Proposition 218

Client Presentations

Affiliations
California Society of Municipal Finance Officers

Municipal Management Association of Northern California

California Municipal Treasurers Association

14 Years Experience

Telephone #:
(800) 755-6864, Ext. 1528

Mr. Fisher has been selected to serve as project manager due to his extensive experience managing multi-disciplinary teams. He also possesses extensive knowledge regarding compliance with Proposition 218.

Presently, Mr. Fisher is a Vice President and the Financial Consulting Services Group Manager at Willdan Financial Services. With 14 years experience at Willdan, he has managed an array of financial consulting projects for public agencies throughout California, Arizona and Florida; coordinating the activities of resources within Willdan, as well as those from other firms working on these projects. Mr. Fisher joined Willdan in April 1999.

Related Experience

City of Flagstaff, AZ – Water, Wastewater and Reclaimed Water Rate Study: Mr. Fisher served as principal-in-charge of the City's utility rate analysis. In the wake of six water main breaks, the City was faced with decreasing revenues and increasing capital and operational costs. The proposed rates developed reverse the City's trajectory of a falling operating reserve and provide sufficient revenue to cover existing and future operations, maintenance, and debt service; all while being financially prudent and responsive to the concerns of the City's Water Commission. The proposed residential inclining block rate appropriately spreads the burden of increased costs based on a comprehensive analysis of customer demands.

Elk Grove Water District, CA – Water Rate Services: Mr. Fisher oversaw the preparation of a comprehensive financial plan and water rate study for the District. This engagement included the development of a comprehensive financial model, updated water rates and connection fees, as well as an analysis of multi-family accounts, a comparison of current and proposed rates, including rates of comparable jurisdictions, comparative rate and cost analysis. Mr. Fisher provided technical assistance throughout this project and partipated in stakeholder meetings. Willdan is currently wrapping up this five-year water rate analysis.

City of Delano, CA – Water, Sanitary Sewer, Solid Waste and Street Cleaning Utility Rate Study: Mr. Fisher provided led this multi-faceted study. Recently developed financial studies did not match current economic realities, and as such the utilities were not generating sufficient cash flows. Given the volatile economy, the City hired Willdan to lead the development of a comprehensive utility financial plan and appropriate water, wastewater and solid waste rates to meet the determined level of required revenue. Willdan modeled and analyzed numerous financial and rate scenarios through the course of the project.

City of Covina, CA – Tiered Water Rate Study: Mr. Fisher served in the role of principal-in-charge of the City's tiered water rate study. In this capacity his responsibilities included the scheduling of key meetings and deliverables, review of progress throughout the development of the project, and quality control. The City's existing rate structure, which was updated in 2007 by Willdan, demonstrated that current utility rate revenues were not sufficient to fund the current operating and maintenance costs and necessary capital improvements. The updated rate analysis incorporated additional customer classes with unique discharge characteristics, which distributed the full cost of the utility services to the City's customer base in proportion to the service demands they place on the utility systems.

City of Glendale Water and Power, CA – Water Rate Redesign: Given the nature of the rate redesign's significant departure from the existing methodology, Mr. Fisher assisted in the development and facilitation of public outreach and stakeholder discussions, oversaw the development of the model and analysis, guided policy-making discussions and oversaw quality review. Mr. Fisher was heavily involved throughout the process in the overall management and project direction and he confirmed that questions were addressed early on in the process rather that in the final stages; additionally, he ensured that consideration was given to how decisions would be presented to and received by stakeholders.

Jonathan Varnes

Task Manager

Education
Bachelor of Science, Finance, University of Florida

Areas of Expertise
Alternatives Analysis

Rate Studies

Cost of Service Studies

Revenue Bonds

Feasibility Analyses

Capital Funding

Affiliations
American Water Works Association

12 Years Experience

Mr. Varnes has served as a municipal utility rate consultant for over a decade; during which he has conducted over 150 retail and wholesale rate studies across the country. Furthermore, he is one of the foremost utility rate modeling experts in the rate consulting industry.

Mr. Varnes experience extends across a variety of utility rate and financial studies, including the following: retail and wholesale rate and cost of service studies; connection fee / impact fee studies; miscellaneous fee and charge studies; bond feasibility reports; interactive rate model development; CIP financial scenario planning; rate ordinance drafting; billing system validation / rate testing; and valuation / divestiture studies.

Rate and Cost of Service Studies

Mr. Varnes possesses nationwide experience with utility rate and cost of service studies for retail and wholesale use. His project experience includes water, sewer, reuse, and stormwater rate studies using state-of-the-art utility financial planning tools. He has developed both short and long-term financial plans for utilities of all sizes – including regional water authorities and regional sewer providers with as many as six municipal customers, each with individual wholesale service contracts.

Interactive Rate Model and Report Development

Mr. Varnes, a utility rate modeling expert, develops interactive rate models that contain dashboards showing key performance indicators. He is also proficient in the customization of models to each client's unique financial dynamics. Upon completion of the analysis, Mr. Varnes can conduct model training and provide a user's manual, which allows clients to perform in-house updates on an annual, or as needed, basis. Occasionally, he is called upon to redesign models developed by past consultants on his client's behalf.

In addition to the development and utilization of comprehensive forecasting tools, Mr. Varnes develops comprehensive reports which communicate the overall rate study results to both the layperson and subject-matter experts. This is done with the use of graphics and tables designed to summarize the results in a manner which is easily understood by the reader – regardless of their level of expertise. Also, for utility staff, the reports generated by Mr. Varnes include detailed, line-item data and calculations so that those who wish to better understand the results may "drill down" into the detailed calculations to research the data, results and conclusions more thoroughly.

Bond Feasibility Reports

Mr. Varnes possesses experience in preparing bond feasibility reports, which include comprehensive utility rate sufficiency analyses. He also provides presentation and rating agency support to clients during the approval process. Mr. Varnes has developed comprehensive bond feasibility reports for over a decade and most importantly, in light of the increased scrutiny placed on utilities by rating agencies in the current economic climate, he has developed bond feasibility reports resulting in the successful issuance of over $100 million of bonds for his clients in the last few years – widely recognized as one of the most difficult markets in which to issue bonds at favorable rates in recent memory.

Project Experience

The following is a list of Mr. Varnes' recent utility rate clients and projects.

- **City of Soledad, CA – Water Rate Study**
- **City of Crescent City, CA – Water and Wastewater Rate and Capacity Fee Analysis**
- **Nevada Irrigation Water District, CA – Water Rate and Cost of Services Studies**

Tony Thrasher

Financial Analyst

Education
Bachelors of Science in Economics (Primary Focus was Econometrics); California Polytechnic University of Pomona

Areas of Expertise
Utility Rate Studies

OMB A-87-compliant Cost Allocation Plans

Fiscal Analyses for User Fees and Rates

Proposition 218 Utility Rate Compliance

2 Years Experience

Telephone #:
(800) 755-6864, Ext. 1530

Mr. Thrasher has been selected to serve as financial analyst due to his water and wastewater rate analysis experience. Mr. Thrasher is an analyst within Willdan's Financial Consulting Services group. His responsibilities include supporting project managers and conducting fiscal analyses for numerous types of public finance studies.

Prior to joining Willdan in February 2012, Mr. Thrasher was as a financial analyst working in bond, equity, and mortgage-backed security markets for Wells Fargo Bank, Bank of New York Mellon, and Deutsche Bank. His experience includes portfolio accounting, differential analysis, and forecasting.

Related Experience

City of Lompoc, CA – Water and Wastewater Rate Study Update: Willdan was contracted to provide a comprehensive review and financial plan update for the City's water and wastewater rates. The project approach includes a thorough review of the CIP, each utility's operating budget, and other important policy and financial documents. The City is seeking to fund an increasing CIP and increasing operations and maintenance expenses; and the financial plan must ensure appropriate revenues are generated in light of the adoption of Senate Bill No. 7 (20 x 2020), coupled with decreasing consumption levels. Costs associated with water production and delivery has been analyzed and an appropriate fixed charge component of the rate structure has been suggested as well. Willdan is also considering the feasibility of creating an agriculture rate.

Phelan Piñon Hills Community Services District (CSD), CA – Water Rate and Fee Study: Willdan developed a comprehensive revenue requirement analysis and financial plan to provide targeted rate and fee structure recommendations that would be based on the CSD's objectives and aggressive timeline. As the CSD was undertaking a study of this type for the first time since becoming an independent local agency, Willdan's primary project objective was to develop a robust and custom-designed financial rate model that would clearly reveal results of the CSD's various particular scenarios.

Willdan collected and analyzed data related to water operations, planned capital improvement projects, existing debt obligations, the acquisition of water rights, and ongoing maintenance and repair operations. Willdan collaborated with staff to prepare and tailor a comprehensive pro forma financial analysis that focused on primary rate and financial objectives. Our analysis resulted in rate structures that provided adequate revenue to fund operations; and create a secure and reliable funding source for future capital improvements, while fully ensuring that rates are equitable and predictable, and reflect the true cost-of-service.

City of Pinole, CA – Wastewater Rate Analysis: The City retained Willdan to prepare a wastewater rate analysis that included a new wastewater rate schedule meeting current and near-term projected system revenue requirements. Mr. Thrasher provided analytical support for this engagement, gathered and verified necessary data, and assisted in the development of the model and the completion of the report.

City of Soledad, CA – Water Rate Study: Mr. Thrasher is serving in the role of lead financial analyst for the City's engagement. The City's water rates and connection fees had not been updated since 1996. The water utility is losing money with existing rates, and they need to invest significantly in capital repair and replacement projects, as well as system upgrades. Mr. Thrasher has worked with City staff through the process of gathering and verifying data, including an on-site meeting to go through the budget in detail. He also developed the model, including the basic revenue requirements, cost causation and basic scenarios. The project is still in process and Mr. Thrasher is working with the City to develop scenarios for presentation to the City Council.

Jeffrey McGarvey

Quality Assurance / Technical Advisor

Education
Bachelor of Science, Finance, University of Central Florida

Areas of Expertise
Alternatives Analysis

Strategic Planning

Rate Studies

Cost of Service Studies

Revenue Bonds

Feasibility Analyses

Capital Funding

Acquisitions

Valuation Analyses

Affiliations
American Water Works Association

The Water Environment Federation

The Utility Management Conference

The WateReuse Foundation

20 Years Experience

Telephone #:
(800) 755-6864, Ext. 1155

Mr. McGarvey is a **managing principal** in Willdan's Financial Consulting Services group and, for more than 20 years, has provided professional consulting services to municipal water, wastewater, solid waste, electric, and natural gas utilities throughout the country. He possesses a broad range of municipal utility systems' experience, including special expertise in complex alternatives analyses; utility rate analyses; utility valuations and acquisitions; regionalization and consolidation studies; debt issuance support, such as the preparation of financial feasibility analyses associated with revenue bond issuance; capital financing analyses; strategic planning; rate and regulatory assistance; and instituting financial mechanisms to provide the sufficient recovery of operating and capital costs. **Mr. McGarvey joined the firm in May 2012.**

Rate and Cost of Service Studies

Mr. McGarvey has extensive experience in utility rates and cost of service studies for water, wastewater, solid waste, electric and natural gas systems. This experience generally relates to performing budget analyses, customer and usage analyses, development of revenue requirements, cost of service allocations and sensitivity analyses related to the implementation of rate structures designed to promote desired usage characteristics.

Revenue Bonds, Feasibility Analyses and Capital Funding

Mr. McGarvey has been involved in the preparation of capital financing plans and feasibility studies associated with the issuance of several hundred million dollars in municipal revenue bonds and bond anticipation notes (BANs). The funding proceeds have been utilized for such purposes as utility acquisitions, expansion of facilities and various other capital improvement needs. In addition, Mr. McGarvey has developed capital funding strategies utilizing various combinations of bonds, bank loans, government assistance loans (i.e. State Revolving Funds) and grants.

As financial feasibility consultant, Mr. McGarvey has made numerous presentations on behalf of clients to various bond insurers and rating agencies (Moody's, Standard & Poor's, and Fitch).

Business and Strategic Planning

Mr. McGarvey has experience in developing complex financial and economic evaluation models for water, wastewater, solid waste, electric and natural gas systems throughout the country. Such experience generally relates to the development of business and strategic plans as well as performing structured alternatives analyses and sensitivity analyses related to the evaluation and implementation of system modifications such as service and operational changes, as well as planning for customer growth and capital expenditures.

Acquisitions and Valuation Analyses

Mr. McGarvey has been involved in numerous acquisitions and valuation analyses for utility systems. Acquisition projects generally involve financial due diligence, valuations, negotiations and financing activities associated with such transactions. Mr. McGarvey has performed valuation analyses utilizing various generally accepted methodologies including cost approach (value of the cash flows generated by the system), original cost less depreciation (book value), comparable sales (actual transactions for other systems), replacement cost new less depreciation and reproduction cost new less depreciation (value of system assets.)

References

Willdan has prepared utility rate and fee analyses for a variety of municipalities and special districts throughout the United States. The chart that follows provides an overview of the Willdan's utility rate analysis experience that is similar to the services requested by the City.

State	Entity	Water/Wastewater Utility		Long-term Financial Planning
		Rate Study	Connection Fee	
AZ	Town of Buckeye		✓	✓
AZ	City of Clarksdale		✓	
AZ	City of Flagstaff	✓	✓	✓
AZ	Town of Florence	✓	✓	
CA	City of Arvin	✓	✓	
CA	City of Avenal	✓		✓
CA	Beaumont Cherry Valley Water District	✓	✓	✓
CA	City of Calexico	✓	✓	
CA	City of Coachella	✓		
CA	City of Covina	✓	✓	✓
CA	City of Crescent City	✓	✓	
CA	City of Delano	✓	✓	✓
CA	East Valley Water District	✓	✓	
CA	City of El Monte	✓	✓	
CA	Elk Grove Water District	✓	✓	✓
CA	Elsinore Water District	✓		✓
CA	Encina Wastewater Authority			✓
CA	City of Fort Bragg	✓		
CA	City of Fountain Valley	✓		
CA	City of Gilroy		✓	
CA	City of Glendale	✓		✓
CA	City of Gustine		✓	
CA	Joshua Basin Water District			✓
CA	Leucadia Wastewater District			✓
CA	City of Lomita	✓		✓
CA	City of Lompoc	✓		✓
CA	McKinleyville Community Services District	✓	✓	✓
CA	City of Merced	✓	✓	
CA	Mesa Consolidated Water District		✓	
CA	City of Modesto	✓		✓
CA	City of Morro Bay		✓	
CA	Phelan Piñon Hills Community Services District	✓	✓	✓
CA	City of Pinole	✓	✓	✓
CA	City of Rio Vista	✓	✓	
CA	City of Sacramento		✓	
CA	San Diego County Water Authority			✓
CA	City of San Fernando	✓		✓
CA	Santa Margarita Water District	✓		
CA	City of Seal Beach	✓		✓
CA	City of Soledad	✓	✓	✓
CA	City of South Pasadena	✓		
CA	City of Stockton		✓	
CA	City of Tulare	✓		✓
CA	City of Westminster	✓		✓

State	Entity	Water/Wastewater Utility		Long-term Financial Planning
		Rate Study	Connection Fee	
DE	County of New Castle	✓	✓	✓
FL	County of Alachua			✓
FL	City of Atlantic Beach		✓	
FL	County of Bay	✓		✓
FL	City of Callaway	✓	✓	✓
FL	City of Carrabelle	✓		
FL	County of Citrus			✓
FL	City of Clearwater			✓
FL	City of Dade City	✓	✓	✓
FL	City of Dania Beach	✓	✓	✓
FL	County of DeSoto	✓		✓
FL	Emerald Coast Utilities Authority	✓		✓
FL	City of Hialeah			✓
FL	City of Hollywood	✓		
FL	City of Leesburg			✓
FL	Peace River Manasota Regional Water Supply Authority			✓
FL	County of Polk			✓
FL	City of Riviera Beach	✓		
FL	County of Sarasota			✓
FL	Toho Water Authority	✓		
IL	City of Jerseyville			✓
KS	City of Wichita			✓
MO	City of Branson	✓	✓	✓
MO	City of Excelsior Springs	✓	✓	✓
MO	City of Lee's Summit	✓	✓	✓
MO	Little Blue Valley Sewer District			✓
MO	City of Republic	✓	✓	✓
NC	City of Greensboro			✓
NC	City of High Point			✓
NC	Orange Water and Sewer Authority			✓
NC	City of Raleigh			✓
NC	County of Wake			✓
NC	City of Winston-Salem			✓
OH	Greene County Board of Commissioners			✓
OR	City of Brookings	✓		✓
VA	County of Arlington			✓
VA	County of Henrico	✓		
VA	County of Isle of Wight	✓		
VA	City of Norfolk	✓		✓
VA	County of Northumberland			✓
VA	City of Richmond			✓
VA	WateReuse Research Foundation	✓		✓
WA	City of Woodland	✓		✓



Representative project descriptions, including client contact information, are identified within this section. Each reference is similar in scope, size, and complexity to the services requested by the City, and was completed within the last five years. We are proud of our reputation for customer service and encourage you to contact our past clients in regard to our commitment to completing these assignments within the agreed upon project budget and timelines.

Water, Sewer, and Reclaimed Water Rate Study | City of Flagstaff, AZ

By using a cost-based approach on behalf of the City of Flagstaff, Willdan successfully completed the design of comprehensive financial and rate models for water, wastewater, and reclaimed water. As the prior consultant's model was not well-suited to account for changes in growth projections and absorption, particular attention was placed on growth assumptions. Furthermore, Willdan was responsible for developing recommendations, by customer class, for equitable and sustainable cost recovery. In the wake of six water main breaks, the City was faced with decreasing revenues and increasing capital and operational costs. The proposed rates developed by Willdan reversed the City's falling operating reserve trajectory; and provided sufficient revenue to cover existing and future operations, maintenance, and debt service — all while being financially prudent and responsive to the Water Commission's concerns. Based on a comprehensive analysis of customer demands, the proposed residential inclining block rate appropriately spread the burden of increased costs.

In addition to the rate analysis, Willdan also developed new capacity charges for the City. Although the City is currently approaching build out, a major expansion is possible with sufficient funding and growth. To accommodate this wide range of development scenarios, and given certain assumptions (funding and growth alternatives), Willdan created numerous capacity fee options to allow the Water Commission and Council to determine the most comfortable scenario, along with resulting facility funding.

Client Contact: Ryan Roberts, Engineering Manager
211 West Aspen, Flagstaff, AZ 86001
Tel #: (928) 779-7685, ext. 7248; Email: rroberts@flagstaffaz.gov

Project Team: Chris Fisher, Principal-in-Charge

Wastewater Rate Analysis | City of Pinole, CA

The City retained Willdan to prepare a wastewater rate analysis that included a new wastewater rate schedule meeting current and near-term projected system revenue requirements. Willdan reviewed various utility system planning documents and effectively integrated the data/information found in these studies into a comprehensive sewer rate and financial analysis. The analysis included:

- Determination of the total annual sewer system revenue requirements for a 10-year period, including the 5 year period for which rates are to be effective, including existing and projected capital financing;
- Allocation of the total annual revenue requirements to the basic sewer cost components;
- Distribution of the component costs to the various customer classes, in accordance with their requirements for service;
- The design of sewer rates that will recover from each class of customer, within practical limits, the cost to serve that class of customer; and
- The incorporation of the proposed new sewer rates into a 10-year financial and business plan.

Client Contact: Hector De La Rosa, Assistant City Manager
2131 Pear Street, Pinole, CA 94564
Tel #: (510) 741-3864; Email: hdelarosa@ci.pinole.ca.us

Project Team: Chris Fisher, Principal-in-Charge; Jeff McGarvey, Policy and Technical Lead; Tony Thrasher, Analyst

Water and Wastewater Rate and Capacity Fee Analysis | City of Crescent City, CA

Willdan completed a water and wastewater rate and capacity fee analysis for the City of Crescent City in 2010. In 2013 we were engaged to complete an updated and expanded financial plan, again for water and wastewater. Due to age conditions and state environmental requirements, the City's sewer plant was subject to extensive repair and upgrade. The utility rates and fees calculated by Willdan will provide sufficient revenue to cover the repayment of a State Revolving Fund loan secured by the City to finance the costs of construction, ensure adequate funding for repair and periodic maintenance of the new and existing facilities, and for ongoing operations and routine maintenance. We are also assisting the City in evaluating the feasibility of implementing various reserve policies.

The water and wastewater rates will be cost-of-service based and Proposition 218 compliant.

Client Contact:	Eric Wier, Assistant City Manager 377 J Street, Crescent City, CA 95531 Tel #: (707) 464-9506; Email: ewier@crescentycity.org
Project Team:	Chris Fisher, Project Manager; Jonathan Vames, Task Leader; Jeff McGarvey, Technical Advisor

Water, Sanitary Sewer, Solid Waste and Street Cleaning Utility Rate Study | City of Delano, CA

The City of Delano retained Willdan in August of 2011 to update their water, wastewater, solid waste and street sweeping utility rates. This project involved the development of a comprehensive financial model which included revenue requirements, capital facilities and debt planning, and cost of service analysis. As the City continues to grow it is critical for them to maintain a proper equilibrium of supply and demand. The City is currently facing two monumental forces that are impacting this balance. Beyond the current state of the economy and the impact to demand and corresponding political pressure to keep utility rates to a minimum, the City is in the midst of following new EPA requirements that removed nine of the City's 11 water wells. Thus, the City is facing decreased consumption and increased financial strain on its utilities. Furthermore, half of the City's water customers are not currently on meters. Willdan is assisting the City in managing the intricacy of their financial plan and rate design to ensure short and long-run financial health and stability.

Client Contact:	Roman Dowling, PE, Public Works Director 1015 11th Ave, Delano, CA 93215 Tel #: (661) 720-2219; Email: rdowling@cityofdelano.org
Project Team:	Chris Fisher, Project Manager; Tony Thrasher, Analyst

Water Utilities Department Comprehensive Rate and Tap Fee Study | City of Lee's Summit, MO

Willdan is currently working with the WUD to develop a comprehensive water and sewer rate study and tap fee analysis. The effort was the result of a strategic planning exercise described above, whereby the City identified the need to address utility system rate structures and levels, and develop rate/financial policies serving as a framework for the cultivation of these new rates. In addition to water and sewer utility user rates, the effort includes reviewing utility system tap fees, and revising them to reflect WUD's updated master plan. The results of this engagement will be a complete multi-year financial plan allowing WUD to meet the goals and objectives established during the strategic planning process, as well as effectively communicate recommendations and actions to stakeholder groups.

Client Contact:	Mark Schaufler, Director of Water Utilities 220 SE Green, Lee's Summit, MO 64063 Tel #: (816) 969-1900; Email: mark.schaufler@cityofls.net
Project Team:	Jeff McGarvey, Lead Consultant / Project Manager

Strategy and Implementation Plan

Executive Summary

The City of Banning, incorporated in 1913, has a population of 29,603 and covers approximately 23.2 square miles in the San Gorgonio Pass area of Riverside County. The City currently serves approximately 11,000 water accounts, and is projected to generate approximately $9 million in operating revenues for FY 2012/13, with water produced from a local aquifer, utilizing a combination of City owned wells, and wells owned jointly by the City and the Beaumont Cherry Valley Water District. The bulk of the accounts served are within the City, with some being outside City boundaries. The City also collects, conveys and treats wastewater for a like number of wastewater accounts, and is projected to generate just over $3 million in operating revenue for FY 2012/13. After a few years of negative fund balances, both utilities are projected to maintain positive balances. However, the sewer utility has not met bond covenants in the most recent years, and likely will not without an increase in rates.

The City last updated utility rates in 2010; consequently, the rates that were approved and implemented as a result of that study did not incorporate sufficient allowance for a large number of planed or contemplated capital projects. With an increasing backlog of capital projects, a continuing need to provide a stable and sufficient source of revenue to fund routine repair and replacement, and provide for operations and maintenance, the City wishes to undertake studies of the water and wastewater utilities, with the development and implementation of a comprehensive financial plan and updated rates, and a study of a proposed reclaimed water program, with the implementation of a new schedule of rates for the sale of reclaimed water, including a discussion of connection or impact fees.

In considering the backlog of capital projects, and developing new rates, it will be important to model different approaches to prioritizing and financing these projects, whether through debt or on a Pay-As-You-Go basis (PAYGO) from rate revenue. As part of this discussion we will discuss with the City the inclusion of depreciation as a cash item in the revenue requirements; a means of funding repair and maintenance of existing capital as it ages, and accumulating funds for periodic replacement.

There will be numerous important policy and technical factors to consider throughout the course of the study. In the previous study, the fixed component of rates was lowered. While this does provide for certain policy and political objectives, it has a corresponding negative effect on revenue stability. This component of the overall rate structure will be evaluated, along with the meter service fee, to better align revenue needs for operations and capital, with the rate structures. In addition, the water allotment for the first tier water rate was increased, effectively limiting aggregate water rate revenue by reducing water sales in the higher rate second tier. Various alternatives to tier allotments will be evaluated during this project. Other charges such as standby charges and system charges will also be considered in the overall context of the financial plan and rate structures.

As mentioned in the City's budget documents, the budget policies for the City and Banning Utility Authority (BUA) call for maintenance of 10 percent operating reserves, which have largely been maintained. The model and plan created during this project will facilitate discussion of existing and, perhaps, new reserve policies.

The City also wishes to implement rates for newly created reclaimed water service. During this process it will be critical to consider and model the impact of this new service on the existing water and wastewater utilities. An important point to consider with reuse water rates is the financial impact to the existing water and sewer revenue stream of existing potable water customers, switching from potable water usage to reuse water usage for their irrigation needs. To the extent that reuse rates are lower than potable rates, which is likely given that a utility would want to provide an economic incentive to customers to switch to reuse, a loss of water billings would occur (and in some instances wastewater billings, since the City wishes to look at the feasibility of billing wastewater on water usage). While the utility would recoup some of the loss in billings with reuse revenue it likely would not completely recover the lost revenue as the reuse rates would most likely be lower than the water rates.

Conversely, there can be a cost mitigation impact of relieving pressure on the potable water system and even relieving the pressure of wastewater disposal alternatives. As a reuse system rolls out, it relieves pressure on the potable water system through delayed plant expansion requirements. Also, for utilities with wastewater disposal pressure, a reuse program can offer a means of wastewater disposal which can generate revenue to offset some of the costs. Finally, there is some level of reduced operating costs on the water and sewer system – which will be transferred to the reuse system. In our experience, the lost revenue typically has a greater impact on near-term rates than the mitigation of certain water/sewer costs; however the financial dynamics of each utility are unique and should be evaluated independently. The model that we develop will incorporate the three utilities, and be fully capable of demonstrating collateral impacts.

Approach to the Project

As described herein, and detailed in our work plan, our approach to this study of the water, wastewater and reclaimed water utilities is ***built around a primary objective; working collaboratively with the City to develop a comprehensive financial plan and model for the utilities, using the model to develop and evaluate various rate, financial and capital funding scenarios, to arrive at a final plan and set of recommended rates that have a clear rationale and basis.*** We propose to conduct this process in a way in which staff and stakeholders gain understanding throughout the process of how the plan is developed, and how policy and financial decisions affect the overall plan, and so that we can clearly communicate the process and results to the City Council, rate subcommittee, and the community. This communication part of the process is critical in gaining acceptance and understanding of the broader community.

Willdan's utility finance experts combine national, state, regional experience. Our staff is experienced in a broad range of utility planning services; and we understand the importance of an approach that integrates elements of utility planning, engineering, and finance. Our team members have considerable experience in utility rate and cost-of-service studies and have performed these services for hundreds of utilities throughout the country.

Our rate study analysis will include comprehensive financial management plan alternatives for the next five fiscal years to support the proposed five-year rate plan, and the model can be set up to look forward 30 years, as requested by in the City's RFP. As part of this analysis, Willdan will develop a comprehensive financial analysis — which incorporates revenue requirements such as operating expenses, transfers, reserve requirements, minor capital expenses, cash-funded major capital expenditures and annual debt service expenses – and we will also provide a functional cost breakdown consistent with AWWA and Water Environment Federation (WEF) rate-making standards. The culmination of the revenue requirements analysis, which will include a capital project financing plan, and the cost of service allocations will be alternative rate plans which will provide sufficient revenue to meet the ongoing funding needs of the system while recovering costs from customers in a manner which is fair, equitable and within reasonable customer impact parameters, given the magnitude of revenue required to fund system costs.

As previously stated, we will develop a robust pro forma financial model that will be used to demonstrate the results of various analyses and aid detailed policy discussions and education sessions with City staff and Council. The model will serve as the basis for developing updated rate and fee structures that will provide for long-term financial stability, appropriately reflect levels of service demand attributable to different customer classes, and comply with the requirements of Proposition 218. Willdan will collect and analyze the necessary data related to water, wastewater and reclaimed water operations, planned capital improvement projects, existing and anticipated debt obligations, and ongoing maintenance and repair operations.

During this project we will be utilizing our Microsoft Excel-based model, with its interactive dashboard, as a comprehensive financial tool to allow planning and evaluation of variable inputs and assumptions, thereby achieving the goal of creating a thorough analysis of revenue requirements. These analyses are then seamlessly integrated with the rate development component of the model to demonstrate and project various rate design alternatives, and the effects they would have on the City's financial outlook.



The model is used in meetings, in order to efficiently cycle through rate scenarios and establish the most viable rate plans for the City. During these interactive meetings we invite City staff to participate in scenario planning/"what-if" sessions where we use the dashboard to demonstrate and evaluate the financial/rate impact of alternative data (CIP, operating costs, etc) and assumptions (interest rates, customer growth, cost escalation, etc.) in real-time to focus on the most critical drivers of the analysis. This ensures the resulting rate plan alternatives are viable from a financial, operational, managerial and political perspective, by demonstrating the future financial impacts of current management decisions to the rate study team, so that only viable rate plan alternatives are considered. These viable rate plan alternatives will then be incorporated into a comprehensive water, wastewater and reclaimed water rate study report which will provide the City every assumption, data item, and calculation used in the development of each rate plan alternative.

Two key initial steps are: 1) the development of a baseline scenario to provide a clear picture of the utilities' current financial condition; and 2) a revenue sufficiency analysis to test the current rate structure and confirm billing determinants and revenue generation; an important confirmation that we are beginning with reliable consumption and billing data, and key in developing the proposed new rates. Recommended changes in required revenue, or to the rate structure, can be evaluated independently during the course of these studies. This information will be integrated into our Excel model, to allow the graphical representation of revenue and rate scenarios, as well as of policy decisions effects to City staff and the City Council (if requested) in real-time, where variables can be changed and the impact of those changes viewed instantly. Willdan will arrange and conduct meetings as necessary, to utilize model results to refine and finalize the analysis, as well as rate and fee structure.

Willdan Models GUIDE You to Your Optimal Solutions

Real-Time Financial Modeling

The goal of financial forecasting is to provide clear vision regarding the potential financial outcomes of current management decisions. Our goal is to help you mold the existing knowledge base of the City into a viable financial management and rate plan. At Willdan, the development and use of real-time financial models in an interactive, collaborative process is an integral part of the model development.

Model Development as Part of the Consulting Process

Each model is designed with the following elements:

- Graphical dashboard to clearly show the results of various scenarios to the user;
- Assumptions;
- Data tables; and
- Calculation engine.

Each model is "baselined" after an initial meeting with staff to ensure that we have the correct data and a basic understanding of the financial dynamics of your system. We will then conduct interactive financial planning sessions with City staff. After validating our data, calculation approach, and baseline assumptions, we will explore alternative scenarios, varying a number of assumptions and financial planning techniques:

- Rate increase magnitude and timing;
- Alternative timing of capital projects;
- Alternative financing options (alternative combinations of pay-as-you-go, revenue bond debt and SRF debt, for example);
- Alternative growth/demand forecasts; and other "what-if" analyses, such as the impact of a loss of one or more service areas or customers;
- Effects on the water and wastewater financial operations of implementing a reclaimed water sales programs; and
- Effect of increases in other sources of funds, such as impact fees.

The model is self-solving through the use of controlled feedback loops, and therefore does not require significant manipulation by the user to solve correctly. Given any combination of cost requirements (both operating and capital), non-rate sources of funds, and forecast assumptions, rate increases are generated that:

- Meet specified reserve targets;
- Fully fund capital expenditures using specified financing techniques; and
- Meet legal and contractual requirements that are financially measurable, such as debt service coverage on the City's existing 2005 Water and Wastewater Revenue Bonds.

Alternatively, the user can specify rate increases and then examine the results to determine if the desired/required parameters are met.

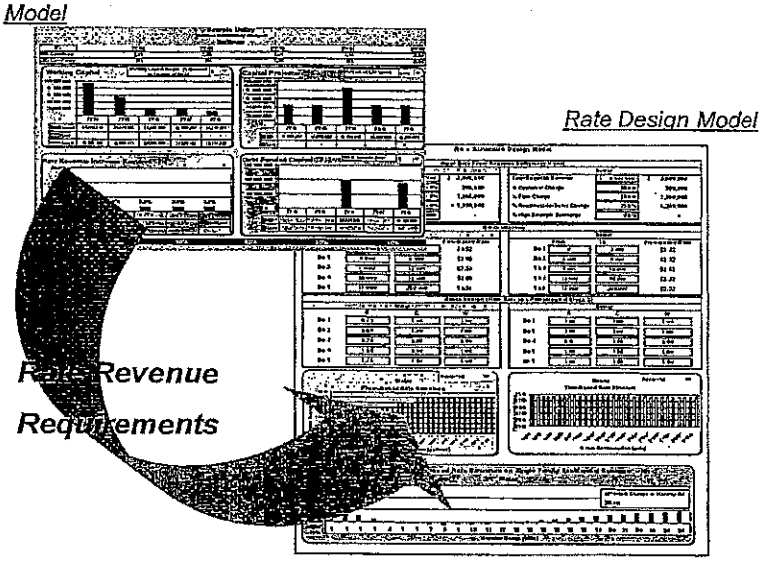
Subsequent to careful development and validation of the baseline forecast, a series of alternative forecasts will be prepared, illustrating various results in the following general categories:

- **What if things turn out differently?** These alternatives will demonstrate the sensitivity of the forecast to the significant assumptions used. This results in a sound understanding of areas where a conservative forecast approach is warranted.
- **What happens when we try this?** This series of alternatives focuses on different financial management approaches. For example, use of different financing techniques such as capitalized interest, interim short-term financing, and capital appreciation bonds may be explored.
- **What can we do to make it better?** This approach to forecasting identifies the factors that may be causing significant rate increases in a given year and explores alternatives. For example, if a large capital project in a single year is the culprit, we would work with staff and the consulting engineers to determine whether this project could be phased or delayed.

Moreover, the rate design model can be used to explore the impact of various rate structures on bills for each customer class over the relevant consumption range.

To summarize, rate model development is a natural part of the Willdan consulting process, and one in which staff and other stakeholders play a collaborative part. Consequently, at the completion of the analysis, the model will be completely customized to emulate the precise financial dynamics of the City, and staff will already have a high level of familiarity with the functionality and use. Interactive workshops will help develop an effective, efficient working relationship among the participating stakeholders that will carry forward into future rate-setting processes.

Financial Planning Model



Willdan's GUIDE Suite of Financial Models – Description of Product Features

The key to success is a robust, real-time financial forecasting model, customized to simulate the utility's financial dynamics. Our GUIDE suite of modeling products includes:

Suite of Models:

- Financial planning;
- Cost of service design; and
- Rate design.

The GUIDE suite of models includes financial planning tools for water, wastewater, reclaimed water, and virtually any utility or municipal government fund, and has the ability to analyze any rate structure and determine the levels of revenue generated by each customer class. In addition, the rate design model can use the City's detailed billing data to develop a bill impact analysis on individual customer bills which can be updated for each rate design scenario.



Features:

- Excel-based open architecture that allows easy integration of City financial data;
- Modular design that allows for maximum design flexibility;
- Easy to update - open architecture and modular design equate to easy annual data updates;
- Automated calculation engine that optimizes financial plan based on user-set constraints;
- Navigation features to quickly move around the model;
- Side-by-side scenario analysis comparison; and
- Healthy listing of user defined assumptions that can be customized to meet the City's needs.

Work Plan

Willdan's work plan will culminate in the successful development of the water, wastewater and reclaimed rates and a five-year cost-of-service based financial plan, the education of key stakeholders, and the completion of the Proposition 218 mandated process.

Within this subsection are the general tasks necessary to facilitate the City's engagement for the water, wastewater, and reclaimed water rate studies. The following activities are based on Willdan's current understanding of the services requested by the City and are subject to revision based on further discussions with the City.

Task 1: Project Kick-off Meeting, Data Gathering and Study Preparation

Willdan will conduct a kick-off meeting with City and stakeholder considerations and objectives outlined. We will review and identify the following:

1) Review of existing water and wastewater rate structure and areas where the existing rates have been successful and/or specific areas of concern;

2) Review of existing documents related to the utilities including (but now limited to) the following: the 2010 Urban Water Management Plan, the 1994 Water Master Plan and 2002 update, the 2010 Water and Wastewater Rate Study, the 2009 Sewer System Management Plan, and schedules of existing rates, meter service fees, system charges and customer fees. Each of these items will have information and background that is important to the development of the overall study;

3) Components to incorporate into the updated revenue requirements; such as, capital improvements, debt repayment, reserves, annual repair and replacement;

4) Strategy and level of effort for outreach and education;

5) Review and discussion on broader policy, political and/or community concerns; the objective being to factor, as necessary, into outreach and education strategies;

6) Conduct a detailed review of the data used in the baseline financial forecast; and

7) Review and resolve (or develop a plan for resolving) data issues and questions.

For further efficiency and collaboration, the kick-off meeting will include a financial policy discussion. This will serve to address and document the City's financial policies for the utilities to be studied. Topics of discussion may include:

- Rate design alternatives;
- Rate policy objectives;
- City financial policies;
- Reserve options and target levels (operating, rate stabilization, repair and replacement);
- Conservation objectives;
- CIP financing options;
- Customer characteristics and classifications;
- Cost of service factors; and
- Proposition 218.



In addition, we will request and begin acquiring data necessary to conduct the analyses. We will provide the City with a detailed list of data requirements pertaining to the subsequent financial and consumption analysis. As these studies are data intensive, and in order to remain on schedule, it is imperative that all data be provided in a timely manner and be delivered in an electronic format.

Task 1A: Data Evaluation and Validation

Based on our experience, it is most effective to obtain and review information prior to the first meeting. Typically questions can be resolved via telephone or e-mail. This approach respects your staff's time and ensures that we are completely prepared for a productive first meeting.

Activities

- Prepare and transmit data and information request;
- Follow-up by phone and/or e-mail to resolve questions;
- Document the nature, form and quality of the data and information received; and
- Based on documentary information, initialize Willdan's financial planning model and prepare a baseline scenario.

Deliverables

- Technical memorandum documenting the data and information received, with comments regarding quality and a list of outstanding issues and questions.

Task 2: Water and Reclaimed Water Rate Study

The following section outlines the work tasks exclusive to the water and reclaimed water rate study.

Task 2.A: Consumption Analysis

Willdan will review historical water consumption and billing data and assess water demands. As appropriate, we will review aggregate water demand characteristics, and incorporate necessary factors into our forecasted projections, future water demands, annual consumption trends and seasonal trends. We will also analyze the performance of the existing water rate structure to assess its appropriateness and adequacy in meeting system goals and recovering system revenue requirements. For this task we will (ideally) incorporate three to five years of City consumption and billing data in the model.

Task 2.B: Revenue Requirements Analysis

In developing reliable and accurate revenue and financial projections, it is necessary to project and analyze the impact and sensitivity of multiple and sometimes complicated variables. We will develop the revenue requirements component of the comprehensive financial plan to include operating (water supply, treatment, personnel, etc.) and non-operating (debt, depreciation, etc.) costs incurred by the water utilities.

The plan and model will be built to incorporate both water and reclaimed water, along with wastewater, so that the three utilities can be studied holistically. With reclaimed water being a new City service, this approach allows us to demonstrate its impact on the existing water and wastewater utilities.

In studying reclaimed water, a new undertaking for the City; we will discuss the operations in detail with the City to ensure we construct a comprehensive revenue requirements analysis, accounting for projected operating and maintenance expenses, costs for constructing necessary facilities, along with associated debt. We will assist the City in evaluating how the implementation of the reclaimed water system comports with or is impacted by the conservation and water use efficiency guidelines enacted in SB X7-7 in 2009.

Willdan's fundamental emphasis is providing long-term financial solutions through the development of financial models that account for current revenue requirements as well as future (short and long-term) needs and expenses, and provide insight on the effects of changes to certain parameters (also known as the elasticity).

Since a utilities revenue requirements (financial plan) and rate structure are directly dependent on one another, our goal during the development of the revenue requirements is to clearly identify each variable and describe the result of adjustments to the overall revenue requirements and rates. This will allow City staff and City Council to examine the effect of decisions made at the policy level on the City revenue requirements and rates.

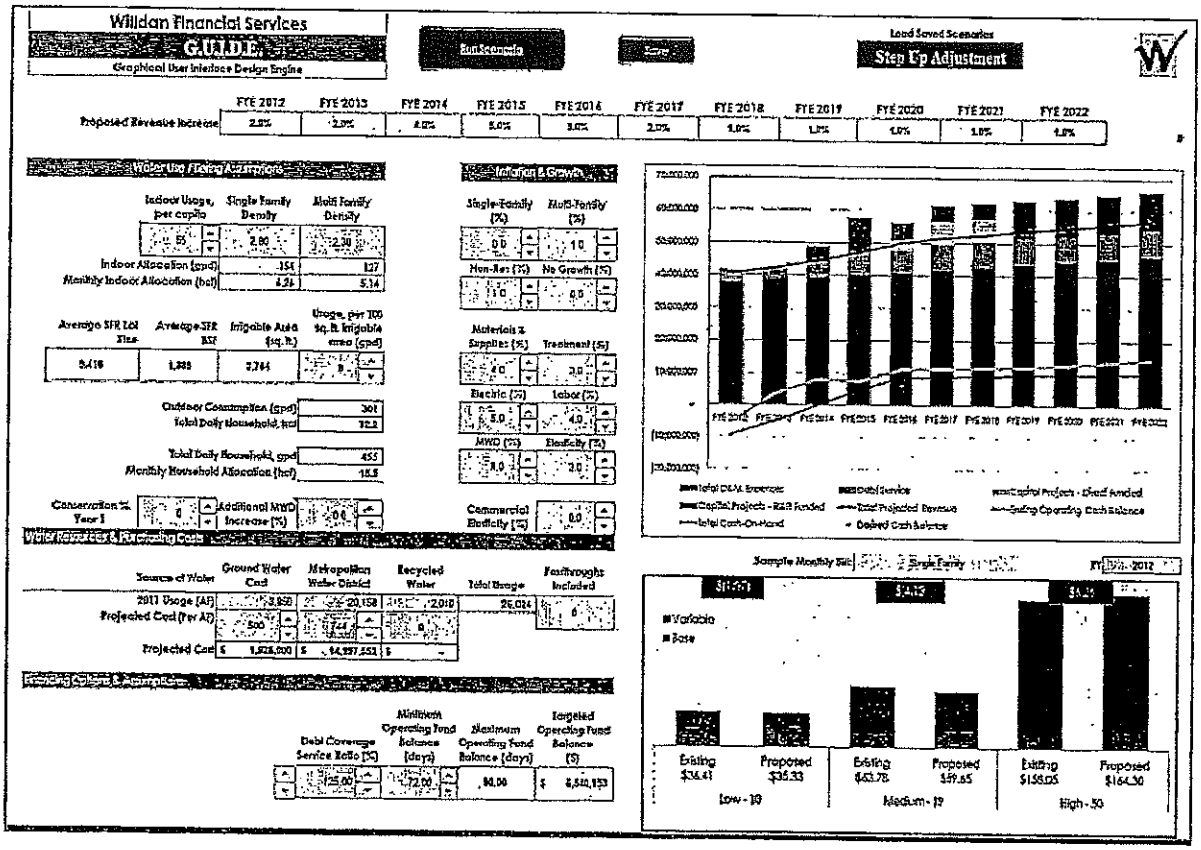
The unrivaled flexibility and customization of our GUIDE dashboard ensures that the City can easily define the financial impact of changes in variables and assumptions.

Willdan has developed GUIDE – an easy to use, graphical scenario and financial planning manager – the dashboard component of our financial model that clearly identifies parameters with toggles and sliders that City staff can adjust to create and test new scenarios, while instantly visualizing and balancing those outcomes with the impact to rates, operating revenues and reserve balances.

Changes to inputs and variables, via the intuitive interface, will directly affect other modules and outputs throughout the model without having to filter through multiple worksheets. The entire model is reflected in one, easy-to-understand page. This innovative approach allows Willdan to analyze the sensitivity dependence of each variable. We recognize that rate setting is an iterative process; therefore, GUIDE enables additional scenario building to reap comprehensive projections. In harmony with the City, Willdan will analyze and test scenarios to ensure stakeholders concerns are reviewed, considered and managed. **Scenarios can be saved and even compared side-by-side to clearly and quickly address questions and facilitate decision making.**

Some of the most common areas for adjustment are identified in Figure 1. Each variable may play a significant challenge to the ability to accurately project revenue. GUIDE is designed to illustrate and signify the impacts of specific City variables instantly, on expenditures, revenues, reserve requirements and rates — all at the slide of a bar.

Figure 1



Task 2.C: Baseline Analysis

Before variables are identified and projected into the revenue requirements and model, a baseline revenue sufficiency and rate analysis is performed. Willdan will utilize a "cash-needs" approach, where cash needs refer to the total revenue required by the utility to meet its cash expenditures.

Basic revenue requirement components of the cash-needs approach include current and future O&M expenses, debt-service payments, including the current outstanding 2005 Revenue Bonds, contributions to specified reserves, whether existing or proposed, and the cost of capital expenditures that are not debt-financed or contributed from other sources. The revenue requirements analysis will be developed based upon the utility's existing financial statements, to test for base year revenue sufficiency. If operating revenues are shown to be deficient, revenue adjustments will be implemented to adequately recover costs.

Another key component of the baseline analysis is a revenue sufficiency analysis where we take the City's existing rate structure, along with billing and customer data, and recalculate the amount of revenue, to ensure agreement with City data. This ensures the integrity of the data for use in the development of the new rate structure, and potentially the reclaimed rates. Furthermore, it may highlight other issues for consideration and discussion.

Task 2.D: Cost Analysis – Scenario Building

Building from the baseline scenario generated in the previous task, we will start generating expenditure scenarios by varying operation, deprecation, capital costs and reserve levels. We will review CIP information to determine: short-term, high-priority needs; annual depreciation of assets, replacement and repair schedules; and assumptions and methodologies used to assess the basis for the CIP projects.

As previously mentioned, we understand that the City has a fairly significant backlog of capital projects, as rate revenue over the past three years has not been sufficient to address all needs. We can model the implementation of various CIP and master plan scenarios by including capital financing in the model, the ability to cycle various scenarios through the model, and clearly show the impacts on the overall plan, and more importantly, rates.

To ensure adequate funding in later years, we will include a 10-year analysis of anticipated capital requirements, with the ability to extend to 30 years, as well as adequate reserve funding. In reviewing the CIPs, it is necessary to know current policy on available funding sources and the type of improvements and costs to fund through rates on a PAYGO or connection fees. As such, these funding options play a role in determining the total amount of revenue required in any given year. These options will be included within GUIDE to allow staff the ability to optimize PAYGO and CIP financing while minimizing shock on water rates.

Task 2.E: Cost of Service Analysis

The principal in establishing adequate rate schedules that are fair and equitable is that rates should reflect the costs of providing service. Our approach recognizes differences in the cost of providing services to different types of customers, areas and levels of service. The cost incurred by the users should be incurred by those whom benefit. Accordingly, cost allocation procedures should recognize the particular service requirements of the customer for not only total volume of water, but pumping/distribution costs and other factors.

This analysis will include gathering cost information associated with water and reclaimed water services and allocation to functions, classification and allocation of costs to each existing customer class. Since demand patterns of various customers differ, depending on their peak-day and peak-hour rates of demand relative to average demands, we will review the number and type of existing customer classes and make recommendations to add or consolidate customer classes, if necessary.

The allocation of water and reclaimed water costs to customer classes will be conducted to estimate the cost of serving each customer class and to enable rate restructuring, as necessary, based on the service requirements. Costs will be allocated in accordance with industry standards.



While varying slightly, both methods recognize that the cost of serving customers depends not only on the total volume of water used or discharged, but also on the rate of use and peaking requirements. Willdan will work with the District to ensure the most appropriate methodologies are pursued.

Task 2.F: Rate Design Analysis and Update

Utilizing the cost-of-service approach, the level of the City's rates is a function of the utility's costs and customer demands.

Willdan will fully modify and provide scenario planning to reflect the impact of different rates and/or revenue adjustments. Willdan will recommend updates to the current rates that are designed to address and uphold key objectives, notably short and long-run financial stability, minimal economic stress for customers, equity and defensibility. Our recommendations will comply with the cost-of-service guidelines of Proposition 218, AWWA, WEF, and existing bond covenants and current legislation.

The methodology utilized to determine how the water utility costs are allocated is expressed in the bullets below. While the methodology may be an "industry standard," our experience and understanding of key variables allow for a comprehensive and well-rounded rate design process:

- ***Existing Rate Compatibility to the City's Objectives:*** Rate structure is the area of the study that tends to generate the most attention and scrutiny. Prior to implementing new rates, Willdan will work collaboratively with staff to verify that key objectives for the City and stakeholders, such as understandability, avoidance of rate shock, public outreach (public buy-in), conservation, revenue stability, etc, have been addressed.
- ***Existing Water Rate Structure:*** When updating rates, there are numerous variables and considerations, ranging from access and quality of data, cost-causation, price elasticity, conservation, and weather conditions. Willdan will work with staff to provide recommended revisions to the City's existing water rate structure to ensure key issues are addressed.
- ***Consistency of New Reclaimed Water Rates and Policies with Water Rates:*** As previously mentioned in the scope and project understanding, we will work with staff to ensure that reclaimed water rates are consistent in structure, application and policy, with water rate structures. The analysis leading to their development will consider mutual impacts, and the rates will fit within the overall approach and work with the City's billing and financial systems.

The rate design task will involve modeling several alternative rate structures using the City's financial data and billing statistics to demonstrate the resulting customer impacts and to identify key issues associated with the new rates and charges.

Basic standards for rate design accepted by the industry are:

- **Revenue sufficiency** – rate revenue should provide sufficient income so that, when combined with other sources of funds, total system costs are covered;
- **Fairness and equity** – based on cost responsibility, as reflected in cost of service allocations, in accordance with industry standards;
- **Resource conservation** – Under conditions of scarcity, the pricing of water as a commodity should promote conservation and discourage unnecessary water use;
- **Administrative simplicity** – so that rates are understandable to customers and efficiently administered by staff;
- **Customer acceptance** – customers understand the rates, view them as fair, and consider them to be reasonable compared to other costs and other utilities; and
- **Public health and welfare** – rates are structured so that essential domestic water consumption is encouraged through affordability.

Task 3: Wastewater Rate Study

The wastewater financial and rate analysis closely mirrors the cost of service and rate setting approach for water and reclaimed water. The following section outlines the scope of work tasks unique to the wastewater rate study.

Task 3.A: Determine Discharge Characteristics and Loadings

Willdan will calculate the average and total sewer discharged by each user class. Additionally, we will determine the number of users by class, annual water use, projected growth, and appropriate discharge factors. Similar to water, flow is not the only factor to consider. Loading factors, based on the strength of the effluent (discharge), will be calculated and incorporated into the rate analysis. Based on the design of the sewer system and facilities, we will make recommendations regarding appropriate classification of customers.

Task 3.B: Cost Projection Analysis

To determine annual required revenue, we will analyze and project the utility Operations Fund and Capital Fund. Furthermore, we will discuss the best way to finance the essential and prioritized projects required to operate the sewer system. Willdan will analyze the City's planned CIP, and any necessary adjustments, based on staff discussions and reviews of the existing planning documents. As such, we will generate "what-if" funding scenarios (financing, phasing and costs) to illustrate the impact of different options on revenues and rates.

Task 3.C: Revenue Requirements Analysis

Similar to the water utility, we will prepare a comprehensive financial forecast for the sewer enterprise with the objective of funding the utility's cash needs. Numerous financial projections of cash-flows will be based on various scenarios that reflect adjustments to O&M, capital expenditures and funding sources, debt covenants, and reserve targets. We will make recommendations on reserve funds and rate of accrual to reach reserve targets.

Willdan will summarize total cash flows for a period of five years. To create a baseline, the project team will confirm the current rate-based revenues based on customer loads by comparing the calculated and actual revenues by customer class under the current rate structure.

Task 3.D: Scenario Planning (GUIDE Walk-through)

As previously mentioned, it is important to identify and avoid rate shock from excessive and compounding simultaneous changes. As such, the rate recommendations will include an evaluation of the effects of the combined utility bills on customers under several variations of inputs. In addition to the financial presentation of data, for each scenario our model also displays a sample customer bill to easily demonstrate the customer bottom line.

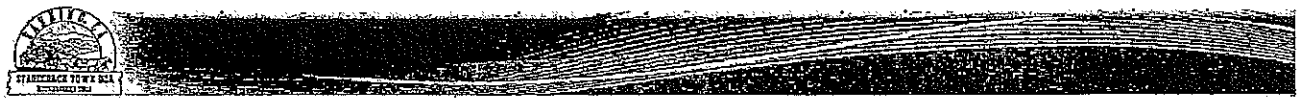
Task 3.E: Cost Distribution to Billable Parameters

A system of billable parameters is required to relate the costs of providing sewer service to the City's customers, as prescribed by the WEF rate setting recommendations, which include the following:

- Evaluating the City's cost of service for each customer class and billing parameter
- Determining appropriate sewer billable parameters
- Determining unit costs for each billable parameter

Task 3.F: Sewer Rate Design Analysis and Update

Based on the cost distribution developed in the prior subtask, we will update the current rates based on feedback received from City staff. We will review the rate structure and provide various recommendations for residential, multi-family and commercial rates based upon water use, discharge and strength characteristics, or other bases to achieve equity between customer classes. As identified in the RFP, we will evaluate alternative rate designs in discussion with the City, such as changing the basis of commercial rates from EDU to water consumption.



Each alternative derives the same required revenue and will be adaptable to work on the current billing system. Each revenue requirement scenario developed will demonstrate the impact of different assumptions on each of the developed rate structures. Willdan will list the advantages and disadvantages of each alternative, and prepare comparison bills for each scenario. For the recommended alternative, we will project the annual unit rates for each customer class, and the current versus proposed bills for typical customers in each class.

4. Reclaimed Water Impact Fees

The following outlines the work tasks and specific points of discussion related to the review and discussion of a reclaimed impact fee.

Task 4.A: Discuss Potential Fee Methodology and Policy Issues

Under AB 1600 (Government Code 66000 through 66024), connection fees must be developed based on an established incremental impact that new developments have on available capacity. Willdan will identify policy issues that may be raised as they relate to the proposed program; discuss how to approach the development of a defensible fee that fairly allocates the cost of the reclaimed water system between existing and expected future users; and highlight potential options and advantages/disadvantages and challenges of implementing a reclaimed water impact fee.

Task 4.B: Existing Development and Future Growth

To establish incremental impact that new development has on available capacity, costs of existing and proposed facilities must be segregated by their benefits to new or existing users. This cost to benefit nexus is the fundamental principle of AB 1600. For reclaimed water related capital projects, we will discuss approaches with the City, including techniques for estimating existing and future development and calculating facility standards, to determine if an approach is workable and makes sense.

Task 4.C: Facility Standards

Facility standards provide a critical link in documenting the nexus between growth, the facilities required to accommodate it, and a defensible fee. Facility standards are used to demonstrate a reasonable relationship between new development and the need for new facilities.

We will review and discuss the City's capital improvement plans relative to reclaimed water, and gather input from City staff to identify the facility standards that would be used to plan for new facilities. Typical utility standards for facility planning include average, monthly and peak demand factors, plus treatment and pumping requirements.

Task 4.D: Facilities Needs and Costs

Identifying the type, amount and cost of facilities required to accommodate growth and correct deficiencies, if any, is an important step in the development of an impact/connection fee. A critical component would be distinguishing between the following:

- Facilities needed to serve growth (that can be funded by impact fees); and
- Facilities needed to correct existing deficiencies for the existing service population (that cannot be funded by fees).

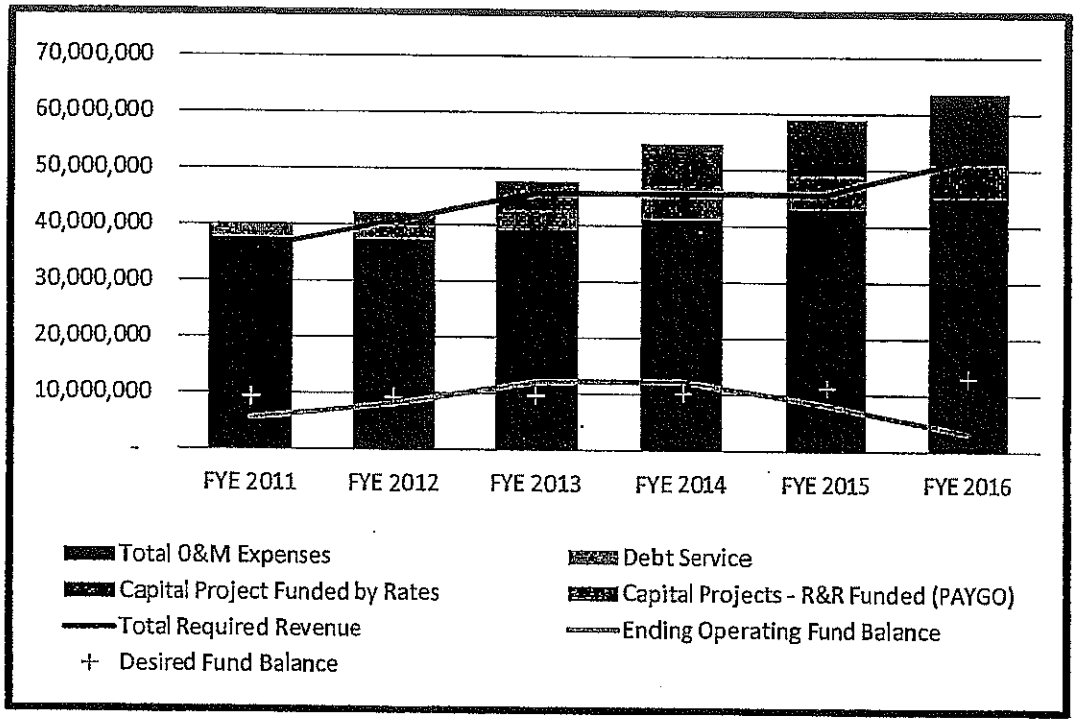
Willdan will provide guidance on how we could assist the City in developing a sound and defensible allocation of planned capital facilities costs between the existing service population and growth.

Task 5: Communicating the Results

Willdan believes in proactive stakeholder outreach, feedback and understanding during the entire process, not only at the time the results are proposed. Throughout the course of the study, in addition to the project kick-off, **Willdan will conduct discussions with key staff and the City Council** to walk-through the model, discuss the preliminary findings, and to discuss the draft results and study findings. We anticipate a total of five meetings (one kick-off meeting, three progress meetings, and one final presentation) with the City during the course of this project. Additionally, we have increasingly been utilizing the effective communication tools provided by GoToMeeting® to better facilitate discussion and feedback. This has proven to be far more beneficial than common conference calls and does not count as a formal meeting, which can add unnecessary additional costs to the project. In addition, we have included a per-meeting cost estimate in the event more meetings are needed. In our experience, the number of meetings actually needed often is not known until the project progresses.

The final presentation of the combined findings and reports to City Council will include easy-to-follow graphics (as shown in Figure 2) and color handouts of the study assumptions, methodologies, findings and conclusions, and will include a discussion period for questions and answers.

Figure 2



Task 6: Development of Utility Benchmark Comparisons

Willdan will provide an evaluation and comparison of the City's utilities against appropriate industry benchmarks. There are a variety of approaches to this type of comparison, and we will discuss with the City which benchmarks make the most sense, and focus on elements of their operations that warrant attention. Several rating agencies, including Fitch, Moody's and others, have published documents that detail the sewer and water benchmarking and best management practices (BMPs) guidelines that they follow when evaluating the credit-worthiness of municipal utilities. We use these to identify meaningful and appropriate benchmarks for measurement and comparison in this type of analysis, and the ability to produce benchmarking statistics is already incorporated in our model.

We will discuss benchmarks and BMPs with City staff to ensure those selected make sense for the City.

Task 7: Prepare and Document Rate Recommendations

Willdan will document the results of the study in a report consistent with the following layout: an executive summary; a methodology; background assumptions; findings; recommendations; and conclusions. The report will provide a detailed summary of the project approach and methodology, data sources, discuss the current rate structure and compliance of proposed rates with City policies, and how they address specific City objectives such as rate equity, revenue stability, conservation and others. We will provide City staff with a digital copy of the preliminary draft report for review and comment, and based on the comments received, prepare a final printed (10 copies) and digital copy of the report. The City will also have full access to Willdan's fully customized, non-proprietary, Excel-based model for its use in the future.

Task 8: Customized Rate Model – Preparation, Training and Delivery

As part of our scope, Willdan will deliver customized versions of its financial planning and rate design models for staff.

Activities:

- Complete customization of the model for the City's needs and circumstances;
- Provide overview of model operation, updating and scenario development;
- Respond to further questions by phone, at the City's option;
- Provide staff training on the operation and use of the model.

Deliverables:

- Financial planning and rate design model, customized for the City; and
- Continuing assistance to be determined by the City.

Task 9: Proposition 218 Procedural Requirements

Based on our 17 year history with Proposition 218 compliance, we will create notices that will explain: 1) the purpose of the rates; 2) how the rates are structured; 3) the time and place of the public hearing; and 4) provide details on what constitutes the existence of a majority protest, as it relates to the implementation of a new/increased utility rate structure. We will work with City staff to develop and distribute an easy-to-understand Proposition 218 notice that will describe the following major components: 1) rate structures; 2) reason for the increases; and 3) date, time, and place of the public hearing.

Should the City request, we can develop the materials, create a parcel database of properties subject to the new proposed rates, and coordinate the printing and mailing of the materials in conjunction with a mailing house that we typically work with on these types of projects. The additional cost for these services is $1.00 per parcel and includes direct costs associated with the mailing.

City Staff Responsibilities

Willdan recommends that the City assign a key individual as project manager. As our analysis is developed, it is expected that the City's appointed project manager will:

- Coordinate responses to informational requests;
- Coordinate review of work products; and
- Identify appropriate staff members for participation in meetings.

We will ask for responses to initial information, follow-up requests and comments on reports within five business days or otherwise agreed upon timetable. If there are delays, the project manager will follow up with the parties involved to establish an estimated date for the delivery of information and/or feedback. To ensure continued progression, the project manger will reconvene with the rest of the Willdan Team to identify tasks that can be started while waiting for requested data.

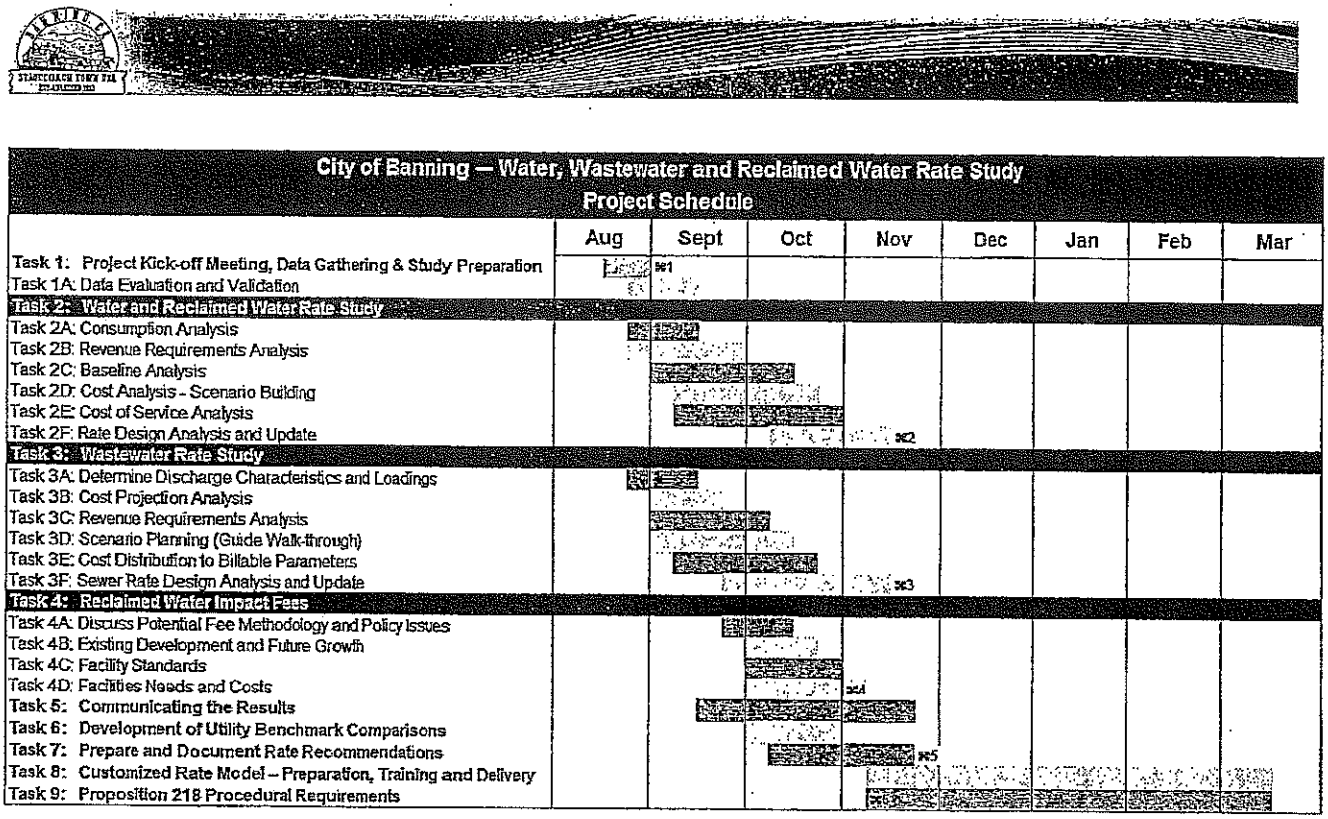
Schedule

Willdan prides itself on being responsive to customer needs. We have developed a general timeline that will begin August 20, 2013; a specific schedule of events and milestones will be developed in concert with City staff.

Depending upon a number of factors, a rate and financial planning effort of this complexity generally requires 16 to 20 weeks to complete. These factors include: 1) the amount of time required to collect necessary data; 2) ability to schedule meetings in a timely manner with City management and staff; and 3) manner by which policy direction is received for the study from the City's management.

Based on these factors and our current understanding of the solicitation, Willdan has developed the following preliminary project schedule:

City of Banning — Water, Wastewater and Reclaimed Water Rate Study
Project Schedule



Legend:

- #1: Informational Request
- #2: Water Rate Study Draft Report
- #3: Sewer Rate Study Draft Report
- #4: Impact Fee Draft Memo
- #5: Final Report
- #6: Proposition 218 Notice

Proposed Quality Assurance Program (QA/QC)

At Willdan, we utilize a project management process that ensures projects are completed on time, within budget and, most importantly, yield results that match our clients' expectations. Our complete project management process has four primary principles common to successful projects:

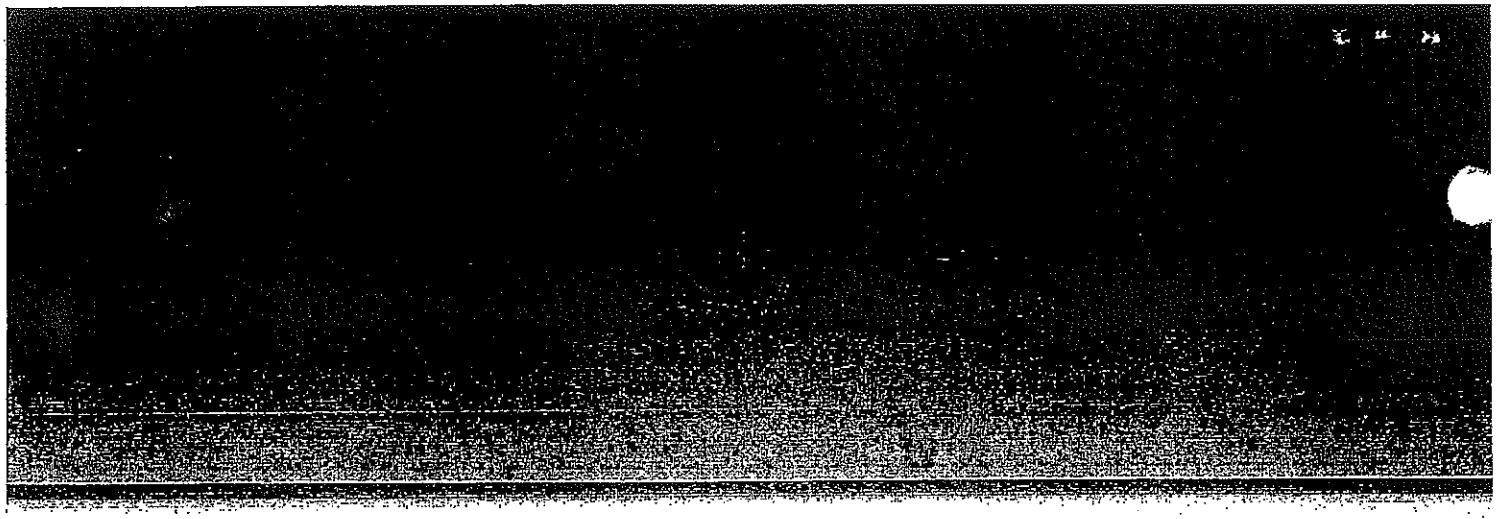
1. **Define** the project to be completed. Mr. Fisher will identify the project scope, set objectives, list potential constraints, document assumptions, choose a course of action and develop an effective communication plan.

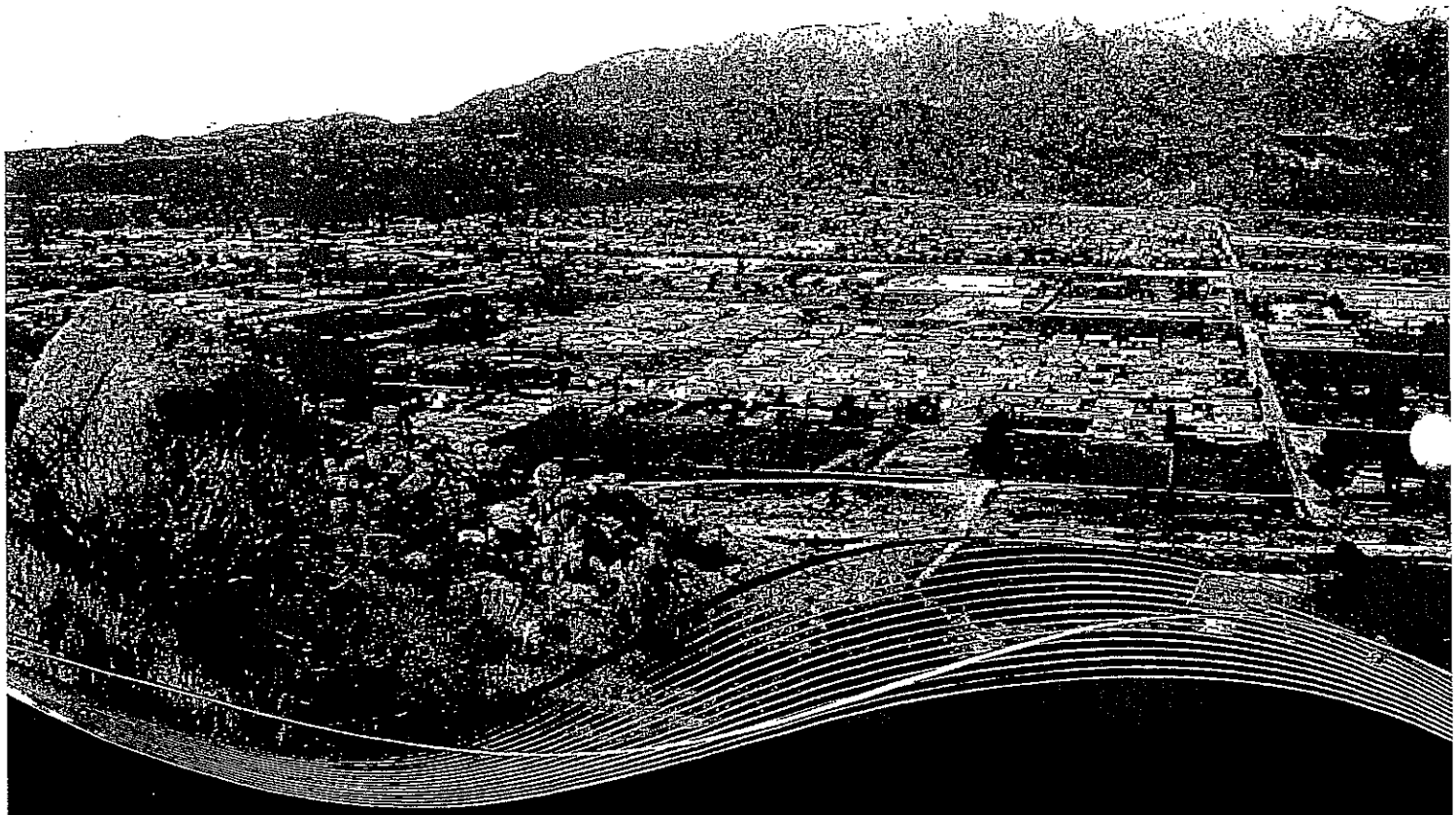
2. **Plan** the project schedule. Mr. Fisher, in collaboration with the project team and City staff, will create an agreed upon timeline to meet the estimated project timeline. He will assign workload functions to appropriately qualified staff to ensure milestones are met, on time. Furthermore, the project team will meet bi-weekly to assess the status of the project and Mr. Fisher will direct existing and upcoming project tasks. These meetings ensure that staffing resources are well-matched to provide the highest quality of work product, high responsiveness to the City, and to keep the project on schedule. These meetings also provide a forum for applying the team's collective expertise to solving difficult analytical issues that arise in complex projects.

3. **Manage** the execution of the project. Mr. Fisher has been selected to fulfill the role of project manager due to his strong project management skills. He will be responsible for controlling the work in progress, providing feedback to the Willdan Team and City staff, and will be accountable to the City for meeting the schedule, budget and technical requirements of the project. Most importantly, Mr. Fisher will ensure constant collaboration and communication between City staff and the Willdan Team through frequent progress memorandums, conference calls and in-person meetings.

4. **Review** work products and deliverables through a structured quality assurance process involving up to three levels of review at the peer level, project manager level, and if necessary executive officer level. We have designed a formal and structured quality assurance system that will be utilized throughout the course of the project.

We have utilized these guiding principles for all of our firm's projects. The City can be assured that through the utilization of these principles, Mr. Fisher will ensure the project deliverables for the Water, Wastewater and Reclaimed Water Rate Study will be of the highest quality and will be delivered on time and within the agreed upon budget.





WILLDAN
Financial Services

27368 Via Industria, Suite 110, Temecula, California 92590-4856
T 951.587.3500 800.755.6864 | F 951.587.3510 888.326.6864
www.willdan.coma

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

Section 1.10 – Additional Services – A contingency of 20% has been requested in the event additional meetings are requested and/or additional costs are incurred during the Proposition 218 process.

Section 1.7 Warranty – excluded – not applicable to professional services

Section 1.8 – Prevailing wages – excluded – not applicable to professional services

Section 2.4 – Invoices – Invoices will be submitted monthly based on percentage of project completed.

Section 5.4 – Performance Bond – excluded – not applicable to professional services

Section 5.5 – "Surety" and reference to Section 5.4 – not applicable

Section 7.3 – Retention – not applicable to professional services

Section 7.7 – liquidated damages – not applicable to professional services

EXHIBIT "C"
COMPENSATION

See attached

Fee Schedule

Based on the described work plan, we propose a ***not-to-exceed fixed price fee of $58,963.*** The table below provides a breakdown of this fee by task and project team member.

City of Banning - Water, Wastewater and Reclaimed Water Rate Study

	C. Fisher Project Manager	J. Vames Task Manager	T. Thrasher Financial Analyst	J. McGarvey Tech Advisor & QA/QC	Total	
	$210	$155	$110	$195	Hours	Cost
Scope of Services						
Task 1: Project Kick-off Meeting, Data Gathering and Study Preparation	5.0	6.0	6.0	5.0	22.0	$ 3,615
Task 1.A: Data Evaluation and Validation	1.0	2.0	4.0	1.0	8.0	$ 1,155
Task 2: Water and Reclaimed Water Rate Study						
Task 2.A: Consumption Analysis	1.0	8.0	16.0	2.0	27.0	$ 3,600
Task 2.B: Revenue Requirements Analysis	1.0	8.0	16.0	2.0	27.0	3,600
Task 2.C: Baseline Analysis	2.0	8.0	16.0	2.0	28.0	3,810
Task 2.D: Cost Analysis - Scenario Building (includes meeting w/ Task 3.D)	3.0	10.0	12.0	3.0	28.0	4,085
Task 2.E: Cost of Service Analysis	1.0	8.0	14.0	0.5	23.5	3,088
Task 2.F: Rate Design Analysis and Update (includes meeting w/ Task 3.F)	3.0	10.0	14.0	3.0	30.0	4,305
Task 3: Wastewater Rate Study						
Task 3.A: Determine Discharge Characteristics and Loadings	1.0	3.0	6.0	2.0	12.0	$ 1,725
Task 3.B: Cost Projection Analysis	1.0	3.0	6.0	1.0	11.0	1,530
Task 3.C: Revenue Requirements Analysis	1.0	4.0	8.0	2.0	15.0	2,100
Task 3.D: Scenario Planning (GUIDE Walk-through) (includes meeting w/ Task 2.D)	3.0	6.0	8.0	2.0	19.0	2,830
Task 3.E: Cost Distribution to Billable Parameters	1.0	4.0	8.0	1.0	14.0	1,905
Task 3.F: Sewer Rate Design Analysis and Update (includes meeting w/ Task 2.F)	3.0	6.0	8.0	3.0	20.0	3,025
Task 4: Reclaimed Water Impact Fees						
Task 4.A: Discuss Potential Fee Methodology and Policy Issues	1.0	2.0	1.0	1.0	5.0	$ 825
Task 4.B: Existing Development and Future Growth	1.0	2.0	-	1.0	4.0	715
Task 4.C: Facility Standards	1.0	2.0	-	1.0	4.0	715
Task 4.D: Facilities Needs and Costs	1.0	2.0	3.0	1.0	7.0	1,045
Task 5: Communicating the Results (includes presentation meeting)	4.0	8.0	8.0	5.0	25.0	3,935
Task 6: Development of Utility Benchmark Comparisons	1.0	6.0	2.0	4.0	13.0	2,140
Task 7: Prepare and Document Rate Recommendations	2.0	8.0	16.0	1.0	27.0	3,615
Task 8: Customized Rate Model – Preparation, Training and Delivery	4.0	8.0	2.0	1.0	15.0	2,495
Task 9: Proposition 218 Procedural Requirements	4.0	2.0	16.0	1.0	23.0	3,105
Subtotals:	46.0	126.0	190.0	45.5	407.5	58,963
Total Cost						**$ 58,963**

Notes:

- Our fee includes all direct expenses associated with the project.
- Additional meetings may be requested at a fixed fee of $1,950 per meeting.
- We will invoice the City monthly based on percentage of project completed.

Hourly Rates

Additional services may be authorized by the City and will be billed at ~~our then-current hourly overhead consulting rates. Our current hourly~~ the rates ~~are~~ listed below.

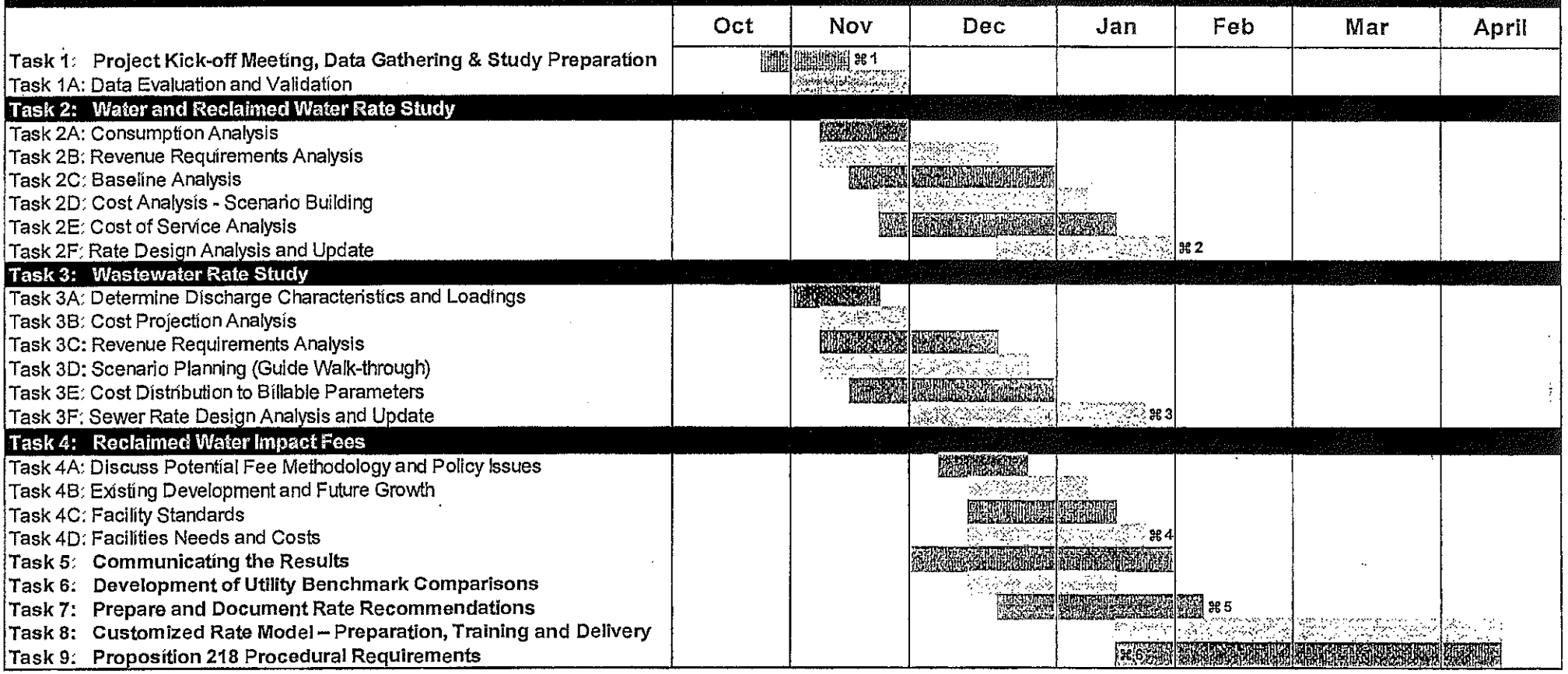
Hourly Rate Schedule	
Position	Hourly Rate
Group Manager	$210
Principal Consultant / Managing Principal	$200
Senior Project Manager	$165
Project Manager	$145
Senior Project Analyst	$130
Senior Analyst	$120
Analyst	$100
Assistant Analyst	$75

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

See attached Project Schedule

The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

City of Banning — Water, Wastewater and Reclaimed Water Rate Study
Project Schedule



Legend:

- ⌘1: Informational Request
- ⌘2: Water Rate Study Draft Report
- ⌘3: Sewer Rate Study Draft Report
- ⌘4: Impact Fee Draft Memo
- ⌘5: Final Report
- ⌘6: Proposition 218 Notice

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY): 11/1/2012

PRODUCER
Dealey, Renton & Associates
P. O. Box 10550
Santa Ana CA 92711-0550

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS ND RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFDRDED BY THE POLICIES BELOW.

INSURERS AFFDRDING COVERAGE

INSURED
Willdan Financial Services
27368 Via Industria, Suite 110
Temecula CA 92590

INSURER A: Travelers Property Casualty Co of Ameri
INSURER B: Catlin Insurance Company, Inc.
INSURER C: American Automobile Ins. Co.
INSURER D:
INSURER E:

CDVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	6301158P020	11/9/2012	11/9/2013	EACH OCCURRENCE	$1,000,000
	X COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$1,000,000
	CLAIMS MADE X OCCUR				MED EXP (Any one person)	$10,000
	X Contractual				PERSONAL & ADV INJURY	$1,000,000
	X BFPD, XCU				GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC				PRODUCTS - COMP/OP AGG	$2,000,000
A	AUTOMOBILE LIABILITY	8101158P020	11/9/2012	11/9/2013	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO				BODILY INJURY (Per person)	$
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
	X HIRED AUTOS					
	X NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	OCCUR CLAIMS MADE				AGGREGATE	$
	DEDUCTIBLE					$
	RETENTION $					$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WZP81007462	11/9/2012	11/9/2013	X WC STATU-TORY LIMITS OTH-ER	
					E.L. EACH ACCIDENT	$1,000,000
					E.L. DISEASE - EA EMPLOYEE	$1,000,000
					E.L. DISEASE - POLICY LIMIT	$1,000,000
B	OTHER Professional Liability Claims Made	AED977441113	11/9/2012	11/9/2013	Per Claim	$1,000,000
					Annual Aggregate	$1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

eneral Liability policy excludes claims arising out of the performance of professional services.
ndependent Contractors are included as respects to General Liability.
e: all work being performed by Willdan Financial Services (1915 districts per the 11/2008 contract; continuing isclosure services per 1997 contract and 3/2011 amendment; arbitrage services; FIA; plus any other service as equired by written contract. The City, and its officers, officials, employees, agents, representatives, and olunteers are additional insured as respects to General and Auto Liability as required by written contract. Primary ee Attached...

CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER LETTER:

City of Banning
June Overholt, Administrative Services Director
99 East Ramsey Street / PO Box 998
Banning CA 92220

CANCELLATION 10 Day notice for Non-Paymnt of Prem

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE: Pramme Emrul 766

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS / SPECIAL PROVISIONS

and Non-Contributing coverage, Waiver of Subrogation applies to GL as required by written contract. Waiver of subrogation for Work Comp is included as required by written contract. (TEMECULA)

Workers' Compensation and Employers' Liability Insurance Policy
Waiver of Our Right to Recover From Others Endorsement - California
WC 04 03 06

If the following information is not complete, refer to the appropriate Schedule attached to the policy.

Insured: Willdan Financial Services

Policy Number WZP81007462

Producer: Dealey, Renton & Associates

Effective Date 11/1/2012

Schedule

Person or Organization

City of Banning
June Overholt, Administrative Services Director
99 East Ramsey Street / PO Box 998
Banning CA 92220

Job Description

For which the insured has agreed by written contract executed prior to loss to furnish this waiver. The premium charge is 2% of policy standard premium at final audit.

Additional Premium %

We have the right to recover our payments from anyone liable for an injury- covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be the percentage, as shown in the Schedule applicable to this endorsement, of the California workers' compensation premium otherwise due on such remuneration.

Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BROAD FORM NAMED INSURED

B. BLANKET ADDITIONAL INSURED

C. EMPLOYEE HIRED AUTO

D. EMPLOYEES AS INSURED

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

G. WAIVER OF DEDUCTIBLE – GLASS

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

J. PERSONAL EFFECTS

K. AIRBAGS

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

M. BLANKET WAIVER OF SUBROGATION

N. UNINTENTIONAL ERRORS OR OMISSIONS

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c.** in **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

   An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

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2. The following replaces Paragraph **b.** in **B.5., Other Insurance,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

   b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

   (1) Any covered "auto" you lease, hire, rent or borrow; and

   (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

   However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1., Who Is An Insured,** of **SECTION II – LIABILITY COVERAGE:**

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2),** of **SECTION II – LIABILITY COVERAGE:**

   (2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4),** of **SECTION II – LIABILITY COVERAGE:**

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph **(5)** in Paragraph **B.7., Policy Period, Coverage Territory,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

   (i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

   (ii) Neither you nor any other involved "insured" will make any settlement without our consent.

   (iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

   (iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C.**, Limit Of Insurance, of **SECTION II – LIABILITY COVERAGE.**

   (v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C.**, Limit Of Insurance, of SECTION II – LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available

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to the "insured" whether primary, excess contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

(d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D., Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph **A.4.b., Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

However, the most we will pay for any expenses for loss of use is $65 per day, to a maximum of $750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a., Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL EFFECTS

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

Personal Effects

We will pay up to $400 for "loss" to wearing apparel and other personal effects which are:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Effects coverage.

K. AIRBAGS

The following is added to Paragraph **B.3., Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE:**

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS:**

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

(a) You (if you are an individual);

(b) A partner (if you are a partnership);

(c) A member (if you are a limited liability company);

(d) An executive officer, director or insurance manager (if you are a corporation or other organization); or

(e) Any "employee" authorized by you to give notice of the "accident" or "loss".

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M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED**:

   Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

   a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and

   b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

   The insurance provided to such additional insured is limited as follows:

   c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.

   d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.

   e. This Insurance does not apply to "bodily injury' or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

3. The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   Duties Of An Additional Insured

   As a condition of coverage provided to the additional insured:

   a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

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i. How, when and where the "occurrence" or offense took place;

ii. The names and addresses of any injured persons and witnesses; and

iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:

i. Immediately record the specifics of the claim or "suit" and the date received; and

ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

a. After the signing and execution of the contract or agreement by you;

b. While that part of the contract or agreement is in effect; and

c. Before the end of the policy period.

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CITY COUNCIL/BANNING UTILITY AUTHORITY
AGENDA

DATE: October 8, 2013

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works
June Overholt, Administrative Services Director/Deputy City Manager

SUBJECT: Banning Utility Authority Resolution No. 2013-18UA, "Awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study"

RECOMMENDATION: Adopt Banning Utility Authority Resolution No. 2013-18UA:

I. Awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed $58,963.

II. Authorize the Administrative Services Director to amend the budget and to make any necessary budget adjustments, transfers or appropriations in an amount of $20,000 in the Waste Water Fund.

III. Authorize the City Manager to execute the Professional Services Agreement with Willdan Financial Services.

IV. Consider establishing Ad Hoc committee to review recommendations and outcome of the study.

BACKGROUND: The City Council last approved Water and Wastewater Rates in 2010, which increased the Water and Wastewater Rates each year over four years from October 2010 to September 2013. October 2010 was the first time rates had been approved since 2003. Although operating expenditures were reduced to address the decline in revenues due to the economic downturn, it became critical to increase the rates to meet bond covenant requirements. The rate increases provided stabilization to the operating funds while major capital projects were put on hold. The slowdown in development activity in the city removed some urgency to implement the capital projects. However, with the economy showing signs of improving and with the regulatory challenges facing the utilities, there is a need to strategically address these demands on the utilities.

DISCUSSION: In order to understand whether rate increases are needed, the city needs to study the existing rate structure, service levels, consumption, regulatory demands and capital requirements.

On June 10, 2013, Request for Proposals (RFPs) were sent to several consulting firms with known experience in performing rate studies. In addition, the RFP was posted to the City website and other sites. On July 26, 2013, seven proposals were received by the Public Works Department. The proposals were evaluated by an Evaluation/Selection Committee for completeness, the proposed project team, project management, understanding, project approach, responsiveness to the RFPs, experience with

In the event that a rate increase is recommended, community meetings will be recommended as part of the Prop 218 process. It is likely that the consultants will be asked to attend community meetings to present the recommendations using the interactive dashboard. It is unknown at this time, how many meetings will be needed. Some meetings have been incorporated into the fees. However, additional meetings will add to the cost. Therefore, staff is recommending a contingency for the project.

FISCAL DATA: The study fees as proposed are $58,963. A contingency of $11,000 (approximately 20%) is recommended to allow for Prop 218 community meetings, if needed. Because most of the complexity of the study is for the water and reclaimed water rate study, the majority of the funding for the project is coming from the Water Operations budget. Budget of $50,000 was included in the approved Fiscal Year 2013/14 budget for the study, Account 660-6300-471.33-11. An appropriation of $20,000 is needed in the Waste Water Fund, Account 680-800-454.33-11.

RECOMMENDED BY:

Duane Burk
Director of Public Works

RECOMMENDED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:

Andrew J. Takata
City Manager

RESOLUTION NO. 2013-18UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AWARDING A PROFESSIONAL SERVICES AGREEMENT TO WILLDAN FINANCIAL SERVICES FOR WATER, WASTEWATER AND RECLAIMED WATER RATE STUDY

WHEREAS, on June 10, 2013, Request for Proposals (RFPs) were sent to several financial consulting firms and on July 22, 2013, seven proposals were received by the Public Works Department; and

WHEREAS, the proposals were evaluated by an Evaluation/Selection Committee for completeness, the proposed project team, project management, understanding, project approach, responsiveness to the RFPs, experience with water, wastewater and reclaimed water studies and proposed cost; and

WHEREAS, upon review of the proposals, it was determined that Willdan Financial Services of Temecula, California is the most qualified firm for the project, as per the guidelines set forth in the RFP; and

WHEREAS, the services to be provided by the consultant will result in a focused and tailored analysis which creates new rates that will provide a comprehensive financial management plan which develops projected system operating results for the next five fiscal years and has the ability to forecast out as far as 30 years.

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

SECTION 1. City Council adopts Resolution No. 2013 -18UA awarding the professional services agreement for the Water, Wastewater and Reclaimed Water Rate Study to Willdan Financial Services of Temecula, California, for an amount not to exceed $58,963.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments and appropriations from the Waste Water Fund to Account No. 680-8000-454.33-11 in an amount of $20,000 and is authorized to approve additional costs within the approved $11,000 contingency.

SECTION 3. The City Manager is authorized to execute the Professional Services Agreement with Willdan Financial Services of Temecula, California, in a form approve by the City Attorney. This authorization will be rescinded if the contract agreement is not executed by both parties within sixty (60) days of the date of this resolution.

PASSED, APPROVED AND ADOPTED this 8th day of October, 2013.

Deborah Franklin, Chairperson
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 to the Banning Utility Authority of the City of Banning, do hereby certify that the foregoing Resolution No. 2013-18UA was duly adopted by the Banning Utility Authority of the City of Banning at a Joint Meeting thereof held on the 8th day of October, 2013, by the following vote, to wit.

AYES:	Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin
NOES:	None
ABSTAIN:	None
ABSENT:	None

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

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CITY OF BANNING
AGENDA REPORT

MEETING OF: July 14, 2015

TO: Mayor and City Council

FROM: Dean Martin, Interim City Manager

SUBJECT: Approval of the attached Resolution Approving the Economic Refunding of the Banning Utility Authority Water Enterprise Revenue Bonds Refunding and Improvement Projects, 2005 Series

---

RECOMMENDATION:

Adopt a resolution of the "City Council of Banning acting as the Legislative Body of Banning Utility Authority authorizing the issuance of its Water Enterprise Revenue Bonds Refunding and Improvement Projects, 2015 Series, approving a Bond Purchase Agreement, an Indenture, an Escrow Agreement, a Preliminary Official Statement, and taking certain other actions in connection therewith."

BACKGROUND:

During the winter of 2005, the Banning Utility Authority, through the City of Banning, issued two series of bonds – one for water and one for wastewater – to assist in the financing of water and wastewater infrastructure projects for the City's service areas.

The water series financed the construction of a reservoir, additional transmission lines, an irrigation water system, and several wells. Additionally, the water bonds refinanced two bond issues – Series 1986 and Series 1989. The wastewater series financed a 1.5 MGD (million gallons per day) tertiary wastewater treatment plant.

With interest rates near historic lows, the City's financing team analyzed the potential to refund (refinance) the existing bonds without extending the term of the original issuance and found that the water bonds presented significant savings to the City.

Based on today's rates (subject to market conditions), the bonds can now be refunded with an estimated net-present-value savings of approximately $3.2 million.

In keeping with the City's policy goals and objectives, the refunding supports the City's goal of providing sound fiscal stewardship for the City of Banning. In an effort to effect the most benefit from the low interest-rate environment, City staff and the financing team have moved with significant expediency.

Attached for your review are the various documents needed to effect the refunding of the Electric and Water Utility Bonds. Below is a brief description of the key documents attached.

Key Bond Documents

Preliminary Official Statements: Serves as the primary marketing and disclosure document for potential buyers of the bonds. It explains credit and legal provisions, gives an overview of operations, and provides key operating and financial data.

Trust Indentures: This agreement sets forth the rights and protections of bondholders and establishes the trust relationship between the bondholders and US Bank, the trustee. It provides for the authentication and delivery of the Bonds, establishes the terms and conditions upon which the Bonds are to be issued and secured, and secures the payment of the principal and interest.

Escrow Agreement: The refunding proceeds of the bond sale are invested in government securities which is then placed into an escrow account. Those funds are invested at a rate which will result in sufficient funds being available to call the bonds for redemption at the first opportunity.

Continuing Disclosure Agreement: Once the bonds are issued, regular and periodic operational and financial information must be made available for existing bondholders and potential investors in the secondary market. Events of Default must also be disclosed. This document memorializes what is required and when as well as where the information will be made available.

FISCAL IMPACT:

The recommended action does not, in itself, cause any new financial obligations. At today's interest rates (subject to the market at actual time of pricing the bonds and offering them to the market), the bonds can be refunded with an estimated net-present-value savings of approximately $3.2 million, or $225,000 annually.

RECOMMENDED BY:

Dean Martin
Interim City Manager

RESOLUTION NO. 2015-11UA

RESOLUTION OF THE BANNING UTILITY AUTHORITY AUTHORIZING THE ISSUANCE ITS WATER ENTERPRISE REVENUE BONDS, REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $35,000,000; APPROVING AN INDENTURE OF TRUST, AN ESCROW AGREEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND A PRELIMINARY OFFICIAL STATEMENT; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Banning Utility Authority (the "Authority") is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose of financing and refinancing capital improvements of member entities of the Authority; and

WHEREAS, under the Bond Law, the Authority is authorized to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities and to provide financing and refinancing for public capital improvements of public entities; and

WHEREAS, the Authority previously issued its $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), which are currently outstanding in the aggregate principal amount of $29,165,000; and

WHEREAS, the Authority desires to issue its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "2015 Bonds") to refund the 2005 Bonds currently outstanding[, and finance certain capital improvements to the Water Enterprise]; and

WHEREAS, the Authority has reviewed the documentation related to the issuance of the 2015 Bonds; and

NOW, THEREFORE, THE BANNING UTILITY AUTHORITY DOES FIND, DETERMINE AND RESOLVE AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and the Authority hereby so finds and determines.

Section 2. The Authority hereby authorizes the issuance of its 2015 Bonds in the aggregate principal amount not to exceed $[_____]. The 2015 Bonds may be issued in one or more series as determined by the Responsible Officer (as defined below).

Section 3. The Authority hereby approves the Indenture of Trust, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved

by the Chairperson, the Vice Chairperson, the Executive Director, the Treasurer, the Secretary, their designee, or any members of the Board of Directors (each, a "Responsible Officer"), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The Authority hereby approves the Escrow Agreement, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The Authority hereby approves the Continuing Disclosure Agreement, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The Authority hereby approves the Bond Purchase Agreement, substantially in the forms annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Bond Purchase Agreement shall provide an underwriter's discount of not greater than [____]%, exclusive of original issue discount, and a true interest cost of not greater than [_____]%.

Section 7. The Authority hereby approves the Preliminary Official Statement relating to the 2015 Bonds (the "Preliminary Official Statement"), substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer. Each of the Responsible Officers is hereby authorized to execute and deliver a certificate deeming the Preliminary Official Statement final for purposes of SEC Rule 15c2-12. Upon the pricing of the 2015 Bonds, each of the Responsible Officers is hereby authorized to prepare and execute a final Official Statement (the "Official Statement"), substantially the form of the Preliminary Official Statement, with such additions thereto and changes therein as approved by any Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority hereby authorizes the distribution of the Preliminary Official Statement and the Official Statement by the underwriter in connection with the offering and sale of the 2015 Bonds.

Section 8. Each Responsible Officer is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution including, but not limited to, the arrangement for the insuring of all or any portion of the Bonds with any municipal bond insurer.

Section 9. The Secretary shall certify to the adoption of this Resolution, which shall be in full force and effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Deborah Franklin, Chairperson

ATTEST:

Marie A. Calderon, Secretary

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PRELIMINARY OFFICIAL STATEMENT DATED JULY __, 2015

NEW ISSUE BOOK ENTRY ONLY

RATINGS
Insured: ***Standard & Poor's:*** **"____"**
Underlying: ***Standard & Poor's:*** **"____"**
(See "RATINGS" herein)

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, under existing statutes, regulations, rulings and court decisions, and assuming compliance with the tax covenants described herein, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. It is also the opinion of Bond Counsel that under existing law interest on the Bonds is exempt from personal income taxes of the State of California. See "TAX MATTERS."

BANNING UTILITY AUTHORITY

$_____*

Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series

Dated: Date of Delivery **Due: November 1, as shown on inside cover**

The Banning Utility Authority (the "Authority") is issuing its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"), as fully registered bonds, registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds will be available to ultimate purchasers of the Bonds in denominations of $5,000 or any integral multiple thereof under the book-entry system maintained by DTC. Ultimate purchasers of the Bonds will not receive physical certificates representing their interest in the Bonds. So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, references herein to the owners shall mean Cede & Co., and shall not mean the ultimate purchasers of the Bonds. Payment of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by U.S. Bank National Association, as trustee (the "Trustee"), so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursement of such payments to DTC's Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants, as more fully described herein. See "APPENDIX E – BOOK-ENTRY ONLY SYSTEM."

The Bonds will bear interest at the rates set forth on the inside cover, payable semi-annually on May 1 and November 1 of each year, commencing on November 1, 2015, as described herein. The Bonds will be issued under an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and the Trustee. Proceeds of the Bonds will be used to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the Authority's $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), currently outstanding in the aggregate principal amount of $29,165,000; and (iii) pay costs of issuance of the Bonds.

The Bonds are subject to optional and mandatory redemption as described herein. See "THE BONDS."

The Bonds are special obligations of the Authority. The Bonds are payable from, and are secured by a charge and lien on, Net Water Revenues. The Bonds are also payable from, and are secured by a charge and lien on, amounts held from time to time in certain funds and accounts established under the Indenture. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein.

[The scheduled payment of principal of and interest on the Bonds, when due, will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Bonds by [_____]. See "BOND INSURANCE" herein.]

Neither the faith and credit nor the taxing power of the City, the County of Riverside (the "County"), the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Agency"), the State of California (the "State"), or any political subdivision thereof is pledged to the payment of the principal of or interest on the Bonds. None of the City, the County, the Agency, the State or any political subdivision thereof, other than the Authority, is liable for the payment of the Bonds. In no event shall the Bonds or any interest or redemption premium thereon be payable out of any funds or properties other than those of the Authority as provided in the Indenture. The Authority has no taxing power. The Bonds do not constitute an indebtedness of the Agency, the City, the County, the State or any political subdivision thereof, other than the Authority, within the meaning of any constitutional or statutory debt limitation or restriction. [REFERENCE PARKING AUTHORITY, IF APPLICABLE]

This cover page contains certain information for quick and general reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Bonds are offered when, as and if issued by the Underwriters, subject to approval of legality by Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed on for the Authority by Norton Rose Fulbright US LLP as Disclosure Counsel, for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the Authority and the City by Aleshire & Wynder, LLP. It is anticipated that the Bonds will be available for delivery through the book-entry facilities of DTC on or about August __, 2015.

[STIFEL LOGO] [WILLIAMS CAPITAL LOGO]

Dated: _____, 2015

* Preliminary; subject to change.

MATURITY SCHEDULE

$_____*

Banning Utility Authority
Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series
(Base CUSIP† 066626)

Maturity (November 1)	Principal Amount	Interest Rate	Yield	CUSIP†

$_____ _____% Term Bonds due _____, Yield ____%; CUSIP†: _____

* Preliminary; subject to change.

† CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. CUSIP numbers have been assigned by an independent company not affiliated with the Authority and are included solely for the convenience of investors. None of the Authority, the City, the Underwriters, or the Financial Advisor, are responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Bond.

CITY OF BANNING
BANNING UTILITY AUTHORITY

$_____
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES

CITY/COUNCIL/AUTHORITY BOARD MEMBERS/ELECTED OFFICIALS

Debbie Franklin, *Mayor/Chairperson*
Art Welch, *Mayor Pro Tem/Vice Chairperson*
Edward Miller, *Council Member/Board Member*
George Moyer, *Council Member/Board Member*
Don M. Peterson, *Council Member/Board Member*
Marie A. Calderon, *City Clerk/Authority Secretary*

CITY/AUTHORITY STAFF

Dean Martin, *Interim City Manager/Executive Director*
Aleshire & Wynder, LLP, *City Attorney/Authority Counsel*
Fred Mason, *Public Utilities Director*
Art Vela, *Acting Public Works Director*

SPECIAL SERVICES

BOND COUNSEL/DISCLOSURE COUNSEL

Norton Rose Fulbright US LLP
Los Angeles, California

FINANCIAL ADVISOR

Urban Futures, Inc.
Orange, California

TRUSTEE

U.S. Bank National Association
Los Angeles, California

DISSEMINATION AGENT

Willdan Financial Services
Temecula, California

VERIFICATION AGENT
[TBD]

No dealer, broker, salesperson or other person has been authorized by the Authority, the City or the City's Public Works Department (the "Department") to give any information or to make any representations, other than as contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by the Authority, the City or the Department. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers of the Bonds. Statements contained in this Official Statement which involve estimates, forecasts, or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representation of facts.

All other information set forth herein has been furnished by the Authority, the City, and the Department, and includes information obtained from other sources which are believed to be reliable. The information and expressions of opinion contained herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority, the City, or the Department since the date hereof. This Official Statement is submitted with respect to the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose, unless authorized in writing by the Authority, the City, and the Department. All summaries of the documents and laws are made subject to the provisions thereof and do not purport to be complete statements of any or all such provisions.

The Underwriters have provided the following two paragraphs for inclusion in this Official Statement:

The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS, INSTITUTIONAL INVESTORS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ABOVE, AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access ("EMMA") web site. The City also maintains a web site. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Bonds.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, SEC Rule 15c2-12.

FORWARD-LOOKING STATEMENTS

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are generally identifiable by the terminology used such as "plan," "project," "expect," "anticipate," "intend," "believe," "estimate," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Except as specifically set forth herein, the City does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

TABLE OF CONTENTS

Page

INTRODUCTION 1

- The Bonds 1
- Use of Proceeds 1
- The Water Enterprise 1
- Further Information 2

THE AUTHORITY 2

THE BONDS 2

- General 2
- Optional Redemption 3
- Mandatory Sinking Fund Redemption* 3
- Special Mandatory Redemption From Insurance or Condemnation Proceeds 5
- Notice of Redemption 5
- Selection of Bonds for Redemption 5
- Effect of Redemption 6
- Book-Entry Only System 6

PLAN OF FINANCE 6

- General 6
- Financing of Capital Improvements 6
- Refunding of 2005 Bonds 6

ESTIMATED SOURCES AND USES OF FUNDS 7

BOND DEBT SERVICE 7

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS 8

- Rates and Charges 8
- Application of Revenues 9

PARITY OBLIGATIONS 9

- Issuance of Additional Parity Obligations 9

BOND INSURANCE 10

THE WATER ENTERPRISE 10

- General 10
- Management and Employees 11
- Water Sources and Supply 11
- Regulatory Compliance & Water Treatment 14
- Water Rates and Charges 15
- Water Shortage Contingency Plan [DISCUSS] 16
- Demand and Sales 18
- Capital Improvement Program 20
- Collection Procedures 20
- Historic Water Enterprise Operating Results 22
- Projected Operating Results and Coverage Ratio for the Water Enterprise 23
- Retirement Programs 24

CONSTITUTIONAL LIMITATIONS 25

TABLE OF CONTENTS
(continued)

Page

Constitutional Limitations on Governmental Spending 25
Proposition 218 26
Proposition 26 27
Future Initiatives 28

RISK FACTORS 28

Bonds are Limited Obligations 28
Limitations on Revenues 29
Enterprise Expenses And Collections 29
No Liability of the Authority to the Owners 29
Limitations on Remedies Available to Owners of the Bonds and the Trustee 29
Limited Recourse on Default 29
Loss of Tax Exemption 30
Secondary Market 30
Forecasts and Forward-Looking Statements 30
Regulatory Risk 30
Casualty Risk; Earthquakes 31

UNDERWRITING 31

CERTAIN LEGAL MATTERS 31

TAX MATTERS 32

Tax Exemption 32
Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds 33
Other Tax Consequences 34

VERIFICATION OF MATHEMATICAL COMPUTATIONS 34

LITIGATION 34

RATINGS 35

CONTINUING DISCLOSURE 35

MISCELLANEOUS 35

AUTHORIZATION OF OFFICIAL STATEMENT 35

APPENDIX A – GENERAL INFORMATION ABOUT THE CITY OF BANNING A-1
APPENDIX B – AUDITED FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR ENDED JUNE 30, 2014 ..... B-1
APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS C-1
APPENDIX D – FORM OF CONTINUING DISCLOSURE AGREEMENT D-1
APPENDIX E – BOOK-ENTRY ONLY SYSTEM E-1
APPENDIX F – PROPOSED FORM OF OPINION OF BOND COUNSEL F-1

OFFICIAL STATEMENT

BANNING UTILITY AUTHORITY

$_____*
Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series

INTRODUCTION

This Official Statement of the Banning Utility Authority (the "Authority") sets forth certain information in connection with the sale by the Authority of its $_____* Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"). This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of Bonds to potential investors is made only by means of the entire Official Statement. The capitalization of any word not conventionally capitalized or otherwise defined herein indicates that such word is defined in a particular agreement or other document and, as used herein, has the meaning given it in such agreement or document. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" for a summary of certain of such definitions.

The Bonds

The Bonds are being issued pursuant to the Constitution and the laws of the State of California (the "State"), including the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6584) of the California Government Code, as amended (the "Bond Law"), and pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee").

The Bonds are special obligations of the Authority, and are payable from, and are secured by a charge and lien on, Net Water Revenues and from amounts held from time to time in certain funds and accounts established under the Indenture. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "RISK FACTORS."

Use of Proceeds

Proceeds of the Bonds will be used to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the Authority's $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), currently outstanding in the aggregate principal amount of $29,165,000; and (iii) pay costs of issuance of the Bonds. See "PLAN OF FINANCE" and "ESTIMATED SOURCES AND USES OF FUNDS."

The Water Enterprise

The Authority leases from the City the water system and facilities appurtenant (the "Water Enterprise"), pursuant to that certain Water Enterprise Lease Agreement, dated as of December 1, 2005

* Preliminary; subject to change.

(the "Water Enterprise Lease Agreement"). Pursuant to the Water Enterprise Lease Agreement, the Authority agrees to lease the Water Enterprise from the City, and the City agrees to lease, and does lease, the Water Enterprise to the Authority. The term of the Water Enterprise Lease Agreement ends on June 30, 2060. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS"

Pursuant to the Water Enterprise Management Agreement, dated as of December 1, 2005 (the "Water Management Agreement"), the City operates and maintains the Water Enterprise on behalf of the Authority. Pursuant to the Water Management Agreement the Authority appoints and retains the City as the manager and operator of the Water Enterprise, until June 30, 2060, with the full power and authority to carry out all responsibilities of manager and operator upon the terms and subject to the conditions set forth in the Water Management Agreement. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS"

Further Information

Brief descriptions of the Bonds, the Indenture, the Lease, the Bond Law, the Authority, the City, and the Water Enterprise are included in this Official Statement. Such information does not purport to be comprehensive or definitive. All references herein to the Indenture, the Lease, the Bond Law, the Constitution and the laws of the State, and the proceedings of the Authority and the City, are qualified in their entirety by reference to each such document, statute, constitution or proceedings. References herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Indenture. Copies of the Indenture and the Lease are available for inspection at the office of the Authority.

THE AUTHORITY

The Authority is a joint powers agency organized and existing under and by virtue of Articles 1 through 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Califomia Government Code, as amended. The City and the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Agency") entered into a Joint Exercise of Powers Agreement dated as of July 12, 2005 to establish the Authority. The Authority is governed by a Board of five Members comprised of the same individuals wbo comprise the City Council of the City. The Authority was created for the purpose, among other things, of providing financing relating to any water utility system or service through the lease, acquisition or construction by the Authority of such public capital improvements. Under the Bond Law, the Autbority has the power to issue bonds to pay the costs of public capital improvements. [REFERENCE PARKING AUTHORITY, IF APPLICABLE]

THE BONDS

General

The Bonds will be issued in fully registered form without coupons in Authorized Denominations. The Bonds will initially be registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York, New York ("DTC"), and will be evidenced by one Bond for each of the maturities in the principal amounts shown on the inside cover page of this Official Statement. DTC is the depository for the Bonds, and registered ownership may not thereafter be transferred except as set forth in the Indenture. The Bonds will mature on November 1 in the years and in the amounts shown on the inside cover page of this Official Statement and will bear interest at the rates shown on the inside cover of this Official Statement.

Interest on the Bonds will be payable semi-annually on each May 1 and November 1, commencing on November 1, 2015, (each, an "Interest Payment Date"), calculated based on a 360-day year of twelve (12) thirty-day months, to the person whose name appears on the registration books of the Trustee as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed by first class mail to the Owner at the address of such Owner as it appears on the registration books; provided, however, that payment of interest or principal may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee prior to the applicable Record Date. Principal of any Bond will be paid by check or wire of the Trustee upon presentation and surrender thereof at the Trust Office. Principal of and interest on the Bonds will be payable in lawful money of the United States of America.

Each Bond will be dated as of the Delivery Date and will bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before October 15, 2015, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Optional Redemption*

The Bonds maturing on or after November 1, 2026 shall be subject to optional redemption, as a whole or in part on any date prior to the maturity thereof, at the option of the Authority, on or after November 1, 2025, from funds derived by the Authority from any source, at the redemption price equal to the principal amount of the Bonds to be redeemed together, witb accrued but unpaid interest to the redemption date, without premium.

Mandatory Sinking Fund Redemption*

The Bonds maturing on November 1, 20__, and November 1, 20__ (the "Term Bonds") are subject to mandatory redemption, in part by lot, from Sinking Account payments set forth in the following schedules on November 1, in each year, commencing November 1, 20__, and November 1, 20__, respectively, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to the Indenture, the total amount of Sinking Account payments to be made subsequent to such redemption shall be reduced in an amount equal to the principal amount of the Term Bonds so redeemed by reducing each such future Sinking Account payment on a pro rata basis (as nearly as practicable) in integral multiples of $5,000, as shall be designated pursuant to written notice filed by the Authority with the Trustee.

* Preliminary; subject to change.

Schedule of Mandatory Sinking Fund Payments
Term Bond Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

Schedule of Mandatory Sinking Fund Payments
Term Bond Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

In lieu of such redemption, the Trustee may apply amounts in the Sinking Account to the purchase of Term Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as may be directed by the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Term Bonds, as set forth in a written request of the Authority. The par amount of Term Bonds so purchased by the Authority in any twelve month period immediately preceding any mandatory Sinking Account payment date in the table above will be credited towards and will reduce the principal amount of Term Bonds required to be redeemed on the succeeding Principal Payment Date.

Special Mandatory Redemption From Insurance or Condemnation Proceeds

The Bonds shall also be subject to redemption as a whole or in part on any date, pro rata by maturity and by lot within a maturity (in a manner determined by the Trustee) from moneys deposited in the Redemption Fund to the extent insurance proceeds received with respect to the Water Enterprise are not used to repair, rebuild, or replace the Water Enterprise pursuant to the Indenture, or to the extent of condemnation proceeds received with respect to the Water Enterprise and elected by the Authority to be used for such purpose pursuant to Indenture, or to the extent excess funds remain upon abandonment or completion of improvements to the Water Enterprise pursuant to the Indenture, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption.

Notice of Redemption

When redemption is authorized or required, pursuant to the Indenture, the Trustee is required to give written notice of the redemption of Bonds to the Owners of Bonds designated for redemption at their addresses appearing on the bond registration books, to certain Securities Depositories, and to one or more Information Services, all as provided in the Indenture, by first class mail, postage prepaid, no less than twenty (20) nor more than sixty (60) days prior to the date fixed for redemption. Neither failure to receive such notice nor any defect in the notice so mailed will affect the sufficiency of the proceedings for redemption of such Bonds or the cessation of accrual of interest on the redemption date. Any notice given pursuant to this paragraph may be conditional and/or rescinded by written notice given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this paragraph.

Selection of Bonds for Redemption

Whenever provision is made in the Indenture for the redemption of less than all of the Bonds secured thereunder, the Trustee shall select the Bonds to be redeemed from all Bonds or such given portion thereof not previously called for redemption, pro rata by maturity or, at the election of the Authority set forth in a written request of the Authority, filed with the Trustee, from such maturities as the Authority shall determine, and by lot within a maturity in any manner which the Trustee in its sole discretion shall deem appropriate and fair. Any such determination shall be deemed conclusive. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate $5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

Effect of Redemption

Once notice of redemption has been duly given as described above, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption are held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed pursuant to the provisions of the Indenture shall be canceled by the Trustee upon surrender thereof and destroyed.

Book-Entry Only System

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered bonds registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. Ultimate purchasers of Bonds will not receive physical certificates representing their interest in the Bonds. Payment of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by the Trustee so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursement of such payments to DTC's Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants. See "APPENDIX E – BOOK-ENTRY ONLY SYSTEM."

PLAN OF FINANCE

General

The Bonds are being issued to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the 2005 Bonds; and (iii) pay costs of issuance of the Bonds.

Financing of Capital Improvements

Approximately $_____ of the net proceeds of the Bonds will be used to finance or refinance (as described below) various rehabilitation and replacement projects to improve the Water Enterprise's service reliability, as well as the construction of new facilities and upgrades to improve and augment the water supply and delivery capabilities of the Water Enterprise, including construction of _____.

Refunding of 2005 Bonds

A portion of the proceeds of the Bonds, together with other available funds, will be deposited into an escrow fund (the "Escrow Fund") held under an Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), and applied to pay the principal and interest with respect to the 2005 Bonds becoming due prior to November 1, 2016 (the "Redemption Date") and on the Redemption Date for the purpose of refunding all of the outstanding 2005 Bonds. The 2005 Bonds were issued pursuant to an Indenture of Trust, dated as of December 1, 2005 (the "2005 Indenture"), by and between the Authority and U.S. Bank National Association as Trustee thereunder.

The amounts deposited in the Escrow Fund will be held solely for the 2005 Bonds and will not be available to pay the principal of or interest on the Bonds or any obligations other than the 2005 Bonds. _____ (the "Verification Agent"), upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to it, relating to the sufficiency of moneys deposited into the Escrow Fund to pay the principal, interest and redemption premium of the 2005 Bonds. See "VERIFICATION OF MATHEMATICAL COMPUTATIONS."

ESTIMATED SOURCES AND USES OF FUNDS

The following table set forth the estimated sources and uses of funds related to the issuance of the Bonds.

Sources of Funds	
Principal Amount of Bonds	$
Amounts Held Under 2005 Indenture	
Less: Underwriters' Discount	
[Net] Original Issue Premium (Discount)	
Total Sources of Funds	$
Uses of Funds:	
Deposit to Costs of Issuance Fund[(1)]	$
Deposit to Escrow Fund	
Deposit to Water Project Fund	
Total Uses of Funds	$

(1) Costs of issuance include fees and expenses of the Financial Advisor, Bond Counsel, Disclosure Counsel, the Trustee, Trustee's counsel, verification agent, bond insurance and surety bond premium, if any, printing expenses and other costs of issuing the Bonds.

BOND DEBT SERVICE

The following table sets forth the annual debt service schedule for the Bonds.

Bond Year Ending	Principal	Interest	Total

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

Pursuant to the Indenture, the Bonds are payable from Net Water Revenues and other amounts held under the Indenture and investment earnings thereon, all as set forth in the Indenture. The Net Water Revenues pledged to the payment of the Bonds are calculated by deducting from the Gross Water Revenues (as defined below) in each Fiscal Year the amounts required for operation and maintenance of the Water Enterprise, as described below. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Application of Revenues" below.

The Bonds are not secured by, and the Owners of Bonds have no security interest in or mortgage on the property of the Water Enterprise or of the Authority. Default by the Authority will not result in loss of any property. Should the Authority default, the Trustee may declare all unpaid principal, together with accrued interest at the rate or rates specified on the outstanding Bonds from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall become due and payable, and take whatever action at law or in equity may appear necessary or desirable to accelerate the principal of the Outstanding Bonds, or enforce performance and observance of any obligation, agreement or covenant of the Authority under the Indenture. See "RISK FACTORS – Limited Recourse on Default."

Rates and Charges

Pursuant to the Indenture, the Authority covenants to fix, prescribe, revise and collect (or cause to be fixed, prescribed, revised and collected, as necessary and applicable) rates, fees and charges for the Water Enterprise, for the services and improvements furnished by said enterprise during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield revenues (the "Gross Water Revenues") from the Water Enterprise sufficient to pay the following amounts in the following order of priority:

(a) Water Operation and Maintenance Expenses estimated by the Authority to become due and payable in such Fiscal Year;

(b) Debt Service payments on the Bonds as they become due and payable during such Fiscal Year, without preference or priority, except to the extent such Debt Service payments are payable from the proceeds of the Bonds or from any other source of legally available funds of the Authority that have been deposited with the Trustee for such purpose prior to the commencement of such Fiscal Year; and

(c) other payments required to meet any other obligations of the Authority that are charges, liens, encumbrances upon, or which are otherwise payable, from Gross Water Revenues during such Fiscal Year.

The Authority also covenants under the Indenture to cause to be fixed, prescribed, revised and collected, rates, fees and charges for the services and improvements furnished by the Water Enterprise during each Fiscal Year that are sufficient to yield Net Water Revenues that are at least equal to one hundred fifteen percent (115%) of the Maximum Annual Debt Service payments coming due and payable in such Fiscal Year under the Indenture.

Pursuant to the Lease, the City has covenanted to the Authority that the City will, upon receipt of a request from the Authority documenting the need to fix, prescribe, revise, or collect certain rates, fees or charges, take the necessary actions to ensure that the Authority is able to meet its obligations as specified above.

Application of Revenues

There is established under the Indenture a Water Fund, such fund to be held separately and maintained in trust by the Authority, into which fund Gross Water Revenues will be deposited, to be applied as follows:

> after payment of all Water Operation and Maintenance Expenses (including amounts reasonably required to be set aside in contingency reserves for Water Operation and Maintenance Expenses the payment of which is not then immediately required) as they become due and payable, to the Trustee, on or before the tenth (10th) Business Day preceding each Interest Payment Date, provided no Event of Default has occurred and is continuing, for deposit into the Bond Fund for the Bonds the amount equal to (i) the aggregate amount of interest coming due and payable on the Bonds on the next succeeding Interest Payment Date, plus (ii) one-half of the aggregate amount of the principal coming due and payable on the next succeeding Principal Payment Date, which payments shall be made on a parity basis with any outstanding Parity Obligations.

Amounts remaining in the Water Fund immediately after making the transfers required to be made under the Indenture shall be released to the Authority free and clear of the lien of said Indenture, to be used by the Authority for any lawful purpose including but not limited to making lease payments pursuant to the Lease.

PARITY OBLIGATIONS

The Authority covenants that no bonds or other indebtedness shall be issued or incurred that are payable in whole or in part out of the Net Water Revenues on a basis senior to the Bonds. Additional obligations may be issued on a parity with the Bonds under the Indenture or on a basis subordinate to the Bonds to the extent required. "Parity Obligations," means any leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the Authority payable and secured by a pledge of and lien upon any of the Net Water Revenues on a parity with the Bonds, entered into or issued pursuant to and in accordance with the Indenture. Following the issuance of the Bonds and the refunding of the 2005 Bonds, no Parity Obligations, other than the Bonds, will be outstanding.

Issuance of Additional Parity Obligations

Except for obligations incurred to prepay or post a security deposit for the payment of the Bonds, the Authority may issue or incur Parity Obligations under the Indenture, during the term of the Bonds only if:

(a) no Event of Default has occurred and is continuing under the Indenture;

(b) the Net Water Revenues, calculated in accordance with generally accepted accounting principles, as shown by the books of the Authority for the most recent completed Fiscal Year for which audited financial statements are available, or for any more recent consecutive twelve (12) month period selected by the Authority, in either case verified by a certificate or opinion of an independent accountant or financial consultant, are at least equal to [120%] of the amount of Maximum Annual Debt Service, plus maximum annual debt service on all Parity Obligations then Outstanding (including the Parity Obligations then proposed to be issued); and **[DISCUSS]**

Either or both of the following items may be added to such Net Water Revenues for the purpose of applying the restriction contained in this paragraph (b):

1. An allowance for revenues from any additions to or improvements or extensions of the Water Enterprise to be constructed with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been from moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 70% of the estimated additional average annual Net Water Revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Obligation, all as shown by the certificate or opinion of a qualified independent consultant employed by the Authority, may be added to such Net Water Revenues for the purpose of applying the restriction contained in this paragraph (b).

2. An allowance for earnings arising from any increase in the charges made for service from the Water Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which the Net Water Revenues

would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a qualified independent engineer employed by the Authority.

(c) upon the issuance of such Parity Obligations a reserve fund shall be established for such Parity Obligations in an amount equal to the reserve requirement with respect to such Parity Obligations.

BOND INSURANCE

[TO COME, IF APPLICABLE]

THE WATER ENTERPRISE

General

Pursuant to the Water Lease, the Water Enterprise consists of all properties and assets, real or personal, tangible and intangible, of the water system of the City now or hereafter existing, used or pertaining to the production, transmission, distribution and sale of water, including all additions, extensions, expansions, improvements and betterments thereto, and equippings thereof; provided, however, that to the extent the City is not the sole owner of an asset or property, only the City's ownership interest in such asset or property shall be considered a part of the Water Enterprise.

Service Area. The City is the sole provider of water service for residential, commercial, industrial and agricultural users within most of the City. The only exception is a small portion on the northern part of the City that is serviced by the Banning Heights Mutual Water Company. Before the City started providing water service to its residents, the old Banning Water Company, incorporated in 1884, provided that service. The City acquired the assets of the Banning Water Company in 1967. The City also purchased the Mountain Water Company, which supplied water to its customers from groundwater wells within the City and in the unincorporated portion of the County, in 1997. The City has provided water service to all other residents for over 48 years.

Background. The City is underlain by the San Gorgonio Pass and Banning Canyon Groundwater Basins. Within the City boundary, the San Gorgonio Pass Basin is subdivided into a series of storage units: the Banning Bench, Banning, Beaumont, and Cabazon storage units. The Banning Canyon Groundwater Basin in turn consists of three storage units known as the Upper, Middle, and Lower Banning Canyon storage units.

The groundwater basins are naturally recharged through the percolation of runoff, direct precipitation, subsurface inflow, and artificial recharge. The Banning Canyon area receives water from the percolation of canyon flows through the gravelly soils of the canyon bottom. The San Gorgonio River running southerly through the Banning Canyon provides intake areas for distributing water to spreading ditches that interconnect with spreading ponds to enhance percolation. The San Gorgonio Basin is recharged naturally with runoff from the adjacent San Jacinto and San Bernardino Mountains.

Management and Employees

Below is a biographical summary of the Acting Public Works Director. **[Add others?]**

Art Vela – Mr. Vela has served as the City's Acting Public Works Director r since [_____]. In that capacity, Mr. Vela oversees the day-to-day planning and administration of all activities and programs of the Water Enterprise, as well as _____. Previously, Mr. Vela was the City's _____. Prior to joining the City, Mr. Vela was _____. Mr. Vela holds a Bachelor of Science degree from _____.

As of June 30, 2014, the Water Enterprise directly employed [___] employees. _____ of these employees are represented by [_____] in all matters pertaining to wages, benefits and working conditions, while the [___] remaining mid-manager level employees are represented by the [_____]. The current memorandum of understanding with the [_____] expires in [_____]. In addition, [__] employees provided customer service support such as meter reading, field services and billing, while also providing support for the City's Electric System. [_____] of these [___] employees report to the City's Finance Department and five report to the Electric Department. [___] of these employees are represented by the [_____], while the remaining mid-manager level employee is represented by [_____]. All employees are members of the California Public Employees Retirement System. See "THE WATER ENTERPRISE – Retirement Program."

Water Sources and Supply

The San Gorgonio Pass divides two major watersheds, the Santa Ana River Watershed to the west and the Salton Sea Watershed to the east. The majority of the City drains towards the Salton Sea Watershed. The San Gorgonio River cuts through the southern area of the City's water planning area forming Banning Canyon. A portion of the City overlies the adjudicated Beaumont Basin, which is the main source of water for the City.

The first recorded claims to the waters of the Banning Canyon date back to 1875. The Banning Water Company was incorporated in 1884 to provide for the delivery of domestic irrigation water to various customers of the City. In 1913 the Banning Water Company entered into an agreement with the Consolidated Reservoir and Power Company for the delivery of 13.26 cubic feet per second of water from the headwaters of the Whitewater River. The Banning Heights Mutual Water Company and the City now receive a portion of that water. In that same year, the Banning Water Company began to operate as a public utility under the rules of the Railroad Commission (now the Public Utilities Commission). In 1957, an order was issued establishing rates for both general metered services and measured irrigation services. The City acquired the Banning Water Company in 1967. In 1997, the City purchased the Mountain Water Company, which supplied water to its customers from groundwater wells located in the City and in the unincorporated portion of the County.

In 2003, the City and other major water suppliers in the area developed a stipulated agreement with the San Timoteo Watershed Management Authority adjudicating pumping and storage rights in the Beaumont Basin. Also in 2003, the City and the Beaumont Cherry Valley Water District, another local water producer, entered into a cooperative agreement to jointly own, operate and construct three new production wells, to build a water treatment facility and to interconnect their existing potable water distribution systems and recycled water systems. This agreement arose out of the need to implement the groundwater management plan for the shared use and interest in the Beaumont Basin.

In February of 2004 a stipulated judgment (the "Judgment") adjudicating the groundwater pumping and storage rights in the Beaumont Basin was approved by the Superior Court of Califomia. The

Judgment establishes pumping rights among the two classes of pumpers: overlying and appropriator. The City is classified as an appropriator. Under the Judgment, the overlying pumpers were assigned fixed rights to 8,650 acre feet per year ("AFY"), which is considered a safe yield, with some flexibility to vary their maximum use during any five-year period. As an appropriator, the City's rights are stated as 31.43 percent of the 8,650 AFY that is not used by the overlying pumpers. In addition, the Judgment provides that if the City provides water service to the land of an overlying pumper, said pumper must assign its water rights to the City. On April 1, 2015 the Beaumont Basin Watermaster approved the Redetermination of the Beaumont Basin Safe Yield. The redetermined safe yield of the Beaumont Basin is 6,700 AFY and will remain for 10 years.

The Judgement authorized appropriators to a controlled overdraft and supplemental recharge allocation of 160,000 AFY for the first 10 years of operation starting in 2004. At the end of Calendar Year 2014 the City's storage account balance is equal to 47,532.70 acre feet.

The amount of groundwater in storage within the City, including the portion of the Beaumont Storage Unit located within the City, is estimated to be between 1.4 and 2.6 million acre-feet. The recommended safe yield for the storage units, as calculated in the *Maximum Perennial Yield Estimates for the Banning and Cabazon Storage Units and Available Water Supply form the Beaumont Basin* (Geoscience, 2011), are presented in Table No. 1, below. In the Geoscience report, the maximum perennial yield was determined by storage unit.

The following table reflects the current groundwater sources for the City and the recommended range of yield.

TABLE NO. 1
SOURCES OF GROUNDWATER CITY WATER

Sources	Perennial Yield (AFY)
Banning Storage Unit	1,130
Banning Bench Storage Unit	1,960
Banning Canyon Storage Unit	4,070
Cabazon Storage Unit	5,265
Beaumont Storage Unit	2,514
Grand Total	14,939

Source: City of Banning.

The City's existing and planned water supply sources are reflected in the table below.

TABLE NO. 2
EXISTING AND PLANNED WATER SOURCES OF THE CITY

Water Supply Source	2015	2020	2025	2030	2035
Banning Storage Unit	1,218	1,130	1,130	1,130	1,130
Banning Bench Storage Unit	1,960	1,960	1,960	1,960	1,960
Banning Canyon Storage Unit	4,070	4,070	4,070	4,070	4,070
Beaumont Storage Unit	2,514	2,514	2,514	2,514	2,514
Cabazon Storage Unit	1,185	1,405	1,648	1,916	2,212
Recycled Water Use[1]	0	1,680	1,680	1,680	1,680
Return Flows from Recycled Water Irrigation [1]	0	420	420	420	420
Return Flows from Potable Water Irrigation	9	18	28	38	48
State Water Project	2,595	2,595	2,595	2,595	2,595
Total	**13,551**	**15,792**	**16,045**	**16,323**	**16,629**

Source: City of Banning 2010 Urban Water Management Plan (Geoscience, 2011)
[1] These values were revised to zero as compared to the 2010 Urban Water Management Plan due to the fact that the City of Banning has not constructed the facilities to provided recycled water as expected. It is anticipated that a treatment facility will be constructed by 2020.

Recycled water supplies are reflected in Table No. 2, above, as being equal to projected irrigation demand. Recycled water production is anticipated to exceed demand and to be applied in other beneficial ways. Water used for irrigation purposes and not utilized by the plants percolates to the groundwater and is available for future use. That volume of water is known as return flow. Return flows from irrigation were calculated from current and projected demands. The return flows are equal to twenty-five percent (25%) of the total amount of water used for irrigation plus the portion of residential water used for outdoor irrigation, which equals fifty percent (50%) in the City and surrounding areas. Any irrigation occurring in the industrial, commercial or public sector was not included in the return flow calculations.

Storage and Distribution Systems. The water system consists of groundwater wells, reservoirs and a distribution line covering approximately 23 square miles and servicing approximately 28,000 people via approximately 10,500 metered connections.

The City operates and maintains 21 potable groundwater production wells and 1 non-potable production well which is used to provide water to a local golf course. Half of the wells are located in Banning Canyon and the remaining ones are located in the Banning Bench, Banning and Beaumont storage units. The 22 wells have a total design capacity of approximately 28,450 gallons per minute ("gpm"). During dry years, the capacity of the Canyon and Banning Bench wells decrease in response to decreased precipitation and subsequent recharge. The following table shows a summary of the City's wells and their current capacities by storage unit.

TABLE NO. 3
WELL CAPACITIES BY STORAGE UNIT

Wells by Storage Unit	Well Design Capacity		Dry Year Capacity	
	gpm	AFY	gpm	AFY
Banning	3,500	5,646	2,850	4,597
Banning Bench	3,650	5,888	2,750	4,463
Banning Canyon	8,600	13,873	4,250	6,856
Cabazon	900	1,452	850	1,371
Beaumont	7,650	12,340	7,125	11,493

Source: City of Banning 2010 Urban Water Management Plan (Geoscience, 2011)

Regulatory Compliance & Water Treatment

Before September 2014, the State of California did not have a statewide program to manage groundwater or a mandatory groundwater management statute. Groundwater management was solely a local responsibility accomplished under the authority of the California Water Code and a number of court decisions. There were six possible methods for groundwater management under prior law. Groundwater management was mainly achieved by a combination of one or more of the following methods: (i) overlying rights; (ii) local agencies; (iii) adjudicated basins; (iv) formation of special act districts with groundwater management authority; (v) assembly bill 3030; or (vi) local groundwater ordinances.

On September 16, 2014, the California Governor signed Assembly Bill No. 1739 and Senate Bill Nos. 1168 and 1319 (collectively, the Sustainable Groundwater Management Act, or "SGMA") into law. The SGMA constitutes a legislative effort to regulate groundwater on a Statewide basis. Under the SGMA, the State of California Department of Water Resources ("DWR") was required to designate groundwater basins in the State as high, medium, low or very low priority for purposes of groundwater management by January 31, 2015. The San Gorgonio Pass and Banning Canyon Groundwater Basins have been initially designated as medium priority. By January 31, 2017, local groundwater producers must establish or designate an entity (referred to as a groundwater sustainability agency, or "GSA"), subject to DWR's approval, to manage each high and medium priority groundwater basin. At this point the GSA has not been designated for San Gorgonio Pass and Banning Canyon Basins. The City will work with public and private parties that have interests in these basins to agree to an appropriate approach and mechanisms for designating a GSA before the deadline. Each GSA is tasked with submitting a groundwater sustainability plan for DWR's approval by January 31, 2020. Groundwater sustainability plans must include sustainability goals and a plan to implement such goals within 20 years. Alternatively, groundwater producers can submit a groundwater management plan under Part 2.75 of the California Water Code or an analysis for DWR's review demonstrating that a groundwater basin has operated within its sustainable yield for at least 10 years. Such alternative plan must be submitted by January 31, 2017 and updated every five years thereafter.

GSAs must consider the interest of all groundwater users in the basin and may require registration of groundwater users, the installation of flow meters to measure groundwater extractions and annual reporting of extractions. In addition, GSAs are authorized to impose spacing requirements on new wells, monitor, regulate and limit or condition groundwater production and establish production allocations among groundwater producers, among other powers. GSAs are authorized to impose fees to fund such activities and to fine or issue cease and desist orders against producers that violate GSA's regulations. Groundwater sustainability plans must include sustainability goals and a plan to implement such goals within 20 years.

The City does not currently expect its groundwater extraction rights or costs in the San Gorgonio Pass and Banning Canyon Groundwater Basins to change significantly as a result of the enactment of the SGMA. The SGMA expresses the legislature's intention that it will not have an effect on water rights.

The City uses two simple methods for disinfection of the water circulated through the Water Enterprise. Chlorine tablets are pushed into the water stream by mechanical equipment and commercial grade chlorine bleach injected by pumps into the water stream at the various well sites. These methods of disinfection are in compliance with the water treatment requirements of the State of California Department of Health Services.

Currently, the Water Enterprise operates under Domestic Water Supply Permit No. 05-20-06P-004 issued on May 2, 2006 (the "Water Permit"). The Water Permit does not currently have an expiration date.

California's maximum contaminant level ("MCL") for total chromium was established in 1977, when the California Department of Public Health ("CDPH") adopted what was then a "National Interim Drinking Water Standard" for chromium. Chromium-6 has been regulated under the 50-µg/L primary drinking water standard MCL for total chromium. The total chromium MCL was established to address exposures to chromium-6, the more toxic form of chromium. The US Environmental Protection Agency ("EPA") adopted the same 50-µg/L standard tor total chromium, but in 1991 raised the federal MCL to 100 µg/L. California did not follow US EPA's change and stayed with its 50-µg/L standard.

In August 2013 CDPH proposed an MCL for chromium-6 of 10 µg/L. On April 15, 2014, CDPH submitted the hexavalent chromium MCL regulations package to the Office of Administrative Law ("OAL") for its review for compliance with the Administrative Procedure Act. On May 28, OAL approved the regulations, which then became effective on July 1, 2014.

The City of Banning currently operates 7 potable wells that are expected to exceed the new MCL of 10 µg/L. Combined, the 7 wells produce approximately 3,000 AFY. Chromium-6 in the wells range from 10.5µg/L to 22.5 µg/L. On June 17, 2015 the State Water Resource Control Board, Division of Drinking Water, issued to the City *Compliance Order No. 05-20-15R-003 for Violation of Health and Safety Code Section 116555(a)(1) and the Primary Drinking Water Standard for Hexavalent Chromium* ("Compliance Order"). Although the Compliance Order is for one of the seven wells (the one with the highest Chromium-6 levels), the City anticipates that similar compliance orders will be issued for the remaining 6 wells. The City plans to reclassify the well with the highest Chromium-6 levels to a non-potable well which will be used to irrigate a local golf course.

As part of the City's corrective action plan it will analyze each well to determine the most cost effective method for meeting the Chromium-6 MCL. Mitigation will include well modifications to reduce intrusion of Chromium-6. This option has the potential of reducing the overall production of the wells; therefore additional wells would be constructed to make up for the loss. Initial analyses of the wells will occur by the end 2015. The second option is well head treatment, which is the costlier of the two options. It is estimated that the capital cost for the development of treatment facilities at the 7 wells can range from $10 million to $30 million depending on the treatment method.

With the exception of the new Chromiu-6 requirements, the City is in compliance with regulations and requirements of the Water Permit.

Water Rates and Charges

Water Rates. Water rates have traditionally been set by the City Council and are not subject to review by any state or local government agency. Pursuant to the Water Lease, the City has agreed to take all steps necessary to validate the water rates determined by the Authority to be required in order to ensure collection of sufficient revenues to ensure that sufficient Net Water Revenues will be available for payment of the debt service on the Water Bonds when due. The most recent revision to the City's water rate structure was approved by the City Council on October 12, 2010 and includes water rates increases to become effective annually from 2010 to and including September 1, 2013. The most recent revised rates and charges pursuant to such rate structure became effective on October 13, 2010 and are summarized in the following table:

TABLE NO. 4
WATER RATES AND CHARGES

Meter Size (Inches)	Customer Charge	Commodity Charge (Rate Plan 0-12 CCF)[1]	Commodity Charge (Rate Plan 13-25 CCF)	Commodity Charge (Rate Plan 26+ CCF)
5/8	$ 20.94	$1.84 per CCF	$2.34 per CCF	$2.64 per CCF
3/4	20.94	1.84per CCF	2.34 per CCF	2.64 per CCF
1	31.75	1.84per CCF	2.34 per CCF	2.64 per CCF
1 1/2	58.74	1.84per CCF	2.34 per CCF	2.64 per CCF
2	91.14	1.84per CCF	2.34 per CCF	2.64 per CCF
3	166.77	1.84per CCF	2.34 per CCF	2.64 per CCF
4	274.83	1.84per CCF	2.34 per CCF	2.64 per CCF
6	544.79	1.84per CCF	2.34 per CCF	2.64 per CCF
8	868.83	1.84per CCF	2.34 per CCF	2.64 per CCF

[1] "CCF" means hundred cubic feet, a measure of water consumption.
Source: City of Banning.

The Autbority has also covenanted under the Indenture to have in effect rules and regulations requiring each consumer or customer connected with the Water Enterprise to pay the rates and charges applicable to the Water Enterprise and providing for the billing thereof and for a due date and a delinquency date for each bill. This covenant includes the obligation not to permit any entity or person (including governmental entities) to receive services from the Water Enterprise free of charge.

[The Authority believes that its current water rates comply with the requirements of Proposition 218 and expects that any future water rates will comply with Proposition 218's procedural and substantive requirements to the extent applicable thereto.] **[TO BE CONFIRMED]** For a discussion regarding a challenge to tiered rate structure in the City of San Juan Capistrano. See "CONSTITUTIONAL LIMITATIONS" herein.

Water Connection Fee. The City charges a one-time connection fee for each new connection to the water system. Commencing on January 2005, the approved water connection fee being collected is $7,232 per equivalent dwelling unit ("EDU"). Prior to January 2005, the approved water connection fee was $4,390 per EDU. The revised water connection fee takes into account the cost of acquiring rights to new water sources, constructing a treatment plant to treat said water and constructing other facilities to serve new users.

Water Frontage Fees. The City also collects a frontage fee equal to $25.00 per foot to new development that abuts a street or easement that contains an existing pipe. The frontage fee is paid only by those developments for which prior owners have not paid a share of the infrastructure.

Water Shortage Contingency Plan

Water conservation has been a key element in meeting the water demand within the City's service area during droughts. The recent drought, in particular, has severely affected the availability of water supplies and, therefore, has substantially increased the need for more water conservation. For the past three years, California has experienced extremely dry weather resulting in drought conditions affecting the State. Water Year 2014, which ended in September (a Water Year begins on October 1 and ends on the following September 30), was the third driest year in 119 years of State records, following 1924 and 1977. Water Storage in California's major surface reservoirs is currently significantly below historical averages, despite recent storms. Over three-fourths of the State ended 2014 in Extreme or Exceptional drought, according to the U.S. Drought Monitor.

Water conservation continues to be an important component of the City's overall water resources planning. The City's goal is to reduce its urban per capita water use to meet the requirements of Senate Bill X7-7, the Water Conservation Act of 2009 ("SBX7-7"). SBX7-7 established a goal of reducing statewide urban per capita water use by 20% by December 31, 2020. The City's per capita water demand for Fiscal Year 2013-14 was _____ gallons per day per capita ("gpcd"), which is [higher/lower] than the City's 2015 target of _____ gpcd. The City will need to reduce its per capita water use by ___% by 2020 in order to meet its per capita water use target of ____ gpcd.

On April 1, 2015, Governor Jerry Brown issued Executive Order B-29-15 (the "Executive Order") to address the ongoing drought conditions in California. The Executive Order, among other things, directed the State Water Resources Control Board (the "SWRCB") to impose restrictions to achieve a statewide 25% reduction in potable urban water usage from 2013 levels through February 28, 2016. The Executive Order further directs the SWRCB to impose restrictions to require that commercial, industrial and institutional properties, such as campuses, golf courses and cemeteries, immediately implement water efficiency measures to reduce potable water usage, and calls upon the SWRCB to direct urban water suppliers to develop rate structures and other pricing mechanisms, including but not limited to surcharges, fees and penalties, to maximize water conservation consistent with statewide water restrictions. The Executive Order includes several provisions to increase enforcement activity against water waste and to streamline the State and local response to drought-related initiatives.

On May 5, 2015, following a formal rulemaking process and public comment period, the SWRCB adopted an emergency regulation to implement the Executive Order. The regulation went into effect on May 18, 2015, and will remain in effect through February 28, 2016. Under the regulation, 411 urban water providers in the State are classified into nine tiers and assigned a required conservation standard which is imposed on each tier. The tier classifications are based upon a water supplier's per capita water usage in the three month period July to September 2014. The conservation standard applied to the tiers ranges from a 4% reduction in total potable water production (although no water providers were proposed to be classified in such tier absent the demonstration by a water provider of satisfaction of certain specified criteria) to a 36% reduction in total potable water production from 2013 levels. As adopted, the regulation requires areas with high per capita water usage to achieve proportionately greater reductions in water use than those with low use. The regulation provides that the 2,600 "small water suppliers" in the State that serve fewer than 3,000 customers or deliver less than 3,000 acre-feet of water annually are required to either achieve a 25% conservation standard or restrict outdoor irrigation to no more than two days per week. Commercial, industrial and institutional properties that are not served by a water supplier (or are self-supplied) are similarly required to either achieve a 25% conservation standard or restrict outdoor irrigation to no more than two days per week. Under the regulation, compliance by the 411 urban water suppliers will be assessed for the period of June 2015 through February 2016 as compared to water usage in the corresponding prior timespan of June 2013 through February 2014. In

addition to the total monthly water production and specific reporting on residential use and enforcement action previously adopted by the SWRCB, the regulation adopted May 5, 2015 also includes new reporting requirements for urban water suppliers to include information on water use in the commercial, industrial and institutional sectors. In order to enforce compliance by water suppliers, the regulation authorizes the SWRCB to issue informational orders, conservation orders or cease and desist orders requiring additional specific actions by a water supplier that is not meeting its conservation standard. Failure to provide information requested pursuant to an informational order within the required timeframe would be subject to civil liability of up to $500 per day for each day out of compliance. Water agencies that violate cease and desist orders may be subject to a civil liability of up to $10,000 a day.

Under the adopted regulation, the City is classified in Tier 8 (June 2014 - February 2015 residential per capita water use of 170 gallons or more per day) and is subject to the 32% conservation standard proposed for that tier. The SWRCB provides a calculation of amounts conserved by the Water System customers to be 7% already. Under the adopted regulation, the Water System customers will need to conserve an additional 25%.

In anticipation of the continuation of drought conditions and the possibility of water conservation measures and other restrictions on water use being imposed, the City has adopted it Ordinance No. 1489, "Drought Water Conservation." Ordinance No. 1489 identifies mandatory restrictions in addition to those mandatory restrictions identified by the SWRCB in their emergency regulation.

[The City and the Authority estimate that the current drought restrictions will decrease gross water revenues by approximately $2,600,000.00 during fiscal year 2015-16. Nevertheless, the City and the Authority believe, although they cannot give any assurances, that Net Water Revenues will still generate sufficient Net Water Revenues to pay Debt Service payments on the Bonds as they become due and payable. In any event, the City has covenanted in the Water Enterprise Lease Agreement to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water Enterprise during each Fiscal Year so that there are at least sufficient Net Water Revenues to pay Debt Service payments on the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rates and Charges.] **[TO BE CONFIRM]**

On April 28, 2015, concurrent with the SWRCB's release of the Notice of Proposed Emergency Regulations for the subsequently adopted regulation, Governor Jerry Brown also announced that he would propose new legislation to provide expanded enforcement powers to local agencies, including the ability to deputize staff to issue water conservation-related warnings and citations and to impose fines up to $10,000 per day for infractions of locally imposed water restrictions.

Given the flexibility in the amount of water that the City can produce from the San Gorgonio Pass and Banning Canyon Groundwater Basins and the City's water use efficiency programs currently in place, the City believes that there is an adequate water supply for the residents and businesses of the City for the next 20 years.

Demand and Sales

The following tables set forth past, current and projected water demand within the City by major categories, in acre-feet per year ("AFY") at five year intervals from 2011 to 2015, but including last year's usage. In 2011 water demand was 7,373 acre-feet. In the Fiscal Year ending ("FYE") June 30, 2015, water demand is projected to be 7,908 acre-feet. According to this table, for the last full year of operations, residential uses comprised approximately fifty-six percent (56%) of total consumption. However, as indicated on Table No. 6, below, the largest residential user of the Water Enterprise accounts only for sixty-two tenths of one percent (0.62%) of the percent of consumption and only approximately fifty-seven tenths of one percent (0.57%) of the revenues during the same year.

TABLE NO. 5
HISTORIC AND PROJECTED WATER CONSUMPTION SALES
For Fiscal Year Ended June 30,

Category	2011 (AFY)	2012 (AFY)	2013 (AFY)	2014 (AFY)	2015 [1] (AFY)
Residential	4,332	4,530	4,473	4,471	4,475
Commercial	1,941	2,008	2,105	2,134	2,176
Industrial	115	123	114	111	111
Public	98	108	106	106	106
Irrigation	887	1,072	963	1,045	1,040
Total	7,373	7,841	7,761	7,867	7,908

Source: City of Banning.
[1] Projected values.

The ten largest water users, which are listed in the table below, account for approximately 28 percent of the annual water consumption. During the last Fiscal Year, the largest private user, Sun Lakes, accounted for approximately 13.6% of the total usage. Sun Lakes is a development consisting of approximately 3,818 residences, one 18 hole championship golf course, one 18 hole executive course and other amenities. A large percentage of the water consumed by Sun Lakes is used for irrigation of the golf courses located within, and primarily serving, the development.

TABLE NO. 6
TEN LARGEST USERS OF WATER
12 Months Ended June 30, 2014

Customers	Business Type	12 Month Consumption (AFY)	Percent of System Consumption	Percent of System Revenue
Sun Lakes	Commercial[1]	1,079.03	13.64%	12.79%
Banning Unified School District	Government	297.94	3.77	3.62
Smith Correctional Facility	Government	218.94	2.77	1.08
City of Banning	Government	222.96	2.82	0.64
Robertson's Ready Mix	Commercial	155.71	1.97	1.61
High Valley Water District	Utility	74.01	0.94	0.86
San Gorgonio Hospital	Hospital	56.00	0.71	0.71
Mt Springs Mfg. Home Community	Residential	49.42	0.62	0.57
Peppertree Apartments	Residential	41.96	0.53	0.49
H K Realty	Residential	37.80	0.48	0.44
Total[2][3]		2,233.77	28.25%	22.84%

Source: City of Banning.
[1] The residential customers within Sun Lakes are connected to the Water Enterprise on an individual basis and their respective consumption is not reflected on this table. The Sun Lakes development is a large customer of the Water Enterprise and its water consumption is primarily for the golf courses and other common areas.
[2] Total System Consumption for fiscal year 2013/14 is 7,908 AFY.
[3] Total System Revenue for fiscal year 2013/14 is $10,245,552.

The City's projected water supply for the current year and each five years through the year 2030 is shown in the following table.

TABLE NO. 7
PROJECTED WATER SUPPLY AND DEMAND COMPARISON BASED ON POPULATION GROWTH
For the Fiscal Year Ending June 30,

Category	2015 (AFY)	2020 (AFY)	2025 (AFY)	2030 (AFY)
Total Water Supply	15,563	15,792	16,045	16,323
Total Demand	10,376	10,183	11,243	12,413
Projected Supply Surplus	**5,187**	**5,609**	**4,802**	**3,910**

Source: City of Banning.

Capital Improvement Program

The City has developed a comprehensive Capital Improvement Program for the Water Enterprise (the "Water CIP"). The Water CIP is intended to address current and future needs of the Water Enterprise. The Water CIP project anticipated to be funded with proceeds of the Bonds includes the replacement of a 20 inch transmission line in the Banning Canyon at an estimated cost of $2,500,000.

In addition to the replacement of the transmission line described above, the Water CIP project list includes the following projects for which most of the funding sources have been identified and which the City plans to complete in the next 5 years:

1. Construction of an additional well. The authority plans to construct an additional well within the eastern boundary of the City solely for the Authority's use. The well will be constructed within the Cabazon Storage Unit to provide relief in the case of overdraft conditions in other units and to accommodate future development. It is anticipated that the project will cost $1,500,000.00

2. Construction of an Irrigation Water System. The Irrigation Water System includes the installation of 5.3 miles of 24 inch water transmission pipeline from the Wastewater Treatment Plant to the intersection of Highland Home Road and Sun Lakes Boulevard. The construction of the project has been split into separate phases of construction (Segment A, B and C). The City has completed the construction of Segment A. The cost of the remaining segments have been estimated to cost $4,700,000.00.

The Water CIP also includes some projects which the Authority plans to complete as soon as funding becomes available. Such projects include, surface water run-off recharge facilities and the construction of a third well within the Beaumont Basin pursuant to the City's agreement with the Beaumont Cherry Valley Water District.

Collection Procedures

Customers being provided water, wastewater and electric services by the City receive a single monthly bill. If payment is not received by the City on or prior to the 20th day following the mailing of the original bill, accounts are considered delinquent. Customers are given an extra 10 days grace period to pay their bills before a notice is posted on their door stating that if no payment is received within 48 hours service will be discontinued due to non-payment. The City does not usually post notices or discontinue service where the amounts due are less than $[30.00]. If the City does post a notice, the customer's bill will reflect a $[12.00] notice charge. If the customer fails to pay by the date indicated in the notice and service to an account is discontinued, the customer must pay a re-connection fee to reestablish service. **[Confirm/update]**

TABLE NO. 8
HISTORIC WATER COLLECTIONS — METERED SALES
For the Fiscal Year Ended June 30,

Category	2010	2011	2012	2013	2014
Residential	$4,539,173	$4,534,773	$5,664,709	$6,054,310	$6,440,802
Commercial	1,688,688	1,770,229	2,354,828	2,410,059	2,609,985
Industrial	70,798	73,498	90,893	91,926	96,816
Public	30,746	25,057	29,787	26,776	25,905
Irrigation[(1)]	61,501	617,315	862,522	936,894	1,072,044
Total	$6,390,906	$7,020,872	$9,002,739	$9,519,965	$10,245,552
Collection Rate	[TO COME]				

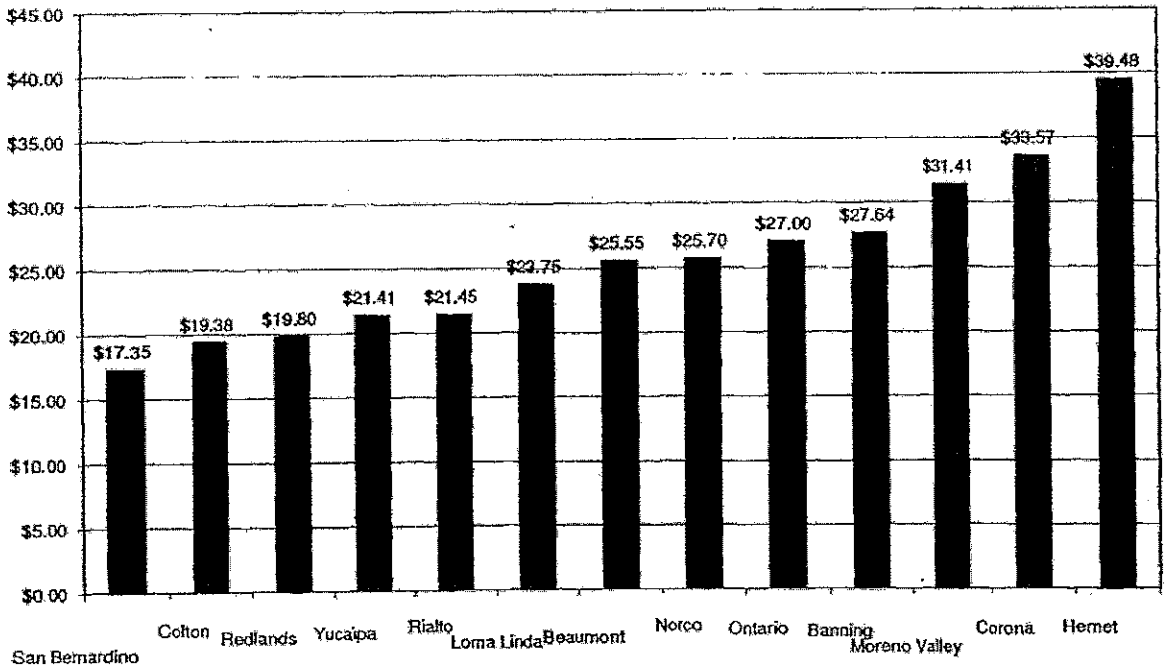
Source: City of Banning.
(1) [ADD FN EXPLAINING INCREASE SINCE FY 2010]

Table No. 8, above, reflects the amounts collected by the City only from metered sales of water from the Water Enterprise. In addition to metered charges, a customer's bill may reflect charges related to the operation of the Water Enterprise that are not included in the amounts shown in the above table but which are reflected in the amounts shown as Water Sales and Service Charges in Table No. 9, below.

The following chart reflects the comparison of a typical monthly bill for consumers of the Water Enterprise and consumers in the surrounding communities:

Comparison of Monthly Water Charges 15 hcf per month for 5/8 meter

[Provide updated table]



Source: City of Banning.

Historic Water Enterprise Operating Results

The following table presents the operating results of the Water Enterprise for the last five Fiscal Years. These results have been extracted from the City's financial statements. The City's auditor, Lance, Soll & Lunghard, LLP (the "Auditor"), has prepared the City's audited financial statements for FYE June 30, 2014, which include the operation of the Water Enterprise, are attached to this Official Statement as Appendix B and should be reviewed in their entirety.

The amounts reflected as Water Sales and Service Charges in the following table include metered sales, turn-on fees, reconnection fees, backflow charges and other operational charges that are regularly or from time to time invoiced to customers of the Water Enterprise. For the amounts concerning only metered water sales, please refer to Table 8, above.

As previously discussed, the City is classified in Tier 8 (June 2014 - February 2015 residential per capita water use of 170 gallons or more per day) and is subject to the 32% conservation standard proposed for that tier. It is projected that the Water Enterprise's revenues will be reduced by approximately $2,600,000.00 during the 2015-2016 fiscal year due to the mandated conservation measures.

TABLE NO. 9
HISTORIC OPERATING RESULTS FOR THE WATER ENTERPRISE
(For Fiscal Year Ended June 30)

	2010	2011	2012	2013	2014
Gross Revenues					
Water Sales and Service Charges	$7,225,142	$7,463,052	$9,222,407	$10,033,378	$10,608,093
Connection Fees	2,520	275	5,274	1,180	-
Interest Revenue	131,203	62,475	32,241	16,306	72,380
Miscellaneous Income [1]	219,736	69,987	174,456	106,391	-
Total Gross Revenues	**$7,578,601**	**$7,595,789**	**$9,434,378**	**$10,157,255**	**$10,680,473**
Operation and Maintenance Expenses					
Salaries and Benefits	$1,296,654	$1,428,519	$1,431,672	$1,493,970	$1,403,942
Supplies and Services	3,697,329	2,799,902	3,350,169	3,449,751	3,341,014
Repairs and Maintenance	13,550	16,875	64,977	17,998	13,000
Total Operation and Maintenance Expenses[2]	**$5,007,533**	**$4,245,296**	**$4,846,818**	**$4,961,719**	**$4,757,956**
Net Water Revenues	**$2,571,068**	**$3,350,493**	**$4,587,560**	**$5,195,536**	**$5,922,517**
Debt Service					
2005 Water Bonds	$2,298,775	$2,293,438	$2,295,438	$2,291,338	$2,291,138
Total Debt Service	**$2,298,775**	**$2,293,438**	**$2,295,438**	**$2,291,338**	**$2,291,138**
Coverage Ratio[3]	**1.12**	**1.46**	**2.00**	**2.27**	**2.58**

Source: City of Banning.
[1] Includes certain miscellaneous items and frontage fees.
[2] Pursuant to the Indenture, Water Operation and Maintenance Expenses do not include debt service or similar payments on Parity Obligations, depreciation or amortization of intangibles or other bookkeeping entries of similar nature.
[3] Debt Service coverage for fiscal year 2009-10 was below the rate covenant. Water rate increases were approved October 2010 with increases implemented October 2010, September 2011, September 2012 and September 2013.

Projected Operating Results and Coverage Ratio for the Water Enterprise

The City's projected operating results and coverage ratio for the Water Enterprise for the current and next four Fiscal Years, calculated under the provisions of the Indenture, are set forth below. These projections are based on the City's judgment as to the most probable occurrence of certain future events. The assumptions and footnotes set forth beneath the table are material to the projections and variations in the assumptions could produce substantially different financial results. Actual revenues and expenses may vary materially from these projections.

TABLE NO. 10
PROJECTED OPERATING RESULTS AND COVERAGE RATIO
FOR THE WATER ENTERPRISE
(For Fiscal Year Ending June 30)

	2015	2016	2017	2018	2019
Gross Revenues					
Water Sales and Service Charges					
Connection Fees					
Interest Revenue					
Miscellaneous Income [1]					
Total Gross Revenues					
Operation and Maintenance Expenses					
Salaries and Benefits					
Supplies and Services					
Repairs and Maintenance					
Total Operation and Maintenance Expenses[2]					
Net Water Revenues					
Debt Service					
2005 Water Bonds					
Total Debt Service					
Coverage Ratio[3]					

Source: City of Banning.
[1] [TO COME]

These estimated projections do not account for potential impact on operations resulting from the implementation of conservation measures in response to the recent Executive Order issued by Governor Brown to address the ongoing drought conditions in California or any potential challenge to the current tiered rate structure similar to the challenge faced by the City of San Juan Capistrano. See "THE WATER ENTERPRISE – Water Shortage Contingency Plan" and "CONSTITUTIONAL LIMITATIONS" herein. The City and the Authority believe, although they cannot give any assurances, that the Water Enterprise would still generate sufficient Net Water Revenues to pay Debt Service payments on the Bonds as they become due and payable. In any event, the City has covenanted in the Water Enterprise Lease Agreement to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water Enterprise during each Fiscal Year so that there are at least sufficient Net Water Revenues to pay Debt Service on the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rates and Charges."

Retirement Programs

All permanent employees of the City are covered under the California Public Employees' Retirement System ("CalPERS"), a public employee, defined benefit pension plan. CalPERS issues a separate, publicly available financial report that includes financial statements and required supplemental information of participating public entities within the State of California. Copies of the CalPERS annual financial report may be obtained from the CalPERS Executive Office, Lincoln Plaza Complex, 400 Q Street, Sacramento, CA 95811 or at www.calpers.ca.gov.

The California Public Employees' Pension Reform Act of 2012 ("PEPRA") enacted statewide pension reforms for state and local public retirement systems effective January 1, 2013. The impacts of the PEPRA primarily apply to employees first hired by a public agency on or after January 1, 2013. Some of these provisions include certain limits on the amount and types of compensation that may be included by a retirement system in calculating pension benefits, the imposition of new formulas for the calculation of pension benefits for employees, certain requirements for the sharing of the costs of pension benefits by employees, and certain limitations on the adoption of new defined benefit plans. The PEPRA prohibits certain retroactive enhancements to pension benefit formulas for all employees, imposes certain limits on subsequent employment for retired employees, prohibits the purchase of non-qualified permissive service credit by all employees after January 1, 2013, and requires for any employee the forfeiture of pension and retirement-related benefits for certain felony convictions.

For fiscal year ended June 30, 2014, as a condition of participation in CalPERS, miscellaneous plan employees are required to contribute 8% of their annual covered salary to CalPERS. The City is required to contribute at an actuarially determined rate calculated as a percentage of covered payroll. The employer contribution for the year ended June 30, 2014 was 20.255% for miscellaneous employees. For the fiscal year ended June 30, 2014, the City's annual pension cost (employer contribution) of $1,484,981 for miscellaneous employees was equal to the City's required contributions. [The Water Enterprise contributed $_____, for the fiscal years ended June 30, 2014, which represented 100% of its required contributions. The required contribution was determined as part of the June 30, 2011 actuarial valuation using the entry age normal actuarial cost method.

For fiscal year ended June 30, 2014, as a condition of participation in CalPERS, safety plan employees are required to contribute 9% of their annual covered salary to CalPERS. The City is required to contribute at an actuarially determined rate calculated as a percentage of covered payroll. The employer contribution for the fiscal year ended June 30, 2014 was 41.376% for safety employees. For the year ended June 30, 2014, the City's annual pension cost (employer contribution) of $986,426 for safety employees was equal to the City's required contributions. The required contribution was determined as part of the June 30, 2011 actuarial valuation using the entry age normal actuarial cost method. The Water Enterprise does not contribute towards the safety plan.] **[Confirm]**

CONSTITUTIONAL LIMITATIONS

Constitutional Limitations on Governmental Spending

Article XIIIA of the California Constitution limits the taxing powers of California public agencies. Article XIIIA provides that the maximum *ad valorem* tax on real property cannot exceed one percent of the "full cash value" of the property, and effectively prohibits the levying of any other *ad valorem* property tax except for taxes above that level required to pay debt service on voter-approved general obligation bonds. "Full cash value" is defined as "the County Assessor's valuation of real property as shown on the 1975/76 tax bill under 'full cash value' or, thereafter, the appraisal value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975

assessment." The "full cash value" is subject to annual adjustment to reflect inflation at a rate not to exceed two percent or a reduction in the consumer price index or comparable local data, or declining property value caused by damage, destruction or other factors.

The foregoing limitation does not apply to *ad valorem* taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters before July 1, 1978 or any bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the votes cast by the voters voting on the proposition.

Under Article XIIIB of the California Constitution, state and local government entities have an annual "appropriations limit" which limits their ability to spend certain moneys called "appropriations subject to limitation," which consist of tax revenues, certain state subventions and certain other moneys, including user charges to the extent they exceed the costs reasonably borne by the entity in providing the service for which it is levying the charge. The Authority believes that the water service and use charges imposed by the Authority do not exceed the costs the Authority reasonably bears in providing water service. In general terms, the "appropriations limit" is to be based on certain 1978/79 expenditures, and is to be adjusted annually to reflect changes in the consumer price index, population, and services provided by these entities. Among other provisions of Article XIIIB, if an entity's revenues in any year exceed the amount permitted to be spent, the excess would have to be returned by revising tax rates or fee schedules over the subsequent two years.

Proposition 218

Proposition 218, a State ballot initiative known as the "Right to Vote on Taxes Act," was approved by the voters on November 5, 1996. The initiative added Articles XIIIC and XIIID to the California Constitution, creating additional requirements for the imposition by most local governments of "general taxes," "special taxes," "assessments," "fees," and "charges." Proposition 218 became effective, pursuant to its terms, as of November 6, 1996, although compliance with some of its provisions was deferred until July 1, 1997, and certain of its provisions purport to apply to any tax imposed for general governmental purposes (*i.e.*, "general taxes") imposed, extended or increased on or after January 1, 1995 and prior to November 6, 1996.

Article XIIID imposes substantive and procedural requirements on the imposition, extension or increase of any "fee" or "charge" subject to its provisions. A "fee" or "charge" subject to Article XIIID includes any levy, other than an *ad valorem* tax, special tax or assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership. Article XIIID prohibits, among other things, the imposition of any proposed fee or charge, and, possibly, the increase of any existing fee or charge, in the event written protests against the proposed fee or charge are presented at a required public hearing on the fee or charge by a majority of owners of the parcels upon which the fee or charge is to be imposed. Except for fees and charges for water, sewer and refuse collection services, the approval of a majority of the property owners subject to the fee or charge, or at the option of the agency, by a two-thirds vote of the electorate residing in the affected area, is required within 45 days following the public hearing on any such proposed new or increased fee or charge. The California Supreme Court's decisions in *Richmond v. Shasta Community Services District*, 32 Cal.4th 409 (2004) (*"Richmond"*), and *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006) (*"Bighorn"*) have clarified some of the uncertainty surrounding the applicability of Section 6 of Article XIIID to service fees and charges. In *Richmond*, the Shasta Community Services District charged a water connection fee, which included a capacity charge for capital improvements to the water system and a fire suppression charge. The Court held that both the capacity charge and the fire suppression charge were not subject to Article XIIID because a water connection fee is not a property-related fee or charge because it results from the property owner's voluntary decision to apply for the connection. In both *Richmond* and *Bighorn*, however, the

Court stated that a fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" within the meaning of Article XIIID, rejecting, in *Bighorn*, the water agency's argument that consumption-based water charges are not imposed "as an incident of property ownership" but as a result of the voluntary decisions of customers as to how much water to use.

Article XIIID also provides that "standby charges" are considered "assessments" and must follow the procedures required for "assessments" under Article XIIID and imposes several procedural requirements for the imposition of any assessment, which may include (1) various notice requirements, including the requirement to mail a ballot to owners of the affected property; (2) the substitution of a property owner ballot procedure for the traditional written protest procedure, and providing that "majority protest" exists when ballots (weighted according to proportional financial obligation) submitted in opposition exceed ballots in favor of the assessments; and (3) the requirement that the levying entity "separate the general benefits from the special benefits conferred on a parcel" of land. Article XIIID also precludes standby charges for services that are not immediately available to the parcel being charged.

Article XIIID provides that all existing, new or increased assessments are to comply with its provisions beginning July 1, 1997. Existing assessments imposed on or before November 5, 1996, and "imposed exclusively to finance the capital costs or maintenance and operations expenses for [among other things] water" are exempted from some of the provisions of Article XIIID applicable to assessments.

Article XIIIC extends the people's initiative power to reduce or repeal existing local taxes, assessments, fees and charges. This extension of the initiative power is not limited by the terms of Article XIIIC to fees, taxes, assessment fees and charges imposed after November 6, 1996 and absent other authority could result in retroactive reduction in any existing taxes, assessments, fees or charges. In *Bighorn*, the Court concluded that under Article XIIIC local voters by initiative may reduce a public agency's water rates and delivery charges. The Court noted, however, that it was not holding that the authorized initiative power is free of all limitations, stating that it was not determining whether the electorate's initiative power is subject to the public agency's statutory obligation to set water service charges at a level that will "pay the operating expenses of the agency, . . . provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due."

[On April 20, 2015, the California Court of Appeal, Fourth District, issued an opinion in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* upholding tiered water rates under Proposition 218 provided that the tiers correspond to the actual cost of furnishing service at a given level of usage. The opinion was specific to the facts of the case, including a finding that the City of San Juan Capistrano did not attempt to calculate the actual costs of providing water at various tier levels. The Authority's water rates are described under the caption "THE WATER ENTERPRISE – Water Rates and Charges."

The Authority believes that its current water rates comply with the requirements of Proposition 218 and expects that any future water rates will comply with Proposition 218's procedural and substantive requirements to the extent applicable thereto. There has not been a similar challenge to the Water Enterprise tiered water rates. However, no assurance can be made that a similar challenge will not be made in the future. If there was a successful challenge, and the City was required to cease from charging any water rate that was determined to be in violation of Article XXIID, the City and the Authority believe, although they cannot give any assurances, that the Water Enterprise would still generate sufficient Net Water Revenues to make payments of interest on and principal of the Bonds. The Authority is unable to predict at this time how Proposition 218 will be interpreted by the future court rulings or what

the ultimate impact of *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* will be.] [**TO BE CONFIRMED**]

Proposition 26

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIIIA and XIIIC. The proposition imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes. Proposition 26, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIIIA, XIIIC and XIIID pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the State or local government of providing the service or product to the payor. Proposition 26 applies to charges imposed or increased by local governments after the date of its approval. The Authority believes its water rates and charges are not taxes under Proposition 26. The Authority is unable to predict at this time how Proposition 26 will be interpreted by the courts or what its ultimate impact will be.

Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID, and Proposition 26 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time, other initiatives have been, and could be, proposed, and if qualified for the ballot, could be adopted affecting the Authority's revenues or the Authority's ability to expend revenues. The Authority is unable to predict either the likelihood of qualification for ballot or passage of these measures or the nature and impact of these measures on the finances or operations of the Water Enterprise.

RISK FACTORS

PURCHASE OF THE BONDS INVOLVES CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE BONDS IS ENCOURAGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE FACTORS DESCRIBED BELOW WHICH, AMONG OTHERS, COULD AFFECT THE MARKET PRICE OF THE BONDS TO AN EXTENT THAT CANNOT BE DETERMINED. HOWEVER, THEY DO NOT PURPORT TO BE AN EXHAUSTIVE LISTING OF RISKS AND OTHER CONSIDERATIONS WHICH MAY BE RELEVANT TO AN INVESTMENT IN THE BONDS. IN ADDITION, THE ORDER IN WHICH THE FOLLOWING FACTORS ARE PRESENTED IS NOT INTENDED TO REFLECT THE RELATIVE IMPORTANCE OF ANY SUCH RISKS.

Bonds are Limited Obligations

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE COUNTY OF RIVERSIDE (THE "COUNTY"), THE AGENCY, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. NONE OF THE CITY, THE COUNTY, THE AGENCY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY, IS LIABLE FOR THE PAYMENT OF THE BONDS. IN NO EVENT SHALL THE BONDS OR ANY INTEREST OR REDEMPTION PREMIUM THEREON BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES

OTHER THAN THOSE OF THE AUTHORITY AS PROVIDED IN THE INDENTURE. THE AUTHORITY HAS NO TAXING POWER. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE AGENCY, THE CITY, THE COUNTY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

Limitations on Revenues

The ability of the Authority to comply with its covenants under the Indenture and to generate Net Water Revenues sufficient to pay the principal of and interest on the Bonds may be adversely affected by actions and events outside of the control of the Authority and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or persons obligated to pay assessments, fees and charges. See "CONSTITUTIONAL LIMITATIONS." Furthermore, the remedies available to the owners of the Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

Enterprise Expenses And Collections

There can be no assurance that the expenses for the Water Enterprise will remain at the levels described in this Official Statement. Changes in technology, energy or other expenses would reduce the Net Water Revenues and could require substantial increases in the applicable rates or charges. Such rate increases could increase the likelihood of nonpayment, and could also decrease demand. Although the Authority has covenanted to fix, prescribe, revise and collect rates, fees and charges of the Water Enterprise at certain levels, there can be no assurance that such amounts will be collected in the amounts and at the time necessary to make timely payments with respect to the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rates and Charges."

No Liability of the Authority to the Owners

Except as expressly provided in the Indenture, the Authority will not have any obligation or liability to the Bondowners with respect to the observance or performance of other agreements, conditions, covenants and terms required to be observed or performed by the City under the Lease, the Water Management Agreement or any related documents or with respect to the performance by the Trustee of any duty required to be performed by it under the Indenture.

Limitations on Remedies Available to Owners of the Bonds and the Trustee

The enforceability of the rights and remedies of the Owners of the Bonds and the Trustee, and the obligations incurred by the City, the Authority, and each Enterprise, may be subject to the following: the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual equity principles which may limit the specific enforcement under state law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the Owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay,

limitations or modification of their rights. Remedies may be limited since the Water Enterprise serves essential public purposes.

Limited Recourse on Default

If the Authority defaults on its obligations to make debt service payments on the Bonds, pursuant to the Indenture, the Trustee, as assignee of the Authority, has the right to accelerate the total unpaid principal amount of the Bonds. However, in the event of a default and such acceleration, there can be no assurance that the Trustee will have sufficient moneys available for payment of the Bonds.

Loss of Tax Exemption

As discussed under the caption "TAX MATTERS" herein, interest with respect to the Bonds could fail to be excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for purposes of federal income taxation retroactive to the date of the execution and delivery of the Bonds as a result of future acts or omissions of the Authority in violation of its covenants contained in the Indenture. Should such an event of taxability occur, the Bonds are not subject to special redemption or any increase in interest rate, and will remain outstanding until maturity or until redeemed under one of the redemption provisions contained in the Indenture.

Secondary Market

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that the Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Such prices could be substantially different from the original purchase price.

Forecasts and Forward-Looking Statements

Although the Authority and the City believe that the projections herein of future operating results of the Water Enterprise are reasonable, there can be no assurance that operating results will match the projections due to changes in general economic conditions and similar factors. In addition, the Water Enterprise and economic development within the service area of the City are subject to federal, State and local regulations. There can be no assurance that the Water Enterprise will not be adversely affected by future economic conditions, governmental policies or other factors beyond the control of the City and the Authority.

This Official Statement contains certain "forward-looking statements" concerning the Authority's operations, the Water Enterprise, and the operations, performance and financial condition of the City, the Authority, the Water Enterprise, including their future economic performance, plans and objectives and the likelihood of success in developing and expanding. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Authority and City. The words "may," "would," "could," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate" and similar expressions are meant to identify these forward-looking statements. Results may differ materially from those expressed or implied by these forward-looking statements.

Regulatory Risk

Laws and regulations governing groundwater management, the diversion and storage of surface waters and water treatment are enacted and promulgated by government agencies on the federal, State and local levels. Compliance with these laws and regulations may be costly.

Although the Authority has covenanted in the Indenture to prescribe, revise and collect revenues for the Water Enterprise during each Fiscal Year which are at least sufficient to pay operating and maintenance expenses, to pay required debt service and meet certain coverage requirements, no assurance can be given that the cost of compliance with such laws and regulations will not adversely affect the ability of the Authority to generate Net Water Revenues in the amounts required to pay debt service on the Bonds. See "THE WATER ENTERPRISE – Water Shortage Contingency Plan" herein.

Casualty Risk; Earthquakes

Any natural disaster or other physical calamity, including earthquake, may have the effect of reducing Revenues through damage to the Water Enterprise and/or adversely affecting the economy of the surrounding area. The Indenture and the Lease require the Authority to maintain insurance or self-insurance, but only if and to the extent available at reasonable cost from reputable insurers, and the Authority is not expressly required to provide earthquake insurance. The State, including the Riverside County area, is a seismically active region. In the event of total loss of the Water Enterprise, there can be no assurance that insurance proceeds will be adequate to redeem all outstanding Bonds or that losses in excess of the insured amount will not occur.

Announcements on January 20, 1995 by the scientists associated with the Southern California Earthquake Center indicated that the probability of a magnitude 7 or greater earthquake on the Richter Scale occurring in Southern California is between 80% and 90% in the 30 year period following the announcement. It is impossible to accurately predict the cost or effect of such an earthquake on the Water Enterprise and on the City's ability to provide continued uninterrupted service to all parts of its service area.

A future earthquake could cause significant damage to the City and the facilities of the Water Enterprise and could adversely affect the ability of the City to meet all of its financial obligations. On January 17, 1994, an earthquake of approximately 6.6 magnitude on the Richter Scale was centered in the northwest San Fernando Valley section of the City of Los Angeles. It caused widespread damage to commercial and residential structures and to major freeways, causing business interruptions and disrupting the normal flow of traffic. Its damaging effects were felt over a large area. The Water Enterprise was not significantly damaged by this earthquake. In the event of a severe earthquake, however, the amount of moneys available to pay debt service on the Bonds could be reduced significantly.

UNDERWRITING

The Underwriters have agreed to purchase the Bonds at a purchase price of $_____, representing the principal amount of the Bonds, plus a [net] bond premium of $_____ and, less an Underwriters' discount of $_____.

The purchase contract pursuant to which the Bonds are being sold provides that the Underwriters will purchase all of the Bonds if any are purchased, and that the obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions, including the approval of certain legal matters by counsel.

The Underwriters may offer and sell the Bonds to certain dealers and others at prices lower than the initial public offering prices stated on the inside cover page hereof. The offering prices may be changed from time to time by the Underwriters.

CERTAIN LEGAL MATTERS

Legal matters in connection with the authorization, execution, delivery and sale of the Bonds are subject to the approval of Norton Rose Fulbright US LLP, Los Angeles, Califomia, Bond Counsel. The form of the approving opinion of Bond Counsel is attached hereto as APPENDIX F. Norton Rose Fulbright US LLP is also serving as Disclosure Counsel. Certain legal matters will be passed upon for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the City and the Authority by the City Attorney.

TAX MATTERS

Tax Exemption

The Internal Revenue Code of 1986 (the "Code") imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in the gross income of the owners thereof for federal income tax purposes retroactive to the date of issuance of the Bonds. The Authority has covenanted to maintain the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, Califomia, Bond Counsel, under existing statutes, regulations, rulings and court decisions, interest on the Bonds is exempt from personal income taxes of the State of California and, assuming compliance with the covenants mentioned herein, interest on the Bonds is excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. In the further opinion of Bond Counsel, under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, interest on the Bonds will not be treated as an itern of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income. A corporation's alternative minimum taxable income is the basis on which the altemative minimum tax imposed by section 55 of the Code will be computed.

Pursuant to the Indenture and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986*, to be delivered by the Authority in connection with the issuance of the Bonds, the Authority will make representations relevant to the determination of, and will make certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching its opinions described in the immediately preceding paragraph, Bond Counsel will assume the accuracy of such representations and the present and future compliance by the Authority with such covenants.

Except as stated in this section above, Bond Counsel will express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, Bond Counsel will express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel. Bond Counsel has

not undertaken to advise in the future whether any event after the date of issuance of the Bonds may affect the tax status of interest on the Bonds or the tax consequences of the ownership of the Bonds.

Bond Counsel's opinion is not a guarantee of a result, but represents its legal judgment based upon its review of existing statutes, regulations, published rulings and court decisions and the representations and covenants of the Authority described above. No ruling has been sought from the Internal Revenue Service (the "Service") with respect to the matters addressed in the opinion of Bond Counsel, and Bond Counsel's opinion is not binding on the Service. The Service has an ongoing program of auditing the tax-exempt status of the interest on municipal obligations. If an audit of the Bonds is commenced, under current procedures the Service is likely to treat the Authority as the "taxpayer," and the owners would have no right to participate in the audit process. In responding to or defending an audit of the tax-exempt status of the interest on the Bonds, tbe Authority may have different or conflicting interests from the owners. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit, regardless of its ultimate outcome.

Existing law may change to reduce or eliminate the benefit to bondholders of the exemption of interest on the Bonds from personal income taxation by the State of California or of the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. Any proposed legislation or administrative action, whether or not taken, could also affect the value and marketability of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed or future change in tax law.

A copy of the form of opinion of Bond Counsel relating to the Bonds is included in APPENDIX F.

Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds

To the extent that a purchaser of a Bond acquires that Bond at a price in excess of its "stated redemption price at maturity" (within the meaning of section 1273(a)(2) of the Code), such excess will constitute "bond premium" under the Code. Section 171 of the Code, and the Treasury Regulations promulgated thereunder, provide generally that bond premium on a tax-exempt obligation must be amortized over the remaining term of the obligation (or a shorter period in the case of certain callable obligations); the amount of premium so amortized will reduce the owner's basis in such obligation for federal income tax purposes, but such amortized premium will not be deductible for federal income tax purposes. Such reduction in basis will increase the amount of any gain (or decrease the amount of any loss) to be recognized for federal income tax purposes upon a sale or other taxable disposition of the obligation. The amount of premium that is amortizable each year by a purchaser is determined by using such purchaser's yield to maturity. The rate and timing of the amortization of the bond premium and the corresponding basis reduction may result in an owner realizing a taxable gain when its Bond is sold or disposed of for an amount equal to or in some circumstances even less than the original cost of the Bond to the owner.

The excess, if any, of the stated redemption price at maturity of Bonds of a maturity over the initial offering price to the public of the Bonds of that maturity is "original issue discount." Original issue discount accruing on a Bond is treated as interest excluded from the gross income of the owner thereof for federal income tax purposes and is exempt from California personal income tax to the same extent as would be stated interest on that Bond. Original issue discount on any Bond purcbased at sucb initial offering price and pursuant to such initial offering will accrue on a semiannual basis over the term of the Bond on the basis of a constant yield method and, within each semiannual period, will accrue on a ratable daily basis. The amount of original issue discount on sucb a Bond accruing during each period is added to the adjusted basis of such Bond to determine taxable gain upon disposition (including sale, redemption

or payment on maturity) of such Bond. The Code includes certain provisions relating to the accrual of original issue discount in the case of purchasers of Bonds who purchase such Bonds other than at the initial offering price and pursuant to the initial offering

Persons considering the purchase of Bonds with original issue discount or initial bond premium should consult with their own tax advisors witb respect to the determination of original issue discount or amortizable bond premium on such Bonds for federal income tax purposes and with respect to the state and local tax consequence of owning and disposing of such Bonds.

Other Tax Consequences

Although interest on the Bonds may be exempt from California personal income tax and excluded from the gross income of the owners thereof for federal income tax purposes, an owner's federal, state or local tax liability may be otherwise affected by the ownership or disposition of the Bonds. The nature and extent of these other tax consequences will depend upon the owner's other items of income or deduction. Without limiting the generality of the foregoing, prospective purchasers of the Bonds should be aware that (i) section 265 of the Code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds and the Code contains additional limitations on interest deductions applicable to financial institutions that own tax-exempt obligations (such as the Bonds), (ii) with respect to insurance companies subject to the tax imposed by section 831 of the Code, section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15% of the sum of certain items, including interest on the Bonds, (iii) interest on the Bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by section 884 of the Code, (iv) passive investment income, including interest on the Bonds, may be subject to federal income taxation under section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income, (v) section 86 of the Code requires recipients of certain Social Security and certain Railroad Retirement benefits to take into account, in determining the taxability of such benefits, receipts or accruals of interest on the Bonds and (vi) under section 32(i) of the Code, receipt of investment income, including interest on the Bonds, may disqualify the recipient thereof from obtaining the earned income credit. Bond Counsel will express no opinion regarding any sucb otber tax consequences.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

The Verification Agent, an independent certified public accountant, upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to them that were prepared by the Underwriters, relating to the sufficiency of monies deposited into the Escrow Fund created under the Escrow Agreement to redeem all of the outstanding 2005 Bonds on the Redemption Date.

The report of the Verification Agent, will include the statement that the scope of its engagement is limited to verifying the mathematical accuracy of the computations contained in such schedules provided to it, and that it has no obligation to update its report because of events occurring, or date or information coming to its attention, subsequent to the date of its report.

LITIGATION

There is no action, suit, proceeding, inquiry or investigation, notice of wbich has been served on the Authority, at law or in equity before or by any court, government agency, public board or body, pending against the Authority, affecting the existence of the Authority or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of

the Bonds or the pledge and lien on the Net Water Revenues pursuant to the Indenture, or contesting or affecting as to the Authority the validity or enforceability of the Bond Law, the Bonds, the Indenture or the Lease, or contesting the tax-exempt status of interest on the Bonds, or contesting the completeness or accuracy of this Official Statement, or contesting the powers of the Authority for the issuance of the Bonds, or the execution and delivery or adoption by the Authority of the Indenture or the Lease, or in any way contesting or challenging the consummation of the transactions contemplated hereby or thereby, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity of the Bond Law, as to the Authority, or the authorization, execution, delivery or performance by the Authority of the Bonds, the Indenture or the Lease.

RATINGS

Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P"), [is expected to assign the Bonds the ratings of "___" with the understanding that insurance policy securing the payment when due of the principal and interest on such bonds will be issued by the Insurer] has assigned an underlying rating of "___" to the Bonds. Such ratings reflect only the views of S&P and an explanation of the significance of such ratings may be obtained only from S&P.

There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by S&P, if in the judgment of the rating agency circumstances so warrant. Any such downward revision or withdrawal of the ratings may have an adverse effect on the market price of the Bonds.

CONTINUING DISCLOSURE

The Authority has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the Authority and the Water Enterprise, not later than March 31 following the end of the Authority's Fiscal Year (currently its Fiscal Year ends on June 30), commencing with the report for Fiscal Year ended June 30, 2015 (each, an "Annual Report"), and to provide notices of the occurrences of certain enumerated events. The Annual Report will be filed by the Dissemination Agent on behalf of the Authority with the Municipal Securities Rulemaking Board. The Municipal Securities Rulemaking Board has made such information available to the public without charge through its EMMA system. The specific nature of information to be contained in each Annual Report or the notice of listed events is set forth in "APPENDIX D – FORM OF CONTINUING DISCLOSURE AGREEMENT." These covenants have been made by the Authority in order to assist the Underwriters in complying with Rule 15c2-12, as amended (the "Rule") promulgated by the Securities and Exchange Commission. [**DESCRIPTION OF PAST 5-YEAR COMPLIANCE TO COME**]

MISCELLANEOUS

This Official Statement does not constitute a contract with the purchasers of the Bonds. All information included herein has been provided by the Authority, except where attributed to other sources. Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized.

All of the preceding descriptions and summaries of certain legal documents, other applicable legislation, agreements, reports and other documents are made subject to the provisions of such documents respectively, and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents available from the Underwriters and following issuance of

the Bonds, on file at the offices of the Trustee in Los Angeles, California, for further information in connection therewith.

AUTHORIZATION OF OFFICIAL STATEMENT

The delivery of this Official Statement has been duly authorized by the Authority and the City.

BANNING UTILITY AUTHORITY

By:_____
Executive Director

CITY OF BANNING

By:_____
Interim City Manager

APPENDIX A

GENERAL INFORMATION ABOUT THE CITY OF BANNING

The following information relating to the City of Banning (the "City") and the County of Riverside, California (the "County") has been supplied by the City and is provided solely for purposes of information. Neither the City nor the County is obligated in any manner to pay principal of or interest on the Bonds or to cure any delinquency or default on the Bonds. The Bonds are payable only from Net Water Revenues and other amounts held under the Indenture. The Underwriters and their counsel make no representation with respect to any of such information.

General Information

The City is located alongside Interstate 10 approximately 80 miles east of Los Angeles and 23 miles west of Palm Springs. The City covers approximately 27 square miles. The City is well known for its picturesque qualities and is nestled between the majestic San Gorgonio and San Jacinto Mountains, the two tallest peaks in Southern California. The community enjoys a rural lifestyle, nearby outdoor recreation opportunities, and invigorating healthful clear air.

Government Organization

The City was incorporated as a general law City in 1913. The City has a "city council/city manager" form of local government. The five members of the City Council are elected at-large from the community to serve four-year terms of office and the City Council selects one of its members to serve as mayor. The City has [___] full-time employees.

Governmental Services

The City maintains its own police department which consists of [___] sworn offices and [___] civilian personnel. The City contracts with the California Department of Forestry in cooperation with the Riverside County Fire Department for fire protection services within the City. The City provides general government services such as plan checking, building permit processing and code enforcement. Electricity, water and wastewater services are provided by the City. Students in the City attend Banning Unified School District for K-12 schools.

Transportation

The City is located along Interstate 10, a major traffic route. The City is also located alongside the Union Pacific Railroad. The City owns a municipal airport which also provides hangar and tie down service. Locally, the City provides both fixed route bus and dial-a-ride services.

Population

The table on the following page provides a comparison of population growth for the City, surrounding cities and the County between 2011 and 2015.

CHANGE IN POPULATION
CITY OF BANNING AND RIVERSIDE COUNTY
2011-2015

	CITY OF BANNING		RIVERSIDE COUNTY	
Year (January 1)	Popnlation	Percentage Change	Population	Percentage Change
2011	29,721	-	2,205,731	-
2012	29,982	0.9	2,229,467	1.1
2013	30,137	0.5	2,253,516	1.1
2014	30,306	0.6	2,280,191	1.2
2015	30,491	0.6	2,308,441	1.2

Source: State of California Department of Finance, Population Research Unit, "Population Estimates for California Cities and Counties."

Employment and Industry

The City is located in the Riverside Area Metropolitan Statistical Area ("MSA") which includes all of Riverside and San Bernardino Counties. In addition to varied manufacturing employment, the MSA has large and growing commercial and service sector employment, as reflected in the following table.

RIVERSIDE-SAN BERNARDINO-ONTARIO MSA
ANNUAL AVERAGE EMPLOYMENT[1]
2010-2014

INDUSTRY	2010	2011	2012	2013	2014
Construction	59,700	59,100	62,600	70,000	77,000
Durable Goods	55,400	55,800	56,900	57,300	59,800
Educational and Health Services	154,100	157,600	167,200	184,500	193,600
Farm	15,000	14,900	15,000	14,500	14,300
Financial Activities	41,00	39,900	40,900	42,200	42,700
Goods Producing	145,900	145,200	150,500	158,600	168,500
Government	234,300	227,500	224,600	225,200	228,800
Information	14,00	12,200	11,700	11,500	11,200
Leisure and Hospitality	122,800	124,000	129,400	135,900	144,300
Manufacturing	85,200	85,100	86,700	87,300	90,200
Nondurable Goods	29,800	29,300	29,800	30,100	30,400
Other Services	38,200	39,100	40,100	41,100	43,200
Professional and Business Services	123,600	126,000	127,500	132,400	137,800
Real Estate and Rental	15,500	14,600	14,900	15,600	16,200
Retail Trade	155,500	158,500	162,400	164,800	168,700
Service Providing	998,900	1,002,800	1,029,800	1,073,300	1,116,700
Transportation, Warehousing and Utilities	66,600	68,800	73,900	79,400	87,300
Wholesale Trade	48,700	49,200	52,200	59,000	56,400
Total, All Industries	**1,159,700**	**1,162,900**	**1,195,300**	**1,246,400**	**1,299,500**

(1) The employment figures by industry which are shown above are not directly comparable to the "Total, All Industries" employment figures due to rounded data.

Source: State Employment Development Department, Labor Market Information Division.

The major employers operating within the City and their respective number of employees as of June 30, 2014 are as follows:

CITY OF BANNING
TOP EMPLOYERS

Name of Company	Employment	Type of Business/Product

Source: City of Banning.

Commercial Activity

The following table summarizes the volume of retail sales and taxable transactions for the City for 2009 through 2013, the latest years available.

CITY OF BANNING
TOTAL TAXABLE TRANSACTIONS
2009-2013

Year	Retail Sales ($000's)	% Change	Retail Sales Permits	Total Taxable Transactions ($000's)	% Change	Issued Sales Permits
2009	130,173	-	315	156,232	-	451
2010	133,218	2.3%	340	146,742	(6.1)%	471
2011	143,230	7.5	323	157,071	7.0	448
2012	146,600	2.3	340	165,579	5.4	466
2013	154,595	5.5	332	175,386	5.9	460

Source: State Board of Equalization, "Taxable Sales in California (Sales & Use Tax)." 2014 data not available.

APPENDIX B

AUDITED FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR ENDED JUNE 30, 2014

APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS

APPENDIX D

FORM OF CONTINUING DISCLOSURE AGREEMENT

APPENDIX E

BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E under the caption "General" concerning The Depository Trust Company, New York, New York ("DTC"), and DTC's book-entry system has been obtained from DTC and the Authority and the City take no responsibility for the completeness or accuracy thereof. The Authority and the City cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The Authority and the City are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Bonds or an error or delay relating thereto. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC's Direct and Indirect Participants are on file with DTC.

General

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to DTC's Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. The information on such web site is not incorporated herein by reference.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of the Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of such principal, premium, if any, and interest to Cede & Co. (or such

other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered as described in the Indenture.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates will be printed and delivered.

Discontinuance of DTC Services

In the event that that DTC shall discontinue providing its services as depository with respect to the Bonds or the Authority shall discontinue the use of a book-entry system of transfers through DTC (or a successor securities depository), the following provisions would apply: (i) the principal of the Bonds will payable upon presentation of such Bonds by the registered owners thereof at the Office of the Trustee; (ii) interest on the Bonds will be payable on each Interest Payment Date by check mailed by the Trustee on the date on which interest is due to the registered owners of the Bonds at the close of business on the Record Date at the addresses of the registered owners as they appear on the Registration Books maintained by the Trustee, except that for registered owners of more than $1,000,000 in principal amount of Bonds who, prior to the Record Date preceding any Interest Payment Date, have provided the Trustee with wire transfer instructions, interest payable on such Bonds will be paid in accordance with the wire transfer instructions provided by such registered owners; (iii) Bonds may be exchanged for an equal aggregate principal amount of Bonds of other Authorized Denominations and of the same tenor and maturity upon surrender thereof at the Office of the Trustee upon payment by the registered owner of any charges the Trustee may make; and (iv) any Bond may, in accordance with its terms, be transferred, upon the Registration Books under the Indenture, by the person in whose name it is registered, in person or by his attorney duly authorized in writing, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed by the registered owner or his duly authorized attorney and upon payment by the registered owner of any charges the Trustee may make under the Indenture; provided, that the Trustee will not be required to transfer any Bonds during the period established by the Trustee for the selection of such Bonds for redemption or any Bonds that have been selected for redemption pursuant to the Indenture.

APPENDIX F

PROPOSED FORM OF OPINION OF BOND COUNSEL

[Dated the Date of Closing]

Banning Utility Authority
99 E. Ramsey Street
Banning, California 92220

City of Banning
99 E. Ramsey Street
Banning, California 92220

$_____
Banning Utility Authority
Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series

Ladies and Gentlemen:

In our role as Bond Counsel to the Banning Utility Authority (the "Authority"), we have examined certified copies of the proceedings taken in connection with the issuance by the Authority of its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds") in the aggregate principal amount of $_____. We have also examined supplemental documents furnished to us and have obtained such certificates and documents from public officials as we have deemed necessary for the purposes of this opinion. The Bonds are issued under Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code, pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), and pursuant to an authorizing resolution of the Board of the Authority adopted on July __, 2015. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Indenture.

The Bonds are being issued to (i) pay costs of certain capital improvements to the Water Enterprise; (ii) refund the Authority's $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), currently outstanding in the aggregate principal amount of $29,165,000; and (iii) pay costs of issuance of the Bonds.

The Bonds are subject to redemption prior to maturity as provided in the Indenture.

Based upon the foregoing, we are of the opinion that:

1. The Indenture has been duly and validly authorized, executed and delivered by the Authority and, assuming the Indenture constitutes the legally valid and binding obligation of the Trustee, constitutes the legally valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, and the Bonds are entitled to the benefits of the Indenture.

2. The proceedings for the issuance of the Bonds have been taken in accordance with the laws and Constitution of the State of California, and the Bonds, having been issued in duly authorized form and executed by the proper officials and delivered to and paid for by the purchasers, constitute legal and binding special obligations of the Authority enforceable in accordance with their terms.

3. The Bonds are secured by a pledge of the Net Water Revenues and all moneys in certain funds and accounts established pursuant to the Indenture, subject to the application thereof on the terms and conditions as set forth in the Indenture.

4. Under existing statutes, regulations, rulings and court decisions, and assuming compliance with the covenants mentioned below, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 (the "Code") from the gross income of the owners thereof for federal income tax purposes. We are further of the opinion that under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, that interest on the Bonds will not be treated as an item of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income of that corporation. A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed. We are further of the opinion that interest on the Bonds is exempt from personal income taxes of the State of California under present state law.

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Non-compliance with such requirements could cause the interest on the Bonds to fail to be excluded from the gross income of the owners thereof retroactive to the date of issuance of the Bonds. Pursuant to the Indenture and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986* being delivered by the Authority in connection with the issuance of the Bonds, the Authority is making representations relevant to the determination of, and is undertaking certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching our opinions described in the immediately preceding paragraph, we have assumed the accuracy of such representations and the present and future compliance by the Authority with such covenants. Further, except as stated in the preceding paragraph, we express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel.

The opinions expressed in paragraphs 1 through 3 above are qualified to the extent the enforceability of the Bonds and the Indenture may be limited by applicable bankruptcy, insolvency, debt adjustment, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally or as to the availability of any particular remedy. The enforceability of the Bonds and the Indenture is subject to the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, to the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a

proceeding in equity or at law, and to the limitations on legal remedies against governmental entities in California.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any fact or circumstance that may hereafter come to our attention or to reflect any change in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and are not binding on the Internal Revenue Service; rather, such opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

Respectfully submitted,

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INDENTURE OF TRUST

Dated as of August 1, 2015

by and between

BANNING UTILITY AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION
as Trustee

Authorizing the Issuance of

$_____
Banning Utility Authority
Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series

TABLE OF CONTENTS

Page

ARTICLE I.
DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS
2

Section 1.01. Definitions 2
Section 1.02. Interpretation 16

ARTICLE II.
THE BONDS
17

Section 2.01. Authorization of Bonds 17
Section 2.02. Terms of the Bonds 17
Section 2.03. Transfer of Bonds 18
Section 2.04. Use of Securities Depository 19
Section 2.05. Exchange of Bonds 20
Section 2.06. Registration Books 20
Section 2.07. Form and Execution of Bonds 20
Section 2.08. Temporary Bonds 21
Section 2.09. Bonds, Mutilated, Lost, Destroyed or Stolen 21
Section 2.10. CUSIP Numbers 22
Section 2.11. Parity Obligations 22

ARTICLE III.
ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS
23

Section 3.01. Issuance of the Bonds 23
Section 3.02. Application of the Proceeds of the Bonds 23
Section 3.03. Establishment and Application of Costs of Issuance Fund 23
Section 3.04. Establishment and Application of Water Project Fund 24
Section 3.05. Validity of Bonds 24

ARTICLE IV.
REDEMPTION OF BONDS
24

Section 4.01. Terms of Redemption 24
Section 4.02. Selection of Bonds for Redemption 26
Section 4.03. Notice of Redemption 26
Section 4.04. Partial Redemption of Bonds 27
Section 4.05. Effect of Redemption 27

TABLE OF CONTENTS
(continued)

Page

ARTICLE V.
REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST
27

Section 5.01. Pledge and Assignment; Transfers to Bond Fund 27
Section 5.02. Covenant Regarding Net Water Revenues 28
Section 5.03. Creation of Bond Fund and Accounts Therein; Allocation of Net Water Revenues 28
Section 5.04. Application of Interest Account 29
Section 5.05. Application of Principal Account 29
Section 5.06. Application of Sinking Account 29
Section 5.07. Application of Reserve Account 29
Section 5.08. Application of Redemption Fund 30
Section 5.09. Rates and Charges 30
Section 5.10. [Reserved] 31
Section 5.11. Budget and Appropriation of Debt Service Payments 31
Section 5.12. Special Obligation of the Authority; Obligations Absolute 31
Section 5.13. Investments 32
Section 5.14. Valuation of Investments 33

ARTICLE VI.
PARTICULAR COVENANTS
33

Section 6.01. Punctual Payment; Compliance with Documents 33
Section 6.02. Extension of Payment of Bonds 33
Section 6.03. Against Encumbrances 34
Section 6.04. Power to Issue Bonds and Make Pledge and Assignment 34
Section 6.05. Accounting Records and Financial Statements 34
Section 6.06. [Reserved] 34
Section 6.07. Continuing Disclosure 34
Section 6.08. Covenants to Maintain Tax-Exempt Status 35
Section 6.09. Waiver of Laws 39
Section 6.10. Protection of Security and Rights of Owners 40
Section 6.11. Further Assurances 40
Section 6.12. Maintenance, Utilities, Taxes and Assessments 40
Section 6.13. Operation of Water Enterprise 40
Section 6.14. Public Liability and Property Damage Insurance 41
Section 6.15. Casualty Insurance 41
Section 6.16. Insurance Net Proceeds; Form of Policies 41
Section 6.17. Eminent Domain 42
Section 6.18. Restriction on Sale of Water Enterprise 42

TABLE OF CONTENTS
(continued)

Page

ARTICLE VII.
EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS
42

Section 7.01. Events of Default and Acceleration of Maturities 42
Section 7.02. Application of Funds Upon Acceleration 43
Section 7.03. Other Remedies; Rights of Bond Owners [and Bond Insurer] 44
Section 7.04. Power of Trustee to Control Proceeding 45
Section 7.05. Appointment of Receivers 45
Section 7.06. Non-Waiver 45
Section 7.07. Rights and Remedies of Bond Owners 46
Section 7.08. Termination of Proceedings 46

ARTICLE VIII.
THE TRUSTEE
47

Section 8.01. Duties, Immunities and Liabilities of Trustee 47
Section 8.02. Merger or Consolidation 48
Section 8.03. Liability of Trustee 48
Section 8.04. Right to Rely on Documents 50
Section 8.05. Preservation and Inspection of Documents 51
Section 8.06. Compensation and Indemnification 51

ARTICLE IX.
MODIFICATION OR AMENDMENT OF THIS INDENTURE
51

Section 9.01. Amendments Permitted 51
Section 9.02. Effect of Supplemental Indenture 53
Section 9.03. Endorsement of Bonds; Preparation of New Bonds 53
Section 9.04. Amendment of Particular Bonds 53
Section 9.05. Notice to Rating Agencies 53
Section 9.06. Copy to [Bond Insurer 53

ARTICLE X.
DEFEASANCE
54

Section 10.01. Discharge of Indenture 54
Section 10.02. Discharge of Pledge of Net Water Revenues 55
Section 10.03. Deposit of Money or Securities with Trustee 55
Section 10.04. Unclaimed Funds 56

TABLE OF CONTENTS
(continued)

Page

ARTICLE XI.
[BOND INSURANCE]
56

Section 11.01. Bond Insurer's Default-Related Provisions 56
Section 11.02. Amendments and Supplements 57
Section 11.03. Defeasance Provisions 57
Section 11.04. Notices to be Given to the Bond Insurer 57
Section 11.05. Payments Unconditional 58
Section 11.06. Reimbursement of Expenses 58
Section 11.07. Payment Procedure Pursuant to Bond Insurance Policy 58
Section 11.08. Reserve Policy Provisions 59

ARTICLE XII.
MISCELLANEOUS
60

Section 12.01. Liability of Authority Limited to Net Water Revenues 60
Section 12.02. Limitation of Rights to Parties, Bond Owners 61
Section 12.03. Funds and Accounts 61
Section 12.04. Waiver of Notice; Requirement of Mailed Notice 61
Section 12.05. Destruction of Bonds 61
Section 12.06. Severability of Invalid Provisions 61
Section 12.07. Notices 62
Section 12.08. Evidence of Rights of Bond Owners 62
Section 12.09. Disqualified Bonds 63
Section 12.10. Money Held for Particular Bonds 63
Section 12.11. Waiver of Personal Liability 63
Section 12.12. Successor Is Deemed Included in All References to Predecessor 63
Section 12.13. Execution in Several Counterparts 63
Section 12.14. Governing Law 63

INDENTURE OF TRUST

This INDENTURE OF TRUST, dated as of August 1, 2015, is by and between the BANNING UTILITY AUTHORITY, a joint powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America with a corporate trust office in Los Angeles, California, being qualified to accept and administer the trusts hereby created (the "Trustee");

WITNESSETH:

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated as of July 12, 2005, by and between the City of Banning (the "City") and the Community Redevelopment Agency of the City of Banning (the "Agency") and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose of financing and refinancing capital improvements of member entities of the Authority; and

WHEREAS, under the Bond Law, the Authority is authorized to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities and to provide financing and refinancing for public capital improvements of public entities; and

WHEREAS, the Authority has previously issued its $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), of which $29,165,000 remain outstanding; and

WHEREAS, for the purpose of refunding the 2005 Bonds currently outstanding [, and financing certain capital improvements to the City's water utility system (the "Water Enterprise")], the Authority has determined to issue its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds") in the aggregate principal amount of $_____, pursuant to and secured by this Indenture in the manner provided herein; and

WHEREAS, the Authority has determined that in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and premium (if any) thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has found and determines, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee, and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture as a valid and binding agreement for

the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of the Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and premium (if any) on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective owners from time to time of the Bonds, as follows:

ARTICLE I.

DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture and of any indenture supplemental hereto and of any certificate, opinion, request, or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. In addition, all capitalized terms used herein and not otherwise defined in this Section 1.01 shall have the respective meanings given such terms in the Water Lease.

"Agency" means the Community Redevelopment Agency of the City of Banning, a public body corporate and politic organized under the laws of the State, and any successor thereto.

"Agreement" means that certain Joint Exercise of Powers Agreement, dated as of July 12, 2005, by and between the City and the Agency, as hereafter duly amended and supplemented from time to time, creating the Authority for the purposes, among other things, of assisting the City and the Agency in the financing and refinancing of Public Capital Improvements, as such term is defined in the Bond Law.

"Annual Debt Service" means, for each Bond Year, (i) with respect to each of the Bonds, the Debt Service payable in such Bond Year, or (ii) with respect to Parity Obligations, the required payments scheduled to be made with respect to all Outstanding Parity Obligations in such Bond Year provided, that for the purposes of determining compliance with Section 5.09 and conditions for the issuance of Parity Obligations pursuant to Section 2.11:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations and by subparagraph (C) with respect to Parity Obligations as to which a Payment Agreement is in force, and by subparagraph (D) with respect

to certain Parity Payment Agreements, interest on any Parity Obligation shall be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount of interest deemed to be payable on any Variable Interest Rate Parity Obligation shall be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the Assumed RBI-based Rate;

(C) Interest on Payments or Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Parity Obligations with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the Authority expected to be produced by the terms of such Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead shall be treated as an obligation bearing interest at a fixed interest rate, and (ii) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead shall be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Parity Obligation with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions shall be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the Authority based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the Authority to make payments to the Qualified Counterparty based on a fixed rate, payments by the Authority to the Qualified Counterparty shall be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the Authority shall be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual Variable Interest Rate on such Parity Obligation, and such Parity Obligation shall set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it shall be assumed that the variable interest rate payment

component payable pursuant to the Payment Agreement is equal in amount to the variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the Authority or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that is required to be used to calculate interest on the Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it shall be assumed:

(a) Authority Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the Authority under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the Authority to the Qualified Counterparty will be based upon an interest rate equal to the Assumed RBI-based Rate, and payments by the Qualified Counterparty to the Authority will be based on the fixed rate specified by the Payment Agreement; and

(b) Authority Obligated to Make Payments Based on Fixed Interest Rate. If payments by the Authority under the Payment Agreement are based on a fixed interest rate and payments by the Qualified Counterparty are based on a variable interest rate index, payments by the Authority to the Qualified Counterparty will be based on an interest rate equal to the rate that is one hundred and five percent (105%) of the fixed interest rate specified by the Payment Agreement to be paid by the Authority, and payments by the Qualified Counterparty to the Authority will be based on a rate equal to the Assumed RBI-based Rate as the variable interest rate deemed to apply to the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (C)(l), (2) and (3) of this definition, the Authority shall not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(D) Debt Service on Parity Payment Agreements. No interest shall be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any other Parity Obligation, interest on that Parity Payment

(1) Authority Obligated to Make Payments Based on Fixed Interest Rate. If the Authority is obligated to make Payment Agreement Payments based on a fixed interest rate and the Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the Authority will be based on the specified fixed rate, and

payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made; and

(2) Authority Obligated to Make Payments Based on Variable Interest Rate Index. If the Authority is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the Authority will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (D)(1) and (2) of this definition, the Authority shall not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt Service on any Balloon Parity Obligations, it shall be assumed that the principal of those Balloon Parity Obligations, together with interest thereon at a rate equal to the Assumed RBI-based Rate, will be amortized in equal annual installments over a term of thirty (30) years from the date of issuance.

"Assumed RBI-based Rate" means, as of any date of calculation, an assumed interest rate equal to ninety percent (90%) of the average RBI during the twelve (12) calendar months immediately preceding the month in which the calculation is made.

"Authority" means the Banning Utility Authority, a joint powers authority duly organized and existing under the Agreement and the laws of the State.

"Authorized Denomination" means denominations of $5,000 or any integral multiple thereof.

"Authorized Representative" means: (a) with respect to the Authority, its Chairperson, Vice Chairperson, Executive Director, Treasurer, Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chairperson and filed with the City and the Trustee; and (b) with respect to the City, its Mayor, City Manager, City Clerk, Treasurer, Finance Director or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its Mayor or City Manager and filed with the Trustee.

"Balloon Parity Obligation" means any Parity Obligation described as such in such Parity Obligation.

"Board" means the Board of Directors of the Authority.

"Bond Counsel" means (a) Norton Rose Fulbright US LLP, Los Angeles, California, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Code.

"Bond Fund" means the fund by that name established pursuant to Section 5.03.

["Bond Insurance Policy" means the municipal bond new issue insurance policy issued by the Bond Insurer that guarantees payment of principal of and interest on the Bonds.]

["Bond Insurer" means _____ or any successor thereto.]

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

"Bond Year" means each twelve-month period extending from November 2 in one calendar year to November 1 of the succeeding calendar year, both dates inclusive, except that the first Bond Year shall extend from the Closing Date to November 1, 2015 with respect to the Bonds.

"Bonds" means the Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series, authorized by and at any time Outstanding pursuant to the Bond Law and the Indenture.

"Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California, or in any state in which the Trust Office of the Trustee is located, are closed. If any payment hereunder is due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day with the same effect as if made on such previous day.

"City" means the City of Banning, a municipal corporation organized under the laws of the State.

"Closing Date" means August __, 2015, being the date of delivery of the Bonds to the Original Purchasers.

"Code" means the Internal Revenue Code of 1986.

"Corporation" means the Banning Public Facilities Corporation.

"Costs of Issuance" means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds and the application of the proceeds of the Bonds, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority, initial fees and expenses of the Trustee and Escrow Agent and their counsel, title insurance premiums, municipal bond insurance premiums and other costs of credit enhancement, appraisal and valuation fees, compensation to any

financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents and costs of printing.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.03.

"Debt Service" means, during any period of computation, the amount obtained for such period by totaling the following amounts: (a) the principal amount of all Outstanding Serial Bonds coming due and payable by their terms in such period; (b) the minimum principal amount of all Outstanding Term Bonds scheduled to be redeemed by operation of mandatory sinking account deposits in such period; and (c) the interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds no longer Outstanding.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Event of Default" means any of the events specified in Section 7.01.

"Escrow Agent" means U.S. Bank National Association, acting as escrow agent under the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement, dated as of August 1, 2015, by and between the Escrow Agent and the Authority relating to the defeasance of the currently outstanding 2005 Bonds.

"Federal Securities" means any of the following (which solely for purposes of Section 10.01(b) hereof are non-callable and non-prepayable) and which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein: cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Moody's (or any combination of the foregoing) [unless the Bond Insurer otherwise approves].

"Fiscal Year" means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority, as its official fiscal year period.

"Gross Water Revenues" means, for any Fiscal Year, all income, rents, rates, fees, charges and other moneys derived by the Authority from the operation of the Water Enterprise, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges, or other moneys derived from the sale, furnishing, and supplying of water and other services, facilities, and commodities sold, furnished or supplied through the facilities of the Water Enterprise, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees (including connection fees), charges or other moneys to the extent that the use

of such earnings and income is limited by or pursuant to law to the Water Enterprise, and (iii) the proceeds derived by the Authority directly or indirectly from the sale, lease or other disposition of a part of the Water Enterprise as permitted hereby; provided that the term "Gross Water Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the Authority.

"Guaranteed Investment Contracts" means investment agreements which allow for withdrawals at such times as required by the Indenture with providers whose unsecured obligations are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

"Indenture" means this Indenture of Trust as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

"Independent Accountant" means any certified public accountant or firm of certified public accountants appointed and paid by the Authority, and who, or each of whom (a) is in fact independent and not under domination of the Authority; (b) does not have any substantial interest, direct or indirect, in the Authority, and (c) is not connected with the Authority as an officer or employee of the Authority but who may be regularly retained to make annual or other audits of the books of or reports to the Authority.

"Information Services" means the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at *www.emma.msrb.org*; provided, however, in accordance with the then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called Bonds as the Authority may designate in writing to the Trustee.

"Interest Account" means the account by that name established in the Bond Fund pursuant to Section 5.03.

"Interest Payment Date" means each May 1 and November 1 of each year, commencing [November 1, 2015].

"Letter of Representations" means the letter of the Authority and the Trustee delivered to and accepted by DTC (or such other applicable Securities Depository) on or prior to the issuance of the Bonds in book entry form setting forth the basis on which DTC (or such other applicable Securities Depository) serves as depository for the Bonds issued in book entry form, as originally executed or as it may be supplemented or revised or replaced by a letter to a substitute Securities Depository.

"Maximum Annual Debt Service" means, as of the date of any calculation, the maximum Debt Service payable during such period of time and the greatest Annual Debt Service payable on any Outstanding Parity Obligations or Parity Obligations then being issued, during the current or any future Bond Year.

"Management Agreement" means the Water Enterprise Management Agreement dated as of December 1, 2005, by and between the Authority and the City, relating to the operation and management of the Water Enterprise by the City on behalf of the Authority.

"Moody's" means Moody's Investors Service, its successors and assigns or, if such entity shall be dissolved, liquidated, or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the City, with the approval of the Authority, by notice to the Trustee.

"Net Water Revenues" means, for any Fiscal Year, an amount equal to all of the Gross Water Revenues received with respect to such Fiscal Year, minus the amount required to pay all Water Operation and Maintenance Expenses.

"Original Purchasers" means Stifel, Nicolaus & Company, Inc. and Williams Capital Group, as the original purchasers of the Bonds upon their delivery by the Trustee on the Closing Date.

"Outstanding," when used as of any particular time with reference to Parity Obligations, means all Parity Obligations which have not been paid or otherwise satisfied as provided in the proceedings and instruments pursuant to which such Parity Obligations have been issued or incurred; and when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 12.09) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.01, including Bonds (or portions thereof) described in Section 12.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture. For purposes of Section 2.11 and Section 5.09 hereof only, (i) Parity Payment Agreements related to other Parity Obligations which are included in determining Annual Debt Service on such other Parity Obligations, and (ii) Parity Bank Agreements as to which no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City shall not be considered Outstanding for purposes of this Agreement.

"Owner" or "Bondholder," whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"Parity Payment Agreement" means a Payment Agreement which is a Parity Obligation.

"Parity Obligations," means any leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the Authority payable and secured by a pledge of and lien upon any of the Net Water Revenues on a parity with the Bonds, entered into or issued pursuant to and in accordance with Section 2.11 hereof.

"Payment Agreement" means a written agreement for the purpose of managing or reducing the Authority's exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or

forward basis by the Authority and a Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments, or any combination thereof or any similar device.

"Payment Agreement Payments" mean the amounts required to be paid periodically by the Authority to the Qualified Counterparty pursuant to a Payment Agreement.

"Payment Agreement Receipts" mean the amounts required to be paid periodically by the Qualified Counterparty to the Authority pursuant to a Payment Agreement.

"Permitted Investments" means any of the following, to the extent permitted by the laws of the State: [CONFIRM]

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership

2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration
Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration
Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing
notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations

3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System
Consolidated systemwide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2, including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee or such holding company provides investment advisory or other management services.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks including the Trustee, its parent holding company and their affiliates. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF, which may be from or with the Trustee, its parent holding company and their affiliates.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements, with providers rated, or guaranteed by guarantors rated, at the time of investment, in the top three categories (without regard to modifiers) by any two or more Rating Agencies.

H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories (without regard to modifiers) assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P including the Trustee, its parent holding company and their affiliates.

K. Repurchase Agreements which satisfy the following criteria:

Repurchase Agreements provide for the transfer of securities from a dealer bank, financial entity or securities firm (seller/borrower) to the City (buyer/lender) or the Trustee or a third party custodial agent, and the transfer of cash from the City to the dealer bank, financial entity or securities firm with an agreement that the dealer bank, financial entity or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the municipal entity and a dealer bank or securities firm or other financial entity

   a. Primary dealers on the Federal Reserve reporting dealer list which are rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   b. Banks rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   c. Financial Entities rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies.

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are those securities listed in (A), (B) and (C) above.

   b. The term of the repo may be up to 30 days, or greater than 30 days if subject to put or redemption at par to pay project/construction costs and/or debt service on the Bonds.

   c. The collateral must be delivered to the municipal entity, trustee or third party acting as agent for the trustee before/simultaneous with payment (perfection by possession of certificated securities).

d. Valuation of Collateral

(I) The securities must be valued weekly, marked-to-market at current market price plus accrued interest

(a) The value of collateral must be equal to at least 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm or financial entity under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are any of those listed in (C) above, then the value of collateral must equal 105%.

L. U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks (including the Trustee and its affiliates) which have a rating on their short-term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1+" by S&P and maturing no more than 360 days after the date of purchase, provided that ratings on holding companies are not considered as the rating of the bank.

M. Local Agency Investment Fund of the State of California ("LAIF"), created pursuant to Section 16429.1 of the California Government Code.

N. The County Treasurer's Investment Pool so long as such Pool is rated AA- or better by S&P or Fitch or Aa3 or better by Moody's.

"Principal" or "Principal Amount" shall mean, as of any date of calculation, the principal amount of the Bonds.

"Principal Account" means the account by that name established in the Bond Fund pursuant to Section 5.03.

"Principal Payment Date" means November 1 of each year, commencing [November 1, 2016].

"Qualified Counterparty" means a party (other than the Authority) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has been or whose debt service obligations have been assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), and (2) who is otherwise qualified to act as the other party to a Payment Agreement with the Authority under any applicable laws.

"Qualified Reserve Account Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company, [approved in form and substance by the Bond Insurer] and deposited with the Trustee pursuant to the Indenture, provided that all of the following requirements are met: (i) at the time of delivery of such letter of credit or surety bond, the long-term credit rating of such bank is within the highest rating category of Moody's and S&P, or the claims paying ability of such insurance company is rated within the two highest rating categories of A.M. Best & Company and S&P; (ii) such letter of credit or surety bond has a term which ends no earlier than the last Interest Payment Date of the series of Bonds to which the Reserve Requirement applies; (iii) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to the Indenture; and (iv) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder amounts necessary to carry out the purposes specified in the Indenture, including the replenishment of the Interest Account or the Principal Account.

"RBI" means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the Authority, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate on actively traded thirty (30) year United States Treasury obligations.

"Record Date" means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month preceding such Interest Payment Date.

"Redemption Fund" means the fund by that name established pursuant to Section 5.08.

"Registration Books" means the records maintained by the Trustee pursuant to Section 2.06 for the registration and transfer of ownership of the Bonds.

"Reserve Account" means the account by that name in the Bond Fund established pursuant to Section 5.03.

["Reserve Policy" means the Qualified Reserve Account Credit Instrument issued by the Bond Insurer on the Closing Date.]

"Reserve Requirement" means as of any date of calculation thereafter, an amount equal to the least of: (i) 100% of the Maximum Annual Debt Service for the then current or every subsequent Bond Year; (ii) 125% of average Annual Debt Service as of the date issuance of the Bonds, and (iii) ten percent (10%) of the proceeds (within the meaning of section 148 of the Tax Code) of the Bonds.

"S&P" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business, its successors and assigns or, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the City, with the approval of the Authority, by notice to the Trustee.

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attn. Call Notification Department, Fax-(212) 855-

7232, and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Certificate of the Authority delivered to the Trustee.

"Serial Bonds" means the Bonds not subject to redemption from mandatory sinking fund payments.

"Sinking Account" means the account by that name in the Bond Fund established pursuant to Section 5.03.

"State" means the State of California.

"Supplemental Indenture" means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

"Tax Regulations" means temporary and permanent regulations promulgated under or with respect to sections 103 and 141 through 501 inclusive, of the Code.

"Term Bonds" means, collectively, the Bonds maturing on November 1, 20__ or November 1, 20__.

"Trustee" means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, or its successor, as Trustee hereunder as provided in Section 8.01.

"Trust Office" means the corporate trust office of the Trustee at the address set forth in Section 12.07, provided, however for transfer, registration, exchange, payment and surrender of Bonds "Trust Office" means care of the corporate trust office of the Trustee in St. Paul, Minnesota, or such other office designated by the Trustee from time to time and such office as the Trustee may designate in writing to the Authority from time to time as the place for transfer, registration, surrender, exchange or payment of the Bonds.

"Undertaking To Provide Continuing Disclosure" shall mean the Continuing Disclosure Agreement, by the Authority and Willdan Financial Services, as Dissemination Agent, dated August 1, 2015 and described in Section 6.07 hereof.

"Variable Interest Rate" means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate shall be as specified in the applicable Parity Obligation, which Parity Obligation shall also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate shall remain in effect, and (ii) the time or times based upon which any change in such variable interest rate shall become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

"Variable Interest Rate Parity Obligations" mean, for any-period of time, all in accordance with the definition of "Annual Debt Service" set forth in this Section 1.01, any Parity Obligations that bear a Variable Interest Rate during such period, except that (i) Parity Obligations shall not be treated as Variable Interest Rate Parity Obligations if the net economic effect of interest rates on particular payments of the Parity Obligations and interest rates on other payments of the same Parity Obligations, as set forth in such Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case, is to produce obligations that bear interest at a fixed interest rate, and (ii) Payments and Parity Obligations with respect to which a Payment Agreement is in force shall be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate.

"Water Enterprise" means the City's water system, consisting of the property and assets described in the Water Lease.

"Water Fund" means the fund by that name established pursuant to Section 5.01(b).

"Water Lease" means the Water Enterprise Lease Agreement, dated as of December 1, 2005, by and between the Authority and the City, relating to the lease of the Water Enterprise by the Authority from the City.

"Water Operation and Maintenance Expenses" means all expenses and costs of management, operation, maintenance and repair of the Water Enterprise, and all incidental costs, fees and expenses properly chargeable to the Water Enterprise, including payments required of the Authority pursuant to contract for the purchase or delivery of water which do not constitute Parity Obligations (but excluding debt service or other similar payments on Parity Obligations or other obligations and depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature).

"Water Project Fund" means the fund by that name established pursuant to Section 3.04.

"Written Certificate", "Written Request" and "Written Requisition" of the Authority means, respectively, a written certificate, request or requisition signed in the name of the Authority by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

Section 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter; masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture: the words "herein", "hereof", "hereby", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II.

THE BONDS

Section 2.01. Authorization of Bonds. The Authority hereby authorizes the issuance hereunder of the Bonds, which shall constitute special obligations of the Authority, for the purpose of providing funds to (i) refund the 2005 Bonds; (ii) [finance certain capital improvements to the Water Enterprise; (iii) purchase a surety policy for the Reserve Account; and (iv)] pay costs of issuance related to the Bonds. The Bonds are hereby designated the "Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series". The aggregate principal amount of Bonds initially issued and Outstanding under this Indenture shall equal _____ Dollars ($_____). This Indenture constitutes a continuing agreement with the Trustee and the Owners from time to time of the Bonds to secure the full payment of the principal of and interest and premium (if any) on all the Bonds, subject to the covenants, provisions and conditions herein contained.

Section 2.02. Terms of the Bonds. The Bonds shall be issued in fully registered form without coupons in Authorized Denominations. The Bonds shall initially be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York, and shall be evidenced by one Bond for each of the maturities in the principal amounts set forth below. DTC is hereby appointed depository for the Bonds, and registered ownership may not thereafter be transferred except as set forth in Section 2.04. The Bonds shall mature on November 1 in the years and in the amounts set forth below and shall bear interest on each Interest Payment Date at the rates set forth below.

Maturity Date (November 1)	Principal Amount	Interest Rate
2015		
2015		
2016		
2017		
2018		
2019		
2019		
2020		
2021		
2022		
2023		
2030		
2035		
2036		

Interest on the Bonds shall be payable semi-annually on May 1 and November 1 calculated based on a 360-day year of twelve (12) thirty-day months on each Interest Payment Date, commencing [November 1, 2015], to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed by first class mail to the Owner at the address of such Owner as its appears on the Registration Books; provided however, that payment of interest or principal may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee prior to the applicable Record Date. Principal of any Bond and any premium upon redemption shall be paid by check or wire of the Trustee upon presentation and surrender thereof at the Trust Office. Principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America.

Each Bond shall be dated the Closing Date and shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before October 15, 2015, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Section 2.03. Transfer of Bonds. Subject to Section 2.05, any Bond may, in accordance with its terms, be transferred on the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee. Transfer of any Bond shall not be permitted by the Trustee during the period established by the Trustee for selection of Bonds for redemption or if such

Bond has been selected for redemption pursuant to Article IV. Whenever any Bonds or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and shall deliver a new Bond or Bonds for a like aggregate principal amount. The Trustee may require the Bond Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

Section 2.04. Use of Securities Depository.

(a) The Bonds shall be initially registered as provided in Section 2.02. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except:

(i) to any successor of Cede & Co., as nominee of DTC, or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (a) hereof (a "substitute depository"); provided, that any successor of Cede & Co., as nominee of DTC or a substitute depository, shall be qualified under any applicable laws to provide the services proposed to be provided by it;

(ii) to any substitute depository, upon (1) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository, or (2) a determination by the Authority to substitute another depository for DTC (or its successor) because DTC or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided, that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) to any person as provided below, upon (1) the resignation of DTC or its successor (or substitute depository or its successor) from its functions as depository, or (2) a determination by the Authority to remove DTC or its successor (or any substitute depository or its successor) from its functions as depository.

(iv) in the case of any transfer pursuant to clause (i) or clause (ii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Trustee, together with a Written Request of the Authority to the Trustee, a new Bond for each maturity shall be authenticated and delivered in the aggregate principal amount of the Bonds then Outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Written Request of the Authority.

(v) in the case of any transfer pursuant to clause (iii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Trustee, together with a Written Request of the Authority to the Trustee, new Bonds shall be authenticated and delivered in such denominations numbered in the manner determined by the Trustee and registered in the names of such persons as are requested in such a Written Request of the Authority, subject to the limitations of Section 2.02 hereof; provided, the Trustee shall not be required to deliver such Bonds within a period less than sixty (60) days from the date of receipt of such a Request of the Authority. After any transfer pursuant to this subsection, the Bonds shall be transferred pursuant to Section 2.03.

(vi) the Authority and the Trustee shall be entitled to treat the person in whose name any Bond is registered as the Owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Authority; and the Authority and the Trustee shall have no responsibility nor shall they have any liability for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Bonds, and neither the Authority nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party, including DTC or its successor (or substitute depository or its successor), except for the Owner of any Bonds.

(vii) so long as the Outstanding Bonds are registered in the name of Cede & Co. or its registered assigns, the Authority and the Trustee shall cooperate with Cede & Co., as sole registered Owner, or its registered assigns in effecting payment of the principal of and interest on the Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

(viii) notwithstanding anything to the contrary contained herein, so long as the Bonds are registered as provided in this Section 2.04, payment of principal of and interest on the Bonds shall be made in accordance with the Letter of Representations delivered to DTC with respect to the Bonds.

Section 2.05. Exchange of Bonds. Any Bond may be exchanged upon surrender thereof at the Trust Office for an equal aggregate principal amount of Bonds of other authorized denominations and of the same tenor and maturity. Exchange of any Bond shall not be permitted during the period established by the Trustee for selection of Bonds for redemption or if such Bond has been selected for redemption pursuant to Article IV. The Trustee shall require the Bond Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such transfer. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Authority.

Section 2.06. Registration Books. The Trustee will keep or cause to be kept, at the Trust Office, sufficient records for the registration and transfer of ownership of the Bonds, which shall at all reasonable times be open to inspection during regular business hours by the Authority and the Owners with reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

Section 2.07. Form and Execution of Bonds. The Bonds shall be substantially in the form attached hereto as Exhibit A and hereby made a part hereof. The Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signatures of its Chairperson and attested with the manual or facsimile signature of its Secretary or any assistant duly appointed by the Board, and shall be delivered to the Trustee for authentication by it. In case any officer of the Authority who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued

and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though the individual who signed the same had continued to be such officer of the Authority. Also, any Bond may be signed on behalf of the Authority by any individual who on the actual date of the execution of such Bond shall be the proper officer although on the nominal date of such Bond such individual shall not have been such officer.

Only such of the Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.08. Temporary Bonds. The Bonds may be issued in temporary form exchangeable for definitive Bonds when ready for delivery. Any temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority, shall be in fully registered form without coupons and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds it will execute and deliver definitive Bonds as promptly thereafter as practicable, and thereupon the temporary Bonds may be surrendered, for cancellation, at the Trust Office and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.09. Bonds, Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series, tenor, and Authorized Denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and destroyed. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Trustee and, if such evidence be satisfactory to them and indemnity for them satisfactory to the Authority and the Trustee shall be given, the Authority, at the expense of the Owner of such lost, destroyed or stolen Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof) upon receipt of the aforementioned indemnity. The Trustee may require payment of a reasonable fee for each new Bond issued under this Section 2.09 and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section 2.09 in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

Section 2.10. CUSIP Numbers. The Trustee and the Authority shall not be liable for any defect or inaccuracy in the CUSIP number that appears on any Bond or in any redemption notice. The Trustee may, in its discretion, include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the Trustee nor the Authority shall be liable for any inaccuracies in such numbers.

Section 2.11. Parity Obligations. The Authority covenants that no additional bonds or other indebtedness shall be issued or incurred on a basis senior to the Bonds that are payable out of the Net Water Revenues in whole or in part. Additional obligations may be issued on a basis subordinate to the Bonds to the extent required. Except for obligations incurred to prepay or post a security deposit for the payment of the Bonds or Parity Obligations, the Authority may issue or incur Parity Obligations during the term of the Bonds only if:

(a) no event of default has occurred and is continuing under this Indenture;

(b) the Net Water Revenues, calculated in accordance with generally accepted accounting principles, as shown by the books of the Authority for the most recent completed Fiscal Year for which audited financial statements are available, or for any more recent consecutive twelve (12) month period selected by the Authority, in either case verified by a certificate or opinion of an independent accountant or financial consultant, are at least equal to 120% of the amount of Maximum Annual Debt Service; and

(c) upon the issuance of such Parity Obligations a reserve fund shall be established for such Parity Obligations in an amount at least equal to the lesser of (i) maximum annual debt service on such Parity Obligations, or (ii) the maximum amount then permitted under the Code.

Either or both of the following items may be added to such Net Water Revenues for the purpose of applying the restriction contained in subsection (b) above:

(i) An allowance for revenues from any additions to or improvements or extensions of the Water Enterprise to be constructed with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been constructed with moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 70% of the estimated additional average annual Net Water Revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Obligation, all as shown by the certificate or opinion of a qualified independent consultant employed by the District, may be added to such Net Water Revenues for the purpose of applying the restriction contained in subsection (b).

(ii) An allowance for earnings arising from any increase in the charges made for service from the Water Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which the Net Water Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional

obligations, as shown by the certificate or opinion of a qualified independent consultant employed by the Authority.

ARTICLE III.

ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS

Section 3.01. Issuance of the Bonds. At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver Bonds in the aggregate principal amount of _____ Dollars ($_____).

Section 3.02. Application of the Proceeds of the Bonds. The proceeds received from the sale of the Bonds ($_____, including net issue [premium/discount] and excluding underwriter's discount [and Bond Insurance premium and surety premium which will be paid directly to the Bond Insurer by the Original Purchasers on behalf of the Authority]) shall be deposited in trust with the Trustee, who shall forthwith set aside such proceeds as follows:

(a) The Trustee shall deposit the amount of $_____ in the Costs of Issuance Fund;

(b) The Trustee shall transfer to the Escrow Agent the amount of $_____ to be deposited in the Escrow Fund established and held under the Escrow Agreement;

(c) [The Trustee shall deposit the remaining balance of such proceeds, in the amount of $_____ in the Water Project Fund to be applied as provided in Section 3.04.]

The Trustee may, in its discretion, establish additional accounts in its books and records to facilitate the transfer of moneys.

[On the Closing Date, the Original Purchaser will wire a payment in the amount of $_____ directly to the Bond Insurer, as payment on behalf of the Authority for the Bond Insurance Policy Premium in the amount of $_____ and the Reserve Policy Premium in the amount of $_____.]

Section 3.03. Establishment and Application of Costs of Issuance Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund." The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance upon submission of Written Requisitions of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. The Trustee has no obligation at any time to monitor the applications of any moneys paid pursuant to a Written Requisition of the Authority. Ninety days after the Closing Date, or upon the earlier Written Request of the Authority, all amounts remaining in the Costs of Issuance Fund shall be transferred by the Trustee to the Interest Account of the Bond Fund and the Costs of Issuance Fund shall be closed.

Section 3.04. Establishment and Application of Water Project Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the "Water Project Fund." Except as otherwise provided herein, moneys in the Water Project Fund shall be used solely to finance capital additions and/or improvements to the Water Enterprise. The Trustee shall disburse moneys in the Water Project Fund as follows:

(a) Before any payment from the Water Project Fund shall be made, the City shall file or cause to be filed with the Trustee, a Requisition of the City which shall be substantially in the form attached hereto as Exhibit B; and

(b) Within five (5) Business Days following receipt of each such Requisition of the City, or as soon thereafter as possible, the Trustee shall pay the amount set forth in such Requisition of the City as directed by the terms thereof out of the Water Project Fund.

Upon abandonment or completion of the improvement of the Water Enterprise, and delivery by the Authority to the Trustee of a notice to that effect, any excess funds shall be transferred to the Redemption Fund and used to redeem Bonds at the earliest redemption date. Upon such transfer, the Water Project Fund shall be closed.

Notwithstanding the foregoing provisions of this Section 3.04, upon the occurrence and continuation of an Event of Default under and as defined in Section 7.01(a) or (b), the Trustee shall immediately withdraw all amounts then on deposit in the Water Project Fund and apply such amounts in accordance with the provisions of Section 7.02.

The Trustee may conclusively rely on the Written Requisition of the City submitted in accordance with this Section 3.04 as complete authorization for disbursements made hereunder.

Section 3.05. Validity of Bonds. The validity of the authorization and issuance of the Bonds is not dependent on and shall not be affected in any way by any proceedings taken by the Authority or the Trustee with respect to or in connection with the Water Lease. The recital contained in the Bonds that the same are issued pursuant to the Constitution and laws of the State shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV.

REDEMPTION OF BONDS

Section 4.01. Terms of Redemption.

(a) Mandatory Sinking Account Redemption. The Term Bonds maturing on November 1, 20__ and November 1, 20__ are subject to mandatory redemption, in part by lot, from Sinking Account payments set forth in the following schedule on November 1 in each year, commencing November 1, 20__ and November 1, 20__, respectively, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to subsections (b) or (c) below, the total amount of Sinking Account payments to be made subsequent to such redemption shall be reduced in an

amount equal to the principal amount of the Term Bonds so redeemed by reducing each such future Sinking Account payment on a pro rata basis (as nearly as practicable) in integral multiples of $5,000, as shall be designated pursuant to written notice filed by the Authority with the Trustee.

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

In lieu of such redemption, the Trustee may apply amounts in the Sinking Account to the purchase of Term Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as may be directed by the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Term Bonds, as set forth in a Written Request of the Authority. The par amount of Term Bonds so purchased by the Authority in any twelve-month period immediately preceding any mandatory Sinking Account payment date in the table above will be credited towards and will reduce the principal amount of Term Bonds required to be redeemed on the succeeding Principal Payment Date.

(b) Optional Redemption. The Bonds maturing on or after November 1, [2026] shall be subject to optional redemption, as a whole or in part on any date prior to the maturity thereof, at the option of the Authority, on or after November 1, [2025], from funds derived by the Authority from any source, at par, together with accrued interest.

(c) Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Bonds shall also be subject to redemption as a whole or in part on any date, pro rata by maturity

and by lot within a maturity (in a manner determined by the Trustee) from moneys deposited in the Redemption Fund to the extent insurance proceeds received with respect to the Water Enterprise are not used to repair, rebuild or replace the Water Enterprise pursuant to Section 6.15 of this Indenture, or to the extent of condemnation proceeds received with respect to the Water Enterprise and elected by the Authority to be used for such purpose pursuant to Section 6.17 of this Indenture, or to the extent excess funds remain upon the abandonment or completion of improvements to the Water Enterprise pursuant to Section 3.04 of this Indenture, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption.

Section 4.02. Selection of Bonds for Redemption. Whenever provision is made in Section 4.01 of this Indenture for the redemption of less than all of the Bonds, the Trustee shall select the Bonds to be redeemed from all Bonds or such given portion thereof not previously called for redemption, pro rata by maturity or, at the election of the Authority set forth in a Written Request of the Authority, filed with the Trustee, from such maturities as the Authority shall determine, and by lot within a maturity in any manner which the Trustee, in its sole discretion, shall deem appropriate and fair. Any such determination shall be deemed conclusive. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate $5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

Section 4.03. Notice of Redemption. The Authority shall give the Trustee notice of its determination to redeem any Bonds in accordance with Section 4.01(b) or (c) not less than 30 days and no more than 90 days prior to the date fixed for redemption. Notice of redemption shall be mailed by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date, to respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books, and by first class mail, facsimile or electronic mails, to the Securities Depositories and to the Information Services. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity or series) are to be redeemed, the CUSIP numbers and (if less than all Bonds of a maturity are redeemed) Bond numbers of the Bonds to be redeemed, the maturity or maturities of the Bonds to be redeemed and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

Any notice given pursuant to this paragraph may be conditional and/or rescinded by written notice given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this Section.

Notwithstanding anything in this Article IV to the contrary, the Trustee shall not mail notice of any redemption of the Bonds pursuant to Section 4.01(c) unless the Trustee shall have on deposit, as of the date of such mailing, an amount of funds sufficient to pay in full the redemption price of all of the Bonds to be redeemed as such payments become due and payable.

Section 4.04. Partial Redemption of Bonds. Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

Section 4.05. Effect of Redemption. Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed pursuant to the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed.

ARTICLE V.

REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.01. Pledge and Assignment; Transfers to Bond Fund.

(a) Pledge of Net Water Revenues. All of the Net Water Revenues and any other amounts (including the proceeds of the sale of the Bonds) held in any of the funds or accounts under the Indenture, are hereby irrevocably pledged, charged and assigned to the punctual payment of the principal of and interest and premium, if any, on the Bonds, and except as otherwise provided herein the Net Water Revenues and such other funds shall not be used for any other purpose so long as any of the Bonds remain Outstanding. Such pledge, charge and assignment shall constitute, on a parity with any Parity Obligations, a first lien on the Net Water Revenues and such other moneys for the payment of the principal of and interest and premium, if any, on the Bonds in accordance with the terms hereof. All Net Water Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall be paid by the Authority to the Trustee pursuant hereto.

(b) Deposits Into Water Fund; Transfers to Bond Fund. The Authority shall cause the City, and the City has agreed and covenanted pursuant to the Water Lease, to deposit all of the Gross Water Revenues immediately upon receipt in the Water Fund, which fund is hereby established and which shall be maintained and held in trust by the Authority as a separate fund.

The Authority shall, from the moneys in the Water Fund, pay all Water Operation and Maintenance Expenses (including amounts reasonably required to be set aside in contingency reserves for Water Operation and Maintenance Expenses, the payment of which is not then immediately required) as they become due and payable. On or before the tenth (10th) Business Day preceding each Interest Payment Date, provided no Event of Default as described in Section 7.01 hereof has occurred and is continuing, the Authority shall cause the City to disburse the following amounts from the Water Fund, in the following order of priority:

(i) to the Trustee for deposit into the Bond Fund the amount equal to (i) the aggregate amount of interest coming due and payable on the Bonds on the next succeeding Interest Payment Date, plus (ii) one-half of the aggregate amount of the principal coming due and payable on the next succeeding Principal Payment Date, which payments shall be made on a parity basis with any outstanding Parity Obligations; and

(ii) to the Trustee for deposit in the Reserve Account, the amount, if any, required to restore the balance in the Reserve Account to the Reserve Requirement, the notice of which deficiency shall have been given by the Trustee to the Authority pursuant to Section 5.07 hereof.

Amounts remaining in the Water Fund immediately after making the transfers required to be made pursuant to this Section 5.01(b) shall be released to the Authority free and clear of the lien of the Indenture, to be used by the Authority for any lawful purpose including but not limited to making lease payments pursuant to the Water Lease.

Section 5.02. Covenant Regarding Net Water Revenues. The Authority shall cause the City to manage, conserve and apply the Gross Water Revenues on deposit in the Water Fund in such a manner that all deposits required to be made pursuant to the preceding Section 5.01 will be made at the times and in the amounts so required.

Section 5.03. Creation of Bond Fund and Accounts Therein; Allocation of Net Water Revenues. There are hereby created the following funds and accounts to be held and administered by the Trustee pursuant to this Indenture: the Bond Fund, and, within the Bond Fund, the Interest Account, the Principal Account, the Sinking Account, and the Reserve Account. On or about the fifth Business Day preceding each date on which interest on the Bonds becomes due and payable, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Net Water Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(a) The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such date on all Bonds then Outstanding.

(b) The Trustee shall deposit in the Principal Account, one-half (½) of the aggregate amount of principal becoming due and payable on the Outstanding Serial Bonds plus, deposit to

the Sinking Account, one-half (½) of the aggregate amount of the mandatory Sinking Account payment required to be paid for Outstanding Term Bonds on the next succeeding Principal Payment Date, until the balance in said accounts are equal to said respective aggregate amounts of such principal and mandatory Sinking Account payments.

(c) The Trustee shall deposit in the Reserve Account the amount, if any, required to restore the balance in the Reserve Account to the Reserve Requirement, the notice of which deficiency shall have been given by the Trustee to the Authority pursuant to Section 5.07 hereof.

(d) The Trustee shall transfer any remaining amounts in the Bond Fund to the Authority for any lawful use with respect to the Water Enterprise.

Section 5.04. Application of Interest Account. All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture).

Section 5.05. Application of Principal Account. All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates.

Section 5.06. Application of Sinking Account. All moneys on deposit in the Sinking Account shall be used and withdrawn by the Trustee for the sole purpose of redeeming or purchasing (in lieu of redemption) Term Bonds pursuant to Section 4.01(a).

Section 5.07. Application of Reserve Account. All amounts in the Reserve Account shall be used and withdrawn by the Trustee solely for the purpose of (a) paying interest on or principal of the Bonds, when due and payable to the extent that moneys deposited in the Interest Account or Principal Account, respectively, are not sufficient for such purpose, (b) paying the redemption price of Term Bonds to be redeemed pursuant to Section 4.01(a) in the event that amounts on deposit in the Sinking Account are not sufficient for such purpose, and (c) making the final payments of principal of and interest on the Bonds. On the date on which all Bonds shall be retired hereunder or provision made therefor pursuant to Article X, all moneys then on deposit in the Reserve Account shall be withdrawn by the Trustee and paid to the Authority for use by the Authority for any lawful purpose. If as of the first (1st) day of the month preceding any Interest Payment Date there shall be any deficiency in the Reserve Account (whether due to a payment therefrom or due to the fluctuation in market value of securities credited thereto, or otherwise), the Trustee shall promptly notify the Authority in writing of the amount of such deficiency and the Authority shall cause the City to pay to the Trustee the amount of such deficiency as provided in Section 5.01(b) hereof. Semiannually, on or before each Interest Payment Date, the Trustee shall value the Reserve Account at fair market value and any amounts on deposit in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Bond Fund.

The Reserve Requirement may be satisfied by crediting to the Reserve Account moneys or a Qualified Reserve Account Credit Instrument or any combination thereof, which in the aggregate make funds available in the Reserve Account in an amount equal to the Reserve

Requirement. Upon deposit of such Qualified Reserve Account Credit Instrument, the Trustee shall transfer any excess amounts then on deposit in the Reserve Account in excess of the Reserve Requirement into a segregated account of the Bond Fund, which monies shall be applied upon written direction of the Authority either (i) to the payment within one year of the date of transfer of capital expenditures of the Authority permitted by law, or (ii) to the redemption of Bonds on the earliest succeeding date on which such redemption is permitted hereby, and pending such application shall be held either not invested in investment property (as defined in section 148(b) of the Code), or invested in such property to produce a yield that is not in excess of the yield on the Bonds; *provided, however*, that the Authority may by written direction to the Trustee cause an alternative use of such amounts if the Authority shall first have obtained a written opinion of nationally recognized bond counsel substantially to the effect that such alternative use will not adversely affect the exclusion pursuant to section 103 of the Code of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In any case where the Reserve Account is funded with a combination of cash and a Qualified Reserve Account Credit Instrument, the Trustee shall deplete all cash balances before drawing on the Qualified Reserve Account Credit Instrument. With regard to replenishment, any available moneys provided by the Authority or the City shall be used first to reinstate the Qualified Reserve Account Credit Instrument and second, to replenish the cash in the Reserve Account. In the event the Qualified Reserve Account Credit Instrument is drawn upon, the Authority shall make payment of interest on amounts advanced under the Qualified Reserve Account Credit Instrument after making any payments pursuant to this subsection.

[On the Closing Date, the Reserve Account will be funded with the Reserve Policy in full satisfaction of the Reserve Requirement.]

Section 5.08. Application of Redemption Fund. The Trustee shall establish and maintain the Redemption Fund, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds to be redeemed pursuant to Section 4.01(c); provided, however, that at any time prior to selection for redemption of any such Bonds, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed pursuant to a Written Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds.

Section 5.09. Rates and Charges. The Authority makes the covenants set forth in this Section 5.09 with respect to the Water Enterprise as a whole and the Gross Water Revenues and the Net Water Revenues generated by the Water Enterprise.

(a) Covenant Regarding Gross Water Revenues. The Authority shall fix, prescribe, revise and collect rates, fees and charges for the Water Enterprise as a whole for the services and improvements furnished by the Water Enterprise during each Fiscal Year that are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Water Revenues that are sufficient to pay the following amounts in the following order of priority:

(i) Water Operation and Maintenance Expenses estimated by the Autbority to become due and payable in such Fiscal Year;

(ii) Debt Service payments as they become due and payable during such Fiscal Year, without preference or priority, except to the extent such Debt Service payments are payable from the proceeds of the Bonds or from any other source of legally available funds of the Authority that bave been deposited with the Trustee for such purpose prior to the commencement of such Fiscal Year;

(iii) the amount, if any, required to restore the balance in the Reserve Account to the full amount of the Reserve Requirement; and

(iv) other payments required to meet any other obligations of the Authority that are charges, liens, encumbrances upon, or which are otherwise payable, from Gross Water Revenues during such Fiscal Year.

(b) Covenant Regarding Net Water Revenues. In addition, the Authority shall fix, prescribe, revise and collect, or cause to be fixed, prescribed, revised and collected, rates, fees and charges for the services and improvements furnished by the Water Enterprise during each Fiscal Year which are sufficient to yield Net Water Revenues for the Water Enterprise, which are at least equal to one hundred fifteen percent (115%) of the Maximum Annual Debt Service payments coming due and payable in such Fiscal Year.

(c) Covenant Regarding Charging Rates. The Authority will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Water Enterprise to pay the rates and charges applicable to the Water Enterprise provided to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The Authority will not permit any part of the Water Enterprise or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof).

Section 5.10. [Reserved].

Section 5.11. Budget and Appropriation of Debt Service Payments. So long as any Bonds remain Outstanding, the Authority covenants that it shall adopt and make all necessary budgets and appropriations of the Debt Service payments from the Net Water Revenues. In the event any Debt Service payment requires the adoption by the Authority of any supplemental budget or appropriation, the Authority shall promptly adopt the same. The covenants on the part of the Authority contained in this Section 5.11 shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Authority to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Authority to carry out and perform the covenants and agreements in this Section 5.11.

Section 5.12. Special Obligation of the Authority; Obligations Absolute. The Authority's obligation to pay the Debt Service payments and any other amounts coming due and

payable hereunder shall be a special obligation of the Authority limited solely to the Net Water Revenues. Under no circumstances shall the Authority be required to advance moneys derived from any source of income other than the Net Water Revenues and other sources specifically identified herein for the payment of the Debt Service payments, nor shall any other funds or property of the Authority be liable for the payment of the Debt Service payments and any other amounts coming due and payable hereunder.

The obligations of the Authority to make the Debt Service payments from the Net Water Revenues and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the Authority or the Trustee of any obligation with respect to the Water Enterprise, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the Authority by the Trustee. Until such time as all of the Debt Service payments and all other amounts coming due and payable hereunder shall have been fully paid or prepaid, the Authority (a) will not suspend or discontinue payment of any Debt Service payments or such other amounts, and (b) will perform and observe all other covenants contained in this Indenture, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Water Enterprise, sale of the Water Enterprise, the taking by eminent domain of title to or temporary use of any component of the Water Enterprise, commercial frustration of purpose, any change in the tax law or other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Indenture.

Section 5.13. Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments, which mature or are available on or before the dates on which such monies are anticipated to be needed. Moneys (if any) in the Reserve Account shall be invested in Permitted Investments maturing, except in the case of Permitted Investments qualifying as Guaranteed Investment Contracts, no later than five (5) years from the date of investment. Such investments shall be directed by the Authority pursuant to a Written Request of the Authority filed with the Trustee at least two (2) Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments described in clause [D] of the definition thereof. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder sball be deposited in the Bond Fund, provided, however, that all earnings on the investment of amounts in the Reserve Account shall be retained therein to the extent required to maintain the Reserve Requirement, and, to the extent not so required, such amounts shall be deposited, when available, in the Bond Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section 5.13.

The Trustee may sell at the best price reasonably obtainable, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority will not receive such confirmations to the extent permitted by law. The Trustee will provide to the Authority periodic cash transaction statements that include detailed information for all investment transactions made by the Trustee under this Indenture.

The Trustee may make any investments authorized hereunder through the Trustee's own bond or investment department or trust investment department, or those of its parent or any affiliate.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

Section 5.14. Valuation of Investments. For the purpose of determining the amount in any fund or account, the value of Permitted Investments credited to such fund or account shall be valued by the Trustee on or before each Interest Payment Date at the market value thereof (excluding any accrued interest). The Trustee may utilize computer pricing services as are available to it in making such valuations. Any deficiency in a fund or account resulting from a decline in market value shall be restored by the Authority no later than the next scheduled valuation date. A Qualified Reserve Account Credit Instrument shall be valued at the maximum amount that can be drawn on such a Qualified Reserve Account Credit Instrument.

ARTICLE VI.

PARTICULAR COVENANTS

Section 6.01. Punctual Payment; Compliance with Documents. The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Net Water Revenues and other assets pledged for such payment as provided in this Indenture, and will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture.

Section 6.02. Extension of Payment of Bonds. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which

shall not have been so extended. Nothing in this Section 6.02 shall be deemed to limit the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

Section 6.03. Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Net Water Revenues and other the funds and accounts pledged or assigned under this Indenture while any of the Bonds are Outstanding, except as set forth in this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserve the right to issue other obligations for such purposes.

Section 6.04. Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Net Water Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, use reasonable efforts to defend, preserve and protect said pledge and assignment of Net Water Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

Section 6.05. Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established pursuant to this Indenture. The Trustee shall, upon the written request of the holder of any of the Outstanding Bonds, provide a copy of the monthly statements relating to the Bonds. Such books of record and account shall be available for inspection by the Authority [or the Bond Insurer] during regular business hours with reasonable prior notice.

The Authority shall at all times keep, or cause to be kept, proper books of record and account prepared in accordance with industry standards in which complete and accurate entries shall be made of all transactions made by it relating to Net Water Revenues and all funds and accounts established pursuant to this Indenture. The Authority shall cause to be performed a component audit of the Water Enterprise within 240 days of the end of each Fiscal Year.

Section 6.06. [Reserved].

Section 6.07. Continuing Disclosure. The Authority hereby covenants and agrees that it will comply with and carry out all of the provisions of its Undertaking To Provide Continuing Disclosure with respect to the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. Notwithstanding any other provision of this Indenture, failure of the Authority to comply with such Undertaking To Provide Continuing Disclosure shall not be considered an Event of Default; however, any Bondholder may take such actions, as provided in such Undertaking To Provide Continuing Disclosure, as may be necessary

and appropriate to cause the Authority to comply with its obligations under such Undertaking To Provide Continuing Disclosure.

Section 6.08. Covenants to Maintain Tax-Exempt Status. The Authority covenants as follows in this Section.

(a) Special Definitions. When used in this Section, the following terms have the following meanings:

"Computation Date" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Facilities" means any property the acquisition, construction or improvement of which was financed directly or indirectly with Gross Proceeds of the Bonds.

"Gross Proceeds" means any proceeds as defined in section 1.148-1(b) of the Tax Regulations (referring to sales, investment and transferred proceeds), and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of the Bonds.

"Investment" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Nongovernmental Output Property" means any property (or interest therein) that prior to its acquisition by the City was used by (or manufactured for or to the order of or held for the use by) any Nongovernmental Person (whether actually so used or not) in connection with any electric and gas generation, transmission, distribution, or related facilities.

"Nongovernmental Person" refers to any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, or an agency or instrumentality acting solely on behalf thereof.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and that is not acquired to carry out the governmental purposes of the Bonds.

"Prior Issue" refers to the 2005 Bonds.

"Rebate Amount" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Tax Regulations" means the United States Treasury Regulations promulgated pursuant to sections 103 and 141 through 150 of the Code.

"Yield" of

(i) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and

(ii) the Bonds has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest to Become Taxable. The Authority shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner that if made or omitted, respectively, would cause the interest on any of the Bonds to fail to be excluded pursuant to section 103(a) of the Code from the gross income of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Authority or the City receives a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Authority or the City, as the case may be, shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, the Authority shall at all times prior to the payment and cancellation of the last Bond to be paid and canceled:

(1) use its best efforts to ensure that the City exclusively owns, operate and possess all of the Facilities that are to be refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity in respect of the use by any Nongovernmental Person of Gross Proceeds of the Bonds or the Prior Issue, or any of the Facilities, other than taxes of general application within the jurisdiction of the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

Without limiting the foregoing, except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, neither of the City nor the Authority will: (i) permit any Nongovernmental Person to hold any ownership, proprietary or possessory interest in the financed property; (ii) contract with any Nongovernmental Person for the provision of operating or other services with respect to any function of the financed property (unless either (A) such arrangement requires no payment of fees to such Nongovernmental Person other than as direct reimbursement of third party costs or reasonable administrative overhead, or (B) such arrangement conforms to administrative guidance of the Internal Revenue Service in order to assure that such arrangement does not create a private business use relationship of the Nongovernmental Person to the financed property); or (iii) contract with any Nongovernmental Person for the sale of output or

capacity of the financed property unless such contract is described either in section 1.141-7(c) of the Treasury Regulations (describing certain types of output contracts that do not have the effect of transferring the benefits of owning the property and the burdens of paying debt service on the financing of the property) or in section 1.141-7(f) of the Treasury Regulations (describing certain types of output contracts that while having the effect of transferring such benefits and burdens but nevertheless may be disregarded in evaluating private business use). As set forth above, for purposes of the preceding sentence, the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issues.

Except as would not cause any Bond to be a "private activity bond", no portion of the Gross Proceeds will be used (directly or indirectly) for the acquisition of any interest in any Nongovernmental Output Property. As set forth above, for purposes of the preceding sentence, the City and the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issue.

(d) No Private Loan. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, the Authority shall not use Gross Proceeds of any Bond to make or finance loans to any Nongovernmental Person. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (a) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (b) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (c) indirect benefits of such Gross Proceeds, or burdens and benefits of ownership of any property acquired, constructed or improved with such Gross Proceeds, are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause any Bond to become an "arbitrage bond" within the meaning of section 148 of the Code and the Tax Regulations and rulings thereunder, the Authority shall not at any time prior to the final maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, would materially exceed the Yield of such Bond within the meaning of said section 148.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Tax Regulations and rulings thereunder, the Authority shall not take or omit to take any action that would cause any Bond to be "federally guaranteed" within the meaning of section 149(b) of the Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The Authority shall timely file any information required by section 149(e) of the Code with respect to the Bonds with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(i) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Tax Regulations and rulings thereunder:

(1) The Authority shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Bond is discharged. However, to the extent permitted by law, the Authority or the City may commingle Gross Proceeds of the Bonds with its other money, provided that the Authority or the City, as the case may be, separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Authority shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Tax Regulations and rulings thereunder. The Authority shall maintain a copy of the calculation with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) In order to assure the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, the Authority shall pay to the United States the amount that when added to the future value of previous rebate payments made for the Bonds equals (A) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Tax Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (B) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, such rebate payments shall be made by the Authority or the City at the times and in the amounts as are or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder for execution and filing by the Authority or the City.

(4) The Authority shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (i) and (ii) above, and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) or other provision of the Tax Regulations.

(h) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Tax Regulations and rulings thereunder, the Authority shall not, at any time prior to the final maturity of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to paragraph (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the Bonds not been relevant to either party.

(i) Bonds Not Hedge Bonds.

(1) The Authority represents that neither the Refunded Bonds nor any Bonds are or will become "hedge bonds" within the meaning of section 149(g) of the Code.

(2) Without limitation of paragraph (i) above, with respect to the Bonds (or to that portion of the Bonds that is to be applied to the refunding of the Refunded Bonds), either: (A) (I) on the date of issuance of the Refunded Bonds, the Authority or the City reasonably expected that at least 85% of the spendable proceeds of the Refunded Bonds would be expended within the three-year period commencing on such date of issuance, and (II) no more than 50% of the proceeds of the Refunded Bonds were invested in Nonpurpose Investments having a substantially guaranteed yield for a period of four years or more; or (B) (I) the provisions of section 149(g) of the Code did not apply to the Refunded Bonds, (II) the average maturity of the refunding bonds is not later than that of the Refunded Bonds, and (III) the amount of the refunding bonds is not in excess of the amount of the Refunded Bonds.

(3) For purposes of this paragraph (j), (A) "Refunded Bonds" shall refer to the bonds of any issue refunded or re-refunded (immediately or through multiple generations of prior issues) by the Bonds, (B) in applying paragraph (ii) above, "Refunded Bonds" shall refer only to bonds that are not refunding bonds, and (C) in applying clause (ii)(B) above, "refunding bonds" refers to, and said clause (ii)(B) has been applied separately to, each issue being refunded or re-refunded by the Bonds (and to the portion of each issue (treating such portion as a separate issue) to the extent such issue is being refunded or re-refunded by the Bonds) that was itself a refunding issue.

(j) Elections. The Authority hereby directs and authorizes any Authorized Representative of the Authority and the City hereby directs and authorizes any Authorized Representative of City to make elections permitted or required pursuant to the provisions of the Code or the Tax Regulations, as such Authorized Representative of the Authority or Authorized Representative of the City (after consultation with Bond Counsel) deems necessary or appropriate in connection with the Bonds, in the Tax Certificate relating to the Bonds or similar or other appropriate certificate, form or document.

(k) Closing Certificate. The Authority agrees to execute and deliver in connection with the issuance of the Bonds a *Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986*, or similar document containing additional representations and covenants pertaining to the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, which representations and covenants are incorporated as though expressly set forth herein.

Section 6.09. Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in

this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

Section 6.10. Protection of Security and Rights of Owners. The Authority will preserve and protect the security of the Bonds and the Owners. From and after the date of issuance of any Bonds, such Bonds shall be incontestable by the Authority.

Section 6.11. Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

Section 6.12. Maintenance, Utilities, Taxes and Assessments. So long as any Bonds remain Outstanding, all improvement, repair and maintenance of the Water Enterprise shall be the responsibility of the Authority, and the Authority shall pay for or otherwise arrange for the payment of all utility services supplied to the Water Enterprise, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Water Enterprise resulting from ordinary wear and tear.

The Authority shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority affecting the Water Enterprise or its interest or estate therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Authority shall be obligated to pay only such installments as are required to be paid so long as any Bonds remain Outstanding as and when the same become due.

The Authority may, at the Authority's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Trustee shall notify the Authority that, in its opinion, by nonpayment of any such items, the interest of the Owners of the Bonds hereunder will be materially adversely affected, in which event the Authority shall promptly pay such taxes, assessments or charges or provide the Trustee with full security against any loss which may result from nonpayment, in form satisfactory to the Trustee.

Section 6.13. Operation of Water Enterprise. The Authority covenants and agrees to operate the Water Enterprise in an efficient and economical manner and to operate, maintain and preserve the Water Enterprise in good repair and working order. The Authority covenants that, in order to fully preserve and protect the priority and security of the Bonds, the Authority shall pay from the Gross Water Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Water Enterprise which, if unpaid, may become a lien or charge upon the Gross Water Revenues prior or superior to the lien granted hereunder, or which may otherwise impair the ability of the Authority to pay the Debt Service payments in accordance herewith.

The Authority covenants and agrees to honor its obligations pursuant to the Management Agreement, and the Authority shall cause the City to honor the obligations of the City under the Management Agreement. The Authority hereby assigns all of its right, title and interest in and to the Management Agreement, with the exception of the indemnification rights granted pursuant to Article IX thereof, to the Trustee for the benefit of the Trustee [and the Bond Insurer].

Section 6.14. Public Liability and Property Damage Insurance. The Authority shall maintain or cause to be maintained, so long as any Bonds remain Outstanding, but only if and to the extent available at reasonable cost from reputable insurers, a standard comprehensive general insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, assignees and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Water Enterprise. Said policy or policies shall provide coverage in such liability limits and shall be subject to such deductibles as shall be customary with respect to works and property of a like character. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the Authority or the City, and may be maintained in whole or in part in the form of self-insurance by the Authority or the City, in the form of the participation by the Authority or the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such proceeds shall have been paid.

Section 6.15. Casualty Insurance. The Authority shall procure and maintain, or cause to be procured and maintained, so long as any Bonds remain Outstanding, but only in the event and to the extent available from reputable insurers at reasonable cost, casualty insurance against loss or damage to any improvements constituting any part of the Water Enterprise, covering such hazards as are customarily covered with respect to works and property of like character. Such insurance may be subject to deductible clauses which are customary for works and property of a like character. Such insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the Authority and may be maintained in whole or in part in the form of self-insurance by the Authority, subject to the provisions of Section 6.16, or in the form of the participation by the Authority in a joint powers agency or other program providing pooled insurance. All amounts collected from insurance against accident to or destruction of any portion of the Water Enterprise shall be used to repair, rebuild or replace such damaged or destroyed portion of the Water Enterprise, and to the extent not so applied or to the extent the Authority determines it is not economically feasible or in the best interests of the Authority to so repair, rebuild or replace such damaged or destroyed portion of the Water Enterprise, shall be applied to redeem the Bonds.

Section 6.16. Insurance Net Proceeds; Form of Policies. The Authority shall pay or cause to be paid when due the premiums for all insurance policies required by the Water Lease. The Authority shall annually on or before December 1 deliver to the Trustee a certificate to the effect that the Authority has complied with the requirements of Sections 6.14 and 6.15 hereof. In the event that any insurance required pursuant to Sections 6.14 or 6.15 shall be provided in the form of self-insurance, the Authority shall file with the Trustee annually, within ninety (90) days following the close of each Fiscal Year, a statement of an independent actuarial consultant

identifying the extent of such self-insurance and stating the determination that the Authority maintains sufficient reserves with respect thereto. In the event that any such insurance shall be provided in the form of self-insurance by the Authority, the Authority shall not be obligated to make any payment with respect to any insured event except from Gross Water Revenues or from such reserves.

Section 6.17. Eminent Domain. Any amounts received as awards as a result of the taking of all or any part of the Water Enterprise by the lawful exercise of eminent domain, at the election of the Authority (evidenced by a Written Certificate of the Authority filed with the Trustee and the Authority) shall either (a) be used for the lease, acquisition or construction of improvements and extension of the Water Enterprise, or (b) be applied to redeem the Bonds.

Section 6.18. Restriction on Sale of Water Enterprise. The Authority covenants that, so long as any Bonds remain Outstanding, the Authority will not sell, lease, encumber or otherwise dispose of the Water Enterprise, a substantial portion of the Water Enterprise, or the Authority's rights to receive Gross Water Revenues, or suffer the Water Enterprise, a substantial portion of the Water Enterprise, or the Authority's rights to receive Gross Water Revenues to be sold, leased, encumbered or otherwise disposed of, except to another public entity, unless the proceeds of such sale, lease, encumbrance or other disposal shall be adequate, and shall be used, to discharge this Indenture as provided in Article X hereof. For purposes of this covenant, a "substantial portion" of the Water Enterprise shall consist of more than five percent (5%) of the book value of the Water Enterprise. Nothing in this covenant shall be construed to restrict the sale by the Authority of less than a substantial portion of the Water Enterprise, provided that such sale is determined by the Authority to be necessary or desirable for the improvement, expansion or repair of the Water Enterprise, and the proceeds of such sale are used either to fund such improvement, expansion or repair of the Water Enterprise, or to redeem a portion of the Bonds pursuant to Section 4.01(b) hereof.

ARTICLE VII.

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

Section 7.01. Events of Default and Acceleration of Maturities. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for mandatory sinking fund redemption, by declaration or otherwise. [No effect shall be given to payments made under the Bond Insurance Policy for purposes of this subsection.]

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable. [No effect shall be given to payments made under the Bond Insurance Policy for purposes of this subsection.]

(c) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such default

shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the City and the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice (other than a default in the payment of any fees and expenses owing to the Trustee) can be corrected, but not within such sixty (60) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America, or if a federal or state court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the Federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any federal or state court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

Upon the occurrence and during the continuance of any Event of Default the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding, [and upon receipt of the prior written consent of the Bond Insurer (provided the Bond Insurer has not failed to comply with its payment obligations pursuant to the Bond Insurance Policy)], the Trustee shall, declare the principal of all of the Bonds and Parity Obligations then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority shall deposit with the Trustee a sum sufficient to pay all of the principal of and interest on the Bonds and Parity Obligations having come due prior to such declaration, with interest on such overdue principal and interest calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds and Parity Obligations, and the reasonable fees and expenses of the Trustee, together with interest thereon at the prime rate of the Trustee then in effect, and any and all other defaults known to the Trustee (other than in the payment of the principal of and interest on the Bonds having come due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee or the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding may, by written notice to the Authority and to the Trustee, on behalf of the Owners of all of the Outstanding Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Section 7.02. Application of Funds Upon Acceleration. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture and all other funds then held by the Trustee hereunder shall be applied by the Trustee

in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of fees, charges and expenses of the Trustee (including fees and disbursements of its counsel and financial consultants) incurred in and about the performance of its powers and duties under this Indenture; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.

Section 7.03. Other Remedies; Rights of Bond Owners [and Bond Insurer]. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy, in addition to the remedy specified in Section 8.01, at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds, and to enforce any rights of the Trustee under or with respect to this Indenture.

If an Event of Default shall have occurred and be continuing and if requested so to do by the Owners of a majority in aggregate principal amount of Outstanding Bonds and indemnified as provided in Section 8.06, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VII, as the Trustee, being advised by counsel, shall deem in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

[For all purposes of this Indenture, upon the occurrence of any Event of Default, the Bond Insurer shall be deemed to be the sole Owner of the Bonds insured pursuant to the Bond Insurance Policy, except with respect to the giving of notice of such Event of Default to the Owners of the Bonds. The Bond Insurer shall have the right, upon the occurrence of any Event of Default, to (i) notify the Authority, the Trustee or any receiver or receivers of the Gross Water Revenues and other amounts pledged hereunder, of such Event of Default, and (ii) request that the Trustee or receiver intervene in any related judicial proceedings that affect the Bonds or the security therefor. The Trustee and the receiver are required to accept such notice from the Bond Insurer].

Section 7.04. Power of Trustee to Control Proceeding. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in aggregate principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact. Trustee's counsel shall not be deemed under any circumstances to be counsel to the Owners. Communications between the Trustee and Trustee's counsel shall deemed confidential and privileged entitled to all protection under the law.

Section 7.05. Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Net Water Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 7.06. Non-Waiver. Nothing in this Article VII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Net Water Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or contract by the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Trustee or Bond Owners by the Bond Law or by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Bond Owners, as the case may be.

Section 7.07. Rights and Remedies of Bond Owners. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity acceptable to the Trustee in its sole discretion against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) the Trustee has not received any inconsistent direction during such 60-day period from the Owners of a majority in aggregate principal amount of the Outstanding Bonds.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 7.08. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Authority, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE VIII.

THE TRUSTEE

Section 8.01. Duties, Immunities and Liabilities of Trustee.

(a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants whatsoever shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a corporate trustee would exercise or use under the circumstances.

(b) The Authority may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and the Authority shall remove the Trustee if at any time requested to do so by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding or their attorneys duly authorized in writing, or if at any time the Trustee shall cease to be eligible in accordance with subsection (e) of this Section 8.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and thereupon shall appoint a successor Trustee by an instrument in writing. Any such removal shall be made upon at least thirty (30) days' prior written notice to the Trustee.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and by giving the Bond Owners notice of such resignation by mail at the respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing. [The Bond Insurer shall be furnished with written notice of any resignation or removal of the Trustee, and the appointment of any successor thereto.]

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee pursuant to the terms hereof. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the Authority shall petition any federal or state court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, shall signify its acceptance of such appointment by executions and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance shall become vested with all the rnoneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as

may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall mail or cause the successor Trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the respective addresses shown on the Registration Books. If the Authority fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

(e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, authorized under such laws to exercise corporate trust powers, which shall have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least Fifty Million Dollars ($50,000,000), and subject to supervision or examination by federal or State agency, so long as any Bonds are Outstanding. If such corporation publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining agency above referred to then for the purpose of this subsection (e), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section 8.01.

Section 8.02. Merger or Consolidation. Any bank or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 8.01 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

Section 8.03. Liability of Trustee.

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not and does not assume responsibility or liability for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture or the Bonds, nor shall the Trustee incur any responsibility or liability in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations herein or in the Bonds assigned to or imposed upon it and the Trustee expressly disclaims any obligation to make any such undertaking. The Trustee shall only be responsible for the representations contained in its certificate of authentication on the Bonds.

The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder, unless and until the trust administrator of this Indenture shall have actual knowledge thereof, or shall have received written notice thereof at the Trust Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee shall not be responsible for the validity, effectiveness or priority of any collateral given to or held by it, nor shall the Trustee have any duty or obligation to monitor continuing notice filing requirements, if any.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it is not assured to its satisfaction that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; provided, however, that if the Trustee shall advance any such funds at anytime the Trustee shall be entitled to immediate reimbursement at the highest rate permitted by law.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents or attorneys or receivers and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver or attorney appointed in good faith by it hereunder.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of Owners pursuant to this Indenture, unless such Owners shall have offered to the Trustee such security or indemnity acceptable to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy; and provided further that in the event the Trustee shall act, the scope of its obligations and duties thereunder shall not thereby be deemed, under any circumstances, to be expanded.

(i) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(j) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority of the Water Enterprise. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from this Indenture for the existence, furnishing or use of the Water Enterprise.

(k) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or other disclosure material prepared or distributed with respect to the Bonds.

Section 8.04. Right to Rely on Documents. The Trustee shall be protected in acting upon any notice, direction, requisition, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with its counsel with regard to legal questions, and the opinion of such counsel or counsel to the Authority shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

Section 8.05. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority and any Bond Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

Section 8.06. Compensation and Indemnification. Absent any fee agreement between the Trustee and the Authority to the contrary, the Authority shall pay to the Trustee (solely from Gross Water Revenues) from time to time the compensation for all services rendered under this Indenture and also all reasonable expenses and disbursements, incurred in and about the performance of its powers and duties under this Indenture. In the event the Trustee advances its own funds for the payment of the Bonds or for the protection or benefit of the Owners of the Bonds, the Authority shall promptly reimburse the Trustee for such advances with interest at the maximum rate allowed by law.

The Authority shall indemnify, defend and hold harmless the Trustee and its officers, directors, agents and employees, against any loss, liability or expense incurred without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. As security for the performance of the obligations of the Authority under this Section 8.06, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest on particular Bonds. The rights of the Trustee and the obligations of the Authority under this Section 8.06 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture.

ARTICLE IX.

MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 9.0I. Amendments Permitted.

(a) This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time, [upon receipt of the prior written consent of the Bond Insurer], by an indenture or indentures supplemental hereto, which the Authority and the Trustee may enter into when the written consent of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding, exclusive of Bonds disqualified as provided in this Indenture, shall have been filed with the Trustee. No such modification or amendment shall (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Net Water Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by

this Indenture on such Net Water Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding, or (iii) modify any of the rights or obligations of the Trustee hereunder without its written consent thereto. It shall not be necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

[Notwithstanding any other provision of this Indenture, the Bond Insurer shall have the right, in lieu of Owners of the Bonds, to consent on behalf of such owners to any Supplemental Indenture that requires the consent of Owners of Bonds.]

(b) This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to limit or surrender any right or power herein reserved to or conferred upon the Authority;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel;

(iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

(iv) to modify, amend or supplement this Indenture in such manner as to cause interest on the Bonds to remain excludable from gross income under the Code; or

(c) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) Prior to the Trustee entering into any Supplemental Indenture hereunder, there shall be delivered to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect

the exclusion from gross income for purposes of federal income taxation of interest on the Bonds.

(e) Notice of any modification hereof or amendment hereto shall be given by the Authority to each rating agency which then maintains a rating on the Bonds [and the Bond Insurer], at least fifteen (15) days prior to the effective date of the related Supplemental Indenture.

Section 9.02. Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.03. Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after the execution of any Supplemental Indenture pursuant to this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Trust Office or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Trust Office, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same series and maturity.

Section 9.04. Amendment of Particular Bonds. The provisions of this Article IX shall not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by him.

Section 9.05. Notice to Rating Agencies. For all purposes of this Indenture: any rating agency rating the Bonds must receive notice from the Authority of each amendment and a copy thereof at least 15 days in advance of its execution or adoption.

Section 9.06. Copy to [Bond Insurer. A full original transcript of all proceedings relating to the execution of an amendment hereunder shall be provided to the Bond Insurer].

ARTICLE X.

DEFEASANCE

Section 10.01. Discharge of Indenture. Any portion or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority with respect to such Bonds:

(a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, in trust, at or before maturity, money or non-callable Federal Securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or

(c) by delivering such Bonds to the Trustee for cancellation.

If the Authority shall also pay or cause to be paid all other sums payable hereunder, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge such Bonds and this Indenture with respect to such Bonds), and notwithstanding that any of such Bonds shall not have been surrendered for payment; this Indenture and the pledge of Net Water Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon the Written Request of the Authority, the Trustee shall be authorized to take such actions and execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction. In the event all Outstanding Bonds are paid as provided in this Section 10.01, the Trustee shall pay over, transfer, assign or deliver to the Authority all moneys or securities or other property held by it pursuant to this Indenture which are not required for the payment or redemption of any Bonds not theretofore surrendered for such payment or redemption and after payment of amounts due to the Trustee under the Indenture.

[Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Authority, and the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Authority to the registered owners of the Bonds shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such registered owners of the Bonds. Notwithstanding anything herein to the contrary, this Indenture shall not be discharged until all expenses pursuant to Section 11.06 hereof shall have been paid in full. The Authority's obligation to pay such amounts shall survive payment in full of the Bonds.]

Section 10.02. Discharge of Pledge of Net Water Revenues. Upon the deposit with the Trustee, in trust, at or before maturity, of money or non-callable Federal Securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, then the pledge of Net Water Revenues in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Authority may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation shall be deemed to be paid and retired.

Section 10.03. Deposit of Money or Securities with Trustee. Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or non-callable Federal Securities in the necessary amount to pay or redeem any Bonds, the money or non-callable Federal Securities so to be deposited or held may include money or non-callable Federal Securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be [(unless the Bond Insurer otherwise approves)]:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount of such Bonds and all unpaid interest thereon to the redemption date; or

(b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium become due, provided that in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above).

In the event of an advance refunding to pay or redeem any Bonds, the Authority shall cause a verification report to be delivered of an independent nationally recognized certified

public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the Indenture, if no separate escrow agreement is utilized), the terms of the escrow agreement or this Indenture, if applicable, shall be controlling.

Section 10.04. Unclaimed Funds. Notwithstanding any provisions of this Indenture, and subject to applicable provisions of State law, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two (2) years after the principal of such Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date when such Bonds became due and payable, shall be repaid to the Authority free from the trusts created by this Indenture and at the request of the Trustee an indemnification agreement acceptable to the Authority and the Trustee indemnifying the Trustee with respect to claims of Owners of Bonds which have not yet been paid, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI.

[BOND INSURANCE]

Section 11.01. Bond Insurer's Default-Related Provisions.

(a) The Trustee shall, to the extent there are no other available funds held under this Indenture, use the remaining funds in the Water Project Fund to pay principal or interest on the Bonds in the event of a payment default; provided, however, that this requirement may be waived in the discretion of the Bond Insurer.

(b) In determining whether a payment default has occurred or whether a payment on the Bonds has been made under the Indenture, no effect shall be given to payments made under the Bond Insurance Policy.

(c) Any acceleration of the Bonds or any annulment thereof shall be subject to the prior written consent of the Bond Insurer (if it has not failed to comply with its payment obligations under the Bond Insurance Policy).

(d) The Bond Insurer shall receive immediate notice of any payment default and notice of any other default known to the Trustee or the Authority within 30 days of the Trustee's or the Authority's knowledge thereof.

(e) For all purposes of the Indenture governing events of default and remedies, except the giving of notice of default to Owners, the Bond Insurer shall be deemed to be the sole Owner of the Bonds it has insured for so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.

The Bond Insurer shall be included as a party in interest and as a party entitled to (i) notify the Authority, the Trustee, or any applicable receiver of the occurrence of an Event of Default and (ii) request the Trustee or receiver to intervene in judicial proceedings that affect the Bonds or the security therefor. The Trustee or receiver shall be required to accept notice of default from the Bond Insurer.

Section 11.02. Amendments and Supplements.

(a) Any amendment or supplement to the Indenture shall be subject to the prior written consent of the Bond Insurer. Any rating agency rating the Bonds must receive notice of each amendment and a copy thereof at least 15 days in advance of its execution or adoption. The Bond Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

(b) Successor Trustees, Etc. No resignation or removal of the Trustee shall become effective until a successor has been appointed and has accepted the duties of Trustee. The Bond Insurer shall be furnished with written notice of the resignation or removal of the Trustee and the appointment of any successor thereto.

Section 11.03. Defeasance Provisions. In the event of an advance refunding, the Authority shall cause to be delivered a verification report of an independent nationally recognized certified public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the authorizing document, if no separate escrow agreement is utilized), the terms of the escrow agreement or authorizing document, if applicable, shall be controlling.

Section 11.04. Notices to be Given to the Bond Insurer. While the Bond Insurance Policy is in effect:

(i) Notice of any drawing upon or deficiency due to market fluctuation in the amount, if any, on deposit, in the Reserve Account;

(ii) Notice of the redemption, other than mandatory sinking fund redemption, of any of the Bonds, or of any advance refunding of the Bonds, including the principal amount, maturities and CUSIP numbers thereof; and

(iii) Notice of any material events pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934;

(iv) Such additional information as the Bond Insurer may reasonably request from time to time.

Section 11.05. Payments Unconditional. The payment obligations under the Water Lease shall be absolute and unconditional, free of deductions and without any abatement, offset, recoupment, diminution or set-off whatsoever.

Section 11.06. Reimbursement of Expenses. The Authority shall pay or reimburse the Bond Insurer for any and all charges, fees, costs, and expenses that the Bond Insurer may reasonably pay or incur in connection with the following: (i) the administration, enforcement, defense, or preservation of any rights or security hereunder or under any other transaction document; (ii) the pursuit of any remedies hereunder, under any other transaction document, or otherwise afforded by law or equity, (iii) any amendment, waiver, or other action with respect to or related to this Indenture or any other transaction document whether or not executed or completed; (iv) the violation by the Authority of any law, rule, or regulation or any judgment, order or decree applicable to it; (v) any advances or payments made by the Bond Insurer to cure details of the Authority under the transaction documents; or (vi) any litigation or other dispute in connection with this Indenture, any other transaction document, or the transactions contemplated hereby or thereby, other than amounts resulting from the failure of the Bond Insurer to honor its payment obligations under the Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver, or consent proposed in respect of this Indenture or any other transaction document. The obligations of the Authority to the Bond Insurer shall survive discharge and termination of this Indenture.

Section 11.07. Payment Procedure Pursuant to Bond Insurance Policy. As long as the Bond Insurance Policy shall be in full force and effect, the Authority and the Trustee agree to comply with the following provisions:

(i) If, on the third day preceding any Interest Payment Date for the Bonds there is not on deposit with the Trustee sufficient moneys available to pay all principal and interest on the Bonds due on such date, the Trustee shall immediately notify the Bond Insurer and U.S. Bank Trust National Association, New York, New York, or its successor as its Fiscal Agent (the "Fiscal Agent") of the amount of such deficiency. If, by said Interest Payment Date, the Authority has not provided the amount of such deficiency, the Trustee shall simultaneously make available to the Bond Insurer and to the Fiscal Agent the registration books for the Bonds maintained by the Trustee. In addition:

(i) The Trustee shall provide the Bond Insurer with a list of the Owners entitled to receive principal or interest payments from the Bond Insurer under the terms of the Bond Insurance Policy and shall make arrangements for the Bond Insurer and its Fiscal Agent

(1) to mail checks or drafts to Owners entitled to receive full or partial interest payments from the Bond Insurer and (2) to pay principal of the Bonds surrendered to the Fiscal Agent by the Owners entitled to receive full or partial principal payments from the Bond Insurer; and

(ii) The Trustee shall, at the time it makes the registration books available to the Bond Insurer pursuant to (i) above, notify Owners entitled to receive the payment of principal or interest on the Bonds from the Bond Insurer (1) as to the fact of such entitlement, (2) that the Bond Insurer will remit to them all or part of the interest payments coming due subject to the terms of the Bond Insurance Policy, (3) that, except as provided in paragraph (b) below, in the event that any Owners is entitled to receive full payment of principal from the Bond Insurer, such Owners must tender his Bond with the instrument of transfer in the form provided on the Bond executed in the name of the Bond Insurer, and (4) that, except as provided in paragraph (b) below, in the event that such Owner is entitled to receive partial payment of principal from the Bond Insurer, such Owner must tender his Bond for payment first to the Trustee, which shall note on such Bond the portion of principal paid by the Trustee, and then, with an acceptable form of assignment executed in the name of the Bond Insurer, to the Fiscal Agent, which will then pay the unpaid portion of principal to the Owner subject to the terms of the Bond Insurance Policy.

(ii) In the event that the Trustee has notice that any payment of principal or interest on a Bond has been recovered from an Owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee shall, at the time it provides notice to the Bond Insurer, notify all Owners that in the event that any Owner's payment is so recovered, such Owner will be entitled to payment from the Bond Insurer to the extent of such recovery, and the Trustee shall furnish to the Bond Insurer its records evidencing the payments of principal of and interest on the Bonds which have been made by the Trustee and subsequently recovered from Owners, and the dates on which such payments were made.

(iii) The Bond Insurer shall, to the extent it makes payment of principal or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy and, to evidence such subrogation, (i) in the case of subrogation as to claims for past due interest, the Trustee shall note the Bond Insurer's rights as subrogee on the registration books maintained by the Trustee upon receipt from the Bond Insurer of proof of the payment of interest thereon to the Owners of such Bonds and (ii) in the case of subrogation as to claims for past due principal, the Trustee shall note the Bond Insurer's rights as subrogee on the registration books for the Bonds maintained by the Trustee upon receipt of proof of the payment of principal thereof to the Owners of such Bonds. Notwithstanding anytbing in this Indenture or the Bonds to the contrary, the Trustee shall make payment of such past due interest and past due principal directly to the Bond Insurer to the extent that the Bond Insurer is a subrogee with respect thereto.

Section 11.08. Reserve Policy Provisions.

(a) The Authority's repayment of any draws under the Reserve Policy and related reasonable expenses incurred by the Bond Insurer (together with interest thereon, from the date of such draw or incurrence of such expenses, at a rate equal to the lower of (i) the prime rate of Citibank, N.A., in effect from time to time, plus 2% per annum and (ii) the highest rate permitted by law) shall enjoy the same priority as the obligation to maintain and refill the Reserve Account. Repayment of draws, expenses and accrued interest (collectively, "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw. If and to the extent that cash has also been deposited in the Reserve Account, all such cash shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing under the Reserve Policy, and repayment of any Policy Costs shall be made prior to replenishment of any such cash amounts. If, in addition to the Reserve Policy, any other Reserve Policy ("Additional Reserve Policy") is provided, drawings under the Reserve Policy and any such Additional Reserve Policy, and repayment of Policy Costs and reimbursement of amounts due under the Additional Reserve Policy, shall be made on a pro rata basis (calculated by reference to the Maximum Amounts available thereunder) after applying all available cash in the Reserve Account and prior to replenishment of any such cash draws, respectively.

(b) If the Authority shall fail to repay any Policy Costs in accordance with the requirements of Paragraph (a) above, the Bond Insurer shall be entitled to exercise any and all remedies available at law or in equity or under the Indenture other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect Owners.

(c) The Indenture shall not be discharged until all Policy Costs owing to the Bond Insurer shall have been paid in full.

(d) As security for the Authority's repayment obligations with respect to the Reserve Policy, to the extent that the Indenture pledges or grants a security interest in the Net Water Revenues as security for the Bonds, the Bond Insurer shall also hereby be granted a security interest in all such Net Water Revenues, subordinate only to that of the Owners.

(e) No Additional Bonds may be issued unless Net Water Revenues equal at least one times coverage of the Authority's obligations with respect to repayment of Policy Costs then due and owing. Furthermore, no Additional Bonds may be issued without the Bond Insurer's prior written consent if any Policy Costs are past due and owing to the Bond Insurer.

(f) The Trustee shall ascertain the necessity for a claim upon the Reserve Policy and shall provide notice to the Bond Insurer in accordance with the terms of the Reserve Policy at least two business days prior to each Interest Payment Date.

ARTICLE XII.

MISCELLANEOUS

Section 12.01. Liability of Authority Limited to Net Water Revenues. Notwithstanding anything in this Indenture or in the Bonds contained, the Authority shall not be required to advance any moneys derived from any source other than the Bonds or Net Water

Revenues and the funds and accounts pledged or assigned under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes hereof any funds of the Authority that may be made available to it for such purposes.

Section 12.02. Limitation of Rights to Parties, Bond Owners. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee and the Owners of the Bonds.

Section 12.03. Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations hereunder.

Section 12.04. Waiver of Notice; Requirement of Mailed Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice shall be required to be given by mail, such requirement shall be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

Section 12.05. Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Authority of any Bonds, the Trustee shall, in lieu of such cancellation and delivery, destroy such Bonds as may be allowed by law, and, upon written request of the Authority, deliver a certificate of such destruction to the Authority.

Section 12.06. Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

Seetion 12.07. Notices. All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by the recipient (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority: Banning Utility Authority
99 E. Ramsey Street
Banning, California 92220
Attention: Executive Director

If to the Trustee: U.S. Bank National Association
633 W. Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Corporate Trust Services
Ref: Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series

If to the [Bond Insurer]: [TO COME, IF NECESSARY];

Section 12.08. Evidence of Rights of Bond Owners. Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Indenture.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

Section 12.09. Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, unless all outstanding Bonds are then so owned or held, Bonds which are known by the Trustee to be owned or held by or for the account of the Authority or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned that have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 12.09 if the pledgee shall certify to the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Authority shall specify to the Trustee those Bonds which are disqualified pursuant to this Section 12.09.

Section 12.10. Money Held for Particular Bonds. The money held by the Trustee for the payment of the interest or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however,* to the provisions of Section 10.04 hereof, but without any liability for interest thereon.

Section 12.11. Waiver of Personal Liability. No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

Section 12.12. Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 12.13. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 12.14. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Banning Utility Authority has caused this Indenture to be signed in its name by its Executive Director, and U.S. Bank National Association, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

BANNING UTILITY AUTHORITY

By:_____
Executive Director

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By:_____
Authorized Signatory

EXHIBIT A

FORM OF BOND

R-_____ $____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

Banning Utility Authority
Water Enterprise Revenue Bond, Refunding and Improvement Projects, 2015 Series

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
____%	November 1, 20___	August __, 2015	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The Banning Utility Authority, a joint powers authority, duly organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the fifteenth day of the month preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before October 15, 2015 in which event it shall bear interest from the Dated Date specified above; provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, at the Interest Rate per annum specified above, payable semiannually on May 1 and November 1, in each year, commencing [November 1, 2015] (collectively, the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender hereof at the corporate trust office of U.S. Bank National Association (the "Trustee"), St. Paul, Minnesota (the "Trust Office"). Interest hereon is payable by check of the Trustee mailed by first class mail to the Registered Owner hereof at the Registered Owner's address as it appears on the registration

books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the Trustee prior to such Record Date by a Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States of America designated by such Registered Owner in such written request.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"), in an aggregate principal amount of $_____ all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued pursuant to the provisions of Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), and pursuant to an Indenture of Trust, dated as of August 1, 2015, by and between the Authority and the Trustee (the "Indenture") and a resolution of the Board of the Authority adopted on July __, 2015, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Net Water Revenues (as defined in the Indenture), and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

This Bond and the interest and premium, if any, hereon and all other Bonds and the interest and premium, if any, thereon (to the extent set forth in the Indenture) are special obligations of the Authority, and are payable from, and are secured by a charge and lien on the Net Water Revenues (as defined in the Indenture). As and to the extent set forth in the Indenture, all of the Net Water Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture, to the payment of the principal of and interest and premium (if any) on the Bonds.

Neither this Bond nor the payment of the principal or any part thereof nor any interest thereon constitutes a debt, liability or obligation of the City, the Community Redevelopment Agency of the City of Banning (the "Agency"), the County of Riverside, the State of California, or any of its political subdivisions, other than the Authority, and neither the City, the Agency, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Net Water Revenues.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

Bonds maturing on or after November 1, 2026 shall be subject to optional redemption, as a whole or in part on any date prior to the maturity thereof, at the option of the Authority, on or after November 1, 2025, from funds derived by the Authority from any source, at par, together with accrued interest.

The Term Bonds maturing on November 1, 20__ and November 1, 20__ are also subject to mandatory redemption from sinking account payments made by the Authority, in part by lot, on November 1 in each year commencing November 1, 20__ and November 1, 20__, respectively, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium, as set forth in the following tables:

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

Schedule of Sinking Account Payments for Term Bonds
Maturing November 1, 20__

Redemption Date (November 1)	Principal Amount

(maturity)

The Bonds are also subject to redemption as a whole, or in part, on any date, pro rata by maturity and by lot within a maturity, (in a manner determined by the Trustee) from moneys deposited in the Redemption Fund, to the extent of (i) sale or disposition proceeds not used to lease or construct improvements or extensions to the Water Enterprise; (ii) insurance or condemnation proceeds received with respect to the Water Enterprise and elected by the Authority to be used for such purpose; or (iii) excess Bond proceeds remain following completion or abandonment of the expansion and improvement of the Water Enterprise, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

As provided in the Indenture, notice of redemption shall be mailed by the Trustee by first class mail not less than 20 nor more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, (as defined in the Indenture), shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Bond may be exchanged at the Trust Office of the Trustee for Bonds of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations. Transfer or exchange of this Bond will not be permitted during the period established by the Trustee for selection of Bonds for redemption or if this Bond has been selected for redemption.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Bond Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Bond Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon endorsed shall have been manually signed by the Trustee.

Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Indenture.

STATEMENT OF INSURANCE

[TO COME]

IN WITNESS WHEREOF, the Banning Utility Authority has caused this Bond to be executed in its name and on its behalf with the manual signature of its Chairperson and attested to by the manual signature of its Secretary, all as of the Dated Date specified above.

BANNING UTILITY AUTHORITY

By:_____
Chairperson

Attest:

_____
Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated: _____, ____ U.S. Bank National Association, as Trustee

By:_____
Authorized Signatory

(FORM OF ASSIGNMENT)

For value received, the undersigned do(es) hereby sell, assign and transfer unto

_____

_____

_____

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and does hereby irrevocably constitute and appoint attorney, to transfer the same on the registration books of the Trustee, with full power of substitution in the premises.

Dated:_____

Signature Guaranteed:

_____

Notes: Signature(s) must be guaranteed by an eligible guarantor.

_____

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS, REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES

(Issue Date: August __, 2015)

Requisition of the City
(Water Project Fund)
(Section 3.04 of the Indenture)

Request No.: P-___ (to be sequentially numbered)

Project Component	Amount of This Draw	Aggregate Amount Draws Including This Draw

(Continue on Additional Sheet if Necessary)

Name and Address of party to whom payment is to be made:

_____

Purpose for which the obligation was incurred:

_____

The undersigned (the "City") hereby represents, warrants and certifies to the Trustee that it is authorized to tender this requisition and that a duly authorized representative of the City has executed this requisition, that if the payment is to be made to the City for amounts that it has paid or will pay to third parties, then the City has either made payment or will make payment within three business days of receipt of moneys requisitioned hereunder, that the aggregate number of business days during this calendar year during which it has held such amounts before making payment does not exceed twenty, and that the Trustee has no duty under the Indenture to audit or otherwise monitor, in any respect, the application or use of such funds paid pursuant to this requisition.

Date: _____

CITY OF BANNING

By: _____

Title: _____

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ESCROW AGREEMENT

by and between the

BANNING UTILITY AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION
as Escrow Agent

Dated as of August 1, 2015

ESCROW AGREEMENT

This ESCROW AGREEMENT, dated as of August 1, 2015, by and between the BANNING UTILITY AUTHORITY (the "Authority"), a joint powers authority organized and existing under the laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Escrow Agent and as Prior Trustee (the "Escrow Agent" and the "Prior Trustee");

W I T N E S S E T H:

WHEREAS, the Authority has previously issued its $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"), of which $29,165,000 remain outstanding, pursuant to an Indenture of Trust, dated as of December 1, 2005 (the "Prior Indenture"), by and between Authority and the Prior Trustee; and

WHEREAS, the Authority desires to refund the 2005 Bonds; and

WHEREAS, the Authority has approved the issuance of its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds"), the proceeds of which are to be used in part to effect the refunding of the 2005 Bonds;

NOW, THEREFORE, in consideration of the mutual premises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. As used herein, the following terms shall have the following meanings:

"Authority" means the Banning Utility Authority.

"City" means the City of Banning.

"Code" means the Internal Revenue Code of 1986.

"Escrow Agent" means U.S. Bank National Association and its successors and assigns, and any other corporation or institution that may at any time be substituted in its place as provided in Section 14 hereof.

"Escrow Fund" means the Escrow Fund established and held by the Escrow Agent pursuant to Section 3 hereof.

"Escrow Requirements" means the amount sufficient to pay the principal and interest with respect to the 2005 Bonds becoming due prior to the Redemption Date and the redemption price on the Redemption Date.

"Escrow Securities" means the Federal Securities (as defined in the Prior Indenture) deposited in the Escrow Fund pursuant to Section 5 hereof.

"2005 Bonds" means the $35,635,000 Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series.

"Prior Indenture" means the Indenture of Trust, dated as of December 1, 2005, by and between the Authority and the Prior Trustee, relating to the 2005 Bonds.

"Prior Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the 2005 Bonds.

"Redemption Date" means November 1, 2016, the date on which the 2005 Bonds are to be prepaid.

"Refunding Bonds" means the Authority's Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series.

"Refunding Bonds Indenture" means the Indenture of Trust, dated as of August 1, 2015, by and between the Authority and the Refunding Bonds Trustee.

"Refunding Bonds Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the Refunding Bonds.

SECTION 2. The Authority hereby appoints U.S. Bank National Association as Escrow Agent under this Escrow Agreement for the benefit of the holders of the 2005 Bonds. The Escrow Agent hereby accepts the duties and obligations of Escrow Agent under this Escrow Agreement and agrees that the irrevocable instructions to the Escrow Agent herein provided are in a form satisfactory to it. The applicable and necessary provisions of the Prior Indenture, including particularly the Redemption provisions thereof, are incorporated herein by reference. Reference herein to, or citation herein of, any provisions of the Prior Indenture shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

SECTION 3. There is created and established with the Escrow Agent a special and irrevocable trust fund designated the "2005 Bonds Escrow Fund" (the "Escrow Fund"), to be held by the Escrow Agent separate and apart from all other funds and accounts, and used only for the purposes and in the manner provided in this Escrow Agreement.

SECTION 4. The Authority herewith deposits, or causes to be deposited, with the Escrow Agent into the Escrow Fund, to be held in irrevocable trust by the Escrow Agent and to be applied solely as provided in this Escrow Agreement, the sum of $_____, as follows:

(i) from the proceeds of the Refunding Bonds, the sum of $_____; and

(ii) from the Reserve Account created under the Prior Indenture, the sum of $_____.

The Authority hereby instructs the Prior Trustee that any moneys or investments remaining in the funds and accounts of the Prior Indenture which are not required to make the foregoing deposits or rebated to the U.S. Treasury are to be transferred on the Redemption Date, or as soon as practicable thereafter, to the Refunding Bonds Trustee for deposit into the Water Fund under the Refunding Bonds Indenture.

SECTION 5. The Escrow Agent acknowledges receipt of the moneys described in Section 4 above. The Escrow Agent agrees immediately to invest $_____ of such amounts in the Escrow Securities set forth in Exhibit A hereto, to deposit such Escrow Securities in the Escrow Fund, and to retain the amount of $____ in cash in the Escrow Fund.

The Escrow Agent shall not have the power to sell, transfer, request the redemption of or otherwise dispose of any of the Escrow Securities or to substitute other securities therefor.

SECTION 6. As the principal of the Escrow Securities shall mature and be paid, and the investment income and earnings thereon are paid, the Escrow Agent shall not reinvest such moneys, except as may be provided in Exhibit A hereto. Such amounts shall be applied by the Escrow Agent to the payment of the Escrow Requirements for the equal and ratable benefit of the holders of the 2005 Bonds.

SECTION 7. The Authority has caused schedules to be prepared relating to the sufficiency of the anticipated receipts from the Escrow Securities listed in Exhibit A to pay the Escrow Requirements.

SECTION 8. The Authority hereby directs and the Escrow Agent hereby agrees that the Escrow Agent will take all the actions required to be taken by it hereunder, in order to effectuate this Escrow Agreement. The liability of the Escrow Agent for the payment of the Escrow Requirements shall be limited to the application, in accordance with this Escrow Agreement, of the principal amount of the Escrow Securities and the interest earnings thereon available for such purposes in the Escrow Fund.

SECTION 9. (a) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of defeasance to the owners of the 2005 Bonds substantially in the form of Exhibit B attached hereto.

(b) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of redemption to the owners of the 2005 Bonds containing the information prescribed in Section 4.03 of the Prior Indenture, substantially in the form of Exhibit C attached hereto.

(c) The Escrow Agent is hereby further instructed to post a copy of such notices, when mailed, to (A) the Securities Depositories (as hereinafter defined) and (B) the Information Services (as hereinafter defined).

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attn. Call Notification Department, Fax (212) 855-7232, or, in accordance with then-current guidelines of the Securities and Exchange

Commission, such other addresses and/or such other securities depositories as the City may designate in a Certificate of the City delivered to the Escrow Agent.

"Information Services" means the Electronic Municipal Market Access system (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at www.emma.msrb.org; or, in accordance with then-current guidelines of the Securities and Exchange Commission, to such other addresses and/or such other services providing information with respect to called bonds as the Authority may designate in a certificate of the Authority delivered to the Escrow Agent.

SECTION 10. The Authority irrevocably instructs the Escrow Agent and the Prior Trustee to pay to the respective owners of the 2005 Bonds presented for payment, through and including the Redemption Date, from amounts held in the Escrow Fund, the principal of the 2005 Bonds maturing prior to and on the Redemption Date plus in each case unpaid interest accrued thereon to the Redemption Date.

After such payment has been made on the Redemption Date, all moneys remaining in the Escrow Fund shall be transferred to the Trustee for deposit in the Water Fund.

SECTION 11. The trust hereby created shall be irrevocable and the holders of the 2005 Bonds shall have an express lien limited to all moneys and Escrow Securities in the Escrow Fund, including the interest earnings thereon, until paid out, used and applied in accordance with this Escrow Agreement.

SECTION 12. This Escrow Agreement is made pursuant to and in furtherance of the Prior Indenture and for the benefit of the holders from time to time of the 2005 Bonds and it shall not be repealed, revoked, altered, amended or supplemented without the written consent of all such holders and the written consent of the Escrow Agent and the Authority; provided, however, that the Authority and the Escrow Agent may, without the consent of, or notice to, such holders enter into such amendments or supplements as shall not be inconsistent with the terms and provisions of this Escrow Agreement, for any one or more of the following purposes:

(a) to cure an ambiguity or formal defect or omission in this Escrow Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the 2005 Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and

(c) to transfer to the Escrow Agent and make subject to this Escrow Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to conclusively rely upon an opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the 2005 Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 13. In consideration of the services rendered by the Escrow Agent under this Escrow Agreement, the Authority agrees to and shall pay to the Escrow Agent its fees, plus expenses, including all reasonable expenses, charges, counsel fees and other disbursements incurred by it or by its attomeys, agents and employees in and about the performance of their powers and duties hereunder. Notwithstanding the foregoing, the Escrow Agent shall have no lien whatsoever upon any of the moneys or Escrow Securities in the Escrow Fund for the payment of such proper fees and expenses.

SECTION 14. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from the trusts hereby created by giving not less than 60 days' written notice to the Authority and the Prior Trustee, specifying the date when such resignation will take effect in the same manner as a notice is to be mailed pursuant to Section 9 hereof, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of the 2005 Bonds or by the Authority as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and to the Authority and the Prior Trustee and signed by the holders of a majority in principal amount of the 2005 Bonds.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in the case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Escrow Agent may be appointed by the holders of a majority in principal amount of the 2005 Bonds, by an instrument or concurrent instruments in writing, signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the Authority shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in principal amount of the 2005 Bonds, and any such temporary Escrow Agent so appointed by the Authority shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or the Authority pursuant to the foregoing provisions of this Section within 60 days after written notice of the removal or resignation of the Escrow Agent has been given to the Authority, the holder of any of the 2005 Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation or institution with trust powers organized under the financial institution laws of the United States or any state, and shall have at the time of appointment capital and surplus of not less than $100,000,000. For purpose of this Section 14, a corporation or institution with trust powers organized under the financial institution laws of the United States or any state shall be deemed to have combined capital and surplus of at least $100,000,000 if it

has a combined capital surplus of at least $20,000,000 and is a wholly-owned subsidiary of a corporation having a combined capital and surplus of at least $100,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Authority, an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trust, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Authority execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor. Should any transfer, assignment or instrument in writing from the Authority be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instrument in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Any corporation or association into which the Escrow Agent, or any successor to it in the trusts created by this Escrow Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it shall be a party or any successor to a substantial portion of the Escrow Agent's corporate trust business, shall, if it meets the qualifications set forth in the fifth paragraph of this Section and if it is otherwise satisfactory to the Authority, be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 15. The Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement except as provided in Section 5 hereof. The Escrow Agent shall have no power or duty to transfer or otherwise dispose of the moneys held hereunder except as provided in this Escrow Agreement.

SECTION 16. To the extent permitted by law, the Authority hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the Authority or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant thereto, the retention of such securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement. The Authority shall not be required

to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's successors, assigns, agents and employees or the material breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the Authority or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement.

SECTION 17. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the Authority, and the Escrow Agent assumes no responsibility for the correctness thereof. The Escrow Agent makes no representation as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the Redemption of the 2005 Bonds pursuant to the Prior Indenture or to the validity of this Escrow Agreement as to the Authority and, except as otherwise provided herein, the Escrow Agent shall incur no liability in respect thereof. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence or willful misconduct, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may consult with counsel, who may or may not be counsel to the Authority, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel) may be deemed to be conclusively established by a written certification of the Authority. Whenever the Escrow Agent shall deem it necessary or desirable that a matter specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel be proved or established prior to taking, suffering, or omitting any such action, such matter may be established only by such a certificate or such an opinion. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to this Escrow Agreement.

No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business shall be the successor to the Escrow Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 18. This Escrow Agreement shall terminate upon payment of all 2005 Bonds on the Redemption Date, or upon such later date on which all amounts held in the Escrow Fund have been disbursed as provided herein.

SECTION 19. THIS ESCROW AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 20. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Authority or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

All the covenants, promises and agreements in this Escrow Agreement contained by or on behalf of the Authority or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 21. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first-above written.

BANNING UTILITY AUTHORITY

By_____
Executive Director

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent and as Prior Trustee

By_____
Authorized Officer

Exhibit A
Schedule of Escrow Securities

Principal Amount	Security	Maturity Date	Coupon	Purchase Price

Exhibit B

NOTICE OF DEFEASANCE TO THE OWNERS OF

Banning Utility Authority
$35,635,000
Water Enterprise Bonds
Refnnding and Improvement Projects, 2005 Series

NOTICE IS HEREBY GIVEN to the applicable owners of the outstanding Banning Utility Authority, $35,635,000 Water Enterprise Bonds Refunding and Improvement Projects, 2005 Series, as listed below (the "Bonds"), that in connection with the Bonds maturing in the years 2015 through 2035, inclusive, and bearing the CUSIP numbers set forth below (the "Defeased Bonds"), there has been deposited with U.S. Bank National Association (the "Trustee"), moneys which will be sufficient to pay the redemption price of and interest on the Defeased Bonds through and including the redemption date of November 1, 2016. The redemption price of, and interest on, such Defeased Bonds shall be paid only from moneys deposited with the Trustee as aforesaid. As a result of such deposit, such Defeased Bonds are deemed to have been paid in accordance with the applicable provisions of the Indenture of Trust, dated as of December 1, 2005, by and between the Banning Utility Authority and the Trustee, pursuant to which the Bonds were issued.

Maturity Date (November 1)	Principal Amount	Interest Rate	CUSIP (066626)
2015	$340,000	3.875%	AW2
2015	500,000	4.500	AK8
2016	875,000	4.000	AL6
2017	910,000	4.000	AM4
2018	945,000	4.125	AN2
2019	485,000	4.125	AX0
2019	500,000	4.500	AP7
2020	1,025,000	5.000	AQ5
2021	1,080,000	5.000	AR3
2022	1,135,000	5.000	AS1
2023	1,190,000	5.000	AT9
2030	10,255,000	5.250	AU6
2035	9,925,000	5.250	AV4

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2015

By: U.S. Bank National Association, as Trustee

Exhibit C

NOTICE OF REDEMPTION TO THE OWNERS OF

Banning Utility Authority
$35,635,000
Water Enterprise Bonds
Refunding and Improvement Projects, 2005 Series

NOTICE IS HEREBY GIVEN pursuant to the terms of the Indenture of Trust, dated as of December 1, 2005, by and between the Banning Utility Authority (the "Authority") and U.S. Bank National Association, as trustee, that all of the Banning Utility Authority, $35,635,000 Water Enterprise Bonds Refunding and Improvement Projects, 2005 Series, as listed below (the "Bonds"), initially issued on December 8, 2005, have been selected for redemption on November 1, 2016 (the "Redemption Date") at a redemption price equal to the principal amount of the Bonds to be redeemed (the "Redemption Price") together with interest accrued to the Redemption Date.

Maturity Date (November 1)	Principal Amount	Interest Rate	CUSIP (066626)
2016	$875,000	4.000%	AL6
2017	910,000	4.000	AM4
2018	945,000	4.125	AN2
2019	485,000	4.125	AX0
2019	500,000	4.500	AP7
2020	1,025,000	5.000	AQ5
2021	1,080,000	5.000	AR3
2022	1,135,000	5.000	AS1
2023	1,190,000	5.000	AT9
2030	10,255,000	5.250	AU6
2035	9,925,000	5.250	AV4

Pursuant to the governing documents, payment of the Redemption Price on the Bonds called for redemption will be paid upon presentation of the Bonds in the following manner:

If by First Class/Registered/Certified Mail: *Express Delivery Only:* *By Hand Only:*

Interest with respect to the principal amount of the Bonds designated to be redeemed shall cease to accrue on and after the Redemption Date.

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2016

By: U.S. Bank National Association, as Trustee

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CONTINUING DISCLOSURE AGREEMENT

THIS CONTINUING DISCLOSURE AGREEMENT (this "Disclosure Agreement"), dated as of August 1, 2015, is by and between tbe Banning Utility Authority (the "Authority") and [Willdan Financial Services], as dissemination agent (the "Dissemination Agent"), in connection with the issuance by the Authority of $_____ aggregate principal amount of the Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds").

WITNESSETH:

WHEREAS, this Disclosure Agreement is being executed and delivered by the Authority and the Dissemination Agent for the benefit of the owners and beneficial owners of the Bonds and in order to assist the purchaser of the Bonds in complying with the Rule (as defined herein);

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. **Definitions**. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as Trustee. In addition, the following capitalized terms shall have the following meanings:

"Annual Report" means any Annual Report provided by the Autbority pursuant to, and as described in, Sections 2 and 3 hereof.

"Annual Report Date" means each March 31 after the end of the Fiscal Year.

"Disclosure Representative" means the [Executive Director] of the Authority or his or her designee, or such other officer or employee as the Authority shall designate in writing to the Dissemination Agent and the Trustee from time to time.

"Dissemination Agent" means [Willdan Financial Services], acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Authority and which has filed with the Trustee a written acceptance of such designation.

"EMMA" means the Electronic Municipal Market Access system, maintained on the internet at http://emma.msrb.org by the MSRB.

"Fiscal Year" sball mean the period beginning on July 1 of each year and ending on the next succeeding June 30, or any twelve-month or fifty-two week period hereafter selected by the Authority, witb notice of such selection or change in fiscal year to be provided as set forth berein.

"Listed Events" means any of the events listed in Section 4 hereof and any other event legally required to be reported pursuant to the Rule.

"MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of tbe Securities Exchange Act of 1934 or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through EMMA.

"Official Statement" means the Official Statement, dated _____, 2015, relating to the Bonds.

"Participating Underwriter" means any of the original purchaser(s) of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

"Repository" means, until otherwise designated by the SEC, EMMA.

"Rule" means Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same has been or may be amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

Section 2. Provision of Annual Reports.

(a) The Authority shall provide, or shall cause the Dissemination Agent to provide, to MSRB, through EMMA, not later than the Annual Report Date, an Annual Report which is consistent with the requirements of Section 3 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as provided by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 3 of this Disclosure Agreement. Not later than 15 Business Days prior to the Annual Report Date, the Authority shall provide the Annual Report to the Dissemination Agent. If the Fiscal Year changes for the Authority, the Authority shall give notice of such change in the manner provided under Section 4(e) hereof.

(b) If by 15 Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, through EMMA, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Authority to determine if the Authority is in compliance with subsection (a). The Authority shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder. The Dissemination Agent may conclusively rely upon such certification of the Authority and shall have no duty or obligation to review such Annual Report.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

(ii) (if the Dissemination Agent is other than the Trustee), to the extent appropriate information is available to it, file a report with the Authority certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided.

Section 3. Content of Annual Reports. The Authority's Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the Authority for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental

entities from time to time by the Governmental Accounting Standards Board. If the Authority's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) The following tables presented in the Official Statement, updated for the Fiscal Year covered by the Annual Report:

(i) [Table No. __ "Demand and Sales – Historic and Projected Water Consumption Sales"; but only the annual update of historic consumption;

(ii) Table No. __ "Demand and Sales – Ten Largest Users of Water";

(iii) Table No. __ "Collection Procedures – Historic Water Collections – Metered Sales"; and

(iv) Table No. __ "Demand and Sales – Historic Water Enterprise Operating Results".]

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Authority is an "obligated person" (as defined by the Rule), which are available to the public on EMMA or filed with the SEC. The Authority shall clearly identify each such document to be included by reference.

Section 4. <u>Reporting of Significant Events</u>.

(a) Pursuant to the provisions of this Section 4, the Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, in a timely manner not more than ten (10) Business Days after the event:

(1) principal and interest payment delinquencies;

(2) defeasances;

(3) tender offers;

(4) rating changes;

(5) adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax- status of the Bonds;

(6) unscheduled draws on the debt service reserves reflecting financial difficulties;

(7) unscheduled draws on credit enhancements reflecting financial difficulties;

(8) substitution of credit or liquidity providers or their failure to perform; or

(9) bankruptcy, insolvency, receivership or similar proceedings.

For these purposes, any event described in the immediately preceding paragraph (9) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Authority in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Authority, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Authority.

(b) Pursuant to the provisions of this Section 4, the Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

(1) mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the Authority or their termination;

(2) appointment of a successor or additional Trustee or the change of the name of a Trustee;

(3) nonpayment related defaults;

(4) modifications to the rights of Owners;

(5) notices of redemption; or

(6) release, substitution or sale of property securing repayment of the Bonds.

(c) Whenever the Authority obtains knowledge of the occurrence of a Listed Event, described in subsection (b) of this Section 4, the Authority shall as soon as possible determine if such event is material under applicable federal securities law.

(d) If the Authority determines that the occurrence of a Listed Event described in subsection (b) of this Section 4 is material under applicable federal securities law, the Authority shall promptly notify the Dissemination Agent in writing and instruct the Dissemination Agent to report the occurrence to the Repository in a timely manner not more than ten (10) Business Days after the event.

(e) If the Dissemination Agent has been instructed by the Authority to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB.

Section 5. **Filings with the MSRB**. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 6. **Termination of Reporting Obligation**. The Authority's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Authority shall give notice of such termination in the same manner as for a Listed Event under Section 4 hereof.

Section 7. **Dissemination Agent**. The Authority may, from time to time, appoint or engage another Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

Section 8. **Amendment; Waiver**. Notwithstanding any other provision of this Disclosure Agreement, the Authority may amend this Disclosure Agreement, provided no amendment increasing or affecting the obligations or duties of the Dissemination Agent shall be made without the consent of such party, and any provision of this Disclosure Agreement may be waived if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the Authority and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

Section 9. **Additional Information**. Nothing in this Disclosure Agreement shall be deemed to prevent the Authority from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Authority chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Authority shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 10. **Default**. In the event of a failure of the Authority or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee, at the written direction of any Participating Underwriter or the holders of at least 25% of the aggregate amount of principal evidenced by Outstanding Bonds and upon being indemnified to its reasonable satisfaction, shall, or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Authority, Trustee or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the Authority, the Trustee or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

Section 11. **Duties, Immunities and Liabilities of Trustee and Dissemination Agent**. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall not be responsible for the form or content of any Annual Report or notice of Listed Event. The Dissemination Agent shall receive reasonable compensation for its services provided under this Disclosure Agreement. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Authority agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorney's fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Authority under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 12. **Beneficiaries**. This Disclosure Agreement shall inure solely to the benefit of the Authority, the Trustee, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 13. **Counterparts**. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Disclosure Agreement as of the date first above written.

BANNING UTILITY AUTHORITY

By:_____
Responsible Officer

[WILLDAN FINANCIAL SERVICES], as
Dissemination Agent

By:_____
Authorized Officer

EXHIBIT A

NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF FAILURE TO FILE ANNUAL REPORT

Name of Obligor: BANNING UTILITY AUTHORITY

Name of Issue: BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS, REFUNDING AND IMPROVEMENT PROJECTS, 2015 SERIES

Date of Issuance: August __, 2015

NOTICE IS HEREBY GIVEN that the Authority has not provided an Annual Report with respect to the above-captioned Bonds as required by the Continuing Disclosure Agreement, dated as of August 1, 2015, by and among the Authority and [Willdan Financial Services]. [The Authority anticipates that the Annual Report will be filed by _____.]

Dated: _____, 20__ [_____], on behalf of the Authority

cc: Banning Utility Authority

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$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

BOND PURCHASE CONTRACT

_____ __, 2015

Banning Utility Authority
99 East Ramsey Street
Banning, California 92220
Attention: Executive Director

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the "Representative"), as representative of itself and The Williams Capital Group, L.P. (together with the Representative, the "Underwriters"), offers to enter into this Bond Purchase Contract (this "Purchase Contract") with the Banning Utility Authority (the "Authority"). This offer is made subject to the Authority's acceptance by execution of this Purchase Contract and delivery of the same to the Underwriters on or before 11:59 p.m. on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the Authority at any time prior to such acceptance. Upon the Authority's acceptance hereof, the Purchase Contract will be binding upon the Authority and the Underwriters. Capitalized terms used in this Purchase Contract and not otherwise defined herein shall have the respective meanings set forth for such terms in the Trust Indenture (defined below).

Section 1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations set forth in this Purchase Contract, the Underwriters agree to purchase from the Authority, and the Authority agrees to sell and deliver to the Underwriters, all (but not less than all) of the $_____ Banning Utility Authority Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2015 Series (the "Bonds") at a purchase price of $_____ (being an amount equal to the principal amount of the Bonds, plus/less a net original issue premium/discount of $_____ and less an Underwriters' discount of $_____). The obligations of the Underwriters to purchase, accept delivery of and pay for the Bonds shall be conditioned on the sale and delivery of all of the Bonds by the Authority to the Underwriters at Closing (as such term is defined herein).

Section 2. Bond Terms; Authorizing Instruments. (a) The Bonds shall be dated their date of delivery and shall mature and bear interest as shown on Exhibit A attached hereto. The Bonds shall be as described in, and shall be issued and secured under, an Indenture of Trust, dated as of August 1, 2015 (the "Trust Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee"). The Bonds are payable and subject to redemption as provided in the Trust Indenture and as described in the Official Statement.

(b) The Bonds will be issued pursuant to Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584, and are payable from and secured by the Authority's pledge of "Net Water Revenues" under and as defined in the Trust Indenture.

(c) The net proceeds of the sale of the Bonds will be used: (i) to refund the Authority's Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2005 Series (the "2005 Bonds"); (ii) [to finance certain capital improvements to the City of Banning's (the "City") water system (the "Enterprise")]; and (iii) to pay the costs of issuing the Bonds.

Section 3. Public Offering. The Underwriters agree to make an initial bona fide public offering of all of the Bonds, at not in excess of the initial public offering yields or prices set forth on Exhibit A attached hereto. Following the initial public offering of the Bonds, the offering prices may be changed from time to time by the Underwriters. The Authority acknowledges and agrees that: (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction between the Authority and the Underwriters; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principal and are not acting as Municipal Advisors (as such term is defined in Section 15B of The Securities Exchange Act of 1934, as amended) to the Authority; (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the Authority with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or is currently providing other services to the Authority on other matters); (iv) the Underwriters have financial interests that may differ from and be adverse to those of the Authority; and (v) the Authority has consulted its own legal, financial and other advisors to the extent that it has deemed appropriate.

Section 4. Official Statement; Continuing Disclosure. (a) The Authority has delivered to the Underwriters the Preliminary Official Statement dated _____ __, 2015 (the "Preliminary Official Statement") and will deliver to the Underwriters the final Official Statement dated the date of this Purchase Contract (as amended and supplemented from time to time pursuant to Section 5(i) of this Purchase Contract, the "Official Statement").

(b) The Authority hereby authorizes the use of the Official Statement and the information contained therein by the Underwriters in connection with the public offering and the sale of the Bonds. The Authority consents to the use by the Underwriters prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds. The Underwriters hereby agree that they will not send any confirmation requesting payment for the purchase of any Bonds unless the confirmation is accompanied by or preceded by the delivery of a copy of the Official Statement. The Underwriters agree: (1) to provide the Authority with final pricing information on the Bonds on a timely basis prior to the Closing; and (2) to take any and all other actions necessary to comply with applicable Securities and Exchange Commission rules and Municipal Securities Rulemaking Board (the "MSRB") rules governing the offering, sale and delivery of the Bonds to ultimate purchasers.

(c) In connection with the issuance of the Bonds, and in order to assist the Underwriters in complying with the provisions of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"), the Authority will execute a Continuing Disclosure Agreement, dated as of August 1, 2015 (the "Continuing Disclosure Undertaking"), with Willdan Financial Services, as

dissemination agent (the "Dissemination Agent"), under which the Authority will undertake to provide certain financial and operating data as required by Rule 15c2-12. The form of the Continuing Disclosure Undertaking is attached as an appendix to the Preliminary Official Statement.

Section 5. Representations, Warranties and Covenants of the Authority. The Authority hereby represents, warrants and agrees with the Underwriters that:

(a) The Board of the Authority has taken official action by resolution (the "Authority Resolution") adopted by a majority of the members of the Board of the Authority at a regular meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the Trust Indenture, the Continuing Disclosure Undertaking, the Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), this Purchase Contract (together with the Trust Indenture, the Continuing Disclosure Undertaking and the Escrow Agreement, the "Authority Agreements") and the Official Statement, and the taking of any and all such action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated hereby.

(b) The Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "State") and has all necessary power and authority to adopt the Authority Resolution and to enter into and perform its duties under the Authority Agreements.

(c) By all necessary official action, the Authority has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the Bonds and the Authority Agreements, and the consummation by it of all other transactions contemplated by the Authority Resolution, the Authority Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered, the Authority Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the Authority, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the Authority's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) As of the date hereof, except as described in the Preliminary Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against, and notice of which has been served on and received by, the Authority or, to the best knowledge of the Authority, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the Authority, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of Authority Agreements

or the Bonds, or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, the Water Lease (as such term is defined in the Trust Indenture), the Management Agreement (as such term is defined in the Trust Indenture) or any other agreement or instrument to which the Authority is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the Authority required for the execution and delivery of this Purchase Contract and the other Authority Agreements or the consummation by the Authority of the transactions contemplated by the Official Statement or the Authority Agreements.

(g) Any certificate signed by any official of the Authority authorized to do so shall be deemed a representation and warranty by the Authority to the Underwriters as to the statements made therein.

(h) The Authority is not in default, and at no time has the Authority defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i) If any event occurs of which the Authority has knowledge between the date of this Purchase Contract and the date of the Closing that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Authority shall notify the Representative and if, in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will cooperate with the Underwriters in causing the Official Statement to be amended or supplemented in a form and in a manner approved by the Representative. All expenses thereby incurred will be paid by the Authority, and the Underwriters will file, or cause to be filed, the amended or supplemented Official Statement with the MSRB's Electronic Municipal Market Access database ("EMMA").

(j) The Authority will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order: (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate; and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions. The Authority will not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(k) The Authority is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of any state or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or any loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, including but not limited to the Water Lease and the Management Agreement, which breach or default has or may have an adverse effect on the ability of the Authority to perform its obligations under the Authority Agreements, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a

default or event of default under any such instrument; and the adoption, execution and delivery of the Authority Agreements, if applicable, and compliance with the provisions on the Authority's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, including but not limited to the Water Lease and the Management Agreement, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Authority or under the terms of any such law, regulation or instrument, except as may be provided by the Authority Agreements.

(l) Except as set forth in the Official Statement under the caption "CONTINUING DISCLOSURE," the Authority has complied in all material respects with its continuing disclosure undertakings in the past five years.

Section 6. The Closing. (a) At 8:00 A.M., Pacific Time, on _____ __, 2015, or on such earlier or later time or date as may be agreed upon by the Representative and the Authority (the "Closing"), the Authority shall deliver or cause to be delivered to the Trustee, the Bonds in definitive form, registered in the name of Cede & Co., as the nominee of The Depository Trust Company, New York, New York ("DTC") (so that the Bonds may be authenticated by the Trustee and credited to the account specified by the Representative under DTC's FAST procedures). Prior to the Closing, the Authority shall deliver, at the offices of Norton Rose Fulbright US LLP ("Bond Counsel") in Los Angeles, California, or such other place as is mutually agreed upon by the Representative and the Authority, the other documents described in this Purchase Contract. On the date of the Closing, the Underwriters shall pay the purchase price of the Bonds as set forth in Section 1 of this Purchase Contract in immediately available funds to the order of the Trustee.

(b) The Bonds shall be issued in fully registered form and shall be prepared and delivered as one Bond for each maturity registered in the name of a nominee of DTC. It is anticipated that CUSIP identification numbers will be inserted on the Bonds, but neither the failure to provide such numbers nor any error with respect thereto shall constitute a cause for failure or refusal by the Underwriters to accept delivery of the Bonds in accordance with the terms of this Purchase Contract.

Section 7. Conditions to Underwriters' Obligations. The Underwriters have entered into this Purchase Contract in reliance upon the representations and warranties of the Authority contained herein and to be contained in the documents and instruments to be delivered on the date of the Closing, and upon the performance by the Authority of its obligations to be performed hereunder and under such documents and instruments to be delivered at or prior to the date of the Closing. The Underwriters' obligations under this Purchase Contract are and shall also be subject to the following conditions:

(a) The representations and warranties of the Authority contained in this Agreement shall be true and correct in all material respects on the date of this Purchase Contract and on and as of the date of the Closing as if made on the date of the Closing.

(b) As of the date of the Closing, the Official Statement shall not have been amended, modified or supplemented, except in any case as may have been agreed to by the Representative.

(c) (i) As of the date of the Closing, the Authority Resolution, the Authority Agreements, the Water Lease and the Management Agreement shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by the Authority and the Representative; and (ii) the Authority shall perform or have performed all of its obligations required under or specified in the Authority Resolution, the Authority Agreements, the Water Lease, the Management Agreement and this Purchase Contract to be performed at or prior to the date of the Closing.

(d) As of the date of the Closing, all necessary official action of the Authority relating to the Authority Agreements, the Authority Resolution and the Official Statement shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect.

(e) Subsequent to the date of this Purchase Contract, up to and including the date of the Closing, there shall not have occurred any change in the financial affairs of the Authority or the City, or in the operations of the Enterprise, as described in the Official Statement, which in the reasonable professional judgment of the Representative materially impairs the investment quality of the Bonds.

(f) As of or prior to the date of the Closing, the Underwriters shall have received each of the following documents:

(A) Certified copies of the Authority Resolution.

(B) Duly executed copies of the Authority Agreements, the Water Lease and the Management Agreement.

(C) The Preliminary Official Statement and the Official Statement, with the Official Statement duly executed on behalf of the Authority.

(D) An approving opinion of Bond Counsel, dated as of the Closing, as to the validity of the Bonds and the exclusion of interest on the Bonds from federal and State income taxation, addressed to the Authority substantially in the form attached as an appendix to the Official Statement, and a reliance letter with respect thereto addressed to the Underwriters and the Trustee.

(E) A supplemental opinion of Bond Counsel, addressed to the Underwriters, to the effect that:

(1) The Purchase Contract has been duly executed and delivered by the Authority and is valid and binding upon the Authority, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles;

(2) The Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Trust Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(3) The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE BONDS" (other than statements relating to DTC or its book-entry system), "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "TAX MATTERS," and in Appendices C and F, insofar as such statements purport to describe certain provisions of the Bonds, or to state legal conclusions and the opinion of Bond Counsel

regarding the tax exempt nature of the Bonds for federal and State income tax purposes, present a fair and accurate summary of the provisions thereof.

(F) A defeasance opinion of Bond Counsel relating to the 2005 Bonds, in form and substance satisfactory to Bond Counsel, the Trustee and the Underwriters.

(G) A letter, dated the Closing Date and addressed to the Underwriters, of Norton Rose Fulbright US LLP, Disclosure Counsel, to the effect that Disclosure Counsel is not passing upon and has not undertaken to determine independently or to verify the accuracy or completeness of the statements contained in the Official Statement, and is, therefore, unable to make any representation to the Underwriters in that regard, but on the basis of its participation in conferences with representatives of the Authority, the City, the Authority Counsel, Bond Counsel, the Authority's Financial Advisor, representatives of the Underwriters and others, during which conferences the content of the Official Statement and related matters were discussed, and its examination of certain documents, and, in reliance thereon and based on the information made available to it in its role as Disclosure Counsel and its understanding of applicable law, Disclosure Counsel advises the Underwriters as a matter of fact, but not opinion, that no information has come to the attention of the attorneys in the firm working on such matter which has led them to believe that the Official Statement (excluding therefrom the financial and statistical data, forecasts, charts, numbers, estimates, projections, assumptions and expressions of opinion included in the Official Statement, information regarding DTC and its book entry system and the information set forth in Appendices B, D and E, as to all of which no opinion is expressed) as of its date and as of the Closing contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and advising the Underwriters that, other than reviewing the various certificates and opinions required by this Purchase Contract regarding the Official Statement, Disclosure Counsel has not taken any steps since the date of the Official Statement to verify the accuracy of the statements contained in the Official Statement.

(H) An opinion of the Authority Counsel, dated as of the Closing addressed to the Authority and the Underwriters, substantially in the form attached hereto as Exhibit D.

(I) An executed Rule 15c2-12 certificate of the Authority, dated as of the date of the Preliminary Official Statement, in the form attached hereto as Exhibit B.

(J) An executed closing certificate of the Authority, dated as of the Closing, in the form attached hereto as Exhibit C.

(K) The opinion or opinions of counsel of the Trustee and the Escrow Agent, dated as of the Closing, addressed to the Authority and the Underwriters, in form and substance satisfactory to Bond Counsel and the Representative.

(L) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Trustee to the effect that the Trustee has accepted the duties imposed by the Trust Indenture and is authorized to carry out such duties.

(M) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Escrow Agent to the

effect that the Escrow Agent has accepted the duties imposed by the Escrow Agreement and is authorized to carry out such duties.

(N) Evidence of required filings with the California Debt and Investment Advisory Commission.

(O) A copy of the executed Blanket Issuer Letter of Representations by and between the Authority and DTC relating to the book entry system.

(P) Evidence that the rating or ratings assigned to the Bonds as of the date of the Closing are as set forth in the Official Statement.

(Q) A certified copy of the general resolution of the Trustee and the Escrow Agent authorizing the execution and delivery of certain documents by certain officers of the Trustee and the Escrow Agent, which resolution authorizes the execution and delivery of the Trust Indenture and the Escrow Agreement and the authentication and delivery of the Bonds by the Trustee.

(R) An opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, counsel to the Underwriters, addressed to the Underwriters and in form and substance satisfactory to the Representative.

(S) A report of [Digital Assurance Certification LLC] as to compliance by the Authority and related entities with their respective continuing disclosure undertakings.

(T) A tax arbitrage certificate with respect to the Bonds, in form and substance satisfactory to Bond Counsel and the Representative.

(U) A certificate of the Dissemination Agent to the effect that the Continuing Disclosure Undertaking has been duly executed and delivered by the Dissemination Agent and, subject to due authorization and delivery by the Authority, is valid and binding upon the Dissemination Agent, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles.

(V) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters or Bond Counsel may reasonably request to evidence compliance by the Authority with legal requirements, the truth and accuracy, as of the date of the Closing, of the representations of the Authority herein contained and of the Official Statement and the due performance or satisfaction by the Authority at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Authority.

All of the opinions, letters, certificates, instruments and other documents mentioned in this Purchase Contract shall be deemed to be in compliance with the provisions of this Purchase Contract if, but only if, they are in form and substance satisfactory to the Representative. If the Authority is unable to satisfy the conditions to the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds contained in this Purchase Contract, or if the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriters nor the Authority shall be under further obligations hereunder, except that the

respective obligations of the Authority and the Underwriters set forth in Section 12 of this Purchase Contract shall continue in full force and effect.

Section 8. Conditions to Authority's Obligations. The performance by the Authority of its respective obligations under this Purchase Contract is conditioned upon: (i) the performance by the Underwriters of their obligations hereunder; and (ii) receipt by the Authority of opinions addressed to the Authority, receipt by the Underwriters of opinions addressed to the Underwriters, and the delivery of certificates being delivered on the date of the Closing by persons and entities other than the Authority.

Section 9. Termination Events. The Underwriters shall have the right to terminate the Underwriters' obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds by notifying the Authority of its election to do so if, after the execution hereof and prior to the Closing, any of the following events occurs:

(A) the marketability of the Bonds or the market price thereof, in the reasonable opinion of the Representative, has been materially and adversely affected by any decision issued by a court of the United States (including the United States Tax Court) or of the State, by any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Department of the Treasury of the United States, the Internal Revenue Service, or other governmental agency of the United States, or any governmental agency of the State, or by a tentative decision or announcement by any member of the House Ways and Means Committee, the Senate Finance Committee, or the Conference Committee with respect to contemplated legislation or by legislation enacted by, pending in, or favorably reported to either the House of Representatives or either House of the Legislature of the State, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State by the Governor of the State in an executive communication, affecting the tax status of the Authority or the City, their property or income, their debt or contractual obligations (including the Bonds) or the interest thereon or any tax exemption granted or authorized by the Internal Revenue Code of 1986, as amended;

(B) the United States becomes engaged in hostilities that result in a declaration of war or a national emergency, or any other outbreak of hostilities occurs, or a local, national or international calamity or crisis occurs, financial or otherwise, the effect of such outbreak, calamity or crisis being such as, in the reasonable opinion of the Representative, would affect materially and adversely the ability of the Underwriters to market the Bonds;

(C) there occurs a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States, New York or State authorities;

(D) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission is issued or made to the effect that the issuance, offering or sale of the Bonds is or would be in violation of any provision of the Securities Act of 1933, as then in effect, or of the Securities Exchange Act of 1934, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(E) legislation is enacted by the House of Representatives or the Senate of the Congress of the United States of America, or a decision by a court of the United States of America is rendered, or a ruling or regulation by or on behalf of the Securities and Exchange Commission or

other governmental agency having jurisdiction of the subject matter is made or proposed to the effect that the Bonds are not exempt from registration, qualification or other similar requirements of the Securities Act of 1933, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(F) in the reasonable judgment of the Representative, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be materially and adversely affected because additional material restrictions not in force as of the date hereof are imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(G) the Office of the Comptroller of the Currency, The New York Stock Exchange or other national securities exchange, or any governmental authority, imposes, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increases materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, or financial responsibility requirements of the Underwriters;

(H) a general banking moratorium is established by federal, New York or State authorities;

(I) any legislation, ordinance, rule or regulation is introduced in or enacted by any governmental body, department or agency in the State or a decision of a court of competent jurisdiction within the State is rendered, which, in the reasonable opinion of the Representative, after consultation with the Authority, materially adversely affects the market price of the Bonds;

(J) any federal or State court, authority or regulatory body takes action materially and adversely affecting the collection of Gross Water Revenues under the Trust Indenture; or

(K) any rating of the Bonds is downgraded, suspended or withdrawn by a national rating service, which, in the reasonable opinion of the Representative, materially adversely affects the marketability or market price of the Bonds;

(L) an event occurs which in the reasonable opinion of the Representative requires a supplement or amendment to the Official Statement and: (i) the Authority refuses to prepare and furnish such supplement or amendment; or (ii) in the reasonable judgment of the Representative, the occurrence of such event materially and adversely affects the marketability of the Bonds or renders the enforcement of the sale contracts of the Bonds impracticable;

(M) an order, decree or injunction issued by any court of competent jurisdiction, or order, ruling, regulation (final, temporary or proposed), official statement or other form of notice or communication issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental authority having jurisdiction of the subject matter, to the effect that: (i) obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Trust Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended; or (ii) the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(N) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any domestic governmental authority or by any domestic national securities exchange, which are material to the marketability of the Bonds; or

(O) the commencement of any action, suit or proceeding described in Section 5(e) or Section 6(e).

Section 10. Changes in Official Statement. After the Closing, the Authority will not adopt any amendment of or supplement to the Official Statement to which the Representative shall reasonably object in writing unless the Authority or its counsel determines that such amendment or supplement is required under applicable law. Within 90 days after the Closing or within 25 days following the "end of the underwriting period" (as such term is defined below), whichever occurs first, if any event relating to or affecting the Bonds, the Enterprise, the Trustee or the Authority shall occur as a result of which it is necessary, in the opinion of the Representative, to amend or supplement the Official Statement in order to make the Official Statement not misleading in any material respect in the light of the circumstances existing at the time it is delivered to a purchaser, the Authority will forthwith prepare and furnish to the Underwriters an amendment or supplement that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to purchaser, not misleading. The Authority shall cooperate with the Underwriters in the filing by the Underwriters of such amendment or supplement to the Official Statement with the MSRB. As used herein, the term "end of the underwriting period" means the later of such time as: (i) the Authority delivers the Bonds to the Underwriters; or (ii) tbe Underwriters do not retain, directly or as members of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Notwithstanding the foregoing, unless the Representative gives notice to the contrary, the "end of the underwriting period" shall be the date of the Closing. Any notice delivered pursuant to this provision shall be written notice delivered to the Authority at or prior to the date of the Closing and shall specify a date (other than the date of the Closing) to be deemed the "end of the underwriting period."

Section 11. Payment of Expenses. (a) The Underwriters shall be under no obligation to pay, and the Authority shall pay the following expenses incident to the performance of the Authority's obligations hereunder:

(i) the fees and disbursements of Bond Counsel and Disclosure Counsel;

(ii) the cost of printing and delivering the Bonds, the Preliminary Official Statement and the Official Statement (and any amendment or supplement prepared pursuant to Section 11 of this Purchase Contract);

(iii) the fees and disbursements of accountants, advisers and of any other experts or consultants retained by the Authority, including the Authority Counsel; and

(iv) any other expenses and costs of the Authority incident to the performance of their respective obligations in connection with the authorization, issuance and sale of the Bonds, including out of pocket expenses and regulatory expenses, and any other expenses agreed to by the parties.

(b) The Underwriters shall pay all expenses incurred by it in connection with the public offering and distribution of the Bonds including, but not limited to:

(i) all advertising expenses in connection with the offering of the Bonds; and

(ii) all out-of-pocket disbursements and expenses incurred by the Underwriters in connection with the offering and distribution of the Bonds (including without limitation the fees and expenses of its counsel and the MSRB, CUSIP Bureau, California Debt and Investment Advisory Commission and California Public Securities Association fees, if any), except as provided in clause (a) above.

Section 12. Notices. Any notice or other communication to be given to the Authority under this Purchase Contract may be given by delivering the same in writing to the Authority at the address set forth on the first page of this Purchase Contract, and any notice or other communication to be given to the Underwriters under this Purchase Contract may be given by delivering the same in writing to

Stifel, Nicolaus & Company Incorporated, as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104
Attention: Guillermo Garcia

Section 13. Survival of Representations, Warranties, Agreements. All of the Authority's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect regardless of: (a) any investigations made by or on behalf of the Underwriters; or (b) delivery of and payment for the Bonds pursuant to this Purchase Contract. The agreements contained in this Section and in Section 12 shall survive any termination of this Purchase Contract.

Section 14. Benefit; No Assignment. This Purchase Contract is made solely for the benefit of the Authority and the Underwriters (including their successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. The rights and obligations created by this Purchase Contract are not subject to assignment by the Underwriters or the Authority without the prior written consent of the other parties hereto.

Section 15. Severability. In the event that any provision of this Purchase Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Purchase Contract.

Section 16. Counterparts. This Purchase Contract may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute the Purchase Contract by signing any such counterpart.

Section 17. Governing Law. This Purchase Contract shall be governed by the laws of the State.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Section 18. Effectiveness. This Purchase Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the Authority, and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

STIFEL, NICOLAUS & COMPANY
INCORPORATED, as Representative

By: _____
Title: Authorized Officer

Accepted:

BANNING UTILITY AUTHORITY

By:_____
Executive Director

Time of Execution: _____ Pacific Time

EXHIBIT A

$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

MATURITY SCHEDULE

Principal Payment Date (November 1)	*Principal*	*Coupon*	*Yield*	*Price*
	$	%	%	

(C) Priced to first optional redemption date of November 1, 20__ at par.

EXHIBIT B

$_____*
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

15c2-12 CERTIFICATE

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the Banning Utility Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate on behalf of the Authority, and further hereby certifies and reconfirms on behalf of the Authority as follows:

(1) This Certificate is delivered in connection with the offering and sale of the above captioned bonds (the "Bonds") in order to enable the underwriter of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule").

(2) In connection with the offering and sale of the Bonds, there has been prepared a Preliminary Official Statement, setting forth information concerning the Bonds and the Authority (the "Preliminary Official Statement").

(3) As used herein, "Permitted Omissions" means the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters, all with respect to the Bonds.

(4) The Preliminary Official Statement is, except for the Permitted Omissions, deemed final within the meaning of Rule 15c2-12, and the information therein is accurate and complete except for the Permitted Omissions.

Dated: _____ __, 2015

BANNING UTILITY AUTHORITY

By:_____
Executive Director

* *Preliminary, subject to change.*

EXHIBIT C

$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

CLOSING CERTIFICATE OF THE AUTHORITY

The undersigned hereby certifies and represents that he is the duly appointed and acting representative of the Banning Utility Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the Authority as follows:

(i) The representations, warranties and covenants of the Authority contained in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and between the Authority and Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, are true and correct and in all material respects on and as of the date of the Closing, with the same effect as if made on the date of the Closing.

(ii) The Authority Resolution is in full force and effect at the date of the Closing and has not been amended, modified or supplemented, except as agreed to by the Authority and the underwriters.

(iii) The Authority has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) The statements and descriptions in the Official Statement pertaining to the Authority do not contain any untrue or misleading statement of a material fact and do not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given to such terms in the Purchase Contract.

Dated: _____ __, 2015

BANNING UTILITY AUTHORITY

By:_____
Executive Director

EXHIBIT D

_____ __, 2015

Banning Utility Authority
99 East Ramsey Street
Banning, California 92220

Stifel, Nicolaus & Company, Incorporated,
as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104

Opinion of Authority Counsel

with reference to

$_____
BANNING UTILITY AUTHORITY
WATER ENTERPRISE REVENUE BONDS
REFUNDING AND IMPROVEMENT PROJECTS
2015 SERIES

Ladies and Gentlemen:

In my capacity as the General Counsel to the Banning Utility Authority (the "Authority") in connection with the issuance by the Authority of the above-referenced bonds (the "Bonds"), I have examined such documents, certificates and records as I have deemed relevant and necessary as the basis for the opinion set forth herein. Capitalized terms used and not otherwise defined herein shall have the same meanings as assigned to them in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and between Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, and the Authority.

Relying on my examination described above and pertinent law and subject to the limitations and qualifications set forth hereinafter, I am of the following opinion:

1. The Authority is a joint exercise of powers authority organized and validly existing under the laws of the State of California.

2. Resolution No. ____ of the Authority (the "Authority Resolution") has been duly adopted at a regular meeting of the Board of the Authority that was duly called and held on July __, 2015 pursuant to law, with all required public notice and at which a quorum was present and acting throughout. The Authority Resolution is in full force and effect and has not been amended or repealed.

3. The Authority has duly authorized, executed and delivered the Official Statement, and the Authority Agreements. Assuming due authorization, execution and delivery by the other parties thereto, as necessary, the Authority Agreements constitute legal, valid and binding agreements of the Authority enforceable against the Authority in accordance with their terms, except

as the enforceability thereof may be limited by applicable bankruptcy, insolvency, debt adjustment, fraudulent conveyance or transfer, moratorium, reorganization or other laws affecting the enforcement of creditors' rights generally and equitable remedies if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and limitations on remedies against public agencies.

4. The execution and delivery by the Authority of the Authority Agreements, the Official Statement and the other instruments contemplated by any of such documents to which the Authority is a party, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, trust agreement, contract, agreement or other instrument to which the Authority is a party or is otherwise subject or bound in a manner which would materially adversely affect the Authority's performance under the Authority Agreements.

5. There is no action, suit or proceeding before or by any court, public board or body pending (with service of process having been accomplished on the Authority) or, to the best of my knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the Authority or the titles of its officers to their respective offices; (b) in any way question or affect the validity or enforceability of the Authority Agreements or the Bonds; or (c) find illegal, invalid or unenforceable the Authority Agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Bonds to which the Authority is a party.

The opinion is based on such examination of the laws of the State of California as I deemed relevant for the purposes of this opinion. I have not considered the effect, if any, of the laws of any other jurisdiction upon matters covered by this opinion. I have assumed the genuineness of all documents and signatures, presented to me. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in such documents. I express no opinion as to the status of the Bonds or the interest thereon or the Authority Agreements under any federal securities laws or any state securities or "Blue Sky" law or any federal, state or local tax law. Further, I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained in the Authority Agreements. Without limiting any of the foregoing, I express no opinion as to any matter other than as expressly set forth above.

I am furnishing this opinion as General Counsel to the Authority. Except for the Authority, no attorney-client relationship has existed or exists between me and the addressees hereof in connection with the Bonds or by virtue of this opinion. This opinion is rendered solely in connection with the financing described herein, and may not be relied upon by you for any other purpose. I disclaim any obligation to update this opinion. This opinion shall not extend to, and may not be used, quoted, referred to, or relied upon by any other person, firm, corporation or other entity without my prior written consent.

Respectfully submitted,

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CITY OF BANNING
AGENDA REPORT

MEETING OF: July 14, 2015

TO: Mayor and City Council

FROM: Dean Martin, Interim City Manager

SUBJECT: Approval of the attached Resolution Approving the Economic Refunding of the Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007

RECOMMENDATION:

Adopt a resolution of the "City Council of Banning acting as the Legislative Body of Banning Financing Authority authorizing the issuance of its Refunding Revenue Bonds (Electric System Project) Series 2015, approving a Bond Purchase Agreement, an Indenture, an Escrow Agreement, a Preliminary Official Statement, and taking certain other actions in connection therewith."

BACKGROUND:

During the summer of 2007, the Banning Financing Authority, through the City of Banning, issued a series of electric system revenue bonds to assist in the financing of improvements in the electric system for the City's service area.

The electric bonds financed the construction of a new substations, circuit breakers, underground feeders, land, and other improvements to the electric system.

With interest rates near historic lows, the City's financing team analyzed the potential to refund (refinance) the existing bonds without extending the term of the original issuance and found that the electric bonds presented significant savings to the City.

Based on today's rates (subject to market conditions), the bonds can now be refunded with an estimated net-present-value savings of approximately $1.05 million.

In keeping with the City's policy goals and objectives, the refunding supports the City's goal of providing sound fiscal stewardship for the City of Banning. In an effort to effect the most benefit from the low interest-rate environment, City staff and the financing team have moved with significant expediency.

Attached for your review are the various documents needed to effect the refunding of the Electric and Water Utility Bonds. Below is a brief description of the key documents attached.

Key Bond Documents

Preliminary Official Statements: Serves as the primary marketing and disclosure document for potential buyers of the bonds. It explains credit and legal provisions, gives an overview of operations, and provides key operating and financial data.

Trust Indentures: This agreement sets forth the rights and protections of bondholders and establishes the trust relationship between the bondholders and US Bank, the trustee. It provides for the authentication and delivery of the Bonds, establishes the terms and conditions upon which the Bonds are to be issued and secured, and secures the payment of the principal and interest.

Installment Sale Agreement(Electric Utility): Provides for the sale of the Electric Utility improvements and the simultaneous purchase of those same improvements by the City. The sale is accomplished via installment payments exactly equal to the annual debt service payments.

Escrow Agreement: The refunding proceeds of the bond sale are invested in government securities which is then placed into an escrow account. Those funds are invested at a rate which will result in sufficient funds being available to call the bonds for redemption at the first opportunity.

Continuing Disclosure Agreement: Once the bonds are issued, regular and periodic operational and financial information must be made available for existing bondholders and potential investors in the secondary market. Events of Default must also be disclosed. This document memorializes what is required and when as well as where the information will be made available.

FISCAL IMPACT:

The recommended action does not, in itself, cause any new financial obligations. At today's interest rates (subject to the market at actual time of pricing the bonds and offering them to the market), the bonds can be refunded with an estimated net-present-value savings of approximately $1.05 million, or $60,000 annually.

RECOMMENDED BY:

Dean Martin
Interim City Manager

RESOLUTION NO. 2015-02FA

RESOLUTION OF THE COMMISSION OF THE CITY OF BANNING FINANCING AUTHORITY AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $50,000,000 PRINCIPAL AMOUNT OF ITS REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2015; APPROVING AN INDENTURE OF TRUST, AN INSTALLMENT SALE AGREEMENT, A BOND PURCHASE AGREEMENT; AN ESCROW AGREEMENT AND A PRELIMINARY OFFICIAL STATEMENT RELATED THERETO; AND APPROVING THE TAKING OF CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Banning Financing Authority (the "Authority"), is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and the powers of such Authority include the power to issue bonds for any of its corporate purposes; and

WHEREAS, the City of Banning (the "City") owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the Authority desires to issue its Refunding Revenue Bonds (Electric System Project), Series 2015 (the "2015 Bonds") to refund the 2007 Bonds currently outstanding and finance certain capital improvements to the Electric System; and

WHEREAS, the Authority has reviewed the documentation related to the issuance of the 2015 Bonds.

NOW, THEREFORE, THE CITY OF BANNING FINANCING AUTHORITY DOES RESOLVE AS FOLLOWS:

Section 1. Pursuant to the Act, the Authority hereby approves the issuance of the 2015 Bonds in an amount not to exceed $_____ in accordance with the terms and conditions of the Indenture of Trust relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by the President, the Executive Director, the Treasurer or any member of the Commission (each, a "Responsible Officer"), with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The Authority hereby approves the Installment Sale Agreement relating to the 2015 Bonds in substantially the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Authority hereby approves the Bond Purchase Agreement relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, the true interest cost rate on the 2015 Bonds shall not exceed [_____]% per annum and the underwriter's discount shall not exceed [____]%.

Section 4. The Authority hereby approves the Escrow Agreement relating to the 2007 Bonds in substantially the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of bond counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The Authority hereby approves the Preliminary Official Statement prepared in connection with the issuance of the 2015 Bonds (the "Preliminary Official Statement"), substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of disclosure counsel to the Authority. Each of the Responsible Officers is hereby authorized to execute and deliver a certificate deeming the Preliminary Official Statement final for purposes of SEC Rule 15c2-12. Upon the pricing of the 2015 Bonds, each of the Responsible Officers is hereby authorized to prepare and execute a final Official Statement (the "Official Statement"), substantially the form of the Preliminary Official Statement, with such additions thereto and changes therein as approved by any Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority hereby authorizes the distribution of the Preliminary Official Statement and the Official Statement by the underwriter in connection with the offering and sale of the 2015 Bonds.

Section 6. Any Responsible Officer is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this resolution.

Section 7. The Secretary of the Authority shall certify to the adoption of this resolution, and thenceforth and thereafter the same shall be in full force and effect. Notwithstanding the foregoing, such certification and any of the other duties and responsibilities assigned to the Secretary pursuant to this resolution may be performed by an Assistant Secretary with the same force and effect as if performed by the Secretary hereunder.

PASSED, ADPPROVED AND ADOPTED this 14th day of July, 2015.

_____
Deborah Franklin, Chairperson

ATTEST:

_____
Marie A. Calderon, Secretary

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PRELIMINARY OFFICIAL STATEMENT DATED JULY __, 2015

NEW ISSUE - BOOK-ENTRY ONLY

RATINGS
[Insured: Standard & Poor's: "____"]
Underlying: Standard & Poor's: "__"
(See "RATINGS" herein)

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, under existing statutes, regulations, rulings and court decisions, and assuming compliance with the tax covenants described herein, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. It is also the opinion of Bond Counsel that under existing law interest on the Bonds is exempt from personal income taxes of the State of California. See "TAX MATTERS."

$[_____]*
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2015

Dated: Date of Delivery **Due: June 1, as shown on the inside cover hereof**

The City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") are being issued by the City of Banning Financing Authority (the "Authority") to (i) refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007, currently outstanding in the amount of $40,045,000, (ii) finance certain improvements (the "Facilities") to the electric system (the "Electric System") of the City of Banning (the "City"), (iii) [pay the insurance premium for the Bonds,] (iv) [fund a Reserve Fund for the Bonds], and (v) pay costs of issuance of the Bonds.

The Bonds are being issued as fully registered bonds, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), and will be available to ultimate purchasers in the denomination of $5,000 or any integral multiple thereof, under the book-entry system maintained by DTC. Ultimate purchasers of Bonds will not receive physical certificates representing their interest in the Bonds. So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, references herein to the owners shall mean Cede & Co., and shall not mean the ultimate purchasers of the Bonds. Interest on the Bonds will be payable on December 1 and June 1 of each year, commencing December 1, 2015. Payments of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by U.S. Bank National Association, Los Angeles, California (the "Trustee"), so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursements of such payments to DTC's Participants is the responsibility of DTC and disbursements of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants, as more fully described herein. See "THE BONDS – Book-Entry System" and "APPENDIX G – BOOK-ENTRY ONLY SYSTEM" herein.

The Bonds are issued pursuant to that certain Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), among the Authority, the City and the Trustee. The Bonds are special obligations of the Authority secured by and payable solely from Revenues as defined in the Indenture, consisting primarily of Installment Payments to be paid by the City under the Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), by and between the City and the Authority.

The Bonds are subject to special mandatory redemption, mandatory sinking fund redemption and redemption from optional prepayment of Installment Payments prior to maturity as more fully described herein.* See "THE BONDS – Redemption" herein.

The City's obligation to make payments under the Installment Sale Agreement is secured by and payable from all Net Revenues, being Gross Revenues derived by the City from the ownership and operation of the Electric System (as described herein), excluding Operation and Maintenance Costs of the Electric System. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein.

[Payment of the principal of and interest on the Bonds when due will be insured by a municipal bond insurance policy to be issued by _____ to be issued simultaneously with the delivery of the Bonds. See "BOND INSURANCE" herein.]

The Bonds are limited obligations of the Authority and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of the Authority or any of its income or receipts, except the Revenues. The full faith and credit of the Authority, the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Agency") and the City (the Agency and the City being the parties to the agreement creating the Authority) is not pledged for the payment of the principal of or interest on the Bonds and no tax or other source of funds, other than the Revenues, is pledged to pay the principal of or interest on the Bonds. The payment of the principal of or interest on the Bonds does not constitute a debt, liability or obligation of the Authority, the City or the Agency for which any such entity is obligated to levy or pledge any form of taxation or for which any such entity has levied or pledged any form of taxation. The Authority has no taxing power.

For a discussion of some of the risks associated with the purchase of the Bonds, see "RISK FACTORS" herein.

This cover page contains information for quick reference only. It is not intended to be a summary of all factors relating to an investment in the Bonds. Investors must read the entire Official Statement before making any investment decision.

The Bonds are offered when, as and if issued by the Underwriters, subject to approval of legality by Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed on for the Authority by Norton Rose Fulbright US LLP as Disclosure Counsel, for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the Authority and the City by Aleshire & Wynder, LLP. It is anticipated that the Bonds will be available for delivery through the book-entry facilities of DTC on or about August __, 2015.

[STIFEL LOGO] [WILLIAMS CAPITAL LOGO]

Dated: _____, 2015

* Preliminary; subject to change.

MATURITY SCHEDULE

$[_____]*
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015
(Base CUSIP† 066614)

Maturity (June 1)	Principal Amount	Interest Rate	Yield	CUSIP†
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				
2034				
2035				
2036				
2037				
2038				

$_____ ___% Term Bonds maturing June 1, 20__ Yield ___%; CUSIP† ___

* Preliminary; subject to change.

† CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. CUSIP numbers have been assigned by an independent company not affiliated with the Authority and are included solely for the convenience of investors. None of the Authority, the City, the Underwriters, or the Financial Advisor, are responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Bond.

No dealer, broker, salesperson or other person has been authorized by the Autbority, the City or the City's Public Works Department (the "Department") to give any information or to make any representations, other than as contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as baving been authorized by the Authority, the City or the Department. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

Tbis Official Statement is not to be construed as a contract with the purchasers of the Bonds. Statements contained in this Official Statement which involve estimates, forecasts, or matters of opinion, whetber or not expressly so described herein, are intended solely as such and are not to be construed as representation of facts.

All other information set forth herein has been furnished by the Authority, the City, and the Department, and includes information obtained from other sources which are believed to be reliable. The information and expressions of opinion contained herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made bereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority, the City, or the Department since the date hereof. Tbis Official Statement is submitted with respect to the sale of the Bonds referred to berein and may not be reproduced or used, in whole or in part, for any other purpose, unless authorized in writing by the Authority, the City, and the Department. All summaries of the documents and laws are made subject to the provisions thereof and do not purport to be complete statements of any or all sucb provisions.

The Underwriters have provided the following two paragraphs for inclusion in this Official Statement:

The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS, INSTITUTIONAL INVESTORS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ABOVE, AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited witb the Municipal Securities Rulemaking Board througb the Electronic Municipal Market Access ("EMMA") web site. The City also maintains a web site. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Bonds.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and tbe information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, SEC Rule 15c2-12.

FORWARD-LOOKING STATEMENTS

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are generally identifiable by the terminology used such as "plan," "project," "expect," "anticipate," "intend," "believe," "estimate," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Except as specifically set forth herein, the City does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

CITY OF BANNING
AND
CITY OF BANNING FINANCING AUTHORITY

CITY COUNCIL/AUTHORITY COMMISSION MEMBERS

Debbie Franklin, *Mayor/President*
Art Welch, *Mayor Pro Tem/Vice President*
Edward Miller, *Council Member/Commission Member*
George Moyer, *Council Member/Commission Member*
Don M. Peterson, *Council Member/Commission Member*

CITY STAFF

Dean Martin, *City Manager/Interim Executive Director*
Marie A. Calderon, *City Clerk/Authority Secretary*
Fred Mason, *Electric Utility Director*
Art Vela, *Acting Public Works Director*
Aleshire & Wynder, LLP, *City Attorney/Authority Counsel*

SPECIAL SERVICES

BOND COUNSEL/DISCLOSURE COUNSEL

Norton Rose Fulbright US LLP
Los Angeles, California

FINANCIAL ADVISOR

Urban Futures, Inc.
Orange, California

TRUSTEE

U.S. Bank National Association
Los Angeles, California

DISSEMINATION AGENT

Willdan Financial Services
Temecula, California

VERIFICATION AGENT
[TBD]

TABLE OF CONTENTS

Page

INTRODUCTION 1

General 1
Authority for Issuance 1
The Authority 1
Security for the Bonds 2
[Bond Insurance 2
Description of the Bonds 2
Bond Owners' Risks 3
Changes Affecting the Electric Utility Industry 3
Professionals Involved in the Offering 3
Offering and Delivery of the Bonds 4
Continuing Disclosure 4
Other Matters 4

THE BONDS 4

General 4
Redemption 5
Transfer and Exchange of Bonds 6
Book-Entry System 7
Bond Debt Service 7

ESTIMATED SOURCES AND USES OF FUNDS 8

PLAN OF FINANCE 8

General 8
Refunding of 2007 Bonds 8
Financing of Capital Improvements 9

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS 10

Assignment of Revenues and Installment Sale Agreement 10
Reserve Fund 10
Qualified Reserve Fund Credit Instrument 11
Issuance of Additional Debt; Parity Obligations 11
Installment Payments 12
Rate Covenant; Collection of Rates and Charges 14
Covenants of the City 15
Special Obligation 17

BOND INSURANCE 18

THE ELECTRIC SYSTEM 18

General 18
Management and Employees 18
Electric System Facilities 19
Power Supply Resources 20

TABLE OF CONTENTS
(continued)

Page

Forward Market Power Purchases 23
Future Power Resources 24
Transmission Resources 24
Wholesale Transactions 26
Historical and Projected Customers, Retail Energy Sales, Revenues and Demand 27
Largest Customers 28
Capital Requirements 29
Insurance 29
Indebtedness 30
Rates and Charges; Recent Rate Increase 31
Summary of Historical Operating Results 32
Projected Operating Results, Cash Flows and Coverage Ratio 33

RISK FACTORS 35

The Bonds are Limited Obligations 35
Electric System Expenses And Collections 35
No Liability of the Authority to the Owners 35
Limitations on Remedies 35
Limited Recourse on Default 36
Loss of Tax Exemption 36
Secondary Market 36
Forecasts and Forward-Looking Statements 36
Rate Regulation 37
Certain Factors Affecting the Electric Utility Industry 37
Articles XIIIC and XIIID of the State Constitution 37
Proposition 26 38
Future Initiatives 38
Casualty Risk; Earthquakes 39

DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS 39

State Legislation 39
Future Regulation 44
Impact of Developments on the City 44

OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY 45

Federal Energy Legislation 45
Environmental Issues 46
Other Factors 50

THE AUTHORITY 51

CONTINUING DISCLOSURE 51

TAX MATTERS 52

Tax Exemption 52
Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds 53

TABLE OF CONTENTS
(continued)

Page

Other Tax Consequences 54

CERTAIN LEGAL MATTERS 54

VERIFICATION OF MATHEMATICAL COMPUTATIONS 54

LITIGATION 55

PROFESSIONAL FEES 55

UNDERWRITING 55

RATINGS 55

FINANCIAL STATEMENTS 55

MISCELLANEOUS 56

APPENDIX a – CITY AUDITED FINANCIAL STATEMENTS FISCAL YEAR ENDING JUNE 30, 2014 A-1
APPENDIX B – GENERAL INFORMATION ABOUT THE CITY OF BANNING B-1
APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS C-1
APPENDIX D – FORM OF OPINION OF BOND COUNSEL D-1
APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT E-1
APPENDIX F – SPECIMEN MUNICIPAL BOND INSURANCE POLICY F-1
APPENDIX G – BOOK-ENTRY ONLY SYSTEM G-1

VICINITY MAP

[To Be Inserted]

OFFICIAL STATEMENT

$[_____]*
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2015

INTRODUCTION

This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The sale and delivery of the Bonds to potential investors are made only by means of the entire Official Statement.

General

The purpose of this Official Statement (which includes the cover page and the appendices attached hereto) is to provide information concerning the issuance, sale and delivery by the City of Banning Financing Authority (the "Authority") of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds"), in the aggregate principal amount of $[_____]*. The proceeds of the sale of the Bonds will be used to (i) refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007, currently outstanding in the amount of $40,045,000, (ii) finance certain improvements (the "Facilities") to the electric system (the "Electric System") of the City of Banning (the "City"), (iii) [pay the insurance premium for the Bonds,] (iv) [fund a Reserve Fund for the Bonds], and (v) pay costs of issuance of the Bonds. See "THE BONDS – Estimated Sources and Uses of Funds" and "PLAN OF FINANCE" herein. The Authority and the City will enter into an Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), pursuant to which the Authority will sell the Improvements to the City in consideration for Installment Payments sufficient in amount to pay the principal of and interest on the Bonds.

Authority for Issuance

The Bonds are being issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), among the Authority, the City, and U.S. Bank National Association, as trustee (the "Trustee").

The Authority

The Authority is a joint exercise of powers authority organized under the laws of the State of California whose members are the City and the Successor Agency to Community Redevelopment Agency of the City of Banning (the "Agency"). The Authority was formed, among other things, to finance and refinance, through the issuance of bonds or other instruments of indebtedness, capital improvements and working capital and other costs as permitted by the Act.

* Preliminary; subject to change.

Security for the Bonds

The Bonds are special obligations of the Authority secured by and payable solely from the Revenues, consisting of (a) all amounts received by the Authority or the Trustee pursuant or with respect to the Installment Sale Agreement, including, without limiting the generality of the foregoing, all of the Installment Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), prepayments, insurance proceeds, and condemnation proceeds, but excluding any Additional Payments; (b) all moneys and amounts held in the funds and accounts established under the Indenture; and (c) investment income with respect to any moneys held by the Trustee pursuant to the Indenture.

The City's obligation to make payments under the Installment Sale Agreement is secured by and payable from Net Revenues, being Gross Revenues derived by the City from the ownership and operation of the Electric System (as described herein), less Operation and Maintenance Costs of the Electric System. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein. Also, see "THE ELECTRIC SYSTEM - Rates and Charges; Recent Rate Increase" herein for a discussion of Electric System rate increases approved by the City Council of the City in March 2013.

The Bonds are limited obligations of the Authority and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of the Authority or any of its income or receipts, except the Revenues. The full faith and credit of the Authority, the Agency and the City, which are parties to the agreement creating the Authority, are not pledged for the payment of the principal of or interest on the Bonds and no tax or other source of funds, other than the Revenues, is pledged to pay the principal of or interest on the Bonds. The payment of the principal of or interest on the Bonds does not constitute a debt, liability or obligation of the Authority, the Agency or the City for which any such entity is obligated to levy or pledge any form of taxation or for which any such entity has levied or pledged any form of taxation. The Authority has no taxing power.

[Bond Insurance

Payment of the principal of and interest on the Bonds when due will be insured by a municipal bond insurance policy (the "Policy") to be issued by _____ (the "Bond Insurer") simultaneously with the delivery of the Bonds. See "BOND INSURANCE" herein.]

Description of the Bonds

For a more complete description of the Bonds and the Indenture pursuant to which they are being issued, see "THE BONDS" and "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" herein.

General. The Bonds will be dated as of and bear interest from their Delivery Date, at the rates set forth on the inside cover page hereof. See "THE BONDS." The Bonds, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository of the Bonds. Individual purchases of the Bonds will be made in book-entry form only. Principal of and interest on the Bonds will be payable by DTC through the DTC participants. See "THE BONDS – Book-Entry System" and APPENDIX G – BOOK-ENTRY ONLY SYSTEM" herein. Purchasers of the Bonds will not receive physical delivery of the Bonds purchased by them.

Redemption*. The Bonds are subject to special mandatory redemption, mandatory sinking fund redemption and redemption from optional prepayment of Installment Payments prior to maturity as more fully described herein. See "THE BONDS - Redemption" herein.

Denomination. The Bonds are being delivered in the minimum denominations of $5,000 or any integral multiple thereof within a single maturity.

Registration, Transfers and Exchanges. The Bonds will be issued and delivered as fully registered Bonds and will be subject to transfer, exchange and replacement as described herein. See "THE BONDS" and "APPENDIX C - SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" herein.

Payments. Interest on the Bonds will be payable semiannually on December 1 and June 1 of each year (each an "Interest Payment Date") commencing December 1, 2015. Principal of the Bonds will be payable upon the presentation and surrender thereof at the corporate trust office of the Trustee, in Los Angeles, California when due. Interest on the Bonds is payable by check of the Trustee mailed on or before each Interest Payment Date to the persons in whose names such Bonds are registered at the close of business on the Record Date, which is the fifteenth (15th) calendar day of the month immediately preceding any Interest Payment Date, or by wire transfer pursuant to the procedure described herein.

Bond Owners' Risks

Certain events could affect the ability of the Authority to make the payments of the principal of and interest on the Bonds when due. See "RISK FACTORS" herein for a discussion of certain factors which should be considered, in addition to other matters set forth herein, in evaluating an investment in the Bonds.

Changes Affecting the Electric Utility Industry

The electric utility industry has faced unprecedented changes in recent years, especially in California. See "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS" and "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY" herein.

Professionals Involved in the Offering

U.S. Bank National Association, Los Angeles, California, will act as Trustee with respect to the Bonds pursuant to the Indenture.

All proceedings in connection with the issuance of the Bonds are subject to the approval of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel. Certain legal matters will be passed upon for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the City and the Authority by Aleshire & Wynder, LLP, in its capacity as City Attorney and Authority Counsel.

* Preliminary; subject to change.

Offering and Delivery of the Bonds

The Bonds are offered when, as and if issued and received by the Underwriters, subject to approval as to their legality by Bond Counsel and the satisfaction of certain other conditions. It is anticipated that the Bonds will be available for delivery through the book-entry facilities of DTC, on or about August __, 2015.

Continuing Disclosure

The City has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City, including the Electric System, and to provide notices of the occurrence of certain listed events. See "CONTINUING DISCLOSURE" and "APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT" herein.

Other Matters

The summaries of and references to documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each document, statute, report, or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in a particular agreement or other document and, as used herein, has the meaning given it in such agreement or document. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" for summaries of certain of such definitions.

THE BONDS

General

The Bonds will be dated the date of their initial delivery and will bear interest at the rates and mature on the dates and in the amounts set forth on the inside cover page of this Official Statement, payable semiannually on each June 1 and December 1 of each year commencing on December 1, 2015 (each, an "Interest Payment Date") to the maturity of the Bonds. The Bonds are subject to redemption as provided herein. Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Bonds shall be payable semiannually calculated based on a 360-day year of twelve (12) thirty-day months on each Interest Payment Date to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed on the Interest Payment Date by first class mail to the Owner at the address of such Owner as its appears on the Registration Books; provided however, that payment of interest will be made by wire transfer in immediately available funds to an account at a financial institution in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee before the applicable Record Date. Any such written request shall remain in effect until rescinded in writing by the Owner. Principal of any Bond and any premium upon redemption shall be paid by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

Principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America. So long as Cede & Co. is the registered owner of the Bonds, payments of principal and interest on the Bonds will be paid to DTC as registered owner of the Bonds. See "THE BONDS – Book-Entry System" and "APPENDIX G – BOOK-ENTRY ONLY SYSTEM" herein.

Redemption*

Redemption from Prepayments of Installment Payments. The Bonds maturing on or before June 1, 20__ shall not be subject to optional redemption prior to maturity. The Bonds maturing on or after June 1, 20__ shall be subject to redemption prior to their respective maturity dates, at the option of the Authority, by lot within a maturity on any date on or after June 1, 20__, from prepayment of Installment Payments made at the option of the City at the redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

Mandatory Sinking Fund Redemption. The Bonds maturing on June 1, 20__ and June 1, 20__ are also subject to redemption prior to their respective stated maturities, on any June 1 on or after June 1, 20__ and June 1, 20__, respectively, in part by lot, from mandatory sinking account payments at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, without premium, as set forth below in the aggregate respective principal amounts and on the respective dates as set forth in the following tables; provided, however, that if some but not all of such Bonds have been redeemed pursuant to optional or special mandatory redemption provisions of the Indenture, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of $5,000.

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Notice of Redemption. The Trustee on behalf and at the expense of the Authority shall mail (by first-class mail, postage prepaid) notice of any redemption to: (i) the respective Owners of any Bonds designated for redemption, at least twenty (20) but not more than sixty (60) days prior to the redemption date, at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services, at least twenty (20) but not more than sixty (60) days prior to the redemption date; provided, however, that neither failure to receive any such notice so

* Preliminary; subject to change.

mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. In addition to mailed notice, the notice to the Securities Depositories and Information Services shall be given by telephonically confirmed facsimile transmission or overnight delivery service or by such other means approved by such institutions. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the bond numbers and the maturity or maturities (in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date. Any notice given pursuant to this paragraph may be rescinded by a written certificate given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this paragraph, but in no event later than the date set for redemption.

Selection of Bonds for Redemption. Whenever provision is made in the optional or special mandatory redemption of Bonds of more than one maturity, the Bonds to be redeemed shall be selected in inverse order of maturity or, at the election of the Authority evidenced by a Written Request of the Authority filed with the Trustee at least thirty (30) days prior to the date of redemption, on a pro rata basis among maturities (provided that, in any event, the principal and interest due on the Bonds Outstanding following such redemption shall be equal in time and amount to the unpaid payments due under the Installment Sale Agreement); and in each case, the Trustee shall select the Bonds to be redeemed within any maturity by lot in any manner which the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, all Bonds shall be deemed to be comprised of separate $5,000 portions and such portions shall be treated as separate Bonds which may be separately redeemed.

Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption shall have been duly provided, such Bonds so called shall cease to be entitled to any benefit under the Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. All Bonds redeemed pursuant to the Indenture shall be canceled and shall be destroyed by the Trustee.

Transfer and Exchange of Bonds

The registration of any Bond may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Bonds may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same interest rate and maturity. The Authority shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee may require the payment by the Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. The Trustee may refuse to transfer or exchange either (i) any Bond during the period established by the Trustee for the selection of Bonds for redemption pursuant to the Indenture, or (ii) the portion of any Bond which the Trustee has selected for redemption pursuant to the provisions of the Indenture.

Book-Entry System

The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will be registered in the name of Cede & Co. (DTC's partnership nominee), and will be available to ultimate purchasers in the denomination of $5,000 or any integral multiple thereof, under the book-entry system maintained by DTC. Ultimate purchasers of Bonds will not receive physical certificates representing their interest in the Bonds. So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, references herein to the Owners shall mean Cede & Co., and shall not mean the ultimate purchasers of the Bonds. Payments of the principal of and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by the Trustee, so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursements of such payments to DTC's Participants is the responsibility of DTC and disbursements of such payments to the Beneficial Owners is the responsibility of DTC's Participants and Indirect Participants. See "APPENDIX G - BOOK-ENTRY ONLY SYSTEM."

Bond Debt Service

The following table sets forth the annual debt service schedule for the Bonds.

Bond Year Ending (June 1)	Principal	Interest	Total

Total

ESTIMATED SOURCES AND USES OF FUNDS

The following sets forth the estimated sources and uses of funds related to the issuance of the Bonds.

Sources of Funds	
Principal Amount of Bonds	$
Amounts Held Under 2007 Indenture	
Less: Underwriters' Discount	
[Net] Original Issue Premium (Discount)	
Total Sources of Funds	$
Uses of Funds:	
Deposit to Acquisition and Construction Fund	$
Deposit to Costs of Issuance Fund[(1)]	
Deposit to Escrow Fund	
Deposit to Reserve Fund	
Total Uses of Funds	$

(1) Costs of issuance include fees and expenses of Bond Counsel, Disclosure Counsel and the Trustee, verification agent, the premium for the bond insurance policy (if any), rating agency fees, printing expenses and other costs of issuance of the Bonds.

PLAN OF FINANCE

General

The Bonds are being issued to (i) refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007 (the "2007 Bonds"), currently outstanding in the amount of $40,045,000, (ii) finance certain improvements (the "Facilities") to the electric system (the "Electric System") of the City of Banning (the "City"), (iii) [pay the insurance premium for the Bonds,] (iv) [fund a Reserve Fund for the Bonds], and (v) pay costs of issuance of the Bonds.

Refunding of 2007 Bonds

A portion of the proceeds of the Bonds, together with other available funds, will be deposited into an escrow fund (the "Escrow Fund") held under an Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), and applied to pay the principal and interest with respect to the 2007 Bonds becoming due prior to June 1, 2017 (the "Redemption Date") and on the Redemption Date for the purpose of refunding all of the outstanding 2007 Bonds. The 2007 Bonds were issued pursuant to an Indenture of Trust, dated as of June 1, 2007, by and between the Authority and U.S. Bank National Association as Trustee thereunder, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010 (the "2007 Indenture").

The amounts deposited in the Escrow Fund will be held solely for the 2007 Bonds and will not be available to pay the principal of or interest on the Bonds or any obligations other than the 2007 Bonds. _____ (the "Verification Agent"), upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to it, relating to the sufficiency of moneys deposited into the Escrow Fund to pay the principal, interest and redemption premium of the 2007 Bonds. See "VERIFICATION OF MATHEMATICAL COMPUTATIONS."

Financing of Capital Improvements

Approximately $11,000,000 of the net proceeds of the Bonds will be used to finance various rehabilitation and replacement projects to improve the Electric System. These existing and new developments will place increased demands on the City's Electric System and will require the upgrading of existing Electric System facilities and the construction of new facilities.

A portion of the proceeds of the Bonds will be deposited into the Acquisition and Construction Fund for the purpose of financing the Facilities. The following table sets forth a general description of the Facilities, the Fiscal Year in which they are expected to be undertaken and the expected budget for the Facilities.

Fiscal Year	Project Description	Budget[(1)(2)]
2016	Construct new Electric Warehouse at City Yard	$2,700,000
2016	Upgrade Alola Substation from 4kV to 12kV, complete 4kV to 12kV conversion of distribution system	3,450,000
2016	Upgrade Airport Substation from 4kV to 12kV	2,100,090
2017	Replace two old wooden poles at Midway Substation freeway crossing with new engineered steel poles	500,000
2017	Extend Sunset Substation distribution circuits to interconnect with the Wilson Street circuit	1,900,000

(1) Preliminary, subject to change.
(2) Budgeted costs are based on projected increases in the Producer Price Index for construction materials and components.

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

Assignment of Revenues and Installment Sale Agreement

Under the Indenture, the Authority assigns to the Trustee, on behalf of the Owners, all of the Authority's right, title and interest to and in the Revenues and all of the right, title and interest of the Authority in the Installment Sale Agreement (other than the rights of the Authority under the Installment Sale Agreement to Additional Payments, indemnification and attorneys' fees). Subject to the terms of the Indenture, all Revenues the Trustee collects and receives shall be applied to the payment of principal of and interest and premium (if any) on the Bonds equally, without priority for series, issue, number or date, in accordance with the terms hereof. So long as any of the Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that a portion of the Revenues may be used for purposes as expressly permitted by the Indenture.

"Revenues" are defined in the Indenture as (a) all amounts received by the Authority or the Trustee pursuant or with respect to the Installment Sale Agreement, including, without limiting the generality of the foregoing, all of the Installment Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), prepayments, insurance proceeds, condemnation proceeds, but excluding any Additional Payments; (b) all moneys and amounts held in the funds and accounts established under the Indenture; and (c) investment income with respect to any moneys held by the Trustee under the Indenture.

Reserve Fund

Under the Indenture, a Reserve Fund is created for the Bonds (the "Reserve Fund") which shall be held in trust by the Trustee. An amount equal to the Reserve Requirement (as defined below) shall be maintained in the Reserve Fund at all times, subject to the provisions of the Indenture, and any deficiency therein shall be replenished from the first available Revenues pursuant to the Indenture. Under the Indenture, the "Reserve Requirement" means, as of any date of calculation by the City, the least of (i) ten percent (10%) of the proceeds (within the meaning of section 148 of the Code) of the Bonds; (ii) 125% of average Annual Debt Service as of the date issuance of the Bonds: or (iii) the Maximum Annual Debt Service for that and any subsequent year.

Under the Indenture, moneys in the Reserve Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to the Indenture, in the event that the moneys in the Bond Service Fund are insufficient therefor. In the event that the amount on deposit in the Bond Service Fund on any date is insufficient to enable the Trustee to pay in full the aggregate amount of principal of and interest on the Bonds coming due and payable, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption, the Trustee shall withdraw the amount of such insufficiency from the Reserve Fund and transfer such amount to the Bond Service Fund.

In the event that the amount on deposit in the Reserve Fund exceeds the Reserve Requirement on the fifteenth calendar day of the month preceding any Interest Payment Date, the amount of such excess shall be withdrawn therefrom by the Trustee and transferred to the Bond Service Fund and credited against the Installment Payment or Installment Payments next due from the City.

Qualified Reserve Fund Credit Instrument

The Authority may fund all or a portion of the Reserve Requirement with one or more Qualified Reserve Fund Credit Instruments, which is defined in the Indenture as an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee pursuant to the terms of the Indenture provided that all of the following requirements are met: (i) the long-term credit rating of such bank or insurance company at the time of delivery of such letter of credit or surety bond is rated in one of the two highest rating categories by Moody's or S&P; (ii) such letter of credit or surety bond has a term of at least twelve (12) months; (iii) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to the terms of the Indenture; and (iv) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the amounts available to repay the principal of and interest on the Bonds.

Upon deposit of any Qualified Reserve Fund Credit Instrument with the Trustee, the Trustee shall transfer any excess amounts then on deposit in the Reserve Fund into a segregated account of the Bond Service Fund, which monies shall be applied at the written direction of the Authority either (i) to the payment within one year of the date of transfer of capital expenditures of the Authority permitted by law, or (ii) to the redemption of Bonds on the earliest succeeding date on which such redemption is permitted hereby, and pending such application shall be held either not invested in investment property (as defined in section 148(b) of the Code), or invested in such property to produce a yield that is not in excess of the yield on the Bonds; provided, however, that the Authority may by written direction to the Trustee cause an alternative use of such amounts if the Authority shall first have obtained a written opinion of nationally recognized bond counsel substantially to the effect that such alternative use will not adversely affect the

exclusion pursuant to section 103 of the Internal Revenue Code of 1986 (the "Code") of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In any case where the Reserve Fund is funded with a combination of cash and a Qualified Reserve Fund Credit Instrument, the Trustee shall deplete all cash balances before drawing on the Qualified Reserve Fund Credit Instrument. With regard to replenishment, any available moneys provided by the Authority shall be used first to reinstate the Qualified Reserve Fund Credit Instrument and second, to replenish the cash in the Reserve Fund. In the event the Qualified Reserve Fund Credit Instrument is drawn upon, the Authority shall make payment of interest on amounts advanced under the Qualified Reserve Fund Credit Instrument after making any payments to the Bond Service Fund pursuant to the terms of the Indenture.

In the event the Qualified Reserve Fund Credit Instrument will lapse or expire, the Trustee shall draw upon such Qualified Reserve Fund Credit Instrument prior to its lapsing or expiring in the full amount of such Qualified Reserve Fund Credit Instrument, make deposits from available Revenues to the Reserve Fund to increase the amount on deposit therein to the Reserve Requirement or substitute such Qualified Reserve Fund Credit Instrument with a Qualified Reserve Fund Credit Instrument that satisfies the requirements described above.

Issuance of Additional Debt; Parity Obligations

The Authority has covenanted in the Indenture that except for the Bonds, no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

Pursuant to the terms of the Installment Sale Agreement, in addition to the Installment Payments, the City may issue or incur other bonds, notes, loans, advances or indebtedness payable from Net Revenues on a parity with the Installment Payments to provide financing for the Electric System in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Obligations subject to the following specific conditions which are made conditions precedent to the issuance and delivery of such Parity Obligations:

(a) No Event of Default shall have occurred and be continuing, and the City shall deliver a certificate to that effect to the Trustee;

(b) The Net Revenues, calculated in accordance with accounting principles consistently applied, as shown by the books of the City for the latest Fiscal Year or as shown by the books of the City for any more recent twelve (12) month period selected by the City, in either case verified by a certificate or opinion of an Independent Accountant employed by the City, plus (at the option of the City) the Additional Revenues, shall be at least equal to one hundred twenty percent ([120%]) of the amount of Maximum Annual Debt Service; [DISCUSS]

(c) There shall be established upon the issuance of such Parity Obligations a reserve fund for such Parity Obligations in an amount equal to the lesser of (i) the maximum amount of debt service required to be paid by the City with respect to such Parity Obligations during any Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code; and

(d) The trustee or fiscal agent for such Parity Obligations shall be the same entity performing the functions of Trustee under the Indenture.

The provisions of subsection (b) above shall not apply to any Parity Obligations if all of the proceeds of which (other than proceeds applied to pay costs of issuing such Parity Obligations and to make a reserve fund deposit required pursuant to subsection (c) above) shall be deposited in an irrevocable escrow for the purpose of paying the principal of and interest and premium (if any) on any Installment Payments or on any outstanding Parity Obligations.

Under the terms of the Installment Sale Agreement, the City may not issue or incur any additional bonds or other obligations during the term of the Installment Sale Agreement having any priority in payment of principal or interest out of the Net Revenues over the Installment Payments. However, nothing in the Installment Sale Agreement is intended or shall be construed to limit or affect the ability of the City to issue or incur Parity Obligations or obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established under the Installment Sale Agreement.

Installment Payments

Under the Installment Sale Agreement, the City agrees to pay to the Authority, its successors and assigns, but solely from the "Net Revenues" (consisting of "Gross Revenues" less "Operation and Maintenance Costs") and other funds pledged under the Installment Sale Agreement, the "Purchase Price," together with interest on the unpaid principal balance payable in Installment Payments coming due and payable in the respective amounts and on the respective Installment Payment Dates specified in the Installment Sale Agreement. These terms are defined in the Installment Sale Agreement as follows:

"Net Revenues" is defined as meaning, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

"Gross Revenues" is defined as meaning all income, rents, rates, fees, charges and otber moneys derived from the ownership or operation of the Electric System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the City from the sale, furnishing and supplying of electric or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Electric System (other than the non-by-passable usage based cbarge supporting the City's public benefit program), plus (2) tbe earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, including City reserves and tbe Reserve Fund established under the Indenture, but excluding in all cases customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City and excluding any proceeds of taxes required by law to be used by the City to pay bonds bereafter issued.

"Electric System" is defined as meaning the entire electric system of the City, including all facilities, properties and improvements at any time owned, controlled or operated by the City for the provision of electricity, and any necessary lands, rights, entitlements and otber property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City, including the Improvements.

"Operation and Maintenance Costs" is defined as meaning the reasonable and necessary costs and expenses paid by the City for maintaining and operating the Electric System, including but not limited to (a) the cost of utilities, including electricity and other forms of energy supplied to the Electric System, (b) the reasonable expenses of management and repair and otber costs and

expenses necessary to maintain and preserve the Electric System in good repair and working order and (c) the reasonable administrative costs of the City attributable to the operation and maintenance of the Electric System, including insurance and other costs described in the Installment Sale Agreement, but in all cases excluding (i) debt service payable on obligations incurred by the City with respect to the Electric System, including but not limited to the Installment Payments and debt service payments on any Parity Obligations, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature, (iv) City's public benefit program expenditures, and (v) periodic administrative transfers to the City's general fund.

"Purchase Price" is defined as meaning the amount to be paid by the City under the Installment Sale Agreement as the purchase price of the Improvements, being equal to the aggregate principal amount of the Bonds.

Under the Installment Sale Agreement, all of the Net Revenues are irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments and any Parity Obligations (described above) and except as otherwise provided in the Installment Sale Agreement the Net Revenues shall not be used for any other purpose so long as any of the Installment Payments remain unpaid. Such pledge, charge and assignment shall constitute a first lien on the Net Revenues and such other moneys for the payment of the Installment Payments and any Parity Obligations in accordance with the terms of the Installment Sale Agreement.

The obligations of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained in the Installment Sale Agreement shall be absolute and unconditional and until such time as all of the Installment Payments and all other amounts coming due and payable under the Installment Sale Agreement shall have been fully paid or prepaid, the City may not suspend or discontinue payment of any Installment Payments or such other amounts, will perform and observe all other agreement contained in the Installment Sale Agreement, and will not terminate the Installment Sale Agreement for any cause. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Special Obligation" herein.

Under the Installment Sale Agreement, all of the Gross Revenues shall be deposited by the City immediately upon receipt in the Electric Utility Fund, which fund is established by the Installment Sale Agreement and held by the City. The City shall use funds in the Electric Utility Fund to pay Operation and Maintenance Costs as such payments become due and payable. The City covenants and agrees that all Net Revenues will be held by the City in the Electric Utility Fund in trust for the benefit of the Trustee (as assignee of the rights of the Authority under the Installment Sale Agreement) and the Bond Owners, and for the benefit of tbe owners of any Parity Obligations. On or before each Installment Payment Date, the City shall withdraw from the Electric Utility Fund, and transfer to tbe Trustee for deposit in the Revenue Fund, and to the trustee for any Parity Obligations, as applicable, an amount of Net Revenues which, together with the balance then on deposit in the Bond Service Fund (other than amounts resulting from the prepayment of the Installment Payments pursuant to the Installment Sale Agreement and other than amounts required for payment of principal of or interest on any Bonds and Parity Obligations which have matured or been called for redemption but which have not been presented for payment), is equal to the aggregate amount of the Installment Payments coming due and payable on the next succeeding Interest Payment Date, together with any amounts required to restore the balance in the Reserve Fund to the Reserve Requirement. In support of the foregoing, the City shall set aside each month equal amounts necessary to make such transfers on or before each Installment Payment Date.

The City is required under the Installment Sale Agreement to manage, conserve and apply the Gross Revenues on deposit in the Electric System Fund in such a manner tbat all deposits required to be

made will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default shall have occurred and be continuing under the Installment Sale Agreement, the City may use and apply Net Revenues in the Electric Utility Fund for (i) the payment of Additional Payments (as defined in the Installment Sale Agreement), (ii) the payment of any subordinate obligations or any unsecured obligations, (iii) the acquisition and construction of extensions and betterments to the Electric System, (iv) the prepayment of any obligations of the City relating to the Electric System, (v) transfers from the Electric Utility Fund to the General Fund of the City for administrative costs, or (vi) any other lawful purposes of the Electric Utility Fund. All monies in the Electric System Fund may be invested by the City from time to time in any Authorized Investment.

Rate Covenant; Collection of Rates and Charges

Under the Installment Sale Agreement, the City agrees that it shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

(a) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;

(b) Adjustable Annual Debt Service (as defined in the Installment Sale Agreement);

(c) All amounts, if any, required to restore the balance in the Reserve Fund and any reserve fund securing any Parity Obligations to the full amount of the Reserve Requirement and the reserve requirement with respect to any Parity Obligations; and

(d) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to one hundred twenty percent (120%) of the amount described in the preceding clause (b) for such Fiscal Year.

See "THE ELECTRIC SYSTEM – Rates and Charges; Recent Rate Increase" herein for a discussion of Electric System rate increases approved by the City Council of the City in March 2013.

Covenants of the City

In addition to the covenant described above under the caption "Rate Covenant; Collection of Rates and Charges," the City makes certain other covenants in the Installment Sale Agreement which are summarized below. See "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – The Installment Sale Agreement" herein.

Maintenance, Utilities, Taxes and Assessments. Throughout the term of the Installment Sale Agreement, all improvement, repair and maintenance of the Electric System shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Electric System, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the

payment of the cost of the repair and replacement of the Electric System resulting from ordinary wear and tear.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Electric System or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Installment Sale Agreement as and when the same become due.

Operation of the Electric System. The City covenants and agrees to operate the Electric System in an efficient and economical manner and to operate, maintain and preserve the Electric System in good repair and working order. The City covenants that, in order to fully preserve and protect tbe priority and security of the Bonds, the City shall pay from the Gross Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Electric System which, if unpaid, may become a lien or charge upon the Gross Revenues or the Net Revenues prior or superior to the lien granted under the Installment Sale Agreement, or which may otherwise impair the ability of the City to pay the Installment Payments in accordance therewith.

Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the term of the Installment Sale Agreement, but only if and to the extent available at reasonable cost from reputable insurers, a standard comprehensive general insurance policy or policies in protection of the Authority, the City and their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Electric System. Said policy or policies shall provide coverage in such liability limits and shall be subject to such deductibles as shall be customary with respect to works and property of a like character. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of the Installment Sale Agreement, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such proceeds shall have been paid.

Casualty Insurance. The City shall procure and maintain, or cause to be procured and maintained, throughout the term of the Installment Sale Agreement, but only in the event and to the extent available from reputable insurers at reasonable cost, casualty insurance against loss or damage to any improvements constituting any part of the Electric System, covering such hazards as are customarily covered with respect to works and property of like character. Sucb insurance may be subject to deductible clauses which are customary for works and property of a like character. Such insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the City and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of the Installment Sale Agreement, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. All amounts collected from insurance against accident to or destruction of any portion of the Electric System shall be used to repair, rebuild or replace such damaged or destroyed portion of the Electric System, and to the extent not so applied, shall be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under the special mandatory redemption provisions of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

Eminent Domain. Any amounts received as awards as a result of the taking of all or any part of the Electric System by the lawful exercise of eminent domain, at the election of the City (evidenced by a Written Certificate of the City filed with the Trustee and the Authority) shall either (a) be used for the acquisition or construction of improvements and extension of the Electric System, or (b) be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under the special mandatory redemption provisions of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

Records and Accounts. The City shall keep proper books of record and accounts of the Electric System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Electric System. Said books shall, upon prior request, be subject to the reasonable inspection by the Owners of not less than ten percent (10%) in aggregate principal amount of the Outstanding Bonds, or their representatives authorized in writing. The City shall cause the books and accounts of the Electric System to be audited annually by an Independent Accountant, not more than two hundred seventy (270) days after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Owners at the office of the City.

Covenants Related to Tax-Exempt Status of the Bonds. The City make certain covenants relating to the tax-exempt status of the Bond, including that it will take such actions as are necessary to insure: (i) that the interest on the Bonds will not become includable in the gross income of the owners thereof for federal income tax purposes; (ii) that no Bond will become a "private activity bond" within the meaning of section 141 of the Code; (iii) that the Bonds will not become "arbitrage bonds" within the meaning of section 148 of the Code; (iv) that the Bonds will not be treated as "federally guaranteed" within the meaning of section 149(b) of the Code and the Tax Regulations and rulings thereunder; and (v) take certain other actions relating to certain reports and to amounts rebatable to the United States under the Code.

Sale of the Electric System Property. Except as provided in the Installment Sale Agreement, the City covenants that the Electric System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole unless such sale is to a public entity. Neither the Net Revenues nor any other funds pledged or otherwise made available to secure payment of the Installment Payments shall be mortgaged, encumbered, sold, leased, pledged, any charge placed thereon, or disposed or used except as authorized by the terms of the Installment Sale Agreement. The City shall not enter into any agreement which impairs the operation of the Electric System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, or which otherwise would impair the rights of the Bond Owners and the owners of any Parity Obligations with respect to the Net Revenues. If any substantial part of the Electric System shall be sold, the payment therefor shall either (a) be used for the acquisition or construction of improvements, extensions or replacements of facilities constituting part of the Electric System, or (b) to the extent not so used, be paid to the Trustee to be applied to pay or prepay the Installment Payments or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

Special Obligation

The City's obligation to pay the Installment Payments, the Additional Payments and any other amounts coming due and payable under the Installment Sale Agreement shall be a special obligation of the City limited solely to the Net Revenues. Under no circumstances shall the City be required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified in the Installment Sale Agreement for the payment of the Installment Payments and the Additional Payments, nor shall any other funds or property of the City be liable for the payment of the

Installment Payments and the Additional Payments and any other amounts coming due and payable under the Installment Sale Agreement.

The obligations of the City to make the Installment Payments and the Additional Payments from the Net Revenues and to perform and observe the other agreements contained in the Installment Sale Agreement shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City, the Authority or the Trustee of any obligation to the City or otherwise with respect to the Electric System, whether under the Installment Sale Agreement or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable under the Installment Sale Agreement shall have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in the Installment Sale Agreement, and (c) will not terminate the Installment Sale Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Electric System, failure to complete the Acquisition and Construction of any Improvements by the estimated Completion Date thereof, the taking by eminent domain of title to or temporary use of any component of the Electric System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or the Installment Sale Agreement.

BOND INSURANCE

[TO COME, IF APPLICABLE]

THE ELECTRIC SYSTEM

General

Pursuant to resolution of the City Council of the City, the City established the Electric System in 1922 through the purchase of all of the property and facilities of the privately owned Light and Power Utility, which prior to its purchase by the City provided electric service to the City. The Electric System currently serves 10,836 residential, 1,005 commercial, 6 industrial and 123 other customers in an approximately 22 square mile service area. Service is provided over a 34.4kV subtransmission system to six distribution substations and is delivered to end users over City owned distribution lines. For Fiscal Year 2014, total energy generated equaled 145,203 MWh and total energy purchases equaled 43,118 MWh. Peak demand in Fiscal Year 2014 was 40.5 MW. The City's all-time peak demand was 47.6 MW in Fiscal Year 2006.

The City Council of the City is the governing body for the Electric System and approves all major operational decisions, including rate setting, operating budgets, power resource acquisitions, enhancement of distribution facilities and capital projects. Day-to-day operation of the Electric System is managed by the Electric Utility Director.

Management and Employees

The following are biographical summaries of the Electric Utility Director and the Power Resource and Revenue Administrator.

Frederick H. Mason – Mr. Mason has served as the City's Electric Utility Director since July 2009. In that capacity, Mr. Mason oversees the day-to-day planning and administration of all activities and programs of the Electric System, as well as the development, interpretation and enforcement of Electric System policies and procedures. Previously, Mr. Mason was the City's Electric Utility Power Resource and Revenue Administrator. Prior to joining the City, Mr. Mason was the Power Resource-Energy Transaction Analyst and Field Services Manager for Riverside Public Utilities for a period of seven years. Mr. Mason holds a Bachelor of Science degree and a Masters in Business Administration from the University of Redlands.

James Steffens – Mr. Steffens is the Utility Financial Analyst for the City, a position he has held since September 2011. Mr. Steffens responsibilities include analysis of financial and market data and representation of the City in communications with other utilities, energy suppliers, the California Independent System Operator Corporation and the Federal Energy Regulatory Commission. He also manages the City's Public Benefit Programs. Prior to joining the City, Mr. Steffens was a financial consultant to government agencies through Willdan Financial Services. Mr. Steffens holds a Bachelor of Arts degree in Economics from California State University, Fullerton and a Masters in Business Administration from the University of Arizona.

As of June 30, 2014, the Electric System directly employed 22 employees. 18 of these employees are represented by the International Brotherhood of Electrical Workers ("IBEW") in all matters pertaining to wages, benefits and working conditions, while the three mid-manager level employees are represented

by the Teamsters Local 1932. The Electric Utility Director is an "At Will" employee with a separate Employment Agreement. The current memorandum of understanding with the IBEW expires on June 30, 2016. In addition, 12 employees provided customer service support such as meter reading, field services and billing, while also providing support for the City's water utility. These 12 employees report to the City's Finance Department. 11 of these employees are represented by the IBEW, while the remaining mid-manager level employee is represented by Teamsters Local 1932. All employees are members of the California Public Employees Retirement System. See "THE ELECTRIC SYSTEM – Retirement Program."

Electric System Facilities

Through agreement with Southern California Edison Company ("Edison"), the Electric System utilizes Edison's subtransmission system in bringing power from the California Independent System Operator ("CAISO") controlled high voltage transmission grid to the Electric System's distribution system at Banning Substation. The City owns two 34.4kV subtransmission circuits totaling approximately ten miles which feed each of the Electric System's six substations. These six substations have 27 circuits feeding approximately 145 miles of overhead and underground lines of 2,400/4160Y volts and 7,200/12,470Y volts. Underground lines total approximately 22 miles or 15% of the total.

The Electric System also has three small hydroelectric generating units located in San Gorgonio Wash. The two lower generating units were rebuilt in 2015 with a combined capacity of .48 MW and started regular operations in June. The two units are projected to produce a total of approximately 4,000 MWh's of electricity each year. The upper generating unit is currently being evaluated to determine whether there is a cost benefit for rebuilding it. If rebuilt, the upper unit would have a capacity of .15 MW.

The following table sets forth information concerning voltages, capacities and circuits for the Electric System's six substations.

Table 1
CITY OF BANNING ELECTRIC
SYSTEM SUBSTATIONS

Substation	Voltage	Capacity (MW)	Distribution Feeders
34 – 4kV			
Alola #1	34.5 -2.4/4.16	3.75	2
Alola #2	34.5 -2.4/4.16	3.75	2
Alola #3	34.5 -2.4/4.16	2.00	1
Airport	34.5 -2.4/4.16	3.75	2
34 – 12kV			
22nd Street	34.5 -7.4/12.47	15.00	3
Midway #1	34.5 -7.4/12.47	7.50	2
Midway #2	34.5 -7.4/12.47	7.50	2
San Gorgonio #1	34.5 -7.4/12.47	10.00	2
San Gorgonio #2	34.5 -7.4/12.47	10.00	2
Sunset #1	34.5 - 7.4/12.47	25.00	5
Sunset #2	34.5 - 7.4/12.47	25.00	4

Source: City of Banning Electric Department.

Power Supply Resources

Peak demand for the Electric System increased annually from 41.9 MW in Fiscal Year 2010 to 46.9 MW in Fiscal Year 2013. Peak demand in Fiscal Year 2014 decreased to 40.5 MW. The decline in peak demand was due to a very mild summer, which resulted in lower demand for air conditioning. For Fiscal Years 2010 through 2014 total retail sales increased from 135,545 MWh to 138,926 MWh. For Fiscal Year 2014, total energy generated equaled 145,203 MWh and total energy purchases equaled 43,118 MWh, for a total of 188,321 MWh of electricity.

As discussed above under the caption "Electric System Facilities," the City has three small hydroelectric generating units which had previously operated infrequently and did not significantly contribute to the Electric System's supply resources. However, with the two lower units being rebuilt in 2015, they will produce approximately 4,000 MWh per year, or three percent of the Utility's power supply requirements. The principal supply resources for the Electric System are derived from the City's membership in the Southern California Public Power Authority ("SCPPA"), a joint powers agency, and the City's participation through SCPPA in (i) Unit 3 of the San Juan Generating Station ("San Juan Unit 3"), (ii) the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 and associated facilities ("PVNGS"), (iii) direct entitlements to the output of hydroelectric generating plants at the Hoover Dam (the "Hoover Upratings Project"), and (iv) certain power purchase agreements between SCPPA and two divisions of Ormat Technologies, Inc. relating to two geothermal energy facilities located in the Imperial Valley of California (the "Ormat Geothermal Energy Projects"). In addition, the City also makes energy purchases in the wholesale market to cover its summer peaking energy and capacity requirements.

In anticipation of the shutdown of San Juan Unit 3 (which will be discussed in more detail later), the City Council approved power sales agreements to obtain capacity and energy from two new SCPPA projects, which will provide the capacity and energy needed to replace the San Juan resource. The two agreements include a 9 MW share of the Puente Hills Landfill Gas-to-Energy Facility, and an 8 MW share of the RE Astoria 2 Solar Project. Both of these facilities are certified renewable energy through the California Energy Commission and will begin providing capacity, energy and associated renewable attributes to the City beginning in 2017. These two agreements are standard power purchase contracts, and do not have a "take or pay" provision.

The following table sets forth certain information regarding the Electric System's power supply resources during the Fiscal Year ended June 30, 2014.

Table 2
CITY OF BANNING
ELECTRIC SYSTEM POWER SUPPLY RESOURCES
(Fiscal Year Ended June 30, 2014)

Source	Capacity Available (MW)	Actual Energy (MWh)	Percent of Total Energy
Joint Powers Agency (SCPPA)			
San Juan[1]	20.0	125,213	66.5%
PVNGS	2.0	18,291	9.7
Hoover	2.0	1,699	0.9
Subtotal	24.0	145,203	77.1
Purchased Power			
CAISO[2]	N/A	15,344	8.2
Ormat[3]	3.4	27,774	14.7
Subtotal		43,118	22.9
Total	**27.4**	**188,321**	**100%**

[1] See "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS - State Legislation - Greenhouse Gas Emissions regarding recent legislation that could adversely affect the use of coal-fired generating plants, including San Juan.
[2] Consists of purchases made in the forward market to cover summer peaking energy requirements.
[3] Also through SCPPA.
Source: City of Banning Electric Department.

As noted, the City is a member of SCPPA, a joint powers agency created for the planning, financing, acquiring, constructing, operating and maintaining of electric generating and transmission projects for participation by some or all of its members. Through its membership in SCPPA, the City is a participant in the following projects.

San Juan Unit 3. The San Juan Generating Station consists of a four unit, coal fired steam electric generating plant located near the town of Farmington in San Juan County, New Mexico. The combined net generating capacity of the four units is 1,800 MW. San Juan Unit 3 has a maximum gross rated capacity of 540 MW and net capacity of 497 MW. The four units were put into operation between 1976 and 1982. In 1993, SCPPA and five of its members negotiated a purchase agreement with Century Power Corporation under which SCPPA purchased a 41.8% interest in San Juan Unit 3 and related common facilities of the San Juan Generating Station, entitling SCPPA to approximately 208 MW of power generated by San Juan Unit 3. SCPPA entered into power sales contracts with five members of SCPPA, including the City. Under these power sales contracts, SCPPA sells 100% of its entitlement to capacity and energy of San Juan Unit 3 on a "take or pay" basis. The City has a 9.8% (20 MW) entitlement in SCPPA's interest in San Juan Unit 3. SCPPA financed its interest in Unit 3 by issuing revenue bonds in an aggregate principal amount of $237,375,000, of which approximately $42,935,000 in aggregate principal amount were outstanding as of June 1, 2015. In Fiscal Year 2014, San Juan Unit 3 provided 125,213 MWh of energy to the City at an average cost of delivered energy of $67.68 per MWh.

In June 2014, the nine owners of the San Juan Generating Station reached a non-binding agreement in principle on an ownership restructuring of the San Juan Generating Station, which if implemented, would result in the shutdown of Units 2 & 3 by December 31, 2017 as part of the overall settlement of matters regarding emissions at San Juan. Most, but not all, of the regulatory approvals and other conditions have been obtained or satisfied in order to implement this proposed ownership restructuring.

In December 2014 SCPPA successfully closed the refunding of the San Juan Power Project's 2005 Refunding Series A Bonds, which resulted in gross savings of $6.3 million and an NPV of $4.95 million, and a new final maturity of January 1, 2017. This ensures that all San Juan Unit 3 related debt will be paid off prior to the unit shutting down December 31, 2017.

In June 2015, the nine owners of San Juan Generating Station completed developing the binding agreements necessary for the final restructuring of ownership and the shutdown of Units 2 & 3 by December 31, 2017. The individual owners still need to obtain final approval through their various governing boards, which is expected to be completed by August 1, 2015.

Palo Verde Nuclear Generating Station. Through its participation in SCPPA, the City has an entitlement to the Palo Verde Nuclear Generating Station near Phoenix, Arizona. SCPPA, pursuant to the Arizona Nuclear Power Project ("ANPP") Participation Agreement, has a 5.91% interest in PVNGS, consisting of Units 1, 2 and 3 and certain associated facilities and contractual rights, a 5.56% ownership interest in the ANPP High Voltage Switchyard and contractual rights, and a 6.55% share of the rights to use certain portions of the ANPP Valley Transmission System in order to transmit PVNGS power to its members which are participating in the project.

SCPPA has sold the entire capability of SCPPA's interest pursuant to power sales contracts with certain of its members, including the City. Under the PVNGS power sales contract, the participants are entitled to SCPPA generation capability based on their respective PVNGS entitlements and are obligated to make payments on a "take or pay" basis.

Commercial operation and initial deliveries from PVNGS Units 1, 2 and 3 commenced in January 1986, September 1986 and January 1988, respectively. Transmission is accomplished through agreements with Salt River Project Agricultural Improvement and Power District, the Los Angeles Department of Water and Power ("LADWP") and Edison. SCPPA had outstanding approximately $36,130,000 aggregate principal amount of bonds with respect to PVNGS as of June 1, 2015.

In response to increased competition in the electric utility business, in 1997 SCPPA began taking steps designed to accelerate the payment of all fixed rate bonds relating to PVNGS by July 1, 2004 (the "PVNGS Restructuring Plan"). Such steps consisted primarily of refunding certain outstanding bonds for savings and accelerating payments by the PVNGS project participants on the bonds issued by SCPPA for PVNGS. The PVNGS Restructuring Plan accomplishes substantial savings to the PVNGS project participants from and after the time the principal of an interest on such fixed rate bonds were paid or provision for the payment thereof was made (i.e., from and after July 1, 2004). Under the PVNGS Restructuring Plan, the delivered cost of energy produced by PVNGS decreased significantly on July 1, 2004.

The City has a 1.00% entitlement interest (2 MW) in SCPPA's ownership interest in the PVNGS, the ANPP High Voltage Switchyard and the ANPP Valley Transmission System. In Fiscal Year 2014, PVNGS provided 18,291 MWh of energy to the City at an average cost of delivered energy of $41.23 per MWh.

Hoover Uprating Project. The City participated in the Hoover Uprating Project which consisted principally of the uprating of the capacity of 17 generating units at the hydroelectric power plant of the Hoover Dam, which is located approximately 25 miles from Las Vegas, Nevada. Modern insulation technology made it possible to "uprate" the nameplate capacity of existing generators. The United States Bureau of Reclamation (the "Bureau") owns and operates the Hoover Dam facility and the Western Area Power Association markets the power from the facility. The City and certain other members of SCPPA obtained entitlements to capacity and associated firm energy which they assigned to SCPPA by agreement dated March 1, 1986 in return for SCPPA's agreement to make advance payments to the Bureau on behalf of such members. The entitlements of the City and these SCPPA members currently total 94 MW of capacity and approximately 107,000 MWh of associated energy annually from the Hoover Uprating Project. As of June 1, 2015, SCPPA has outstanding approximately $6,095,000 aggregate principal amount of bonds with respect to the Hoover Uprating Project. The City has an entitlement of approximately 2 MW. In Fiscal Year 2014, the Hoover Uprating Project provided 1,699 MWh of energy to the City at an average cost of delivered energy of $36.56 per MWh.

Ormat Geothermal Energy Projects. In 2005, SCPPA entered into a power purchase agreement (the "Ormat Power Purchase Agreement") with OrHeber 2, Inc., which is a division of Ormat Technologies, Inc. ("Ormat"). This agreement provides for the purchase of 10 MW of electric generation from a geothermal energy facility located in the Heber area of the Imperial Valley of California. In turn, pursuant to certain power sales agreements (the "Ormat Power Sales Agreements"), SCPPA agreed to sell the energy purchased by it to four of its members, including the City. The City's contract share of the purchased power is 1 MW or 10% of the total 10 MW output. Under the City's Ormat Power Sales Agreement, the City pays an initial cost for delivered energy of $57.50 per MWh, with an annual increase of 1.5%.

The Ormat Power Purchase Agreement and the Ormat Power Sales Agreements (including the City's Ormat Power Sales Agreement) have terms of 25 years from January 1 immediately following the commercial operation dates for the geothermal energy facilities. The Heber facility was completed and commenced delivering energy in January 2006, and thus the agreements relating to that facility have an expiration date of January 1, 2032.

In 2008 Ormat requested, and the SCPPA participants agreed to substitute the generating facility supplying power related to the Ormat Power Purchase Agreement. The new geothermal facility which provides power per the Agreement is the "Heber South" generating facility, which has a capacity of 14 MW versus the original Heber facility's 10 MW. The City's share continues to be 10%, but the actual capacity increased from 1 MW to 1.4 MW. Additionally, the City agreed to take 2 MW of capacity from the original Heber facility, under the same terms and conditions, thereby additionally increasing its overall capacity from 1.4 MW to 3.4 MW. With this change in facilities and increased capacity, there was an update in the pricing of the power, the original pricing methodology applies to the first 9.5 MW delivered each hour, but electricity in excess of 9.5 MW delivered any hour will be charged at an initial price of $76 per MWh, with an annual increase of one and one-half percent. All other aspects of the Ormat Power Purchase Agreement remain unchanged.

The Ormat Power Purchase Agreement is subject to early termination by either party thereto in its sole discretion as of January 1 immediately following the 15th or 20th anniversary of the commercial operation date relating to the facility which is the subject of the agreement. In the event of such termination, the Ormat Power Sales Agreement relating to the facility would concurrently terminate. Furthermore, each Ormat Power Sales Agreement is subject to early termination by either party thereto immediately following the 15th or 20th anniversary of the commercial operation date relating to the facility which is the subject of the agreement. If this termination right is exercised by any SCPPA member pursuant to its Ormat Power Sales Agreement, then SCPPA shall unilaterally terminate all of the

Ormat Power Sales Agreements unless the contract shares subscribed to by the remaining SCPPA members are increased to 100%. If all of the Ormat Power Sales Agreements are terminated, SCPPA shall terminate the Ormat Power Purchase Agreement in accordance with its right of termination contained therein.

In Fiscal Year 2014, the City purchased 27,774 MWh of energy pursuant to its Ormat Power Sales Agreement at an average cost of delivered energy of $69.03 per MWh.

See "THE ELECTRIC SYSTEM – Indebtedness" for a description of the City's share of SCPPA's obligations discussed above.

Forward Market Power Purchases

In addition to power supply resources associated with the City's participation in SCPPA projects, the City has made energy purchases in the forward market to cover its summer peaking energy and capacity requirements. In this regard, the City evaluates responses to requests for proposal from various energy suppliers and selects the supplier providing the most economical cost. There is no assurance that the City will be able to engage in forward market purchases in the future. For the past several years, the City has found that it has been more cost effective to purchase needed peaking energy in the CAISO wholesale markets.

The cost of obtaining necessary energy will depend upon contract requirements and the current market price for energy. Spot market prices are dependent upon such factors as natural gas prices, the availability of generating sources in the region, fuel type, and weather conditions such as ambient temperatures and the amount of rainfall or snowfall. Generating unit outages, dry weather, hot or cold temperatures, time of year, transmission constraints, and other factors can all affect the supply and price of energy. See "DEVELOPMENTS IN THE ENERGY MARKETS."

Future Power Resources

General. The Electric System's current resources meet its customer demand in the months of October through May ("Winter Months"). Summer peaking requirements are purchased for the months of June through September. The quantity of peaking power actually purchased fluctuates depending on load projections. Current Electric System resources are expected to cover demand during the Winter Months until San Juan Unit 3 shuts down December 31, 2017. As previously noted, the City executed power sales agreements with SCPPA for power to replace that which was being lost with the shutdown of the San Juan Unit 3 facility. Those two projects, which will begin providing capacity and power to the City in 2017, are described in more detail below.

Puente Hills Landfill Gas-to-Energy Facility. The Puente Hills Landfill Gas-to-Energy Facility is an existing facility that is currently under contract with Southern California Edison. SCPPA has negotiated to start taking the output from the facility, which has a nameplate capacity of 46 MW, as of January 1, 2017. The City's share of the project will be 20.9302% or approximately 9.6 MW of the nameplate capacity. However, because the Puente Hills Landfill has shut down and is no longer accepting waste, the actual capacity of the facility will decrease each year at an estimated rate of 4-6%, as the available "fuel" is depleted. The projected capacity of the facility for 2017 is estimated at 41.5 MW, which will result in the City receiving approximately 8.7 MW of capacity and associated energy. The project has a fixed price of $80 per MWh and a term of 13 years. The facility is located in Los Angeles County (Whittier) near the interchange of the I-605 and CA-60 freeways, and will interconnect with the CAISO's system at Southern California Edison's Hillgen Substation.

RE Astoria 2 Solar Project. The RE Astoria 2 Solar Project is being developed by Recurrent Energy (which has developed other renewable energy projects for SCPPA) and the project is scheduled to begin commercial operation in 2017. The project will be 75 MW and is the second phase of a larger project that was developed for Pacific Gas & Electric. The City's share of the project will be 13% or 8 MWs of capacity. The project has a fixed price of $64 per MWh and a term of 20 years. It will be sited on approximately 840 acres in California on the border between Los Angeles and Kern Counties, and will interconnect with the California Independent System Operator's ("CAISO") system at Southern California Edison's Whirlwind Substation.

Transmission Resources

Transmission resources are an integral component of the City's plan to provide economical and reliable electric service to its customers. The City currently has several firm capacity transmission agreements to deliver up to 26 MW of remote generation to the City's takeout point at the Devers 230 substation. In addition, the City has a Wholesale Distribution Access Tariff ("WDAT") Agreement with Edison that allows the City to utilize Edison's distribution system to deliver electricity from the takeout point over the Devers 115 line to the Banning Substation to serve the City's entire retail customer load.

Effective January 1, 2003, the City turned over operational control of its high voltage and certain low voltage transmission entitlements to the CAISO, thereby becoming a Participating Transmission Owner (PTO) in the CAISO. In exchange for the transfer of control to the CAISO of its transmission facilities and certain contractual transmission rights, the City was entitled to receive, until December 31, 2010, firm transmission rights commensurate with the transmission facilities and transmission rights which it turned over to the CAISO. After that time, the firm transmission rights would convert to Congestion Revenue Rights, which are financial instruments used to offset congestion charges on the applicable transmission paths.

As a PTO in the CAISO, the City continues to own its transmission facilities and to be bound by its contractual arrangements. The CAISO provides to the City (as well as other participants) access to the CAISO Controlled Grid. However, the CAISO maintains operational control for the benefit of all market participants by providing non-discriminatory transmission access, congestion management, grid security, and control area services.

The City is currently part owner of two transmission projects, and also has contractual arrangements for additional firm transmission. The following table summarizes these resources.

Table 3
CITY OF BANNING -- ELECTRIC UTILITY
FIRM TRANSMISSION SERVICE AGREEMENTS
As of June 30, 2014

Transmission Line / Path	Owner/Party	City's Capacity	Primary Use
Mead – Phoenix	SCPPA	3 MW	PVNGS, Westwing, Marketplace
Mead – Adelanto	SCPPA	12 MW	PVNGS, Marketplace
Adelanto – Victorville/Lugo	LADWP	12 MW	PVNGS, Marketplace
Victorville/Lugo – Devers 230	LADWP	8 MW	PVNGS, Marketplace
Mead 230 – Dever 230	Edison	2 MW	Hoover

Source: City of Banning Electric Department.

Mead-Phoenix Transmission Project. This 256-mile, 500 kV AC transmission line, which was placed into commercial operation on April 15, 1996, extends between a southern terminus at the existing Westwing Substation (in the vicinity of Phoenix, Arizona) and a northern terminus at Marketplace Substation, a substation located approximately 17 miles southwest of Boulder City, Nevada. The line is looped through the 500-kV switchyard constructed in the existing Mead Substation in southern Nevada with an initial transfer capability of 1,300 MW. By connecting to Marketplace Substation, the Mead-Phoenix Transmission Project interconnects with the Mead-Adelanto Transmission Project and with the existing McCullough Substation. The Mead-Phoenix Transmission Project is comprised of three project components. SCPPA has executed an ownership agreement providing it with an 18.3077% member-related ownership share in the Westwing-Mead project component, a 17.7563% member-related ownership share in the Mead Substation project component, and a 22.4082% member-related ownership share in the Mead-Marketplace project component. Other owners of the line are APS, M-S-R Public Power Agency, Salt River Project and the City of Vernon, California. Through a contract with SCPPA, the City is entitled to receive 3 MW of this line's transmission capacity. The term of this contract extends for the life of the facility, or until all SCPPA bonds issued to finance the project are defeased. As of June 1, 2015 SCPPA had outstanding approximately $33,175,000 principal amount of its bonds issued to finance its interest in the Mead-Phoenix Transmission Project. The City has entered into a transmission service contract with SCPPA which obligates the City to pay the cost of its share of the transfer capability on a "take-or-pay" basis.

Mead-Adelanto Transmission Project. Through a contract with SCPPA, the City is entitled to 12 MW of transmission capacity from this 202 mile, 500 kV AC transmission line, which was placed into commercial operation on April 15, 1996. This arterial line extends between a southwest terminus at the existing Adelanto Substation in southern California and a northeast terminus at Marketplace Substation. By connecting to Marketplace Substation, the line interconnects with the Mead-Phoenix Transmission Project and the existing McCullough Substation in southern Nevada. The line has an initial transfer capability of 1,200 MW. SCPPA has executed an ownership agreement providing it with a total of a 67.9167% member-related ownership share in the project. The other owners of the line are M-S-R Public Power Agency and the City of Vernon, California. The term of this contract extends for the life of facility, or until all SCPPA bonds issued to finance the project are defeased. As of June 1, 2015, SCPPA had outstanding approximately $108,875,000 principal amount of its bonds issued to finance its interest in the Mead-Adelanto Transmission Project. The City bas entered into a transmission service contract with SCPPA which obligates the City to pay the cost of its share of the transfer capability on a "take-or-pay" basis.

See "THE ELECTRIC SYSTEM – Indebtedness" for a description of the City's share of SCPPA's obligations discussed above.

Adelanto-Victorville/Lugo. The City has a contract with LADWP for 12 MW of firm transmission service which extends and connects the Mead-Adelanto Transmission Project to the Victorville/Lugo transmission path. This contract has a fixed price of $0.27 per kW Month or $3,240 per month, based on a 12 MW entitlement.

Victorville/Lugo-Devers 230. The City has two contracts with Edison for a total of 8 MW of firm transmission service which provides transmission for the City's Palo Verde entitlement, as well as import of additional market purchases. The cost for this service is determined based on Edison's Transmission Revenue Requirement ("TRR") and is adjusted each year. Currently the cost is $4.67 per kW month or $37,360 per month for an 8 MW entitlement.

Mead 230-Devers 230. The City contracts with Edison for a total of 2 MW of firm transmission service which provides transmission for the City's Hoover entitlement. The cost for this service is

determined based on Edison's Transmission Revenue Requirement (TRR) and is adjusted each year. Currently the cost is $4.67 per kW month or $9,340 per month for a 2 MW entitlement.

Wholesale Transactions

Currently the City does not sell excess transmission capacity. Excess power is typically sold in the Day-Ahead Market, and quantities are based on the amount in excess of the anticipated Electric System customer load for the next trading day. Income from the sale of excess power was approximately $2,030,000 for the Fiscal Year ended June 30, 2014. Due to the volatility of market prices, income from the sale of excess power for Fiscal Year 2015 is conservatively estimated at $1,500,000.

Historical and Projected Customers, Retail Energy Sales, Revenues and Demand

The following table sets forth the average number of customers, metered MWh sales and revenues derived from retail sales, by classification of service, and peak demand during the past five Fiscal Years.

Table 4
CITY OF BANNING
ELECTRIC SYSTEM CUSTOMERS, RETAIL SALES, REVENUES AND DEMAND – HISTORICAL
(Fiscal Years Ended June 30)

	2010	2011	2012	2013	2014
Number of Customers					
Residential	10,552	10,623	10,679	10,693	10,768
Commercial	989	999	1,000	999	1,000
Industrial	6	6	5	5	5
Other	124	131	130	130	121
Total	11,671	11,759	11,814	11,827	11,894
Mega-Watt Hour Sales[(1)]					
Residential	67,821	64,508	67,302	68,552	66,352
Commercial	47,631	46,540	49,370	49,338	49,415
Industrial	9,146	8,933	8,555	10,121	13,379
Other	10,947	10,233	10,749	10,873	9,780
Total	135,545	130,214	135,976	138,884	138,926
Revenues from Sales[(1)]					
Residential	$12,658,211	$12,002,635	$12,226,581	$12,443,114	$13,151,115
Commercial	9,014,009	9,172,048	9,498,875	9,518,696	10,624,022
Industrial	1,650,659	1,485,423	1,367,155	1,447,083	2,131,714
Other	1,546,040	1,469,870	1,739,672	1,711,292	1,296,415
Total	$24,868,919	$24,129,976	$24,832,283	$25,120,185	$27,203,266
Peak Demand (MW)	41.9	45.0	44.3	46.9	40.5

(1) Metered Sales.
Source: City of Banning Electric Department.

For the Fiscal Year ended June 30, 2014, approximately 48% of the City's electric retail sales revenues were derived from sales to residential customers. Commercial and Industrial customers represented approximately 39% and 8% of retail sales revenues, respectively. The remaining 5% of retail sales revenues were attributable to sales to City municipal facilities.

The table below sets forth projections respecting the average number of customers, MWh sales and revenues derived from retail sales, by classification of service, and peak demand during the unaudited prior Fiscal Year and ensuing four Fiscal Years.

TABLE 5
CITY OF BANNING
ELECTRIC SYSTEM CUSTOMERS, RETAIL SALES,
REVENUES AND DEMAND - PROJECTED
(Fiscal Years Ended June 30)

	2015	2016	2017	2018	2019
Number of Customers					
Residential	10,822	10,876	10,930	10,985	11,040
Commercial	1,010	1,020	1,025	1,030	1,035
Industrial	5	5	6	6	6
Other	121	121	122	122	122
Total	11,958	12,022	12,083	12,143	12,203
Mega-Watt Hour Sales[1]					
Residential	66,684	67,017	67,352	67,689	68,027
Commercial	49,662	49,910	50,160	50,411	50,663
Industrial	13,446	13,513	13,581	13,649	13,717
Other	9,829	9,878	9,927	9,977	10,027
Total	139,621	140,319	141,020	141,725	142,434
Revenues from Sales[1]					
Residential	$13,216,871	$13,282,955	$13,349,370	$13,416,117	$13,483,197
Commercial	10,677,142	10,730,528	10,784,180	10,838,101	10,892,292
Industrial	2,142,373	2,153,084	2,163,850	2,174,669	2,185,542
Other	1,302,897	1,309,412	1,315,959	1,322,538	1,329,151
Total	$27,339,282	$27,475,979	$27,613,359	$27,751,425	$27,890,183
Peak Demand (MW)	43.7	44.1	44.5	44.9	45.3

(1) Metered Sales.
Source: City of Banning Electric Department.

Largest Customers

With one exception, no single customer of the Electric System accounted for as much as 5% of retail sales for Fiscal Year 2014, and no customer accounted for as much as 10% of those sales. Table 6 on the following page sets forth the ten largest retail customers of the Electric System, their type of business and the percentage of retail sales and consumption accounted for by each during Fiscal Year 2014.

TABLE 6
CITY OF BANNING ELECTRIC SYSTEM
TEN LARGEST RETAIL CUSTOMERS
(Fiscal Year Ended June 30, 2014)

Customer	Type of Business	Percent of Retail Sales	Consumption (kWh)
City of Banning	Local Government	9.81%	11,283,158
EDA/Facilities Management	Institutional Facility	4.64	6,517,288
San Gorgonio Memorial Hospital	Health Care	2.45	4,982,132
Banning Unified School District	Education	2.98	4,041,914
Robertson's Ready Mix	Construction Materials	2.08	2,304,704
Sun Lakes Country Club HOA	Country Club	1.48	1,992,978
Albertson's Store #6512	Grocery Retailer	1.25	1,982,400
Verizon	Service Provider	0.68	960,082
Semain Brothers	Mobile Home Park	0.58	948,324
Rio Ranch Market	Grocery Retailer	0.64	923,056
Total		26.61%	35,936,036

Source: City of Banning Electric Department.

Capital Requirements

As shown in the following table, the City expects capital requirements for the Electric System to aggregate approximately $11,726,855.00 for the next five Fiscal Years. Approximately $10,925,000.00 will be paid with Bond proceeds, with approximately $801,855.00 being funded from the Electric Improvement Fund.

	Fiscal Years Ended June 30,					
Description	2016	2017	2018	2019	2020	Total
Sunset Grade Separation	$ 400,592.00	--	--	--	--	$ 400,592.00
Downtown Undergrounding	968,542.00	--	--	--	--	968,542.00
New Utility Warehouse	2,452,847.00	--	--	--	--	2,452,847.00
Rebuild Alola Substation	3,427,387.00	--	--	--	--	3,427,387.00
Rebuild Airport Substation	2,077,487.00	--	--	--	--	2,077,487.00
Upgrade Midway Substation	--	$500,000.00	--	--	--	500,000.00
Extend Circuits at Sunset Sub	50,000.00	1,850,000.00	--	--	--	1,900,000.00

Source: City of Banning Electric Department.

Insurance

The City maintains self-insurance programs for workers' compensation and general liability claims. For general liability claims, the City is at risk for up to $50,000 per occurrence. Amounts in excess of $50,000 up to $50,000,000 are covered through the Public Entity Risk Management Authority ("PERMA"), a joint powers authority consisting of 26 public entity members, including the City and 17 other California cities. PERMA covers $1,000,000 of this amount and obtains the balance through participation in the California Joint Powers Risk Management Authority, a state-wide joint powers authority consisting of California cities and other joint powers insurance authorities.

For workers' compensation claims, the City is at risk for up to $250,000 per occurrence. Losses exceeding $250,000 and up to $500,000 are covered through PERMA under its risk-sharing pool

program, and amounts in excess of $500,000 are covered by the Local Agency Workers' Compensation Excess Joint Powers Authority, a state-wide joint powers authority consisting of California cities, joint powers authorities and special districts. Estimates for all liabilities, including an estimate for incurred by not reported claims, are included in the Self-Insurance Internal Service Fund.

PERMA also provides a non-risk sharing "deductible" or claims-servicing pool for general liability claims within the self-insured retention ("SIR") level of $50,000. Annual contributions are deposited with PERMA from which claims are paid on behalf of the City. Any claims paid by PERMA for the City in excess of deposits at year-end are recorded as "Due to Other Agencies" within the Self-Insurance Internal Service Fund. In addition, the City makes deposits with PERMA for workers' compensation claims below the $250,000 SIR from which claims are paid on behalf of the City.

Property coverage on City facilities is provided through the City's participation in PERMA's property insurance program. Through PERMA property insurance is purchased from Alliant Property Insurance Company. Coverage provided is $100,000,000 per occurrence with a deductible of $5,000 per occurrence.

The City does not maintain earthquake coverage insurance on the Improvements. See "RISK FACTORS – Casualty Risk." **[Confirm]**

Indebtedness

As previously discussed, the City is a participant in the following SCPPA projects: PVNGS, San Juan Unit 3, Hoover Upratings Project, Mead-Phoenix Transmission Project and Mead-Adelanto Transmission Project. To the extent the City participates in projects developed by SCPPA, the City is obligated to pay for its proportionate share of the cost of the particular project. Such payments are included in Operation and Maintenance Costs and, thus, are deducted from Gross Revenues in arriving at Net Revenues available for payment of Installment Payments.

The SCPPA agreements referenced above are on a "take or pay" basis, which requires payments to be made whether projects are completed or operable, or whether output from such projects is suspended, interrupted or terminated. Such payments represent the City's share of current and long-term obligations. All of these agreements contain "step-up" provisions obligating the City to pay a share of the obligations of any defaulting participant, a situation which, to date, has not occurred. The City's participation and share of the debt of SCPPA (without giving effect to any "step-up" provisions) are shown in Table 8 on the following page. The City's Ormat agreement, and the recently executed Puente Hills Landfill Gas-to-Energy Facility and RE Astoria 2 Solar Project agreements are not "take or pay". The City's participation and share of the debt of SCPPA (without giving effect to any "step-up" provisions) are shown in Table 7 on the following page.

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Table 7
CITY OF BANNING ELECTRIC SYSTEM
OUTSTANDING TAKE OR PAY OBLIGATIONS
(As of January 1, 2015)

SCPPA Project	Debt Outstanding	City Share of Debt Outstanding[1]	City Participation[2]
San Juan	$ 42,955,000	$4,209,777	9.80%
PVNGS	36,130,000	361,300	1.00
Hoover	6,090,000	129,681	2.13
Mead-Phoenix	32,210,000	331,750	1.03
Mead-Adelanto	108,760,000	1,468,271	1.35
Total	$226,145,000	$6,500,779	

(1) Excludes interest on debt.
(2) The City's participation obligation is subject to increase upon default in payment by another project participant.
Source: City of Banning Electric Department.

Rates and Charges; Recent Rate Increase

To ensure an adequate revenue stream to cover Electric System costs, the Electric System rate schedule includes a System Cost Adjustment Factor permitting an increase in rates beginning on the first day of the second calendar quarter following any calendar quarter during which the Electric System experiences a loss. This increase is imposed administratively (that is, without approval by the City Council of the City), but cannot exceed $0.02 per kWh during any calendar quarter. Uncollected revenue in excess of the $0.02 per kWh cap is carried over as an expense in the next calendar quarter.

Electric System retail rates are otherwise subject to change with the approval of the City Council of the City. City staff or an outside consultant perform an analysis of the cost of service for each Electric System customer type (residential, commercial, industrial or other) and prepare a report and recommendation to the City Council respecting any proposed rate changes. The City Council reviews the report and recommendation and either approves or rejects the proposed rate changes. Electric rates in the City are not subject to regulation by the Califomia Public Utilities Commission or any other state agency. State Legislative Assembly Bill 1890 ("AB 1890") requires the imposition of a public benefits charge ("PBC") of 2.85% of annual electric retail sales. The City collects the PBC as a 2.85% charge applied to all electric charges.

In April 2002 a rate increase was adopted which only affected Schedule C - General and Industrial Service customers (tbose with demands exceeding 20 kW). At the same time, the City also restructured the time-of-use periods for Schedule TOU customers (those with demands exceeding 500 kW) to make them more reflective of the actual demand curve.

In March 2007, the City adopted a rate increase affecting all customer classes. These increases became effective commencing in May 2007, although increases for Scbedule TOU customers were phased in over a two year period. In August 2009 the City adopted an overall twenty percent rate increase with an effective date of October 1, 2009. This increase affected all customer classes and was required due to tbe downturn in the economy, which had a significant impact on electric retail sales. In March 2013, the City adopted an overall twelve percent increase with an effective date of May 1, 2013. Under the new rate structure, no customer class subsidizes any other customer class.

The following table sets forth the average rates for the indicated customer classes for the Fiscal Years ended June 30, 2010 through June 30, 2014.

Table 8
CITY OF BANNING ELECTRIC SYSTEM
FIVE YEAR HISTORY OF RATES
Average Rate in Dollars per Kilowatt Hour
(Fiscal Years Ended June 30)

Customer Class	2010	2011	2012	2013	2014
Residential	$0.1809	$0.1861	$0.1815	$0.1815	$0.1982
Commercial	0.1893	0.1971	0.1924	0.1929	0.2150
Industrial	0.1805	0.1663	0.1539	0.1430	0.1593
Other	0.1490	0.1436	0.1618	0.1574	0.1326

Source: City of Banning Electric Department.

The following table sets forth a comparison of rates charged by certain members of SCPPA, including the City, for certain customer classes.

Table 9
CITY OF BANNING ELECTRIC SYSTEM
COMPARISON OF RATES CHARGED - SCPPA MEMBERS
(As of June 2015)

Utility	Residential (1,000 kWh - Summer Season	Commercial General Service (5,000 kWh)	Large Commercial Demand (100 kW and 50,000 kWh – Summer Season)
Banning	**$199.52**	**$988.00**	**$10,222.00**
Anaheim	182.60	787.13	6,241.87
Azusa	172.53	735.66	5,726.15
Burbank	174.57	752.52	7,118.03
Colton	182.11	985.33	9,526.88
Glendale	215.24	868.60	7,798.60
Imperial Irrigation District	135.10	659.00	6,020.00
Pasadena	214.57	756.11	6,356.27
Riverside	149.52	726.00	6,905.05

Source: City of Banning Electric Department.

Summary of Historical Operating Results

Table 10 on the next page sets forth a summary of operating results for the City's Electric System for the five Fiscal Years ended June 30, 2014. This information has been extracted from the City's audited financial statements. It has not been reviewed by the City's independent auditor. The City's audited financial statements for the Fiscal Year ended June 30, 2014, which include the operation of the Electric System, are attached to this Official Statement as APPENDIX A and should be reviewed in their entirety.

Table 10
CITY OF BANNING ELECTRIC SYSTEM
HISTORICAL OPERATING RESULTS AND COVERAGE RATIO
(Fiscal Years Ended June 30)[1]

	2010	2011	2012	2013	2014
Gross Operating Revenue					
Sales and Service Charges	$27,883,707	$27,240,024	$27,478,319	$29,138,857	$30,095,489
Connection Fees	265	266	1,060	7,155	215,991
Interest Revenue	854,325	318,044	164,027	31,239	110,175
Miscellaneous Income	283,097	172,618	505,546	81,477	-
Total Gross Revenues	$29,021,394	$27,730,952	$28,148,952	$29,258,728	$30,421,655
Operation and Maintenance Expenses	$2,383,511	$2,610,270	$2,615,386	$2,776,698	$2,873,860
Salaries and Benefits	5,240,668	3,809,767	4,535,860	4,744,751	5,082,280
Supplies and Services[2]	31,051	35,442	114,497	-	16,963
Repairs and Maintenance	174,685	159,486	151,583	148,733	147,985
Street Lighting Costs	19,135,587	18,536,737	17,281,603	18,532,961	17,000,644
Power Purchased for Resale	$26,965,502	$25,151,702	$24,698,929	$26,203,143	$25,121,732
Total Operation and Maintenance Expenses[3]					
Net Operating Revenues	$2,055,892	$2,579,250	$3,450,023	$3,055,585	$5,299,923
Debt Service					
2007 Electric Bonds	$2,670,838	$2,670,638	$2,669,238	$2,671,638	$2,667,638
Total Debt Service	$2,670,838	$2,670,638	$2,669,238	$2,671,638	$2,667,638
Coverage Ratio[4]	0.77	0.97	1.29	1.14	1.99

(1) This table does not include revenues and expenses relating to the 2.85% Public Benefits Charge.

(2) Includes amounts transferred to the City's General Fund equal to 10% of actual metered sales for fiscal years 2009/10 and 2010/11. In fiscal year 2011/12 and forward, the transfer amount of 10% is based on operating revenues. These transferred amounts will be a part of Net Operating Revenues pledged to the payment of Installment Payments under the Installment Sale Agreement and will only be transferred to the extent not needed for the payment of Installment Payments. Also, includes the inter-fund allocations for administrative costs charged to the Electric System.

(3) Pursuant to the Installment Sale Agreement, Operation and Maintenance Expenses do not include debt service or similar payments on Parity Obligations, depreciation or amortization of intangibles or other bookkeeping entries of similar nature, or public benefit program expenditures.

(4) Debt Service coverage for fiscal years 2009/10, 2010/11 and 2012/13 were below the rate covenant. Rate increases were approved in April 2013 and implemented in May 2013.

Source: City of Banning.

Projected Operating Results, Cash Flows and Coverage Ratio

At the present time, significant portions of the City remain undeveloped. In addition, certain areas of the City are underdeveloped or are in need of redevelopment. A number of new projects within these areas are currently underway or are expected to occur in the future. Among these are the following:

Commercial Projects

600 N. Highland Springs Ave	San Gorgonio Hospital – New Patient Tower
150 E. Ramsey Street	Village at Paseo San Gorgonio – Mixed Use
1450 E. Lincoln Street	24 Unit Airport Industrial Work Lofts
Hargrave & Ramsey Street	La Quinta Inn & Restaurant
Hathaway & Nicolet	Business Park (O'Donnell Group)

Tracts/Development Projects

Rancho San Gorgonio	1,543 Acres	4,862 – Single Family Dwellings
Butterfield – Pardee Homes	831 Acres	3,385 – Single Family Dwellings
Gilman Street	65 Acres	166 – Single Family Dwellings

The City's projected operating cash flows and coverage ratios for the Electric System through Fiscal Year 2019 are set forth in Table 11 on the next page. These projections are based on the City's judgment as to the occurrence of certain future events. The footnotes to the table include certain assumptions. These assumptions and the footnotes are material to the projections, and variations in the assumptions could produce substantially different financial results. Actual revenues and expenses may vary materially from these projections.

The Electric System's unaudited cash flows for the prior Fiscal Year and projections for the ensuing four Fiscal Years are set forth in Table 11. These projections are based on the City's judgment as to the occurrence of certain future events. The footnotes to the table include certain assumptions. The assumptions and footnotes set forth beneath the table are material to the projections, and variations in the assumptions could produce substantially different financial results. Actual revenues and expenses may vary materially from these projections.

Table 11
CITY OF BANNING ELECTRIC SYSTEM
PROJECTED CASH FLOW AND COVERAGE RATIO
(Fiscal Year Ended June 30)[1]

	2015[2]	2016	2017	2018	2019
Gross Operating Revenue					
Sales and Service Charges[4]	$29,705,000	$29,853,525	$30,002,793	$30,152,807	$30,303,571
Connection Fees	10,600	10,600	10,600	10,600	10,600
Interest Revenue	53,291	53,791	53,791	53,791	53,791
Miscellaneous Income	162,780	162,780	162,780	162,780	162,780
Total Gross Revenues	$29,931,671	$30,080,696	$30,229,964	$30,379,978	$30,530,742
Operation and Maintenance Expenses	$3,242,131	$2,610,270	$2,615,386	$2,776,698	$2,873,860
Salaries and Benefits[5]	4,981,470	3,809,767	4,535,860	4,744,751	5,082,280
Supplies and Services[6]	60,250	35,442	114,497	-	16,963
Repairs and Maintenance[6] [7]	160,000	159,486	151,583	148,733	147,985
Street Lighting Costs[6]	17,159,680	18,536,737	17,281,603	18,532,961	17,000,644
Insurance Premiums[6]	275,360	275,360	275,360	275,360	275,360
Power Purchased for Resale[3]	$25,878,891	$26,526,837	$26,559,583	$24,592,626	$24,626,060
Total Operation and Maintenance Expenses[8]					
Net Operating Revenues	$4,052,780	$3,553,859	$3,670,381	$5,787,322	$5,904,682
Debt Service					
2007 Electric Bonds	$2,670,038	$2,667,300	$2,668,800	$2,667,800	$2,669,300
Total Debt Service					
Coverage Ratio[4]	1.52	1.33	1.38	2.17	2.21

(1) This table does not include revenues and expenses relating to the 2.85% Public Benefits Charge.
(2) Fiscal Year 2015 based on budgeted revenues and expenditures.
(3) Power purchase expenses projected to remain flat until Fiscal Year 2018. In Fiscal Year 2018 $2 million decrease due to divesture of the San Juan power plant.
(4) Sales and Service Charges increased by 0.5% each year.
(5) Salaries and Benefits projected to increase by 1% each year.
(6) Other operating expenses projected to remain flat.
(7) Includes amount transferred to the City's General Fund equal to 10% of operating revenues. These transferred amounts will be a part of Net Operating Revenues pledged to the payments of Installment Payments under the Installment Sale Agreement and will only be transferred to the extent not needed for the payment of Installment Payments. Also, includes the inter-fund allocations for administrative costs charged to the Electric System.
(8) Electric Operations and Maintenance Expenses do not include debt service or similar payments on Parity Debt, depreciation or amortization of intangibles or other bookkeeping entries of similar nature, or public benefit program expenditures.

Source: City of Banning.

RISK FACTORS

The purchase of the Bonds involves investment risk. The following is a listing and discussion of certain risk factors that should be considered, in addition to the other matters discussed in this Official Statement, in evaluating the investment quality of the Bonds. Necessarily, this listing and discussion is neither comprehensive nor definitive and there can be no assurance that other risk factors will not become material in the future. The order in which the following risk factors are presented is not intended to reflect their relative importance.

The Bonds are Limited Obligations

The Bonds are limited obligations of the Authority and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of the Authority or any of its income or receipts, except the Revenues. The full faith and credit of the Authority, the Agency and the City is not pledged for the payment of the principal of or interest on the Bonds and no tax or other source of funds, other than the Revenues, is pledged to pay the principal of or interest on the Bonds. The payment of the principal of or interest on the Bonds does not constitute a debt, liability or obligation of the Authority, the City or the Agency for which any such entity is obligated to levy or pledge any form of taxation or for which any such entity has levied or pledged any form of taxation. The Authority has no taxing power.

Electric System Expenses And Collections

There can be no assurance that the City's expenses for the Electric System will remain at the levels described in this Official Statement. Changes in technology, increases in energy and fuel costs, new environmental regulations or other expenses may reduce the Net Revenues and could require substantial increases in the applicable rates or charges. Such rate increases could increase the likelihood of nonpayment, and could also decrease demand. Although the City has covenanted to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System at certain levels, there can be no assurance that such amounts will be collected in the amounts and at the times necessary to make timely payments with respect to the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Rate Covenant; Collections of Rates and Charges."

No Liability of the Authority to the Owners

Except as expressly provided in the Indenture, the Authority will have no obligation or liability to the Owners of the Bonds with respect to the Installment Payments when due, or with respect to the observance or performance of other agreements, conditions, covenants and terms required to be observed or performed by the City under the Installment Sale Agreement or any related documents or with respect to the performance by the Trustee of any duty required to be performed by it under the Indenture.

Limitations on Remedies

The ability of the City to comply with the covenants under the Installment Sale Agreement and to generate Net Revenues sufficient to pay all Installment Payments in a timely manner may be adversely affected by actions and events outside of the control of the City and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of assessments, fees and charges. See "RISK FACTORS –Articles XIIIC and Article XIIID of the State Constitution." Furthermore, any remedies available to the Owners of the Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on remedies contained in the Indenture, the rights and obligations under the Bonds and the Indenture may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California. The opinion to be delivered by Bond Counsel concurrently with the execution and delivery of the Bonds, that tbe Bonds evidence valid and binding obligations and the Indenture constitutes a valid and binding obligation of the Authority and the City will be subject to such limitations, and the various other legal opinions to be delivered concurrently with the execution and delivery of the Bonds will be similarly qualified. See "APPENDIX D – FORM OF OPINION OF BOND COUNSEL." In the event the Authority or the City fails to comply with their respective covenants under the Indenture or to cause the timely payment of all principal or interest with respect to the Bonds, there can be no assurance that available remedies will be adequate to fully protect the interest of the holders of the Bonds.

Limited Reeourse on Default

If the City defaults on its obligations to make Installment Payments, the Trustee, as assignee of the Authority, has the right to accelerate the Installment Payments. However, in the event of a default and such acceleration, there can be no assurance that the Trustee will have sufficient revenues to pay the accelerated Bonds.

Loss of Tax Exemption

As discussed under the caption "TAX MATTERS" herein, interest with respect to the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the execution and delivery of tbe Bonds as a result of future acts or omissions of the Authority or the City in violation of their covenants contained in the Indenture or the Installment Sale Agreement. Should such an event of taxability occur, the Bonds are not subject to special redemption or any increase in interest rate and will remain outstanding until maturity or until redeemed under one of the redemption provisions contained in the Indenture.

Secondary Market

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that the Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Sucb prices could be substantially different from the original purchase price.

Forecasts and Forward-Looking Statements

Although the Authority believes tbat the City's projections of future operating results of the Electric System are reasonable, tbere can be no assurance that actual operating results will match the projections due to changes in general economic conditions and similar factors. In addition, the Electric System and economic development within the service area of the City are subject to comprehensive federal, state and local regulations. Tbere can be no assurance that the Electric System will not be adversely affected by future economic conditions, governmental policies or other factors beyond the control of the City.

This Official Statement contains certain "forward-looking statements" concerning the Authority's operations, the Electric System, and the operations, performance and financial condition of the City, the Authority, the Electric System, including their future economic performance, plans and objectives and the likelihood of success in developing and expanding. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Authority and City. The words "may," "would," "could," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate" and similar expressions are meant to identify these forward-looking statements. Results may differ materially from those expressed or implied by these forward-looking statements.

Rate Regulation

The City sets rates and charges for electric service provided at retail within its boundaries. The authority of the City to impose and collect rates and charges for power service is not currently subject to the direct regulatory jurisdiction of the California Public Utilities Commission ("CPUC") or the Federal Energy Regulatory Commission ("FERC"), and presently no other regulatory authority directly limits or restricts such rates and charges. See "THE ELECTRIC SYSTEM – Rates and Charges; Recent Rate Increase." It is possible that future Constitutional, legislative or regulatory changes could subject the rates, charges and/or service areas of the City to the direct jurisdiction of the CPUC or FERC or to other limitations or requirements under federal or State law.

Certain Factors Affecting the Electric Utility Industry

The electric utility industry in general has been, and in the future may be, affected by a number of other factors which could impact the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. The Authority is unable to predict what impact such factors will have on the business operations and financial condition of the Electric System, but the impact could be significant. This Official Statement includes a brief discussion of certain of these factors. See "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS" and "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY."

Articles XIIIC and XIIID of the State Constitution

Proposition 218, a State ballot initiative known as the "Right to Vote on Taxes Act," was approved by the voters of the State on November 5, 1996. Proposition 218 added Articles XIIIC and XIIID to the State Constitution. Article XIIID creates additional requirements for the imposition by most local governments (including the City) of general taxes, special taxes, assessments and "property-related" fees and charges. Article XIIID explicitly exempts fees for the provision of electric service from the provisions of such article. Nevertheless, Proposition 218 could indirectly affect some California municipally-owned electric utilities. For example, to the extent Proposition 218 reduces a city's general fund revenues, that city could seek to increase the transfers from its electric utility to its general fund.

Article XIIIC expressly extends the people's initiative power to reduce or repeal previously-authorized local taxes, assessments, and fees and charges. The terms "fees and charges" are not defined in Article XIIIC, although the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006), that the initiative power described in Article XIIIC may apply to a broader category of fees and charges than the property-related fees and charges governed by Article XIIID. Moreover, in the case of *Bock v. City Council of Lompoc*, 109 Cal.App.3d 52 (1980), the Court of Appeal determined that electric rates are subject to the initiative power. Thus, even electric service charges (which are expressly exempted from the provisions of Article XIIID) might be subject to the initiative provision of Article XIIIC, thereby subjecting such fees and charges imposed by the City to reduction by

the electorate. The City believes that even if the electric rates of the City are subject to the initiative power, under Article XIIIC or otherwise, the electorate of the City would be precluded from reducing electric rates and charges in a manner adversely affecting the payment of the Bonds by virtue of the "impairment of contracts clause" of the United States and California Constitutions.

Proposition 26

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIIIA and XIIIC. Proposition 26 imposes a majority voter approval requirement on local governments such as the City with respect to certain fees and charges for general purposes, and a two-thirds voter approval requirement with respect to certain fees and charges for special purposes, unless the fees and charges are expressly excluded. Proposition 26 was designed to supplement tax limitations imposed by the voters in California Constitution Articles XIIIA, XIIIC and XIIID pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product.

Proposition 26 is subject to interpretation by California courts. Proposition 26 may be interpreted to limit fees and charges for electric utility services charged by governmental entities such as the City to preclude future transfers of electric utility generated funds to a local government's general fund, if applicable, and/or to require stricter standards for the allocation of costs among customer classes. In *Citizens for Fair REU Rates v. City of Redding* (filed on January 20, 2015 and modified on February 19, 2015), for example, the California Court of Appeal considered a ratepayer challenge to a "payment in lieu of taxes" (or "PILOT") imposed by the City of Redding on its electric utility without voter approval. The city's PILOT was designed to be equivalent to the ad valorem taxes the electric utility would have had to pay if the electric utility were privately owned. The PILOT is passed through to the city's electric utility customers as part of the rates and charges for electric service. The Court of Appeal determined that a charge for electric service could be an "imposed charge," and therefore subject to Proposition 26, if the purchaser has no realistic alternative power source. Therefore, the Court held that the PILOT constituted an unconstitutional "tax" under Proposition 26 unless the city proves that the amount collected is necessary to cover the reasonable costs to the city of providing various governmental services to the city's electric utility. The Court of Appeal stated that even if the rates charged by the city are lower than those paid by others in California, they must not exceed the city's reasonable cost of providing electric service or be approved by the voters. In addition, the Court of Appeal noted that Proposition 26 has no retrospective effect as to local taxes that existed prior to November 3, 2010, but found that since the PILOT was subject to the City Council's recurring discretion, the PILOT did not escape the purview of Proposition 26. On April 29, 2015, the California Supreme Court granted review of the decision of the Court of Appeal. As a result of the California Supreme Court's grant of review, the decision of the Court of Appeal in *Citizens for Fair REU Rates v. City of Redding* is no longer considered published and may not be cited or relied on as precedent in the courts of the State.

The City is unable to predict at this time how Proposition 26 will be ultimately be interpreted by the courts or what its future impact will be.

Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID, and Proposition 26 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time, other initiatives have been, and could be, proposed, and if qualified for the ballot, could be adopted affecting the City's revenues or the City's ability to expend revenues. The City is unable to predict either the likelihood of

qualification for ballot or passage of these measures or the nature and impact of these measures on the finances or operations of the Electric System.

Casualty Risk; Earthquakes

Any natural disaster or other physical calamity could have the effect of reducing revenues through damage to the Electric System and/or adversely affecting the economy of the surrounding area. For example, the City is located in a region of seismic activity. The principal earthquake fault in the Los Angeles and City area is the San Andreas Fault, which extends an estimated 700 miles from north of the San Francisco area to the Salton Sea in Southern California.

Announcements on January 20, 1995 by the scientists associated with the Southern California Earthquake Center indicated that the probability of a magnitude 7 or greater earthquake on the Richter Scale occurring in Southern California is between 80% and 90% in the 30 year period following the announcement. It is impossible to accurately predict the cost or effect of such an earthquake on the Electric System and on the City's ability to provide continued uninterrupted service to all parts of its service area.

A future earthquake could cause significant damage to the City and the facilities of the Electric System and could adversely affect the ability of the City to meet all of its financial obligations. On January 17, 1994, an earthquake of approximately 6.6 magnitude on the Richter Scale was centered in the northwest San Fernando Valley section of the City of Los Angeles. It caused widespread damage to commercial and residential structures and to major freeways, causing business interruptions and disrupting the normal flow of traffic. Its damaging effects were felt over a large area, and the transmission services by the Cities of Pasadena and Burbank over the Pacific Intertie DC Transmission Line were temporarily interrupted because of damage to the Sylmar Converter Station. The Electric System was not significantly damaged by this earthquake. In the event of a severe earthquake, however, the amount of moneys available to pay debt service on the Bonds could be reduced significantly.

DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS

State Legislation

A number of bills affecting the electric utility industry have been introduced or enacted by the California Legislature in recent years. In general, these bills regulate greenhouse gas emissions and provide for greater investment in energy-efficiency and environmentally friendly generation and storage alternatives, principally through more stringent renewable resource portfolio standard requirements. The following is a brief summary of certain of these bills that have been enacted.

Greenhouse Gas Emissions – Executive Orders. On June 1, 2005, then Governor Arnold Schwarzenegger signed Executive Order S-3-05, which placed an emphasis on efforts to reduce greenhouse gas emissions by establishing statewide greenhouse gas reduction targets. The targets are: (i) a reduction to 2000 emissions levels by 2010; (ii) a reduction to 1990 levels by 2020; and (iii) a reduction to 80% below 1990 levels by 2050. The Executive Order also called for the California Environmental Protection Agency to lead a multi-agency effort to examine the impacts of climate change on California and develop strategies and mitigation plans to achieve the targets. On April 25, 2006, then Governor Schwarzenegger also signed Executive Order S-06-06, which directs the State of California to meet a 20% biomass utilization target within the renewable generation targets of 2010 and 2020 for the contribution to greenhouse gas emission reduction.

On April 29, 2015, Governor Jerry Brown signed Executive Order B-30-15, which establishes a new interim statewide greenhouse gas emission reduction target to reduce greenhouse gas emissions to 40% below 1990 levels by 2030. The Executive Order indicates that the new interim target is aimed at ensuring that California meets the target established by Executive Order S-3-05 of reducing greenhouse gas emission to 80% below 1990 levels by 2050. The Executive Order also directs the Califomia Natural Resources Agency to update the State's climate adaptation strategy every three years and to ensure that its provisions are fully implemented. Among other requirements, the Executive Order provides that the State's adaptation strategy must identify a lead agency or agencies that are responsible for adaptation efforts in at least the following sectors: water, energy, transportation, public health, agriculture, emergency services, forestry, biodiversity and habitat, and ocean and coastal resources. The Executive Order requires that the lead agencies for each sector must, by September 2015, outline the actions in their sector that will be taken as identified in the State's adaptation strategy and report back to the California Natural Resources Agency by June 2016.

Greenhouse Gas Emissions – Global Warming Solutions Act. Then Governor Schwarzenegger signed Assembly Bill 32, the Global Warming Solutions Act of 2006 (the "GWSA"), which became effective as law on January 1, 2007. The GWSA prescribed a statewide cap on global warming pollution with a goal of retuming to 1990 greenhouse gas emission levels by 2020. In addition, the GWSA established an annual mandatory reporting requirement for all IOUs, local publicly-owned electric utilities ("POUs") and other load-serving entities (electric utilities providing energy to end-use customers) to inventory and report greenhouse gas emissions to the California Air Resources Board ("CARB"), required CARB to adopt regulations for significant greenhouse gas emission sources (allowing CARB to design a "cap-and-trade" system) and gave CARB the authority to enforce such regulations beginning in 2012.

On December 11, 2008, CARB adopted a "scoping plan" to reduce greenhouse gas emissions. The scoping plan set out a mixed approach of market structures, regulation, fees and voluntary measures. The scoping plan included a cap-and-trade program. In August 2011, CARB revised the scoping plan in response to litigation. The revised scoping plan also included a cap-and-trade program. The scoping plan is required to be updated every five years. In October 2013, CARB released a draft of its 2013 scoping plan update. Public comments on the draft scoping plan update were submitted by November 1, 2013. CARB issued the proposed first update to the scoping plan update on February 10, 2014, which was approved by CARB on May 22, 2014. The scoping plan update recommends that a plan to extend the cap-and-trade program beyond 2020 be developed by 2017. In addition, CARB approved a resolution at its October 25, 2013 board meeting that directs CARB's executive officer to develop a plan for a post-2020 program, including a cost containment mechanism, before 2018.

On October 20, 2011, CARB adopted a regulation implementing a cap-and-trade program. The California Office of Administrative Law ("OAL") approved the regulation on December 13, 2011. The cap-and-trade regulation became effective on January 1, 2012. Emission compliance obligations under the regulation began on January 1, 2013. The cap-and-trade program covers sources accounting for 85% of California's greenhouse gas emissions, the largest program of its type in the United States.

The cap-and-trade program is being implemented in phases. The first phase of the program (January 1, 2013 to December 31, 2014) introduced a hard emissions cap covering emissions from electricity generators, electricity importers and large industrial sources emitting more than 25,000 metric tons of carbon dioxide-equivalent greenhouse gases ("CDE") per year. In 2015, the program is being expanded to cover emissions from transportation fuels, natural gas, propane and other fossil fuels. The cap will decline each year until the end of the program currently scheduled for 2020 unless otherwise extended, as expected, through an act of the State legislature.

The cap-and-trade program includes the distribution of carbon allowances equal to the annual emissions cap. Each allowance is equal to one metric ton of CDE. As part of a transition process, initially, most of the allowances were distributed for free. Additional allowances are being auctioned quarterly (auctions began in November 2012). Utilities can acquire more allowances at these auctions or on the secondary market. IOUs are required to auction the allowances they received for free from CARB. This requirement also applies to POUs that sell electricity into the ISO markets, other than sales of electricity from resources funded by municipal tax-exempt debt where the POU makes a matched purchase to serve its traditional retail customers. Utilities required to sell their allowances in the auctions are then required to purchase allowances to meet their compliance obligations, and use any remaining proceeds from the sale of their allocated allowances for the benefit of their ratepayers and to meet the goals of the GWSA. POUs that do not sell into the ISO markets, and those that sell into the ISO markets only electricity from resources funded by municipal tax-exempt debt, have three options (which are not mutually exclusive) once their allocated allowances are distributed to them. They can (i) place allowances in their compliance accounts to meet compliance obligations for plants they operate directly, (ii) place allowances in the compliance account of a joint powers agency or public power utility that generates power on their behalf, and/or (iii) auction the allowances and use the proceeds to benefit their ratepayers and meet the goals of the GWSA.

The cap-and-trade program also allows covered entities to use offset credits for compliance (not exceeding 8% of a covered entity's compliance obligation). Offsets can be generated by emission reduction projects in sectors that are not regulated under the cap-and-trade program. CARB has approved the following types of offset projects: urban forest projects, reforestation projects, destruction of ozone-depleting substances, livestock methane management projects and destruction of fugitive coal mine methane. CARB will consider additional and updated offset protocols, including a new compliance offset protocol for rice cultivation practices, the adoption of which is currently expected to occur in mid-2015.

On April 25, 2014, CARB adopted various changes to the cap-and-trade program, including provisions relating to the electricity sector such as "safe harbor" provisions under the "resource shuffling" prohibition. These changes became effective on July 1, 2014.

The California cap-and-trade program is linked to the equivalent program in Quebec, Canada. The link took effect on January 1, 2014, although the first joint auction was delayed until November 25, 2014 in order to resolve certain technical issues. California's program may be linked to additional Canadian provincial cap-and-trade programs, and possibly other U.S. state cap-and-trade programs, in later years as part of the Western Climate Initiative. The Western Climate Initiative is a regional effort consisting of California and four Canadian provinces (Quebec, British Columbia, Ontario and Manitoba), which have established a greenhouse gas reduction trading framework.

The City is unable to predict at this time the full impact of the cap-and-trade program over the long-term on the Electric System or on the electric utility industry generally or whether any additional changes to the adopted program will be made. Since the advent of the cap and trade program in 2012, regulations by the CARB have provided the electric sector, including the Electric System, with sufficient allocated greenhouse gas allowances or credits to cover existing operations in meeting retail load obligations. As a result, there have been minimal additional costs to the Electric System in managing the need for additional allowances required for retail obligations. Wholesale transactions utilizing carbon-based generation have included greenhouse gas adders as part of the transaction price and hence, no significant additional expenses for greenhouse gas emission management have been incurred under those transactions. However, the City could be adversely affected in the future if the greenhouse gas emissions of its resource portfolio are in excess of the allowances administratively allocated to it and it is required to purchase compliance instruments on the market to cover its emissions. The City may also be adversely affected depending on how the federal Clean Power Plan affects the State's cap-and-trade program.

However, with the City's divestiture of San Juan Unit 3, scheduled for December 31, 2017, and the execution of the power sales agreements for renewable energy to replace San Juan, the City's resource mix will be approximately 75% renewable energy and nearly 90% emissions free (the Palo Verde Nuclear and Hoover Large Hydro generating facilities, while not considered renewable energy, do not produce emissions). This will result in a significant reduction in the potential adverse impact of the cap-and-trade program and any other State or Federal program. See "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Environmental Issues – Greenhouse Gas Regulations under the Clean Air Act" for a brief description of the federal Clean Power Plan.

Greenhouse Gas Emissions – Emissions Performance Standard. Senate Bill 1368 ("SB 1368") became effective as law on January 1, 2007. It provides for an emission performance standard ("EPS"), restricting new investments in baseload fossil fuel electric generating resources that exceed the rate of greenhouse gas emissions for existing combined-cycle natural gas baseload generation. SB 1368 allows the California Energy Commission (the "CEC") to establish a regulatory framework to enforce the EPS for POUs such as the City. The CPUC has a similar responsibility for the IOUs. The regulations promulgated by the CEC were approved by the Office of Administrative Law on October 16, 2007. The CEC regulations prohibit any investment in baseload generation that does not meet the EPS of 1,100 pounds of carbon dioxide ("CO_2") per MWh of electricity produced, with limited exceptions for routine maintenance, requirements of pre-existing contractual commitments, or threat of significant financial harm.

In January 2012, the CEC initiated a review of the regulations for enforcement of the EPS for POUs to ensure there is adequate review of investments in facilities that do not meet the EPS. On March 19, 2014, the CEC issued its Final Conclusions in the EPS proceeding. The CEC proposed to expand the public notice requirement so that a POU would have to post a notice of a public meeting at which its governing board would consider any expenditure over $2.5 million to meet environmental regulatory requirements at a non-EPS compliant baseload facility. The CEC further proposed to require each POU to file an annual notice identifying all investments over $2.5 million that it anticipates making during the subsequent 12 months on non-EPS compliant baseload facilities to comply with environmental regulatory requirements. This requirement would be waived for any POU that has entered into a binding agreement to divest within five years of all baseload facilities exceeding the EPS. The CEC did not propose to lower the EPS. Further, by letter from the CPUC to the CEC, the CPUC expressed its view that the EPS not be lowered. A final regulatory package was unanimously adopted at the CEC's June 18, 2014 business meeting. The adopted regulations had limited changes to the proposed POU reporting requirements. CEC staff has also since confirmed that the $2.5 million threshold applies to an individual investment by each utility – not the combined investment of all participants in a project. These changes and any future changes to the EPS regulations may impact the City.

Energy Procurement and Efficiency Reporting. Senate Bill 1037 ("SB 1037") was signed by then Governor Schwarzenegger on September 29, 2005. It requires that each POU, including the City, prior to procuring new energy generation resources, first acquire all available energy efficiency, demand reduction, and renewable resources that are cost-effective, reliable and feasible. SB 1037 also requires each POU to report annually to its customers and to the CEC its investment in energy efficiency and demand reduction programs. The City has complied with such reporting requirements.

Further, California Assembly Bill 2021 ("AB 2021"), signed by then Governor Schwarzenegger on September 29, 2006, requires that the POUs establish, report, and explain the basis of the annual energy efficiency and demand reduction targets by June 1, 2007 and every three years thereafter for a ten-year horizon. A subsequent bill has changed the time interval for establishing annual targets to every four years. The City has complied with this reporting requirement under AB 2021. Future reporting requirements under AB 2021 include: (i) the identification of sources of funding for the investment in

energy efficiency and demand reduction programs; (ii) the methodologies and input assumptions used to determine cost-effectiveness; and (iii) the results of an independent evaluation to measure and verify energy efficiency savings and demand reduction program impacts. The information obtained from the POUs is being used by the CEC to present the progress made by the POUs towards the State of California's goal of reducing electrical consumption by 10% within ten years and the greenhouse gas targets presented in Executive Order S-3-05. In addition, the CEC will provide recommendations for improvement to assist each POU in achieving cost-effective, reliable, and feasible savings in conjunction with the established targets for reduction.

Renewable Portfolio Standards. Senate Bill X1 2 ("SBX1 2"), the "California Renewable Energy Resources Act," was signed into law by Governor Jerry Brown on April 12, 2011. SBX1 2 codifies the Renewable Portfolio Standard ("RPS") target for retail electricity sellers to serve 33% of their loads with eligible renewable energy resources by 2020 as provided in Executive Order S-14-08 (signed by Governor Jerry Brown in November 2008). As enacted, SBX1 2 makes the requirements of the RPS program applicable to POUs (rather than just prescribing that POUs meet the intent of the legislation as under previous statutes). However, the governing boards of POUs are responsible for implementing the requirements, rather than the CPUC, as is the case for the IOUs. In addition, the CEC is given certain enforcement authority for POUs and CARB is given the authority to set penalties. CARB is expected to complete a RPS enforcement penalties rulemaking by November 2015 for POUs.

SBX1 2 requires each POU to adopt and implement a renewable energy resource procurement plan. As set out in more detail in the CEC's RPS enforcement regulation, noted below, the plan must require the utility to procure at least the following amounts of electricity products from eligible renewable energy resources, which may include renewable energy certificates ("RECs"), as a proportion of total kilowatt hours sold to the utility's retail end-use customers: (i) over the 2011-2013 compliance period, an average of 20% of retail sales from January 1, 2011 to December 31, 2013, inclusive; (ii) over the 2014-2016 compliance period, a total equal to 20% of 2014 retail sales, 20% of 2015 retail sales, and 25% of 2016 retail sales; (iii) over the 2017-2020 compliance period, a total equal to 27% of 2017 retail sales, 29% of 2018 retail sales, 31% of 2019 retail sales, and 33% of 2020 retail sales; and (iv) for 2021 and each subsequent year, 33% of retail sales for the applicable year.

SBX1 2 grandfathers any facility approved by the governing board of a POU prior to June 1, 2010 as satisfying renewable energy procurement obligations adopted under prior law if the facility is a "renewable electrical generation facility" as defined in the bill (subject to certain restrictions). Renewable electrical generation facilities include certain out-of-state renewable energy generation facilities if such facility: (i) will not cause or contribute to any violation of a California environmental quality standard or requirement, (ii) participates in the accounting system to verify compliance with the RPS program requirements, and (iii) either (a) commenced initial commercial operation after January 1, 2005 or (b) either (x) the electricity generated by the facility is from incremental generation resulting from expansion or repowering of the facility or (y) the electricity generated by the facility was procured by a retail seller or POU as of January 1, 2010. The percentage of a retail electricity seller's RPS requirements that may be met with unbundled RECs from generating facilities outside California declines over time, beginning at 25% through 2013 and declining to a level of 10% in 2017 and beyond.

The CEC has developed detailed rules to implement SBX1 2. On June 12, 2013, the CEC adopted regulations for the enforcement of the RPS program requirements for POUs. In connection with the implementation of SBX1 2, the CEC is responsible for certifying electric generation facilities as "eligible renewable energy resources" for purposes of the RPS program and on April 30, 2013, adopted guidelines that identify the requirements, conditions and process for certification of facilities as eligible renewable energy resources. The current guidelines identify bio-methane as an eligible renewable energy resource in certain circumstances. Under these guidelines, utilities that procure bio-methane were

required to reapply for certification of the generating facilities that use the bio-methane. The CEC proposed new amendments to the RPS regulation on March 27, 2015. The formal comment period for the proposed amendments ended on May 11, 2015. The CEC is expected to consider adoption of the proposed amendments during its June 10, 2015 business meeting. As previously noted, the City's resource mix will be approximately 75% renewable energy on or before December 31, 2017.

See "THE ELECTRIC SYSTEM – Power Supply Resources" for additional information regarding the City's renewable resources.

Solar Power. On August 21, 2006, then Governor Schwarzenegger signed into law California Senate Bill 1 (also known as the "California Solar Initiative"). This legislation requires POUs, including the City, to establish a program supporting the stated goal of the legislation to install 3,000 MW of photovoltaic energy in California. POUs are also required to establish eligibility criteria in collaboration with the CEC for the funding of solar energy systems receiving ratepayer-funded incentives. The legislation gives a POU the choice of selecting an incentive based on the installed capacity or based on the energy produced by the solar energy system, measured in kilowatt-hours. Incentives would be required to decrease at a minimum average rate of 7% per year. POUs also have to meet certain reporting requirements regarding the installed capacity, number of installed systems, number of applicants, amount of awarded incentives and the contribution toward the program's goals. The City has established a program in accordance with the requirements of the California Solar Initiative.

Recently Introduced Climate Change Bills. On January 5, 2015, Governor Jerry Brown proposed three major climate goals to be completed within the next 15 years: (1) increase from 33% to 50% California's electricity derived from renewables; (2) reduce current petroleum use in cars and trucks by up to 50%; and (3) increase by 50% the efficiency of existing buildings and make heating fuels cleaner. Recently, a number of bills were introduced in the State Legislature that, if adopted, would, among other things, implement the climate goals announced by the Governor. As expected, the proposed bills would increase the State's RPS from 33% to 50% (SB 350 and AB 645) and would require CARB to approve a statewide greenhouse gas emission limit that is equivalent to 80% below the 1990 level to be achieved by 2050, as contemplated by Executive Order S-3-05, and would authorize CARB to adopt interim greenhouse gas emissions level targets to be achieved by 2030 and 2040 (SB 32). A bill (AB 21) has also been introduced that would require a statewide greenhouse gas emissions limit for 2080 to be established by 2018. Another bill (SB 180) would require state agencies to update the EPS and expand its application to secondary generation sources. The City is analyzing the bills to assess what their full impact might be. The City is unable to predict at this time the ultimate form any of the proposed bills may take or the likelihood of their passage.

Future Regulation

The electric industry is subject to continuing legislative and administrative reform. States routinely consider changes to the way in which they regulate the electric industry. Historically, both further deregulation and forms of additional regulation have been proposed for the industry, which has been highly regulated throughout its history. While there is no current proposal to further deregulate the industry, there still are additional regulations or legislative mandates being proposed or considered for the industry such as higher reliance on renewable energy and tighter regulations for greenhouse gas emission reductions. The City is unable to predict at this time the impact any such proposals will have on the operations and finances of the City's Electric System or the electric utility industry generally.

Impact of Developments on the City

The effect of the developments in the California energy markets described above on the City's Electric System cannot be fully ascertained at this time. Also, volatility in energy prices in California may return due to a variety of factors that affect both the supply and demand for electric energy in the western United States. These factors include, but are not limited to, the adequacy of generation resources to meet peak demands, the availability and cost of renewable energy, the impact of economy-wide greenhouse gas emission legislation and regulations, fuel costs and availability, weather effects on customer demand, transmission congestion, the strength of the economy in California and surrounding states and levels of hydroelectric generation, which is affected by weather conditions such as the amount of rainfall or snowfall, within the region (including the Pacific Northwest). See "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY." This price volatility may contribute to greater volatility in the revenues of the Electric System from the sale (and purchase) of electric energy and, therefore, could materially affect the City's financial condition. However, the City is currently approximately 85% resourced, which significantly reduces exposure to market volatility. In addition, the City undertakes resource planning and risk management activities and manages its resource portfolio to mitigate future price volatility and spot market rate exposure.

OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY

Federal Energy Legislation

Energy Policy Act of 2005. Under the federal Energy Policy Act of 2005 ("EPAct 2005"), the Federal Energy Regulatory Commission ("FERC") was given refund authority over POUs if they sell into short-term markets, like the ISO markets, and sell eight million MWhs or more of electric energy on an annual basis. In addition, FERC was given authority over the behavior of market participants. Under FERC's authority it can impose penalties on any seller for using a manipulative or deceptive device, including market manipulation, in connection with the purchase or sale of energy or of transmission service. The Commodity Futures Trading Commission ("CFTC") also has jurisdiction to enforce certain types of market manipulation or deception claims under the Commodity Exchange Act.

EPAct 2005 authorized FERC to issue permits to construct or modify transmission facilities located in a national interest electric transmission corridor if FERC determines that the statutory conditions are met. EPAct 2005 also required the creation of an electric reliability organization ("ERO") to establish and enforce, under FERC supervision, mandatory reliability standards ("Reliability Standards") to increase system reliability and minimize blackouts. Failure to comply with such Reliability Standards exposes a utility to significant fines and penalties by the ERO.

NERC Reliability Standards. EPAct 2005 required FERC to certify an ERO to develop mandatory and enforceable Reliability Standards, subject to FERC review and approval. The Reliability Standards apply to users, owners and operators of the Bulk-Power System, as more specifically set forth in each Reliability Standard. On February 3, 2006, FERC issued Order 672, which certified the North American Electric Reliability Corporation ("NERC") as the ERO. Many Reliability Standards have since been approved by FERC.

The ERO or the entities to which NERC has delegated enforcement authority through an agreement approved by FERC ("Regional Entities"), such as the Western Electricity Coordinating Council, may enforce the Reliability Standards, subject to FERC oversight, or FERC may independently enforce them. Potential monetary sanctions include fines of up to $1 million per violation per day. FERC Order 693 further provided the ERO and Regional Entities with the discretion necessary to assess

penalties for such violations, while also having discretion to calculate a penalty without collecting the penalty if circumstances warrant.

Other Legislation. Congress has considered and is considering numerous bills addressing domestic energy policies and various environmental matters, including bills relating to energy supplies and development (such as a federal energy efficiency standard and expedited permitting for natural gas drilling projects), global warming, physical and cyber security and water quality. Many of these bills, if enacted into law, could have a material impact on the City's Electric System and the electric utility industry generally. In light of the variety of issues affecting the utility sector, federal energy legislation in other areas such as reliability, transmission planning and cost allocation, operation of markets, environmental requirements and cyber security is also possible. However, the City is unable to predict the outcome or potential impacts of any possible legislation on the City's Electric System at this time.

Environmental Issues

General. Electric utilities are subject to continuing environmental regulation. Federal, State and local standards and procedures which regulate the environmental impact of electric utilities are subject to change. These changes may arise from continuing legislative, regulatory and judicial action regarding such standards and procedures. Consequently, there is no assurance that any City facility or project will remain subject to the laws and regulations currently in effect, will always be in compliance with future laws and regulations or will always be able to obtain all required operating permits. An inability to comply with environmental standards could result in additional capital expenditures, reduced operating levels or the shutdown of individual units not in compliance. In addition, increased environmental laws and regulations may create certain barriers to new facility development, may require modification of existing facilities and may result in additional costs for affected resources.

Greenhouse Gas Regulations Under the Clean Air Act. The United States Environmental Protection Agency (the "EPA") has taken steps to regulate greenhouse gas emissions under existing law. In 2009, the EPA issued a final "endangerment finding," in which it declared that the weight of scientific evidence requires a finding that six identified greenhouse gases, namely, CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, cause global warming, and that global warming endangers the public health and welfare. The final rule for the "endangerment finding" was published in the Federal Register on December 15, 2009. As a result of this finding, the EPA determined that it was authorized to issue regulations limiting CO_2 emissions from, among other things, motor vehicles and stationary sources, such as electric generating facilities, under the federal Clean Air Act. The EPA subsequently issued the "Tailoring Rule," published in the Federal Register on June 3, 2010, which regulates greenhouse gas emissions from large stationary sources, including electric generating facilities, if the sources emit more than the specified threshold levels of tons per year of CO_2. Large sources with the potential to emit in excess of the applicable threshold will be subject to the major source permitting requirements under the Clean Air Act, including the EPA's Prevention of Significant Deterioration ("PSD") permit program and its Title V operating permit program. Permits would be required in order to construct, modify and operate facilities exceeding the emissions threshold. Examples of such permitting requirements include, but are not limited to, the application of Best Available Control Technology (known as BACT) for greenhouse gas emissions, and monitoring, reporting, and recordkeeping for greenhouse gases.

The endangerment finding and the Tailoring Rule have been challenged in court, but were upheld on June 26, 2012 in a decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Coalition for Responsible Regulation, Inc., et al. v. EPA*. A petition for rehearing was denied on December 20, 2012. In October 2013, several petitions for review relating to these findings were consolidated in the United States Supreme Court case *Utility Air Regulatory Group v. EPA*, dealing with

the issue of whether the EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases. A decision in the case was rendered on June 23, 2014 as described below. Legislation has also been introduced in the United States Congress that would repeal the EPA's endangerment finding or otherwise prevent the EPA from regulating greenhouse gases as air pollutants.

In December 2010, the EPA announced two settlements with a number of states and environmental groups. Pursuant to one settlement agreement dated December 23, 2010, the EPA on April 13, 2012 proposed establishing New Source Performance Standards limiting CO_2 emissions from fossil-fuel fired electric generating units. In response to a June 25, 2013 Presidential memorandum (the "Presidential Memorandum"), the EPA proposed revised, generally more stringent standards on September 20, 2013 and simultaneously rescinded the April 13, 2012 proposal. The new proposed rule was published in the Federal Register on January 8, 2014. The EPA states that the revised standards would apply only to new facilities, not reconstructed or modified facilities. The Presidential Memorandum required the EPA to propose by June 1, 2014, and to finalize by June 1, 2015, standards, regulations, or guidelines that address carbon pollution from modified, reconstructed and existing power plants.

The proposed rule for new power plants would restrict CO_2 emissions from new natural gas-fired units to 1,000 pounds of CO_2 per MWh for larger units and 1,100 pounds of CO_2 per MWh for smaller units. These emission limits are based on the use of natural gas combined cycle technology. CO_2 emissions from new coal-fired units would be restricted to 1,100 pounds of CO_2 per MWh over 12 months, or 1,000-1,050 pounds over seven years. The EPA states that this emission limit reflects the use of partial carbon capture and sequestration as the best system of emission reduction that has been adequately demonstrated for coal-fired units. The basis for this assertion is being challenged in a lawsuit filed by the State of Nebraska in January 2014 in the U.S. District Court for Nebraska. The new performance standard would be the most stringent in the country (surpassing the emission performance standard of 1,100 pounds of CO_2 per MWh of electricity produced imposed by the CEC regulations in California as described under "DEVELOPMENTS IN THE CALIFORNIA ENERGY MARKETS – State Legislation – *Greenhouse Gas Emissions – Emissions Performance Standard*"). The rule is expected to be finalized in [June 2015], after which it is likely to be subject to further legal challenges. **[TO BE UPDATED, IF NECESSARY]**

On June 2, 2014, the EPA released its "Clean Power Plan" proposal for both existing and modified or reconstructed power plants as contemplated by the Presidential Memorandum. The proposed rule is designed to reduce CO_2 emissions from the power sector by 30% on average nationwide by 2030, as compared to 2012 levels. Under the proposal, the EPA will set different interim (2024) and final (2030) emissions targets for each state based on overall CO_2 emissions and the amount of electricity generated in the State. The emissions target for California for 2030 is proposed to be 537 pounds of CO_2 per MWh, representing a reduction of approximately 23.1% from estimated 2012 emissions levels of 698 pounds of CO_2 per MWh. States will have one year after finalization of the rule (until June 2016 under the current schedule) to design their own state implementation plans to reach the emissions target or may request an extension through 2018 for states working on multi-state plans. Interim standards would apply from 2020 to 2029, with final standards taking effect in 2030. It is proposed that state emission targets may be met in a combination of ways, including through a "Best System of Emissions Reduction," which may include coal plant efficiency upgrades, switching from coal to natural gas, and by improving energy efficiency or promoting renewable energy. In the event a state fails to develop a satisfactory implementation plan, the EPA may impose a federal implementation plan instead.

Concurrently with the release of the Clean Power Plan proposal, the EPA also released a proposal applying specifically to existing power plants subject to modification (which includes a physical or

operational change that increases the source's maximum achievable hourly rate of emissions) or reconstruction (which includes the replacement of components of an existing facility to the extent that (i) the fixed capital costs of the new components exceeds 50% of the fixed capital costs that would be required to construct a comparable entirely new facility, and (ii) it is technologically and economically feasible to meet the applicable standards). Under the proposal, reconstructed coal-fired electricity generating units with a heat input of greater than 2,000 MMBtu/h would be required to meet an emissions limit of 1,900 pounds of CO_2 per MWh. Smaller coal-fired units would be required to meet an emission limit of 2,100 pounds of CO_2 per MWh. These emissions limits are based on the use of the most efficient generating technology at the affected source. As contemplated in the proposal, modified coal-fired electricity generating units would be required to meet a unit-specific emission limit that is 2% lower than the unit's best historical annual CO_2 emissions rate since 2002 (but not lower than the proposed standards for reconstructed power plants). These standards of performance are based on a combination of best operating practices and equipment upgrades. For modified and reconstructed natural gas-fired power plants, the EPA has proposed the same emissions limits as it did for new facilities. Under the EPA's proposal, facilities with a heat input of greater than 850 MMBtu/h would be required to meet an emissions limit of 1,000 pounds of CO_2 per MWh. Smaller facilities would be required to meet an emissions limit of 1,100 pounds of CO_2 per MWh.

The proposed rules for existing, and modified or reconstructed, power plants were published in the Federal Register on June 18, 2014; comments on the proposed rules were accepted until December 1, 2014 and October 16, 2014, respectively. The EPA has indicated that it intends to finalize the "Clean Power Plan" rules in mid-summer of 2015. FERC held technical conferences throughout the nation through March 2015 to assess potential reliability impacts from the proposed rule. EPA officials have been participating in those Commissioner-led workshops.

A number of lawsuits have been filed challenging the proposed rules and seeking to prevent the EPA from moving forward to implement the proposed Clean Power Plan. Additional legal and legislative challenges are also expected.

On June 23, 2014, the United States Supreme Court issued its decision in the *Utility Air Regulatory Group v. EPA* case noted above. In the decision, the Court invalidated substantial portions of the Tailoring Rule, which purported to modify the emissions thresholds set forth in the Clean Air Act (governing when PSD and Title V permitting would be triggered) to account for greenhouse gases, while preserving various aspects of the EPA's ability to regulate greenhouse gas emissions from most new major sources. The decision holds that, for facilities that are otherwise subject to PSD permitting obligations (by virtue of their emissions of conventional pollutants), the EPA may regulate greenhouse gases from those facilities through the PSD BACT standards (without approving the EPA's current approach to BACT regulation of greenhouse gases, or any other approach that may be adopted).

The City is unable to predict the impact of the Court's decision in *Utility Air Regulatory Group v. EPA,* the outcome of any ongoing legal or legislative challenges to other EPA rulemaking with respect to greenhouse gas emissions or the effect that any future final rules promulgated by the EPA regulating greenhouse gas emissions from electric generating units will have on the City or its Electric System.

Air Quality – National Ambient Air Quality Standards. The Clean Air Act requires that the EPA establish National Ambient Air Quality Standards ("NAAQS") for certain air pollutants. When a NAAQS has been established, each state must identify areas in its state that do not meet the EPA standard (known as "non-attainment areas") and develop regulatory measures in its state implementation plan to reduce or control the emissions of that air pollutant in order to meet the applicable standard and become an "attainment area." The EPA periodically reviews the NAAQS for various air pollutants and has in recent years increased, or proposed to increase, the stringency of the NAAQS for certain air pollutants.

The EPA revised the NAAQS for particulate matter on December 14, 2012, the NAAQS for sulfur dioxide on June 22, 2010, and the NAAQS for nitrogen dioxide on February 9, 2010, and in each case made the NAAQS more stringent. It is possible that some areas will be designated as non-attainment based on the revised standards for particulate matter, nitrogen dioxide and sulfur dioxide. These developments may result in stringent permitting processes for new sources of emissions and additional state restrictions on existing sources of emissions, such as power plants. On September 2, 2011, President Obama directed the EPA to withdraw a proposal advanced by the EPA to lower the NAAQS for ozone. As a result of this withdrawal, the EPA resumed the process of issuing non-attainment designations for the ozone NAAQS under the standard set in 2008. On April 30, 2012, the EPA issued ozone non-attainment designations for areas in California, including the Los Angeles – San Bernardino Counties and the Los Angeles – South Coast Air Basin. Additional non-attainment areas for ozone have been and may continue to be designated. On May 29, 2013, the EPA proposed a rule to implement the 2008 ozone NAAQS. Comments on the proposed rule were due to the EPA by August 5, 2013. While implementing the 2008 ozone NAAQS, the EPA is continuing its review of this standard. In January 2014, the EPA released draft risk and exposure assessment documents and a draft policy assessment document relating to this review; comments were due by March 24, 2014. In addition, the Supreme Court found in its review of *EPA v. EME Homer City Generation, LP* that the EPA has authority to impose a Cross-State Air Pollution Rule (the "Transport Rule") which curbs air pollution emitted in upwind states to facilitate downwind attainment of three NAAQS. On November 26, 2014, the EPA proposed to increase the stringency of the NAAQS for ozone by lowering the existing ozone standard of 75 parts per billion ("ppb") to between 65 and 70 ppb, although the EPA is also soliciting public comment on a standard as low as 60 ppb. The new proposed rule was published in the Federal Register on December 17, 2014. Comments on the proposed rule were accepted until March 17, 2015. A final rule is expected to be issued in October 2015. On December 18, 2014, the EPA issued a final rule making initial area designations for the 2012 NAAQS for fine particulate matter ("PM2.5"), designating 14 areas in six states as non-attainment, including the Los Angeles – San Bernardino Counties and the Los Angeles – South Coast Air Basin. These PM2.5 designations became effective on April 15, 2015.

Mercury and Air Toxics Standards. On December 16, 2011, the EPA signed a rule establishing new standards to reduce air pollution from coal- and oil-fired power plants under sections 111 (new source performance standards, or "NSPS") and 112 (toxics program) of the Clean Air Act. The final rule was published in the Federal Register on February 16, 2012. The EPA updated the Mercury and Air Toxics Standards ("MATS") emission limits on November 30, 2012 and again on March 28, 2013. The EPA is currently reconsidering certain aspects of the regulation. Under section 111 of the Clean Air Act, MATS revises the standards that new and modified facilities, including coal- and oil-fired power plants, must meet for particulate matter, sulfur dioxide, and nitrogen oxide. Under section 112, MATS sets new toxics standards limiting emissions of heavy metals, including mercury, arsenic, chromium, and nickel; and acid gases, including hydrochloric acid and hydrofluoric acid, from existing and new power plants larger than 25 MW that burn coal or oil. Power plants have up to four years to meet these standards. While many plants already meet some or all of these new standards, some plants will be required to install new equipment to meet the standards. On November 25, 2014, the United States Supreme Court agreed to review the MATS rule following the filing of petitions for writ of certiorari from 23 states and industry groups; a ruling is expected in [June 2015]. **[TO BE UPDATED, IF NECESSARY]**

Regulation of Coal Combustion Residuals. On June 21, 2010, the EPA proposed to regulate coal combustion residuals ("CCR") such as ash. The EPA proposed to list these residuals as a special waste and regulate them as a hazardous waste. This would require a federal or state permitting program covering the storage, treatment, transport, disposal, and other activities related to residuals. The EPA also proposed an alternative regulation that would classify residuals as nonhazardous solid waste. Under the alternative regulation, plants could dispose of residuals in surface impoundments or landfills if they comply with national minimum standards. The disposal standards would address location, liner

requirements, groundwater monitoring and other issues, but permits would not be required under the alternative regulation. The EPA solicited additional public comments on its proposed coal combustion residual regulation on October 12, 2011 and again on August 2, 2013. The EPA released its final CCR rule on December 19, 2014, adopting the industry-preferred alternative regulation classifying CCRs as nonhazardous solid waste.

Regulation of Cooling Water Intake Structures. On April 20, 2011, the EPA proposed to regulate cooling water intake structures at certain existing power plants in order to reduce the number of fish and other aquatic organisms that are trapped against intake screens or drawn into the generating unit. The EPA proposed to require modified intake screens that would capture and safely return fish to water bodies, or require the facility's water intake velocity to be reduced, thus allowing fish to move away from intake structures. The best technology to reduce entrainment would be determined on a site-specific basis. A final regulation was released by the EPA on May 16, 2014 and became effective on October 14, 2014.

Effluent Limitations Guidelines and Standards. On June 7, 2013, the EPA proposed to set technology-based effluent limitations guidelines and standards for metals and other pollutants in wastewater discharged from steam electric power plants. The proposal would cover wastewater associated with several types of equipment and processes, including flue gas desulfurization, fly ash, bottom ash, flue gas mercury control and gasification of fuels. The EPA is also considering best management practices for surface impoundments containing CCRs. The EPA proposed four preferred alternatives for regulating wastewater discharges. The stringency of controls, types of waste streams covered, and the costs vary between the four alternatives. The public comment period on this proposal ended on September 20, 2013. The EPA was expected to issue a final rule in May 2014 but in December 2013 it announced that it would need additional time to finalize this rule.

The City purchases power from coal-fired power stations that may be affected by the regulations described above; compliance with such new rules could therefore result in an increase in the cost of power that the City purchases from such units.

Other Factors

The electric utility industry in general has been, or in the future may be, affected by a number of other factors which could affect the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. In addition to the factors discussed above, such factors include, among others, (a) effects of compliance with rapidly changing environmental, safety, licensing, regulatory and legislative requirements other than those described above (including those affecting nuclear power plants or potential new energy storage requirements), (b) changes resulting from conservation and demand-side management programs on the timing and use of electric energy, (c) changes resulting from a national energy policy, (d) effects of competition from other electric utilities (including increased competition resulting from a movement to allow direct access or from mergers, acquisitions, and "strategic alliances" of competing electric and natural gas utilities and from competitors transmitting less expensive electricity from much greater distances over an interconnected system) and new methods of, and new facilities for, producing low-cost electricity, (e) the repeal of certain federal statutes that would have the effect of increasing the competitiveness of many IOUs, (f) increased competition from independent power producers and marketers, brokers and federal power marketing agencies, (g) "self-generation" or "distributed generation" (such as microturbines and fuel cells) by industrial and commercial customers and others, (h) issues relating to the ability to issue tax-exempt obligations, including severe restrictions on the ability to sell to nongovernmental entities electricity from generation projects and transmission service from transmission line projects financed with outstanding tax-exempt obligations, (i) effects of inflation on the operating and maintenance costs of an

electric utility and its facilities, (j) changes from projected future load requirements, (k) increases in costs and uncertain availability of capital, (l) shifts in the availability and relative costs of different fuels (including the cost of natural gas and nuclear fuel), (m) sudden and dramatic increases in the price of energy purchased on the open market that may occur in times of high peak demand in an area of the country experiencing such high peak demand, such as has occurred in California, (n) inadequate risk management procedures and practices with respect to, among other things, the purchase and sale of energy and transmission capacity, (o) other legislative changes, voter initiatives, referenda and statewide propositions, (p) effects of the changes in the economy, (q) effects of possible manipulation of the electric markets, (r) natural disasters or other physical calamities, including, but not limited to, earthquakes and floods and (s) changes to the climate. Any of these factors (as well as other factors) could have an adverse effect on the financial condition of any given electric utility and likely will affect individual utilities in different ways.

The City is unable to predict what impact such factors will have on the business operations and financial condition of the Electric System, but the impact could be significant. This Official Statement includes a brief discussion of certain of these factors. This discussion does not purport to be comprehensive or definitive, and these matters are subject to change subsequent to the date hereof. Extensive information on the electric utility industry is available from the legislative and regulatory bodies and other sources in the public domain, and potential purchasers of the Bonds should obtain and review such information.

THE AUTHORITY

The Authority was established pursuant to a Joint Exercise of Powers Agreement dated as of November 12, 2003, by and between the City and the Agency in accordance with the provisions of the Joint Exercise of Powers Act, consisting Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Joint Powers Act"). Pursuant to the Joint Powers Act, the Authority is authorized to issue revenue bonds to provide funds to acquire or construct public capital improvements, such revenue bonds to be repaid from payments for such improvements, such as the Installment Payments described herein. The members of the City Council of the City comprise the Authority's Commission. The Authority has no independent staff and consequently is dependent upon the City's officers and employees to administer the day-to-day activities of the Authority on its behalf.

CONTINUING DISCLOSURE

The City will undertake all responsibilities for any continuing disclosure with respect to holders of the Bonds as described below, and the Authority shall have no liability to the holders of the Bonds or any other person with respect to such disclosure matters.

The City has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City, including the Electric System, not later than March 31 following the end of the City's Fiscal Year (currently its Fiscal Year ends on June 30), commencing with the reports for Fiscal Year ended June 30, 2015 (each, an "Annual Report"), and to provide notices of the occurrences of certain enumerated events. The Annual Report will be filed by the Dissemination Agent on behalf of the City with the Municipal Securities Rulemaking Board. The Municipal Securities Rulemaking Board has made such information available to the public without charge through its EMMA system. The specific nature of information to be contained in each Annual Report or the notice of listed events is set forth in "APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT." These covenants have been made by the City in order to assist the Underwriters in complying with Rule

15c2-12, as amended (the "Rule") promulgated by the Securities and Exchange Commission. [**DESCRIPTION OF PAST 5-YEAR COMPLIANCE TO COME**]

TAX MATTERS

Tax Exemption

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in the gross income of the owners thereof for federal income tax purposes retroactive to the date of issuance of the Bonds. Each of the Authority and the City has covenanted to maintain the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In the opinion of Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, under existing statutes, regulations, rulings and court decisions, interest on the Bonds is exempt from personal income taxes of the State of California and, assuming compliance with the covenants mentioned herein, interest on the Bonds is excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. In the further opinion of Bond Counsel, under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, interest on the Bonds will not be treated as an item of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income. A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed.

Pursuant to the Installment Sale Agreement and the Indenture and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986*, to be delivered by the Authority and the City in connection with the issuance of the Bonds, each of the Authority and the City will make representations relevant to the determination of, and will make certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching its opinions described in the immediately preceding paragraph, Bond Counsel will assume the accuracy of such representations and the present and future compliance by each of the Authority and the City with such covenants.

Except as stated in this section above, Bond Counsel will express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, Bond Counsel will express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel. Bond Counsel has not undertaken to advise in the future whether any event after the date of issuance of the Bonds may affect the tax status of interest on the Bonds or the tax consequences of the ownership of the Bonds.

Bond Counsel's opinion is not a guarantee of a result, but represents its legal judgment based upon its review of existing statutes, regulations, published rulings and court decisions and the representations and covenants of the Authority and the City described above. No ruling has been sought from the Internal Revenue Service (the "Service") with respect to the matters addressed in the opinion of Bond Counsel, and Bond Counsel's opinion is not binding on the Service. The Service has an ongoing program of auditing the tax-exempt status of the interest on municipal obligations. If an audit of the

Bonds is commenced, under current procedures the Service is likely to treat the Authority as the "taxpayer," and the owners would have no right to participate in the audit process. In responding to or defending an audit of the tax-exempt status of the interest on the Bonds, the Authority may have different or conflicting interests from the owners. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit, regardless of its ultimate outcome.

Existing law may change to reduce or eliminate the benefit to bondholders of the exemption of interest on the Bonds from personal income taxation by the State of California or of the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. Any proposed legislation or administrative action, whether or not taken, could also affect the value and marketability of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed or future change in tax law.

A copy of the form of opinion of Bond Counsel relating to the Bonds is included in APPENDIX D.

Tax Accounting Treatment of Bond Premium and Original Issue Discount on Bonds

To the extent that a purchaser of a Bond acquires that Bond at a price in excess of its "stated redemption price at maturity" (within the meaning of section 1273(a)(2) of the Code), such excess will constitute "bond premium" under the Code. Section 171 of the Code, and the Treasury Regulations promulgated thereunder, provide generally that bond premium on a tax-exempt obligation must be amortized over the remaining term of the obligation (or a shorter period in the case of certain callable obligations); the amount of premium so amortized will reduce the owner's basis in such obligation for federal income tax purposes, but such amortized premium will not be deductible for federal income tax purposes. Such reduction in basis will increase the amount of any gain (or decrease the amount of any loss) to be recognized for federal income tax purposes upon a sale or other taxable disposition of the obligation. The amount of premium that is amortizable each year by a purchaser is determined by using such purchaser's yield to maturity. The rate and timing of the amortization of the bond premium and the corresponding basis reduction may result in an owner realizing a taxable gain when its Bond is sold or disposed of for an amount equal to or in some circumstances even less than the original cost of the Bond to the owner.

The excess, if any, of the stated redemption price at maturity of Bonds of a maturity over the initial offering price to the public of the Bonds of that maturity is "original issue discount." Original issue discount accruing on a Bond is treated as interest excluded from the gross income of the owner thereof for federal income tax purposes and is exempt from California personal income tax to the same extent as would be stated interest on that Bond. Original issue discount on any Bond purchased at such initial offering price and pursuant to such initial offering will accrue on a semiannual basis over the term of the Bond on the basis of a constant yield method and, within each semiannual period, will accrue on a ratable daily basis. The amount of original issue discount on such a Bond accruing during each period is added to the adjusted basis of such Bond to determine taxable gain upon disposition (including sale, redemption or payment on maturity) of such Bond. The Code includes certain provisions relating to the accrual of original issue discount in the case of purchasers of Bonds who purchase such Bonds other than at the initial offering price and pursuant to the initial offering

Persons considering the purchase of Bonds with original issue discount or initial bond premium should consult with their own tax advisors with respect to the determination of original issue discount or amortizable bond premium on such Bonds for federal income tax purposes and with respect to the state and local tax consequence of owning and disposing of such Bonds.

Other Tax Consequences

Although interest on the Bonds may be exempt from California personal income tax and excluded from the gross income of the owners thereof for federal income tax purposes, an owner's federal, state or local tax liability may be otherwise affected by the ownership or disposition of the Bonds. The nature and extent of these other tax consequences will depend upon the owner's other items of income or deduction. Without limiting the generality of the foregoing, prospective purchasers of the Bonds should be aware that (i) section 265 of the Code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds and the Code contains additional limitations on interest deductions applicable to financial institutions that own tax-exempt obligations (such as the Bonds), (ii) with respect to insurance companies subject to the tax imposed by section 831 of the Code, section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15% of the sum of certain items, including interest on the Bonds, (iii) interest on the Bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by section 884 of the Code, (iv) passive investment income, including interest on the Bonds, may be subject to federal income taxation under section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income, (v) section 86 of the Code requires recipients of certain Social Security and certain Railroad Retirement benefits to take into account, in determining the taxability of such benefits, receipts or accruals of interest on the Bonds and (vi) under section 32(i) of the Code, receipt of investment income, including interest on the Bonds, may disqualify the recipient thereof from obtaining the earned income credit. Bond Counsel will express no opinion regarding any such other tax consequences.

CERTAIN LEGAL MATTERS

Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel, will render an opinion with respect to the validity and enforceability of the Bonds, the Installment Sale Agreement, and the Indenture. See "APPENDIX D – FORM OF BOND COUNSEL OPINION." Norton Rose Fulbright US LLP is also serving as Disclosure Counsel in connection with the Bonds. Certain legal matters will be passed upon for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, and for the City and the Authority by Aleshire & Wynder, LLP, in its capacity as City Attorney and Authority Counsel.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

The Verification Agent, an independent certificated public accountant, upon delivery of the Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to them that were prepared by the Underwriters, relating to the sufficiency of monies deposited into the Escrow Fund created under the Escrow Agreement to redeem all of the outstanding 2007 Bonds on the Redemption Date.

The report of the Verification Agent, will include the statement that the scope of its engagement is limited to verifying the mathematical accuracy of the computations contained in such schedules provided to it, and that it has no obligation to update its report because of events occurring, or date or information coming to its attention, subsequent to the date of its report.

LITIGATION

There is no action, suit or proceeding pending or, to the knowledge of the Authority or the City threatened at the present time seeking to restrain or to enjoin the execution or delivery of the Bonds or the Installment Sale Agreement or the Indenture or in any way contesting or affecting the validity or enforceability of the Bonds, the Installment Sale Agreement, the Indenture or any action of the Authority or the City contemplated with respect to the foregoing.

PROFESSIONAL FEES

In connection with the issuance of the Bonds, fees payable to certain professionals, including Norton Rose Fulbright US LLP, as Bond Counsel and Disclosure Counsel, and U.S. Bank National Association, as Trustee, are contingent upon the issuance of the Bonds.

UNDERWRITING

The Underwriters have agreed to purchase the Bonds at a purchase price of $_____, representing the principal amount of the Bonds, plus a [net] bond premium of $_____ and, less an Underwriters' discount of $_____.

The purchase contract pursuant to which the Bonds are being sold provides that the Underwriters will purchase all of the Bonds if any are purchased, and that the obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions, including the approval of certain legal matters by counsel.

The Underwriters may offer and sell the Bonds to certain dealers and others at prices lower than the initial public offering prices stated on the inside cover page bereof. The offering prices may be changed from time to time by the Underwriters.

RATINGS

[Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P") has assigned the Bonds a rating of "____", with the understanding that an insurance policy securing the payment when due of the principal and interest on the Bonds will be issued by the Bond Insurer upon the issuance of the Bonds.] S&P has also assigned an underlying rating of "___" to the Bonds. Sucb ratings reflect only the views of the rating agency and an explanation of the significance of such ratings may be obtained only from the rating agency.

There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of the rating agency circumstances so warrant. Any such downward revision or withdrawal of the ratings may have an adverse effect on the market price of the Bonds.

FINANCIAL STATEMENTS

The audited financial statements for the City for the Fiscal Year ended June 30, 2014, included in this Official Statement as APPENDIX A, bave been audited by Lance, Soll & Lunghard, LLP (the "Auditor"), as stated in the Auditor's report appearing in APPENDIX A. The City has not requested, nor has the Auditor given, the Auditor's consent to the inclusion in this Official Statement of its report on such financial statements. No review or investigation with respect to subsequent events has been undertaken in connection with such financial statements by the Auditor.

MISCELLANEOUS

There are descriptions herein of certain documents and reports which are brief summaries thereof and which do not purport to be complete or definitive, and reference is made to such documents and reports for full and complete statements of the contents thereof.

Any statement in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between any of the Authority, the City, and the purchasers or Owners of any of the Bonds.

The execution and delivery of this Official Statement has been duly authorized by the Authority and the City.

CITY OF BANNING FINANCING AUTHORITY

By: _____
President

CITY OF BANNING

By: _____
Interim City Manager

APPENDIX A

CITY AUDITED FINANCIAL STATEMENTS
FISCAL YEAR ENDING JUNE 30, 2014

APPENDIX B

GENERAL INFORMATION ABOUT THE CITY OF BANNING

The following information relating to the City of Banning (the "City") and the County of Riverside, California (the "County") has been supplied by the City and is provided solely for purposes of information. The Bonds are payable solely from Revenues and other sources as described in this Official Statement, and the taxing power of the City, the County, the State of California (the "State"),or any political subdivision thereof, is not pledged to the payment of the Bonds. The Underwriters and their counsel make no representation with respect to any of such information.

General Information

The City is located alongside Interstate 10 approximately 80 miles east of Los Angeles and 23 miles west of Palm Springs. The City covers approximately 27 square miles. The City is well known for its picturesque qualities and is nestled between the majestic San Gorgonio and San Jacinto Mountains, the two tallest peaks in Southern California. The community enjoys a rural lifestyle, nearby outdoor recreation opportunities, and invigorating healthful clear air.

Government Organization

The City was incorporated as a general law City in 1913. The City has a "city council/city manager" form of local government. The five members of the City Council are elected at-large from the community to serve four-year terms of office and the City Council selects one of its members to serve as mayor. The City has [___] full-time employees.

Governmental Services

The City maintains its own police department which consists of [___] sworn offices and [___] civilian personnel. The City contracts with the California Department of Forestry in cooperation with the Riverside County Fire Department for fire protection services within the City. The City provides general government services such as plan checking, building permit processing and code enforcement. Electricity, water and wastewater services are provided by the City. Students in the City attend Banning Unified School District for K-12 schools.

Transportation

The City is located along Interstate 10, a major traffic route. The City is also located alongside the Union Pacific Railroad. The City owns a municipal airport which also provides hangar and tie down service. Locally, the City provides both fixed route bus and dial-a-ride services.

Population

The table on the following page provides a comparison of population growth for the City, surrounding cities and the County between 2011 and 2015.

CHANGE IN POPULATION
BANNING AND RIVERSIDE COUNTY
2011-2015

	BANNING		RIVERSIDE COUNTY	
Year (January 1)	Population	Percentage Change	Population	Percentage Change
2011	29,721	-	2,205,731	-
2012	29,982	0.9	2,229,467	1.1
2013	30,137	0.5	2,253,516	1.1
2014	30,306	0.6	2,280,191	1.2
2015	30,491	0.6	2,308,441	1.2

Source: State of California Department of Finance, Population Research Unit, "Population Estimates for California Cities and Counties."

Employment and Industry

The City is located in the Riverside Area Metropolitan Statistical Area ("MSA") which includes all of Riverside and San Bernardino Counties. In addition to varied manufacturing employment, the MSA has large and growing commercial and service sector employment, as reflected in the following table.

RIVERSIDE-SAN BERNARDINO-ONTARIO MSA
ANNUAL AVERAGE EMPLOYMENT[1]
2010-2014

INDUSTRY	2010	2011	2012	2013	2014
Construction	59,700	59,100	62,600	70,000	77,000
Durable Goods	55,400	55,800	56,900	57,300	59,800
Educational and Health Services	154,100	157,600	167,200	184,500	193,600
Farm	15,000	14,900	15,000	14,500	14,300
Financial Activities	41,00	39,900	40,900	42,200	42,700
Goods Producing	145,900	145,200	150,500	158,600	168,500
Government	234,300	227,500	224,600	225,200	228,800
Information	14,00	12,200	11,700	11,500	11,200
Leisure and Hospitality	122,800	124,000	129,400	135,900	144,300
Manufacturing	85,200	85,100	86,700	87,300	90,200
Nondurable Goods	29,800	29,300	29,800	30,100	30,400
Other Services	38,200	39,100	40,100	41,100	43,200
Professional and Business Services	123,600	126,000	127,500	132,400	137,800
Real Estate and Rental	15,500	14,600	14,900	15,600	16,200
Retail Trade	155,500	158,500	162,400	164,800	168,700
Service Providing	998,900	1,002,800	1,029,800	1,073,300	1,116,700
Transportation, Warehousing and Utilities	66,600	68,800	73,900	79,400	87,300
Wholesale Trade	48,700	49,200	52,200	59,000	56,400
Total, All Industries	1,159,700	1,162,900	1,195,300	1,246,400	1,299,500

(1) The employment figures by industry which are shown above are not directly comparable to the "Total, All Industries" employment figures due to rounded data.

Source: State Employment Development Department, Labor Market Information Division.

The major employers operating within the City and their respective number of employees as of June 30, 2014 are as follows:

CITY OF BANNING
TOP EMPLOYERS

Name of Company	Employment	Type of Business/Product

Source: City of Banning.

Commercial Activity

The following table summarizes the volume of retail sales and taxable transactions for the City for 2009 through 2013, the latest years available.

CITY OF BANNING
TOTAL TAXABLE TRANSACTIONS
2009-2013

Year	Retail Sales ($000's)	% Change	Retail Sales Permits	Total Taxable Transactions ($000's)	% Change	Issued Sales Permits
2009	130,173	-	315	156,232	-	451
2010	133,218	2.3%	340	146,742	(6.1)%	471
2011	143,230	7.5	323	157,071	7.0	448
2012	146,600	2.3	340	165,579	5.4	466
2013	154,595	5.5	332	175,386	5.9	460

Source: State Board of Equalization, "Taxable Sales in California (Sales & Use Tax)." 2014 data not available.

APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS

The following definitions and summaries of the Indenture and the Installment Sale Agreement are summaries only and are not to be considered full descriptions thereof. Reference is made to further provisions of the documents described in the body of this Official Statement, and to the documents themselves.

[TO COME]

APPENDIX D

FORM OF OPINION OF BOND COUNSEL

_____, 2015

City of Banning Financing Authority
99 E. Ramsey Street
Banning, California 92220

City of Banning
99 E. Ramsey Street
Banning, California 92220

$_____
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015

Ladies and Gentlemen:

In our role as Bond Counsel to the City of Banning Financing Authority (the "Authority"), we have examined certified copies of the proceedings taken in connection with the issuance by the Authority of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") in the aggregate principal amount of $_____. We have also examined supplemental documents furnished to us and have obtained such certificates and documents from public officials as we have deemed necessary for the purposes of this opinion. The Bonds are issued under Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and among the Authority, the City of Banning (the "City") and U.S. Bank National Association, as trustee (the "Trustee"), and pursuant to the authorizing resolution of the Commission of the Authority adopted on _____, 2015. The proceeds of the sale of the Bonds will be used to refund the Authority's $45,790,000 Revenue Bonds (Electric System Project) Series 2007 and finance certain improvements (the "Facilities") to the City's Electric System. The Authority and the City will enter into an Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), pursuant to which the Authority will sell the Improvements to the City in consideration for Installment Payments. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Indenture and the Installment Sale Agreement, as applicable.

As Bond Counsel, we have examined copies certified to us as being true and complete copies of the proceedings of the Authority and the City in connection with the issuance of the Bonds. We have also examined such certificates of officers of the Authority and the City and others as we have considered necessary for the purposes of this opinion.

Based upon the foregoing, we are of the opinion that:

1. The Indenture has been duly and validly authorized, executed and delivered by the Authority and the City and, assuming such Indenture constitutes the legally valid and binding obligation of the Trustee, constitutes the legally valid and binding obligation of the Authority and the City, enforceable against the Authority and the City in accordance with its terms, and the Bonds are entitled to the benefits of the Indenture.

2. The Installment Sale Agreement has been duly and validly authorized, executed and delivered by the Authority and the City, and constitutes the legally valid and binding obligation of the Authority and the City, enforceable against the Authority and the City in accordance with its terms.

3. The proceedings for the issuance of the Bonds have been taken in accordance with the laws and Constitution of the State of California, and the Bonds, having been issued in duly authorized form and executed by the proper officials and delivered to and paid for by the purchasers, constitute legal and binding special obligations of the Authority enforceable in accordance with their terms.

4. The Bonds constitute valid and binding limited obligations of the Authority as provided in the Indenture, and are entitled to the benefits of the Indenture. The Bonds are payable from the Revenues, subject to the application thereof on the terms and conditions as set forth in the Indenture.

5. Under existing statutes, regulations, rulings and court decisions, and assuming compliance with the covenants mentioned below, interest on the Bonds is excluded pursuant to section 103(a) of the Internal Revenue Code of 1986 (the "Code") from the gross income of the owners thereof for federal income tax purposes. We are further of the opinion that under existing statutes, regulations, rulings and court decisions, the Bonds are not "specified private activity bonds" within the meaning of section 57(a)(5) of the Code and, therefore, that interest on the Bonds will not be treated as an item of tax preference for purposes of computing the alternative minimum tax imposed by section 55 of the Code. Receipt or accrual of interest on Bonds owned by a corporation may affect the computation of the alternative minimum taxable income of that corporation. A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed. We are further of the opinion that interest on the Bonds is exempt from personal income taxes of the State of California under present state law.

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded pursuant to section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. Non-compliance with such requirements could cause the interest on the Bonds to fail to be excluded from the gross income of the owners thereof retroactive to the date of issuance of the Bonds. Pursuant to the Indenture and the Installment Sale Agreement, and in the *Tax Certificate Pertaining to Arbitrage and Other Matters under Sections 103 and 141-150 of the Internal Revenue Code of 1986* being delivered by the Authority and the City in connection with the issuance of the Bonds, each of the Authority and the City is making representations relevant to the determination of, and is undertaking certain covenants regarding or affecting, the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. In reaching our opinions described in the immediately preceding paragraph, we have assumed the accuracy of such representations and the present and future compliance by each of the Authority and the City with such covenants. Further, except as stated in the preceding paragraph, we express no opinion as to any federal or state tax consequence of the receipt of interest on, or the ownership or disposition of, the Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequence with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof predicated or permitted upon the advice or approval of other counsel.

The opinions expressed in paragraphs 1 through 4 above are qualified to the extent the enforceability of the Bonds, the Indenture and the Installment Sale Agreement may be limited by applicable bankruptcy, insolvency, debt adjustment, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally or as to the availability of any particular remedy. The enforceability of the Bonds, the Indenture and the Installment Sale Agreement is subject to the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, to the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and to the limitations on legal remedies against governmental entities in California.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any fact or circumstance that may hereafter come to our attention or to reflect any change in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and are not binding on the Internal Revenue Service; rather, such opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

Respectfully submitted,

APPENDIX E

FORM OF CONTINUING DISCLOSURE AGREEMENT

APPENDIX F

[SPECIMEN MUNICIPAL BOND INSURANCE POLICY]

APPENDIX G

BOOK-ENTRY ONLY SYSTEM

The information in this Appendix G under the caption "General" concerning The Depository Trust Company, New York, New York ("DTC"), and DTC's book-entry system has been obtained from DTC and the Authority and the City take no responsibility for the completeness or accuracy thereof. The Authority and the City cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix G. The Authority and the City are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Bonds or an error or delay relating thereto. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC's Direct and Indirect Participants are on file with DTC.

General

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to DTC's Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. The information on such web site is not incorporated herein by reference.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual

purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of the Bonds may wish to ascertain that the nominee holding tbe Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Autbority or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of such principal, premium, if any, and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or Trustee, disbursement of such payments to Direct Participants will be the responsibility of

DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered as described in the Indenture.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates will be printed and delivered.

Discontinuance of DTC Services

In the event that that DTC shall discontinue providing its services as depository with respect to the Bonds or the Authority shall discontinue the use of a book-entry system of transfers through DTC (or a successor securities depository), the following provisions would apply: (i) the principal of the Bonds will payable upon presentation of such Bonds by the registered owners thereof at the Office of the Trustee; (ii) interest on the Bonds will be payable on each Interest Payment Date by check mailed by the Trustee on the date on which interest is due to the registered owners of the Bonds at the close of business on the Record Date at the addresses of the registered owners as they appear on the Registration Books maintained by the Trustee, except that for registered owners of more than $1,000,000 in principal amount of Bonds who, prior to the Record Date preceding any Interest Payment Date, have provided the Trustee with wire transfer instructions, interest payable on such Bonds will be paid in accordance with the wire transfer instructions provided by such registered owners; (iii) Bonds may be exchanged for an equal aggregate principal amount of Bonds of other Authorized Denominations and of the same tenor and maturity upon surrender thereof at the Office of the Trustee upon payment by the registered owner of any charges the Trustee may make; and (iv) any Bond may, in accordance with its terms, be transferred, upon the Registration Books under the Indenture, by the person in whose name it is registered, in person or by his attorney duly authorized in writing, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed by the registered owner or his duly authorized attorney and upon payment by the registered owner of any charges the Trustee may make under the Indenture; provided, that the Trustee will not be required to transfer any Bonds during the period established by the Trustee for the selection of such Bonds for redemption or any Bonds that have been selected for redemption pursuant to the Indenture.

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INSTALLMENT SALE AGREEMENT

by and between

CITY OF BANNING FINANCING AUTHORITY,
as Seller

and the

CITY OF BANNING,
as Purchaser

Dated as of August 1, 2015

Relating to:

$[_____]
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS

SECTION 1.1 Definitions 1

ARTICLE II COVENANTS AND REPRESENTATIONS

SECTION 2.1 Covenants and Representations of the City 4
SECTION 2.2 Covenants and Representations of the Authority 6

ARTICLE III ISSUANCE OF BONDS; ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS

SECTION 3.1 The Bonds 6
SECTION 3.2 Documentation Required for the Improvements 6
SECTION 3.3 Acquisition and Construction of the Improvements 6
SECTION 3.4 Grant of Easements 7
SECTION 3.5 Appointment of City as Agent of Authority 7

ARTICLE IV SALE OF IMPROVEMENTS; INSTALLMENT PAYMENTS

SECTION 4.1 Sale 7
SECTION 4.2 Term 7
SECTION 4.3 Title 8
SECTION 4.4 Installment Payments 8
SECTION 4.5 Pledge and Application of Net Revenues 8
SECTION 4.6 Special Obligation of the City; Obligations Absolute 9
SECTION 4.7 Rates and Charges 10
SECTION 4.8 Superior and Subordinate Obligations 11
SECTION 4.9 Issuance of Parity Obligations 11
SECTION 4.10 Additional Payments 11

ARTICLE V MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1 Maintenance, Utilities, Taxes and Assessments 12
SECTION 5.2 Operation of Electric System 12
SECTION 5.3 Public Liability and Property Damage Insurance 12
SECTION 5.4 Casualty Insurance 13
SECTION 5.5 Insurance Net Proceeds: Form of Policies 13
SECTION 5.6 Eminent Domain 13
SECTION 5.7 Records and Accounts 13
SECTION 5.8 Tax Covenants 13
SECTION 5.9 Further Assurances 18
SECTION 5.10 Continuing Disclosure 18

ARTICLE VI DISCLAIMER OF WARRANTIES; ACCESS

TABLE OF CONTENTS
(continued)

Page

SECTION 6.1	Disclaimer of Warranties	18
SECTION 6.2	Access to the Electric System	18
SECTION 6.3	Release and Indemnification Covenants	18
SECTION 6.4	Non-Liability of Authority for Electric System Obligations	19

ARTICLE VII ASSIGNMENT, SALE AND AMENDMENT

SECTION 7.1	Assignment by the Authority	19
SECTION 7.2	Assignment by the City	19
SECTION 7.3	Sale of Electric System Property	19
SECTION 7.4	Amendment Hereof	19

ARTICLE VIII EVENTS OF DEFAULT

SECTION 8.1	Events of Default Defined	20
SECTION 8.2	Remedies on Default	20
SECTION 8.3	No Remedy Exclusive	21
SECTION 8.4	Agreement to Pay Attorneys' Fees and Expenses	21
SECTION 8.5	No Additional Waiver Implied by One Waiver	21
SECTION 8.6	Trustee and Bond Owners to Exercise Rights	21
SECTION 8.7	Rights of the Owners of Parity Obligations	21

ARTICLE IX PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 9.1	Special Mandatory Prepayment	22
SECTION 9.2	Credit for Amounts on Deposit	22
SECTION 9.3	Optional Prepayment	22

ARTICLE X MISCELLANEOUS

SECTION 10.1	Further Assurances	22
SECTION 10.2	Amendment of Indenture	22
SECTION 10.3	Notices	22
SECTION 10.4	Third Party Beneficiary	23
SECTION 10.5	Payment on Non-Business Day	23
SECTION 10.6	Governing Law	23
SECTION 10.7	Binding Effect	23
SECTION 10.8	Severability of Invalid Provisions	23
SECTION 10.9	Article and Section Headings and References	24
SECTION 10.10	Execution of Counterparts	24
SECTION 10.11	Waiver of Personal Liability	24

EXHIBIT A – Schedule of Installment Payments
EXHIBIT B – Description of the Improvements

INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT, dated as of August 1, 2015, by and between the **CITY OF BANNING FINANCING AUTHORITY**, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the **CITY OF BANNING**, a general law city duly organized and existing under the laws of the State of California (the "City"),

WITNESSETH:

WHEREAS, the City owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, the Authority is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and the powers of such Authority include the power to issue bonds for any of its corporate purposes; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), which are currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the City desires to finance certain improvements (the "Improvements") to the Electric System; and

WHEREAS, the Authority has approved the issuance of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") to assist the City in providing funds to refund the 2007 Bonds currently outstanding and finance the Improvements; and

WHEREAS, the City has determined that it is necessary and desirable to enter into this Installment Sale Agreement pursuant to which the City is to purchase the Improvements and to make Installment Payments equal in time and amount to the debt service on the Bonds allocable to the Installment Sale Agreement; and

WHEREAS, the City has approved the purchase of the Improvements from the Authority as provided in this Agreement; and

WHEREAS, the Authority and the City have duly authorized the execution and delivery of this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the respective meanings specified in the Indenture. In addition, the following terms defined in this Section 1.1 shall, for all purposes of this Agreement, have the respective meanings herein specified.

"Acquisition and Construction" means, with respect to any of the Improvements, the acquisition, construction, improvement, equipping, renovation, remodeling or reconstruction thereof.

"Acquisition and Construction Costs" means, with respect to any of the Improvements, all costs of the Acquisition and Construction thereof which are paid from moneys on deposit in the Acquisition and Construction Fund, including but not limited to:

(a) all costs required to be paid to any person under the terms of any agreement for or relating to the Acquisition and Construction of the Improvements;

(b) obligations incurred for labor and materials in connection with the Acquisition and Construction of the Improvements;

(c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the Acquisition and Construction of the Improvements;

(d) all costs of engineering and architectural services, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper Acquisition and Construction of the Improvements;

(e) any sums required to reimburse the Authority or the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the Acquisition and Construction of the Improvements;

(f) all financing costs incurred in connection with the Acquisition and Construction of the Improvements, including but not limited to Costs of Issuance and other costs incurred in connection with this Agreement and the financing of the Improvements; and

(g) the interest components of the Installment Payments during the period of Acquisition and Construction of the Improvements, to the extent not paid from the proceeds of the Bonds deposited in the Interest Account pursuant to the Indenture.

"Additional Payments" means the amounts payable by the City pursuant to Section 4.10.

"Additional Revenues" means, with respect to the issuance of any Parity Obligations, any or all of the following amounts:

(i) An allowance for Net Revenues from any additions or improvements to or extensions of the Electric System to be financed from the proceeds of such Parity Obligations or from any other source, all in an amount equal to seventy-five percent (75%) of the estimated additional Net Revenues to be derived from such additions, improvements and extensions for the first twelve (12) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by the certificate or opinion of a qualified independent engineer employed by the City.

(ii) An allowance for Net Revenues arising from any increase in the charges made for service from the Electric System which has become effective prior to the incurring of such Parity Obligations, in an amount equal to the total amount by which the

Net Revenues would have been increased if such increase in charges had been in effect during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the City, all as shown by the certificate or opinion of an Independent Accountant.

"Adjusted Annual Debt Service" means, for any Fiscal Year or any designated twelve (12) month period in question, the Annual Debt Service for such Fiscal Year or twelve month period minus the sum of the amount of the Annual Debt Service with respect to Outstanding Parity Obligations to be paid during such Fiscal Year or twelve month period, from the proceeds of Parity Obligations or interest earned thereon (other than interest deposited into the Revenue Fund), all as set forth in a Written Certificate of the City.

"Agreement" means this Installment Sale Agreement, together with any duly authorized and executed amendments hereto.

"Annual Debt Service" means, for any Fiscal Year or any designated twelve (12) month period in question, (i) with respect to the Installment Payments, the required payments scheduled to be made with respect to all Outstanding Installment Payments in such Fiscal Year or twelve (12) month period, or (ii) with respect to Parity Obligations, the required payments scheduled to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or twelve (12) month period provided, that for the purposes of determining compliance with Section 4.7 and conditions for the issuance of Parity Obligations pursuant to Section 4.9:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations and by subparagraph (C) with respect to Parity Obligations as to which a Payment Agreement is in force, and by subparagraph (D) with respect to certain Parity Payment Agreements, interest on any Parity Obligation shall be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount of interest deemed to be payable on any Variable Interest Rate Parity Obligation shall be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the Assumed RBI-based Rate;

(C) Interest on Payments or Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Parity Obligations with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the City expected to be produced by the terms of such Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead shall be treated as an obligation bearing interest at a fixed interest rate, and (ii) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead shall be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Parity Obligation with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions shall be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the City based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the City to make payments to the Qualified Counterparty based on a fixed rate, payments by the City to the Qualified Counterparty shall be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the City shall be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual Variable Interest Rate on such Parity Obligation, and such Parity Obligation shall set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it shall be assumed that the variable interest rate payment component payable pursuant to the Payment Agreement is equal in amount to the variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the City or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that is required to be used to calculate interest on the Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it shall be assumed:

(a) City Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the City under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the City to the Qualified Counterparty will be based upon an interest rate equal to the Assumed RBI-based Rate, and payments by the Qualified Counterparty to the City will be based on the fixed rate specified by the Payment Agreement; and

(b) City Obligated to Make Payments Based on Fixed Interest Rate. If payments by the City under the Payment Agreement are based on a fixed interest rate and payments by the Qualified Counterparty are based on a variable interest rate index, payments by the City to the Qualified Counterparty will be based on an interest rate equal to the rate that is one hundred and five percent (105%) of the fixed interest rate specified by the Payment Agreement to be paid by the City, and payments by the Qualified Counterparty to the City will be based on a rate equal to the Assumed RBI-based Rate as the variable interest rate deemed to apply to the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (C)(l), (2) and (3) of this definition, the City shall not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (1 0) years or less;

(D) Debt Service on Parity Payment Agreements. No interest shall be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement

Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any other Parity Obligation, interest on that Parity Payment

(1) City Obligated to Make Payments Based on Fixed Interest Rate. If the City is obligated to make Payment Agreement Payments based on a fixed interest rate and the Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the City will be based on the specified fixed rate, and payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made; and

(2) City Obligated to Make Payments Based on Variable Interest Rate Index. If the City is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the City will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded.

Notwithstanding the provisions of subparagraphs (D)(l) and (2) of this definition, the City shall not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt · Service on any Balloon Parity Obligations, it shall be assumed that the principal of those Balloon Parity Obligations, together with interest thereon at a rate equal to the Assumed RBI-based Rate, will be amortized in equal annual installments over a term of thirty (30) years from the date of issuance.

"Assumed RBI-based Rate" means, as of any date of calculation, an assumed interest rate equal to ninety percent (90%) of the average RBI during the twelve (12) calendar months immediately preceding the month in which the calculation is made.

"Balloon Parity Obligation" means any Parity Obligation described as such in such Parity Obligation.

"Electric System" means the entire electric system of the City, including all facilities, properties and improvements at any time owned, controlled or operated by the City for the provision of electricity, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City, including the Improvements.

"Electric Utility Fund" means the fund by that name established and held by the City hereunder.

"Event of Default" means any of the events described in Section 8.1.

"Gross Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Electric System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the City from the sale, furnishing and supplying of electric or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Electric System (other than the non-by-passable usage based charge supporting the City's public benefit program), plus (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, including City reserves and the Reserve Fund established under Section 5.4 of the Indenture, but excluding in all cases customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City and excluding any proceeds of taxes required by law to be used by the City to pay bonds hereafter issued.

"Improvements" means the Electric System financed with the proceeds of the 2007 Bonds and the proceeds of the Bonds as described in Exhibit B attached hereto, as such description may be amended by the City from time to time pursuant to and in accordance with Section 3.2 hereof.

"Indenture" means the Indenture of Trust relating to the Bonds.

"Installment Payment Date" means the fifteenth (15th) day of each May and November during the Term of this Agreement, commencing November 15, 2015.

"Installment Payments" means the amounts payable by the City pursuant to Section 4.4, including any prepayments thereof pursuant to Article IX hereof.

"Maximum Annual Debt Service" means, with respect to any period of time, the greatest Annual Debt Service payable during such period of time on the Outstanding Installment Payments and any Outstanding Parity Obligations or Parity Obligations then being issued.

"Net Revenues" means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

"Operation and Maintenance Costs" means the reasonable and necessary costs and expenses paid by the City for maintaining and operating the Electric System, including but not limited to (a) the cost of utilities, including electricity and other forms of energy supplied to the Electric System, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Electric System in good repair and working order and (c) the reasonable administrative costs of the City attributable to the operation and maintenance of the Electric System, including insurance and other costs described in Article V hereof, but in all cases excluding (i) debt service payable on obligations incurred by the City with respect to the Electric System, including but not limited to the Installment Payments and debt service payments on any Parity Obligations, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature, (iv) City's public benefit program expenditures, and (v) periodic administrative transfers to the City's general fund.

"Outstanding," when used as of any particular time with reference to Installment Payments, means all Installment Payments which have not been paid or otherwise satisfied as provided in Article IX and when used as of any particular time with reference to Parity Obligations means all Parity Obligations which have not been paid or otherwise satisfied as provided in the proceedings and instruments pursuant to which such Parity Obligations have been issued or incurred. For purposes of Section 4.7 and Section 4.9 hereof only, (i) Parity Payment Agreements related to other Parity Obligations which are included in

determining Annual Debt Service on such other Parity Obligations, and (ii) Parity Bank Agreements as to which no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City shall not be considered Outstanding for purposes of this Agreement.

"Parity Obligations" means any leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued pursuant to and in accordance with Section 4.9 hereof.

"Parity Payment Agreement" means a Payment Agreement which is a Parity Obligation.

"Payment Agreement" means a written agreement for the purpose of managing or reducing the City's exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or forward basis by the City and a Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments, or any combination thereof or any similar device.

"Payment Agreement Payments" mean the amounts required to be paid periodically by the City to the Qualified Counterparty pursuant to a Payment Agreement.

"Payment Agreement Receipts" mean the amounts required to be paid periodically by the Qualified Counterparty to the City pursuant to a Payment Agreement.

"Purchase Price" means the amount to be paid by the City hereunder as the purchase price of the Improvements, being equal to the aggregate principal amount of the Bonds.

"Qualified Counterparty" means a party (other than the City) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has been or whose debt service obligations have been assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating the Bonds or any Parity Obligations (without regard to any gradations within a rating category), and (2) who is otherwise qualified to act as the other party to a Payment Agreement with the City under any applicable laws.

"RBI" means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the City, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate on actively traded thirty (30) year United States Treasury obligations.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bond, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

"Term of this Agreement" means the time during which this Agreement is in effect, as provided in Section 4.2 hereof.

"Variable Interest Rate" means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate shall be as specified in the applicable

Parity Obligation, which Parity Obligation shall also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate shall remain in effect, and (ii) the time or times based upon which any change in such variable interest rate shall become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

"Variable Interest Rate Parity Obligations" mean, for any-period of time, all in accordance with the definition of "Annual Debt Service" set forth in this Section 1.1, any Parity Obligations that bear a Variable Interest Rate during such period, except that (i) Parity Obligations shall not be treated as Variable Interest Rate Parity Obligations if the net economic effect of interest rates on particular payments of the Parity Obligations and interest rates on other payments of the same Parity Obligations, as set forth in such Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case, is to produce obligations that bear interest at a fixed interest rate, and (ii) Payments and Parity Obligations with respect to which a Payment Agreement is in force shall be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate.

ARTICLE II

COVENANTS AND REPRESENTATIONS

SECTION 2.1 Covenants and Representations of the City. The City makes the following covenants and representations to the Authority that as of the Closing Date:

(a) The City is a general law city duly organized and validly existing under the laws of the State, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions on its part contemplated hereby, by proper action has duly authorized the execution and delivery of this Agreement.

(b) The representatives of the City executing this Agreement are fully authorized to execute the same.

(c) This Agreement has been duly authorized, executed and delivered by the City, and constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms.

(d) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its facilities are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, facilities or operations of the Electric System.

(e) No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction herein and therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or threatened against or affecting the City or the Electric System which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or upon the financial condition or operation of the Electric System, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, or the financial condition or operations of the Electric System.

(g) The City has heretofore established the Electric Utility Fund into which the City deposits and will continue to deposit all Gross Revenues, and which the City will maintain throughout the Term of this Agreement.

(h) There are no outstanding bonds, notes, loans, leases, installment sale agreements or other obligations which have any security interest in the Net Revenues, which security interest or claim is superior to or on a parity with the Installment Payments.

(i) The City has determined that it is necessary and proper for City uses and purposes that the City acquire the Electric System in the manner provided for in this Agreement, in order to provide essential services and facilities to persons residing in the City.

SECTION 2.2 Covenants and Representations of the Authority. The Authority makes the following covenants and representations as the basis for its undertakings herein contained:

(a) The Authority is a joint powers authority, duly organized and existing under the laws of the State. The Authority has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of its governing body, the Authority has been duly authorized to execute, deliver and duly perform this Agreement and the Indenture.

(b) To finance the Authority's purchase of the Electric System, the Reserve Fund deposit required by Section 3.2(b) of the Indenture and the Costs of Issuance, the Authority will issue its Bonds, which will mature, bear interest and be subject to redemption as set forth in the Indenture.

(c) The Bonds will be issued under and secured by the Indenture, and pursuant thereto, certain of the Authority's interests in this Agreement have been assigned to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(d) The Authority is not in default under any of the provisions of the laws of the State, which default would affect its existence or its powers referred to in subsection (a) of this Section 2.2.

ARTICLE III

ISSUANCE OF BONDS; ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS

SECTION 3.1 The Bonds. The Authority has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of _____ Dollars ($[_____]). The Authority and the City agree that the proceeds of sale of the Bonds shall be paid to the Trustee on the Closing Date for deposit pursuant to the terms and conditions of the Indenture. The City hereby approves the Indenture, the assignment to the Trustee of the rights of the Authority assigned under and pursuant to the Indenture, and the issuance of the Bonds by the Authority under and pursuant to the Indenture.

SECTION 3.2 Documentation Required for the Improvements. Before any payment is made for the Improvements or any component thereof to be constructed by the City from amounts on deposit in the Acquisition and Construction Fund, the City shall have made available to the Authority detailed plans and specifications relating thereto. The City may from time to time make amendments to such plans and specifications, and may thereby change or modify the description of such Improvements or component thereof.

SECTION 3.3 Acquisition and Construction of the Improvements. The Authority hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided, for the Acquisition and Construction of the Improvements in accordance with plans and specifications, construction contracts and other documents relating thereto and approved by the City pursuant to all applicable requirements of law. Direct payment of the Acquisition and Construction Costs shall be made from amounts on deposit in the Acquisition and Construction Fund, pursuant to Section 3.5 of the Indenture. All contracts for, and all work relating to, the Acquisition and Construction of the Improvements shall be subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The Authority expects that the Acquisition and Construction of the Improvements will be completed on or before three years from the date of issuance of the Bonds; provided, however, that the failure to complete the Acquisition and Construction of the Improvements by the estimated completion date thereof shall not constitute an Event of Default hereunder or a grounds for termination hereof, nor shall such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments.

The City shall have the right from time to time in its sole discretion to amend the description of the Improvements to be financed and improved hereunder. In order to exercise such right, the City shall file with the Authority an amended Exhibit B hereto.

Upon the completion of the Acquisition and Construction of the Improvements, but in any event not later than thirty (30) days following such completion, the City Representative shall execute and deliver to the Authority and the Trustee a Written Certificate which (a) states that the Acquisition and Construction of such Improvements have been substantially completed, (b) identifies the total Acquisition and Construction Costs thereof, and (c) identifies (i) the amounts, if any, to remain on deposit in the Acquisition and Construction Fund for payment of Acquisition and Construction Costs thereafter intended to be requisitioned by the Authority and (ii) the amounts to be transferred to the Bond Service Fund.

SECTION 3.4 Grant of Easements. The City hereby grants to the Authority all necessary easements, rights of way and rights of access in and to all real property or interests therein now or hereafter acquired and owned by the City, as may be necessary or convenient to enable the Authority to

acquire, construct and install the Improvements thereon or thereabouts. The City covenants that it will execute, deliver and record any and all additional documents as may be required to be executed, delivered and recorded to establish such easements, rights of way and rights of access.

SECTION 3.5 Appointment of City as Agent of Authority. The Authority hereby appoints the City as its agent to carry out all phases of the Acquisition and Construction of the Improvements pursuant to and in accordance with the provisions hereof and the Indenture. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the Acquisition and Construction of the Improvements. The Authority, or the City as agent of the Authority hereunder, shall enter into, administer and enforce all purchase orders or other contracts relating to the Acquisition and Construction of the Improvements. All contracts for, and all work relating to, the Acquisition and Construction of the Improvements shall be subject to all applicable provisions of law relating to the acquisition, construction, improvement, and equipping of like facilities and property by the City.

ARTICLE IV

SALE OF IMPROVEMENTS; INSTALLMENT PAYMENTS

SECTION 4.1 Sale. In consideration for the Installment Payments and other consideration set forth in this Agreement, the Authority hereby agrees to sell, transfer and convey to the City all of the Authority's right title and interest in and to the Improvements, and the City hereby agrees to purchase the Improvements from the Authority, upon the terms and conditions set forth in this Agreement.

SECTION 4.2 Term. The Term of this Agreement shall commence on the Closing Date, and shall end on the date on which the City shall have paid all of the Installment Payments and all other amounts due and payable hereunder. The provisions of this Section 4.2 are subject in all respects to any other provisions of this Agreement relating to the termination hereof with respect to the Electric System or any portion thereof.

SECTION 4.3 Title. On the Closing Date, title to the Improvements shall be deemed conveyed to and vested in the City. The Authority and the City shall execute, deliver and cause to be recorded any and all documents necessary to convey such title to the City.

SECTION 4.4 Installment Payments.

(a) Obligation to Pay. The City agrees to pay to the Authority, its successors and assigns, but solely from the Net Revenues and other funds pledged hereunder, the Purchase Price, together with interest on the unpaid principal balance, payable in Installment Payments coming due and payable in the respective amounts and on the respective Installment Payment Dates specified in Exhibit A hereto. The Installment Payments shall be paid by the City to the Trustee, as assignee of the Authority pursuant to the Indenture, in the amounts and at the times as set forth in Section 4.5(b). The City shall receive a credit against any Installment Payment due hereunder to the extent of any monies on deposit in the Bond Service Fund on the applicable Installment Payment Date.

(b) Effect of Prepayment. In the event that the City prepays all remaining Installment Payments in full pursuant to Article IX, the City's obligations under this Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; provided, however, that the City's obligations to compensate and indemnify the Trustee pursuant to Sections 4.10 and 6.3 shall

survive such prepayment. In the event that the City prepays the Installment Payments in part but not in whole pursuant to Section 9.1, the principal component of each succeeding Installment Payment shall be reduced in inverse order of Installment Payment Date or pro rata among such dates, as determined by the City, and the interest component of each remaining Installment Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable on the Bonds thereby redeemed pursuant to Section 4.1 of the Indenture. In any event, the remaining Installment Payments shall equal in time and amount the remaining debt service on the Bonds.

(c) Rate on Overdue Payments. In the event the City should fail to make any of the payments required in this Section 4.4 and Section 4.10, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment, at a rate of interest per annum equal to the rate borne by the Outstanding Bonds.

(d) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Authority to the Trustee in trust, pursuant to the Indenture, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Office, all amounts payable by the City pursuant to this Section 4.4 and all amounts payable by the City pursuant to Article IX.

SECTION 4.5 Pledge and Application of Net Revenues.

(a) Pledge of Net Revenues. All of the Net Revenues are hereby irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments and any Parity Obligations, and except as otherwise provided herein the Net Revenues shall not be used for any other purpose so long as any of the Installment Payments remain unpaid. Such pledge, charge and assignment shall constitute a first lien on the Net Revenues and such other moneys for the payment of the Installment Payments and any Parity Obligations in accordance with the terms hereof.

(b) Deposits Into Funds; Transfers to Make Installment Payments. All of the Gross Revenues shall be deposited by the City immediately upon receipt in the Electric Utility Fund, which fund is hereby established and held by the City. The City shall use funds in the Electric Utility Fund to pay Operation and Maintenance Costs as such payments become due and payable. Tbe City covenants and agrees that all Net Revenues will be held by the City in the Electric Utility Fund in trust for the benefit of the Trustee (as assignee of the rights of the Authority hereunder) and the Bond Owners, and for the benefit of the owners of any Parity Obligations. On or before each Installment Payment Date, the City shall withdraw from the Electric Utility Fund, and transfer to the Trustee for deposit in the Revenue Fund, and to the trustee for any Parity Obligations, as applicable, an amount of Net Revenues which, together with the balance then on deposit in the Bond Service Fund (other than amounts resulting from the prepayment of the Installment Payments pursuant to Article IX and other than amounts required for payment of principal of or interest on any Bonds and Parity Obligations which bave matured or been called for redemption but which have not been presented for payment), is equal to the aggregate amount of the Installment Payments coming due and payable on the next succeeding Interest Payment Date, together with any amounts required to restore the balance in the Reserve Fund to the Reserve Requirement. In support of the foregoing, the City shall set aside each month equal amounts necessary to make such transfers on or before each Installment Payment Date.

The City shall manage, conserve and apply the Gross Revenues on deposit in the Electric Utility Fund in such a manner that all deposits required to be made pursuant to this subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default shall have occurred and be continuing hereunder, the City may use and apply Net Revenues in the Electric Utility Fund for (i) the payment of Additional Payments, (ii) the payment of any subordinate obligations or any unsecured obligations, (iii) the acquisition and construction of extensions and betterments to the Electric System, (iv) the prepayment of any obligations of the City relating to the Electric System, (v) transfers from the Electric Utility Fund to the General Fund of the City for in-lieu fees and administrative costs, or (vi) any other lawful purposes of the Electric Utility Fund. All monies in the Electric Utility Fund may be invested by the City from time to time in any Authorized Investment.

SECTION 4.6 Special Obligation of the City; Obligations Absolute. The City's obligation to pay the Installment Payments, the Additional Payments and any other amounts coming due and payable hereunder shall be a special obligation of the City limited solely to the Net Revenues. Under no circumstances shall the City be required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and the Additional Payments, nor shall any other funds or property of the City be liable for the payment of the Installment Payments and the Additional Payments and any other amounts coming due and payable hereunder.

The obligations of the City to make the Installment Payments and the Additional Payments from the Net Revenues and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City, the Authority or the Trustee of any obligation to the City or otherwise with respect to the Electric System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder shall have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Electric System, failure to complete the Acquisition and Construction of any Improvements by the estimated Completion Date thereof, the taking by eminent domain of title to or temporary use of any component of the Electric System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or this Agreement.

Nothing contained in this Section 4.6 shall be construed to release the Authority or the Trustee from the performance of any of the agreements on its part contained herein or in the Indenture, and in the event the Authority or the Trustee shall fail to perform any such agreements, the City may institute such action against the Authority or the Trustee as the City may deem necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Authority prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority hereby agrees to cooperate fully with the City and to take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City shall so request.

SECTION 4.7 Rates and Charges. The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

(a) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;

(b) Adjustable Annual Debt Service;

(c) All amounts, if any, required to restore the balance in the Reserve Fund and any reserve fund securing any Parity Obligations to the full amount of the Reserve Requirement and the reserve requirement with respect to any Parity Obligations; and

(d) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to one hundred twenty percent (120%) of the amount described in the preceding clause (b) for such Fiscal Year.

SECTION 4.8 Superior and Subordinate Obligations. The City shall not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Net Revenues over the Installment Payments. Nothing herein is intended or shall be construed to limit or affect the ability of the City to issue or incur (a) Parity Obligations pursuant to Section 4.9, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 4.9 Issuance of Parity Obligations. In addition to the Installment Payments, the City may issue or incur other bonds, notes, loans, advances or indebtedness payable from Net Revenues on a parity with the Installment Payments to provide financing for the Electric System in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Obligations subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of such Parity Obligations:

(a) No Event of Default shall have occurred and be continuing, and the City shall deliver a certificate to that effect to the Trustee;

(b) The Net Revenues, calculated in accordance with accounting principles consistently applied, as shown by the books of the City for the latest Fiscal Year or as shown by the books of the City for any more recent twelve (12) month period selected by the City, in either case verified by a certificate or opinion of an Independent Accountant employed by the City, plus (at the option of the City) the Additional Revenues, shall be at least equal to one hundred twenty percent (120%) of the amount of Adjusted Annual Debt Service;

(c) There shall be established upon the issuance of such Parity Obligations a reserve fund for such Parity Obligations in an amount equal to the lesser of (i) the maximum amount of

debt service required to be paid by the City with respect to such Parity Obligations during any Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code; and

(d) The trustee or fiscal agent for such Parity Obligations shall be the same entity performing the functions of Trustee under the Indenture.

The provisions of subsection (b) of this Section shall not apply to any Parity Obligations if all of the proceeds of which (other than proceeds applied to pay costs of issuing such Parity Obligations and to make a reserve fund deposit required pursuant to subsection (c) of this Section) shall be deposited in an irrevocable escrow for the purpose of paying the principal of and interest and premium (if any) on any Installment Payments or on any outstanding Parity Obligations.

SECTION 4.10 Additional Payments. In addition to the Installment Payments, the City shall pay when due all costs and expenses incurred by the Authority to comply with the provisions of the Indenture, including without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund or the Acquisition and Construction Fund), and shall pay to the Trustee upon request therefor all compensation for fees due to the Trustee and all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents, together with all amounts required to indemnify the Trustee pursuant to Section 6.3 hereof or Section 6.13 of the Indenture, and all costs and expenses of attorneys, auditors, engineers and accountants. The rights of the Trustee and the obligations of the City under this Section 4.10 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1 Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Agreement, all improvement, repair and maintenance of the Electric System shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Electric System, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Electric System resulting from ordinary wear and tear.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting any Electric System or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in its opinion, by nonpayment of any such items, the interest of the Authority hereunder or under the Indenture will be materially adversely affected, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority.

SECTION 5.2 Operation of Elcctric System. The City covenants and agrees to operate the Electric System in an efficient and economical manner and to operate, maintain and preserve the Electric System in good repair and working order. The City covenants that, in order to fully preserve and protect the priority and security of the Bonds, the City shall pay from the Gross Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Electric System which, if unpaid, may become a lien or charge upon the Gross Revenues or the Net Revenues prior or superior to the lien granted hereunder, or which may otherwise impair the ability of the City to pay the Installment Payments in accordance herewith.

SECTION 5.3 Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the Term of this Agreement, but only if and to the extent available at reasonable cost from reputable insurers, a standard comprehensive general insurance policy or policies in protection of the Authority, the City and their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Electric System. Said policy or policies shall provide coverage in such liability limits and shall be subject to such deductibles as shall be customary with respect to works and property of a like character. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.5, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such proceeds shall have been paid.

SECTION 5.4 Casualty Insurance. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Agreement, but only in the event and to the extent available from reputable insurers at reasonable cost, casualty insurance against loss or damage to any improvements constituting any part of the Electric System, covering such hazards as are customarily covered with respect to works and property of like character. Such insurance may be subject to deductible clauses which are customary for works and property of a like character. Such insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the City and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.5, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. All amounts collected from insurance against accident to or destruction of any portion of the Electric System shall be used to repair, rebuild or replace such damaged or destroyed portion of the Electric System, and to the extent not so applied, shall be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under Section 2.3(a) of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

SECTION 5.5 Insurance Net Proceeds: Form of Policies. The City shall pay or cause to be paid wben due the premiums for all insurance policies required by this Agreement. The Trustee shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. In the event that any insurance required pursuant to Sections 5.3 or 5.4 shall be provided in the form of self-insurance, the City shall file with the Trustee annually, within ninety (90) days following the close of each fiscal year, a statement of an independent actuarial consultant identifying the extent of such self-insurance and stating that such consultant has determined that the City maintains sufficient reserves with respect thereto. On or before July 1 of each year, the City shall certify to the Trustee that all policies of insurance are in conformance with the requirements of this Installment Sale Agreement and the Trustee shall be entitled to rely on such certification without independent investigation.

SECTION 5.6 Eminent Domain. Any amounts received as awards as a result of the taking of all or any part of the Electric System by the lawful exercise of eminent domain, at the election of the City (evidenced by a Written Certificate of the City filed with the Trustee and the Authority) shall either (a) be used for the acquisition or construction of improvements and extension of the Electric System, or (b) be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under Section 2.3(a) of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

SECTION 5.7 Records and Accounts. The City shall keep proper books of record and accounts of the Electric System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Electric System. Said books shall, upon prior request, be subject to the reasonable inspection by the Owners of not less than ten percent (10%) in aggregate principal amount of the Outstanding Bonds, or their representatives authorized in writing. The City shall cause the books and accounts of the Electric System to be audited annually by an Independent Accountant, not more than two hundred seventy (270) days after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Owners at the office of the City.

SECTION 5.8 Tax Covenants.

(a) Special Definitions. When used in this Section, the following terms have the following meanings:

"Computation Date" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Facilities" means any property the acquisition, construction or improvement of which was financed directly or indirectly with Gross Proceeds of the Bonds.

"Gross Proceeds" means any proceeds as defined in section 1.148-1(b) of the Tax Regulations (referring to sales, investment and transferred proceeds), and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of the Bonds.

"Investment" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Nongovernmental Output Property" means any property (or interest therein) that prior to its acquisition by the City was used by (or manufactured for or to the order of or held for the use by) any Nongovernmental Person (whether actually so used or not) in connection with any electric and gas generation, transmission, distribution, or related facilities.

"Nongovernmental Person" refers to any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, or an agency or instrumentality acting solely on behalf thereof.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Tax Code, in which Gross Proceeds of the Bonds are invested and that is not acquired to carry out the governmental purposes of the Bonds.

"Prior Issue" refers to the 2007 Bonds.

"Rebate Amount" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Tax Regulations" means the United States Treasury Regulations promulgated pursuant to sections 103 and 141 through 150 of the Tax Code.

"Yield" of

(1) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and

(2) the Bonds has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest to Become Taxable. The Authority and the City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner that if made or omitted, respectively, would cause the interest on any of the Bonds to fail to be excluded pursuant to section 103(a) of the Tax Code from the gross income of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Authority or the City receives a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Authority or the City, as the case may be, shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall at all times prior to the payment and cancellation of the last Bond to be paid and canceled:

(i) use their best efforts to ensure that the City exclusively own, operate and possess all of the Facilities that are to be refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity in respect of the use by any Nongovernmental Person of Gross Proceeds of the Bonds or the Prior Issue, or any of the Facilities, other than taxes of general application within the jurisdiction of the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

Without limiting the foregoing, except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, neither of the City nor the Authority will: (i) permit any Nongovernmental Person to hold any ownership, proprietary or possessory interest in the financed property; (ii) contract with any Nongovernmental Person

for the provision of operating or other services with respect to any function of the financed property (unless either (A) such arrangement requires no payment of fees to such Nongovernmental Person other than as direct reimbursement of third party costs or reasonable administrative overhead, or (B) such arrangement conforms to administrative guidance of the Internal Revenue Service in order to assure that such arrangement does not create a private business use relationship of the Nongovernmental Person to the financed property); or (iii) contract with any Nongovernmental Person for the sale of output or capacity of the financed property unless such contract is described either in section 1.141-7(c) of the Treasury Regulations (describing certain types of output contracts that do not have the effect of transferring the benefits of owning the property and the burdens of paying debt service on the financing of the property) or in section 1.141-7(f) of the Treasury Regulations (describing certain types of output contracts that while having the effect of transferring such benefits and burdens but nevertheless may be disregarded in evaluating private business use). As set forth above, for purposes of the preceding sentence, the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issues and the Original Issue.

Except as would not cause any Bond to be a "private activity bond", no portion of the Gross Proceeds will be used (directly or indirectly) for the acquisition of any interest in any Nongovernmental Output Property. As set forth above, for purposes of the preceding sentence, the City and the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issue.

(d) No Private Loan. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not use Gross Proceeds of any Bond to make or finance loans to any Nongovernmental Person. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (a) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (b) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (c) indirect benefits of such Gross Proceeds, or burdens and benefits of ownership of any property acquired, constructed or improved with such Gross Proceeds, are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause any Bond to become an "arbitrage bond" within the meaning of section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not at any time prior to the final maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, would materially exceed the Yield of such Bond within the meaning of said section 148.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not take or omit to take any action that would cause any Bond to be "federally guaranteed" within the meaning of section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The Authority shall timely file any information required by section 149(e) of the Tax Code with respect to the Bonds with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder:

(i) The Authority and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Bond is discharged. However, to the extent permitted by law, the Authority or the City may commingle Gross Proceeds of the Bonds with its other money, provided that the Authority or the City, as the case may be, separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Authority and the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder. The Authority and the City shall maintain a copy of the calculation with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) In order to assure the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, the Authority and the City, jointly and severally but without duplication, shall pay to the United States the amount that when added to the future value of previous rebate payments made for the Bonds equals (A) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Tax Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (B) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, such rebate payments shall be made by the Authority or the City at the times and in the amounts as are or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder for execution and filing by the Authority or the City.

(iv) The Authority and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (i) and (ii) above, and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) or other provision of the Tax Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority shall not, at any time prior to the final maturity of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to paragraph (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the Bonds not been relevant to either party.

(j) Bonds Not Hedge Bonds.

(i) The Authority and the City each represents that neither the Refunded Bonds nor any Bonds are or will become "hedge bonds" within the meaning of section 149(g) of the Tax Code.

(ii) Without limitation of paragraph (i) above, with respect to the Bonds (or to that portion of the Bonds that is to be applied to the refunding of the Refunded Bonds), either: (A) (I) on the date of issuance of the Refunded Bonds, the Authority or the City reasonably expected that at least 85% of the spendable proceeds of the Refunded Bonds would be expended within the three-year period commencing on such date of issuance, and (II) no more than 50% of the proceeds of the Refunded Bonds were invested in Nonpurpose Investments having a substantially guaranteed yield for a period of four years or more; or (B) (I) the provisions of section 149(g) of the Tax Code did not apply to the Refunded Bonds, (II) the average maturity of the refunding bonds is not later than that of the Refunded Bonds, and (III) the amount of the refunding bonds is not in excess of the amount of the Refunded Bonds.

(iii) For purposes of this paragraph (j), (A) "Refunded Bonds" shall refer to the bonds of any issue refunded or re-refunded (immediately or through multiple generations of prior issues) by the Bonds, (B) in applying paragraph (ii) above, "Refunded Bonds" shall refer only to bonds that are not refunding bonds, and (C) in applying clause (ii)(B) above, "refunding bonds" refers to, and said clause (ii)(B) has been applied separately to, each issue being refunded or re-refunded by the Bonds (and to the portion of each issue (treating such portion as a separate issue) to the extent such issue is being refunded or re-refunded by the Bonds) that was itself a refunding issue.

(k) Elections. The Authority hereby directs and authorizes any Authorized Authority Representative and the City hereby directs and authorizes any Authorized City Representative to make elections permitted or required pursuant to the provisions of the Tax Code or the Tax Regulations, as such Authorized Authority Representative or Authorized City Representative (after consultation with Bond Counsel) deems necessary or appropriate in connection with the Bonds, in the Tax Certificate relating to the Bonds or similar or other appropriate certificate, form or document.

SECTION 5.9 Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and the Indenture, and for the better assuring and confirming unto the Trustee and Owners of the Bonds the rights and benefits provided herein and in the Indenture.

SECTION 5.10 Continuing Disclosure. The City will comply with the continuing disclosure requirements promulgated under Securities and Exchange Commission Rule 15c2-12(b)(5).

ARTICLE VI

DISCLAIMER OF WARRANTIES; ACCESS

SECTION 6.1 Disclaimer of Warranties. The Authority and the Trustee make no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Electric System, or any other representation or warranty with respect to the Electric System. In no event shall the Authority or the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising

out of this Agreement or the Indenture for the existence, furnishing, functioning or City's use of the Electric System.

SECTION 6.2 Access to the Electric System. The City agrees that the Authority, the Trustee [and the Bond Insurer,] and any duly authorized representative thereof, shall have the right at all reasonable times to enter upon and to examine and inspect the Electric System. The City further agrees that the Authority and the Trustee, and any duly authorized representative thereof, shall have such rights of access to the Electric System as may be reasonably necessary to cause the proper maintenance of the Electric System in the event of failure by the City to perform its obligations hereunder.

SECTION 6.3 Release and Indemnification Covenants. The City to the extent permitted by law shall and hereby agrees to indemnify and save the Authority and the Trustee and their respective officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Electric System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Electric System, (d) any act or negligence of any sublessee of the City with respect to the Electric System, (e) the Acquisition and Construction of the Electric System or the authorization of payment of the Acquisition and Construction Costs, (f) the performance by the Trustee of its duties and obligations under the Indenture, including any duties referred to in Section 8.4 of the Indenture, or (g) the offer, sale and issuance of the Bonds. No indemnification is made under this Section or elsewhere in this Agreement for willful misconduct or negligence by the Authority or the Trustee, or their respective officers, employees, successors or assigns. The rights of the Trustee and the obligations of the City under this Section 6.3 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

SECTION 6.4 Non-Liability of Authority for Electric System Obligations. The Authority and its successor and assigns shall have no obligation and shall incur no liabilities or debts whatsoever for the obligations, liabilities and debts of the City incurred in connection with the Electric System.

ARTICLE VII

ASSIGNMENT, SALE AND AMENDMENT

SECTION 7.1 Assignment by the Authority. The Authority's rights under this Agreement, including the right to receive and enforce payment of the Installment Payments to be made by the City under this Agreement have been pledged and assigned to the Trustee pursuant to the Indenture, to which pledge and assignment the City hereby consents.

SECTION 7.2 Assignment by the City. This Agreement may not be assigned by the City.

SECTION 7.3 Sale of Electric System Property. Except as provided herein, the City covenants that the Electric System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole unless such sale is to a public entity. Neither the Net Revenues nor any other funds pledged or otherwise made available to secure payment of the Installment Payments shall be mortgaged, encumbered, sold, leased, pledged, any charge placed thereon, or disposed or used except as authorized by the terms of this Agreement. The City shall not enter into any agreement which impairs the operation of the Electric System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, or which otherwise would impair the rights of the Bond Owners and the owners of any Parity Obligations with respect to the Net Revenues. If any substantial part of the Electric System shall be sold, the payment therefor shall either (a)

be used for the acquisition or construction of improvements, extensions or replacements of facilities constituting part of the Electric System, or (b) to the extent not so used, be paid to the Trustee to be applied to pay or prepay the Installment Payments or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

SECTION 7.4 Amendment Hereof. The City and the Authority shall have the right to modify or amend this Agreement, without the consent of the Trustee or any of the Bond Owners or any of the owners of Parity Obligations, but only if such amendment or modification (a) does not cause interest represented by the Bonds to be includable in gross income for federal income tax purposes in the opinion of Bond Counsel, (b) does not materially adversely affect the interests of the Owners of the Bonds or the owners of any Parity Obligations in the opinion of Bond Counsel, (c) does not modify any of the rights or obligations of the Trustee without the Trustee's written consent, and (d) only is for any one or more of the following purposes:

(i) to provide for the issuance of Parity Obligations pursuant to Section 4.9;

(ii) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;

(iii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable; or

(iv) to amend any provision thereof for the purpose of complying with the applicable requirements of the Tax Code; provided[, however, that provisions hereof expressly recognizing or granting rights in the Bond Insurer shall not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer].

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.1 Events of Default Defined. The following events shall be Events of Default hereunder:

(a) Failure by the City to pay any Installment Payment when and as the same become due and payable hereunder.

(b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of thirty (30) days.

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding causes (a) or (b), for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; provided, however, that if the City shall notify the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60-day period, such failure shall not constitute an event of default hereunder if the City shall commence to cure such failure within

such sixy (960) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

(e) The occurrence and continuation of any event of default under and as defined in the instruments authorizing the issuance of any Parity Obligations.

SECTION 8.2 Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Trustee as assignee of the Authority shall have the right, at its option and without any further demand or notice, but subject in all respects to the provisions of Article VIII of the Indenture, to:

(a) declare all principal components of the unpaid Installment Payments and the principal amount of the unpaid Parity Obligations, together with accrued interest on the Installment Payments and interest then due and payable on the entire principal amount of the unpaid Parity Obligations at the net effective rate of interest per annum then borne by the Outstanding Bonds or the rate or rates of interest then applicable to such Parity Obligations from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable;

(b) take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement; and

(c) as a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment shall confer.

The provisions of the preceding clause (a), however, are subject to the condition that if, at any time after the principal components of the unpaid Installment Payments shall have been so declared due and payable pursuant to the preceding clause (a), and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee (including any fees and expenses of its attorneys), and any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) shall have been made good, then, and in every such case, with the written consent of the Trustee, shall rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon. As provided in Section 8.6, the Trustee shall be required to exercise the remedies provided herein in accordance with the Indenture.

SECTION 8.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

SECTION 8.4 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Bonds should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred.

SECTION 8.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 8.6 Trustee and Bond Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture.

SECTION 8.7 Rights of the Owners of Parity Obligations. Notwithstanding anything in this Article VIII to the contrary, it is hereby acknowledged and agreed that the rights of the Trustee and the Bond Owners hereunder in and to the Net Revenues and the Electric System shall be exercised on a parity and proportionate basis with the rights of the owners of any Parity Obligations and any fiduciary acting for the benefit of such owners. The provisions of this Article VIII, including but limited to Section 8.2(a) and the provisions of any instruments authorizing the issuance of any Parity Obligations, shall be construed in accordance with the foregoing sentence.

ARTICLE IX

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 9.1 Special Mandatory Prepayment. The principal component of the Installment Payments shall be prepaid in whole or in part on any date, in inverse order of Installment Payment Dates or pro rata among Installment Payment Dates as determined by the City, in integral multiples of $5,000, by paying a prepayment price equal to the aggregate principal components of the Installment Payments to be prepaid, together with the interest component of the Installment Payment required to be prepaid on or accrued to such date, as required by Sections 5.4 and 5.6 hereof, and pursuant to Section 2.3(a) of the Indenture. Any such prepayment price shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds pursuant to Section 2.3(a) of the Indenture. The City shall give the Trustee and the Authority written notice of its intention to exercise its option under the second preceding sentence not less than sixty (60) days in advance of the date of exercise (or such lesser period of time as shall be consented to by the Trustee and the Authority).

SECTION 9.2 Credit for Amounts on Deposit. In the event of prepayment of the principal components of the Installment Payments in full under this Article IX, such that the Indenture shall be discharged by its terms as a result of such prepayment, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Indenture shall be credited towards the amounts then required to be so prepaid.

SECTION 9.3 Optional Prepayment. The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part (in integral multiples of $5,000) to the extent the Authority has the ability to effect an optional redemption of the Bonds under the Indenture. The City shall give the Trustee and the Authority written notice of its intention to exercise its option under this Section not less than sixty (60) days in advance of the date of exercise (or such lesser period of time as shall be consented to by the Trustee and the Authority).

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Further Assurances. The City agrees that it will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Authority or the Trustee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

SECTION 10.2 Amendment of Indenture. The Authority covenants that it shall take no action to amend or supplement the Indenture in any manner without obtaining the prior written consent of the City to such amendment or supplement.

SECTION 10.3 Notices. Any notice, request, demand or other communication under this Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:
City of Banning
99 E. Ramsey Street
Banning, California 92220
Attention: City Manager
Telephone: (951) 922-3101
Facsimile: (951) 922-3112

If to the Authority:
City of Banning Financing Authority
99 E. Ramsey Street
Banning, California 92220
Attention: Executive Director
Telephone: (951) 922-3101
Facsimile: (951) 922-3112

If to the Trustee: U.S. Bank National Association
633 W. Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Corporate Trust Services
Telephone: (213) 615-6002
Facsimile: (213) 615-6119

SECTION 10.4 Third Party Beneficiary. The Trustee shall be and is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary. [To the extent that this Agreement confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Agreement the Bond Insurer shall be and is hereby made a third-party beneficiary hereunder and may enforce any such right remedy or claim conferred, given or granted hereunder.]

SECTION 10.5 Payment on Non-Business Day. Whenever in this Agreement any payment is required to be made on a day which is not a Business Day, such payment shall be made on the first Business Day following such day.

SECTION 10.6 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State.

SECTION 10.7 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Authority and the City, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 10.8 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 10.9 Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 10.10 Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

SECTION 10.11 Waiver of Personal Liability. No member of the City Council, officer, agent or employee of the City shall be individually or personally liable for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this

Agreement; but nothing herein contained shall relieve any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

IN WITNESS WHEREOF, the Authority and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

CITY OF BANNING,
as purchaser

By: _____
Title: City Manager

CITY OF BANNING FINANCING AUTHORITY,
as seller

By: _____
Title: Executive Director

EXHIBIT A

SCHEDULE OF INSTALLMENT PAYMENTS

Installment Payment Date	Principal Component	Interest Component	Total

EXHIBIT B

DESCRIPTION OF IMPROVEMENTS

[TO BE UPDATED]

Project Description	**Budgeted Cost** [1] [2]
Install new 34.5 kV circuit breaker in an existing spare position at the Southern California Edison Company ("SCE") Substation	$ 550,000
Construct a new North Substation which will include a 115 kV Edison switchyard and a 68 kV switchyard	5,106,000
Construct the first of three 15 MVA 69/12.47 kV transformers, and 12.47 V switchgear at North Substation	2,442,000
Install 12.4 kV underground feeders 1, 2, 3 and 4 at North Substation and pick up load formerly served from San Gorgonio and Midway Substations	1,820,000
Construct a new 34.5 kV breaker and a half switchyard in the southwest corner of San Gorgonio Substation and connect to existing 34.5/12.47 kV Bank 1 and Bank 2	4,440,000
Construct a new 69 kV overhead circuit (30,000 ft.) on wood poles with underbuild from San Gorgonio Substation to the new North Substation	3,230,000
Construct a new 69 kV switchyard and install two new 56 MVA, 34.5/69 kV transformers in the northwest corner of San Gorgonio Substation	7,770,000
Install a 12.47 kV underground feeder number 5 at San Gorgonio Substation	455,000
Install Bank 2 at North Substation	2,442,000
Construct a new 69 kV switchyard and install the first of two 10 MVA, 69/12.47 kV transformers in Midway Substation	3,330,000
Install Bank 2 at Midway Substation	2,442,000
Purchase one-half acre of land for East End Substation	1,110,000
Construct a new 69 kV underground circuit (12,000 ft.) from Midway Substation to the new North Substation	2,997,000
Construct a new 69 kV overhead circuit (22,500 ft.) on wood poles with underbuild from San Gorgonio Substation to the Midway Substation	2,442,000

(1) Preliminary, subject to change.
(2) Budgeted costs are based on projected increases in the Producer Price Index for construction materials and components.

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INDENTURE OF TRUST

by and among the

CITY OF BANNING FINANCING AUTHORITY

and

CITY OF BANNING

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of August 1, 2015

Relating to:

$[_____]
City of Banning Financing Authority
Refunding Revenue Bonds (Electric System Project) Series 2015

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY 2

SECTION 1.1 DEFINITIONS 2
SECTION 1.2 RULES OF CONSTRUCTION 10
SECTION 1.3 EQUAL SECURITY 11

ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS 11

SECTION 2.1 AUTHORIZATION OF BONDS 11
SECTION 2.2 TERMS OF BONDS 11
SECTION 2.3 REDEMPTION OF BONDS 12
SECTION 2.4 FORM OF BONDS 14
SECTION 2.5 EXECUTION OF BONDS 14
SECTION 2.6 TRANSFER AND EXCHANGE OF BONDS 14
SECTION 2.7 REGISTRATION BOOKS 15
SECTION 2.8 ISSUANCE IN TEMPORARY FORM 15
SECTION 2.9 BONDS MUTILATED, LOST, DESTROYED OR STOLEN 15
SECTION 2.10 BOOK-ENTRY SYSTEM; LIMITED OBLIGATION 16
SECTION 2.11 REPRESENTATION LETTER 16
SECTION 2.12 TRANSFERS OUTSIDE BOOK-ENTRY SYSTEM 17
SECTION 2.13 PAYMENTS AND NOTICES TO THE NOMINEE 17
SECTION 2.14 INITIAL DEPOSITORY AND NOMINEE 17

ARTICLE III ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS 17

SECTION 3.1 ISSUANCE OF BONDS 17
SECTION 3.2 APPLICATION OF PROCEEDS AND OTHER MONEYS 18
SECTION 3.3 RESERVE FUND 18
SECTION 3.4 COSTS OF ISSUANCE FUND 19
SECTION 3.5 ACQUISITION AND CONSTRUCTION FUND 19
SECTION 3.6 VALIDITY OF BONDS 20

ARTICLE IV REVENUES; FLOW OF FUNDS 20

SECTION 4.1 ASSIGNMENT OF REVENUES 20
SECTION 4.2 RECEIPT, DEPOSIT AND APPLICATION OF REVENUES 20
SECTION 4.3 INVESTMENTS 21
SECTION 4.4 ACQUISITION, DISPOSITION AND VALUATION OF INVESTMENTS 21

ARTICLE V COVENANTS OF THE AUTHORITY; SPECIAL TAX COVENANTS 22

SECTION 5.1 PUNCTUAL PAYMENT; COMPLIANCE WITH DOCUMENTS 22
SECTION 5.2 EXTENSION OF PAYMENT OF BONDS 22
SECTION 5.3 AGAINST ENCUMBRANCES 22
SECTION 5.4 POWER TO ISSUE BONDS AND MAKE PLEDGE AND ASSIGNMENT 22
SECTION 5.5 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS 23
SECTION 5.6 NO ADDITIONAL OBLIGATIONS 23
SECTION 5.7 TAX COVENANTS RELATING TO THE BONDS 23
SECTION 5.8 INSTALLMENT SALE AGREEMENT 27

TABLE OF CONTENTS
(continued)

Page

SECTION 5.9 WAIVER OF LAWS 27
SECTION 5.10 FURTHER ASSURANCES 27
SECTION 5.11 CONTINUING DISCLOSURE 27

ARTICLE VI THE TRUSTEE 28

SECTION 6.1 APPOINTMENT OF TRUSTEE 28
SECTION 6.2 PAYMENT OF BONDS; REGISTRATION BOOKS 28
SECTION 6.3 ACCEPTANCE OF TRUSTS 28
SECTION 6.4 FEES, CHARGES AND EXPENSES OF TRUSTEE 31
SECTION 6.5 NOTICE TO BOND OWNERS OF DEFAULT 31
SECTION 6.6 INTERVENTION BY TRUSTEE 31
SECTION 6.7 REMOVAL OF TRUSTEE 31
SECTION 6.8 RESIGNATION BY TRUSTEE 31
SECTION 6.9 APPOINTMENT OF SUCCESSOR TRUSTEE 31
SECTION 6.10 MERGER OR CONSOLIDATION 32
SECTION 6.11 CONCERNING ANY SUCCESSOR TRUSTEE 32
SECTION 6.12 APPOINTMENT OF CO-TRUSTEE 32
SECTION 6.13 INDEMNIFICATION; LIMITED LIABILITY OF TRUSTEE 33

ARTICLE VII MODIFICATION AND AMENDMENT OF THIS INDENTURE 33

SECTION 7.1 AMENDMENT BY CONSENT OF BOND OWNERS 33
SECTION 7.2 DISQUALIFIED BONDS 34
SECTION 7.3 ENDORSEMENT OR REPLACEMENT OF BONDS AFTER AMENDMENT 34
SECTION 7.4 AMENDMENT BY MUTUAL CONSENT 34

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS 35

SECTION 8.1 EVENTS OF DEFAULT AND ACCELERATION OF MATURITIES 35
SECTION 8.2 APPLICATION OF FUNDS UPON ACCELERATION 36
SECTION 8.3 OTHER REMEDIES: RIGHTS OF BOND OWNERS 36
SECTION 8.4 POWER OF TRUSTEE TO CONTROL PROCEEDING 36
SECTION 8.5 APPOINTMENT OF RECEIVERS 37
SECTION 8.6 NON-WAIVER 37
SECTION 8.7 RIGHTS AND REMEDIES OF BOND OWNERS 37
SECTION 8.8 TERMINATION OF PROCEEDINGS 38

ARTICLE IX [BOND INSURANCE] 38

SECTION 9.1 INSURER'S REQUIREMENTS TO GOVERN 38
SECTION 9.2 REQUIREMENTS OF THE INSURER 38
SECTION 9.3 PAYMENTS UNDER THE POLICY 39

ARTICLE X MISCELLANEOUS 40

SECTION 10.1 LIMITED LIABILITY OF AUTHORITY 40
SECTION 10.2 BENEFITS OF INDENTURE LIMITED TO PARTIES 40
SECTION 10.3 DISCHARGE OF INDENTURE 40
SECTION 10.4 SUCCESSOR IS DEEMED INCLUDED IN ALL REFERENCES TO PREDECESSOR 41

TABLE OF CONTENTS
(continued)

Page

SECTION 10.5	EXECUTION OF DOCUMENTS BY BOND OWNERS	41
SECTION 10.6	WAIVER OF PERSONAL LIABILITY	42
SECTION 10.7	PARTIAL INVALIDITY	42
SECTION 10.8	DESTRUCTION OF CANCELED BONDS	42
SECTION 10.9	FUNDS AND ACCOUNTS	42
SECTION 10.10	NOTICES	42
SECTION 10.11	UNCLAIMED MONEYS	43
SECTION 10.12	EXECUTION IN SEVERAL COUNTERPARTS	43
SECTION 10.13	GOVERNING LAW	43

EXHIBIT A [FORM OF BOND] 1
EXHIBIT B CITY OF BANNING FINANCING AUTHORITY REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT), SERIES 2015 1

INDENTURE OF TRUST

THIS INDENTURE OF TRUST, is dated as of August 1, 2015, by and among the **CITY OF BANNING FINANCING AUTHORITY**, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), the **CITY OF BANNING**, a municipal corporation, duly organized and existing under the laws of the State of California (the "City"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, and being qualified to accept and administer the trusts hereby created (the "Trustee").

WITNESSETH:

WHEREAS, the City owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, under Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), the Authority is authorized to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities including the City, and to provide financing for public capital improvements of public entities including the City; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the City desires to finance certain improvements (the "Improvements") to the Electric System; and

WHEREAS, for the purpose of providing funds to refund the 2007 Bonds and to finance the Improvements, the Authority has determined to issue its City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015, in the aggregate principal amount of $[_____] (the "Bonds"), all pursuant to and secured by this Indenture in the manner provided herein; and

WHEREAS, the City and the Authority have determined that it is necessary and desirable to enter into an Installment Sale Agreement, dated the date hereof (the "Installment Sale Agreement"), pursuant to which the Authority will sell the Improvements to the City in consideration for Installment Payments equal in time and amount to the debt service on the Bonds; and

[WHEREAS, in order to further enhance the payments of principal of and interest on the Bonds the Authority has obtained a municipal bond insurance policy from [BOND INSURER] (the "Insurer"); and]

WHEREAS, the Authority has determined that in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and premium (if any) thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the City and the Authority have determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute

this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and premium (if any) on all Bonds at any time issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY

SECTION 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Indenture and of any Supplemental Indenture and of the Bonds and of any certificate, opinion, request or other documents herein mentioned have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. In addition, all capitalized terms used herein and not otherwise defined in this Section 1.1 shall have the respective meanings given such terms in the Installment Sale Agreement.

"Acquisition and Construction Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.5.

"Additional Payments" means the payments so designated and required to be paid by the City pursuant to Section 4.10 of the Installment Sale Agreement.

"Agency" means the Community Redevelopment Agency of the City of Banning.

"Annual Debt Service" means, for each Bond Year with respect to each of the Bonds, the sum of (a) the interest payable on the Outstanding Bonds in such Bond Year, and (b) the principal amount of the Outstanding Bonds scheduled to be paid in such Bond Year, including from mandatory sinking fund payments.

"Authority" means the City of Banning Financing Authority, a public body corporate and politic duly organized and existing pursuant to a Joint Exercise of Powers Agreement, dated November 12, 2003, between the City and the Agency.

"Authorized Investments" means any securities in which the City may legally invest funds subject to its control.

"Authorized Representative" means: (a) with respect to the Authority, its President, Vice President, Treasurer, Executive Director, Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its President, Vice President, Treasurer, Executive Director or Secretary and filed with the City and the Trustee; and (b) with respect to the City, its Mayor, Mayor Pro Tem, City Manager, Finance Director, City Clerk or any other

person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its Mayor, Mayor Pro Tem, City Manager, Finance Director or City Clerk and filed with the Trustee.

"Bond Counsel" means (a) Norton Rose Fulbright US LLP, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

"Bond Service Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.2(a).

"Bond Year" means any twelve-month period commencing on June 2 in a year and ending on the next succeeding June 1, both dates inclusive; except that the first Bond Year shall commence on the Closing Date and end on June 1, 2016.

"Bonds" means the City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015, issued and at any time Outstanding pursuant to the Bond Law and this Indenture.

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the city in which the Office of the Trustee is located.

"City" means the City of Banning, a general law city duly organized and existing under the laws of the State of California.

"Closing Date" means August __, 2015, being the date of delivery of the Bonds to the Original Purchasers.

"Costs of Issuance" means all items of expense directly or indirectly relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to printing expenses, rating agency fees, filing and recording fees, fees, expenses and charges of the City, the Authority, the Trustee, and their respective counsel, including the Trustee's first annual administrative fee, costs of obtaining bond insurance, a Qualified Reserve Fund Credit Insttument or Permitted Investment for monies held in the funds and accounts created and held hereunder, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds and the execution and delivery of the Installment Sale Agreement.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.4.

"Depository" means DTC and its successors and assigns or if (a) the then Depository resigns from its functions as securities depository of the Bonds, or (b) the Authority discontinues use of the Depository pursuant to Section 2.12 hereof, any other securities depository which agrees to follow the procedures requested to be followed by a securities depository in connection with the Bonds and which is selected by the Authority with the consent of the Trustee.

"Depository Participant" means a member of, or participant in, the Depository.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Escrow Agent" means U.S. Bank National Association, acting as escrow agent under the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement, dated as of August 1, 2015, by and between the Escrow Agent and the Authority relating to the defeasance of the currently outstanding 2007 Bonds.

"Escrow Fund" means the Escrow Fund established under the Escrow Agreement and held by the Escrow Agent.

"Event of Default" means any of the events described in Section 8.1.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term "fair market value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit the value of which is determined in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) the value of which is determined in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security-State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California, but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

"Federal Securities" means any of the following (which solely for purposes of Section 10.3(c) hereof are noncallable and nonprepayable) and which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein: cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Moody's (or any combination of the foregoing) shall be used to effect defeasance of the Bonds [unless the Insurer otherwise approves].

"Indenture" means this Indenture, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

"Independent Accountant" means any accountant or firm of such accountants appointed and paid by the City or the Authority, and who, or each of whom (a) is in fact independent and not under domination of the City or the Authority; (b) does not have any substantial interest, direct or indirect, with the City or the Authority; and (c) is not connected with the City or the Authority as an officer or employee of the City or the Authority, but who may be regularly retained to make annual or other audits of the books of or reports to the City or the Authority.

"Information Services" means the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at *www.emma.msrb.org*; provided, however, in accordance with the then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called Bonds as the Authority may designate in writing to the Trustee.

"Installment Payments" means the payments required to be paid by the City pursuant to Section 4.4 of the Installment Sale Agreement, including all prepayments thereof.

"Installment Sale Agreement" means that certain Installment Sale Agreement by and between the Authority and the City, with respect to the sale of the Improvements, dated as of August 1, 2015, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

["Insurer" means [BOND INSURER], or any successor thereto or assignee thereof, as issuer of the Policy.]

"Interest Payment Date" means June 1 and December 1 in each year, beginning December 1, 2015, and continuing so long as any Bonds remain Outstanding.

"Maximum Annual Debt Service" means the largest of the sums obtained for any Bond Year after totaling the following for each such Bond Year:

A. The principal amount of all Outstanding Bonds maturing or required to be redeemed by mandatory sinking account redemption in such year; and

B. The interest which would be due during such year on the aggregate principal amount of Bonds which would be Outstanding in such year if the Bonds Outstanding on the date of such computation were to mature or be redeemed in accordance with the applicable maturity or mandatory sinking account redemption schedule. At the time and for the purpose of making such computation, the amount of Bonds already retired in advance of the above mentioned schedule or schedules shall be deducted pro rata from the remaining amounts thereon.

"Moody's" means Moody's Investors Service, its successors and assigns or, if such entity shall be dissolved, liquidated, or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the City, with the approval of the Authority, by notice to the Trustee.

"Nominee" means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant hereto.

"Office" means the corporate trust office of the Trustee in Los Angeles, California, or at such other or additional offices as may be specified in writing to the Authority and the City.

"Original Purchasers" means Stifel, Nicolaus & Company, Inc. and Williams Capital Group, as the original purchasers of the Bonds upon their delivery by the Trustee on the Closing Date.

"Outstanding", except as provided for in Section 7.2, when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been

discharged in accordance with Section 10.3; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

"Owner", when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Registration Books.

"Permitted Investments" means [CONFIRM]

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership

2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration
Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration
Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations

3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System
Consolidated systemwide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2, including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee or such holding company provides investment advisory or other management services.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks including the Trustee, its parent holding company and their affiliates. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF, which may be from or with the Trustee, its parent holding company and their affiliates.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements, with providers rated, or guaranteed by guarantors rated, at the time of investment, in the top three categories (without regard to modifiers) by any two or more Rating Agencies.

H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories (without regard to modifiers) assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P including the Trustee, its parent holding company and their affiliates.

K. Repurchase Agreements which satisfy the following criteria:

Repurchase Agreements provide for the transfer of securities from a dealer bank, financial entity or securities firm (seller/borrower) to the City (buyer/lender) or the Trustee or a third party custodial agent, and the transfer of cash from the City to the dealer bank, financial entity or securities firm with an agreement that the dealer bank, financial entity or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the municipal entity and a dealer bank or securities firm or other financial entity

   a. Primary dealers on the Federal Reserve reporting dealer list which are rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   b. Banks rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies, or

   c. Financial Entities rated at the time of investment in the top three rating categories (without regard to modifiers) by two or more Rating Agencies.

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are those securities listed in (A), (B) and (C) above.

   b. The term of the repo may be up to 30 days, or greater than 30 days if subject to put or redemption at par to pay project/construction costs and/or debt service on the Bonds.

   c. The collateral must be delivered to the municipal entity, trustee or third party acting as agent for the trustee before/simultaneous with payment (perfection by possession of certificated securities).

   d. Valuation of Collateral

      (l) The securities must be valued weekly, marked-to-market at current market price plus accrued interest

         (a) The value of collateral must be equal to at least 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm or financial entity under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are any of those listed in (C) above, then the value of collateral must equal 105%.

L. U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks (including the Trustee and its affiliates) which have a rating on their short-term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1+" by S&P and maturing no more than 360 days after the date of purchase, provided that ratings on holding companies are not considered as the rating of the bank.

M. Local Agency Investment Fund of the State of California ("LAIF"), created pursuant to Section 16429.1 of the California Government Code.

N. The County Treasurer's Investment Pool so long as such Pool is rated AA- or better by S&P or Fitch or Aa3 or better by Moody's.

["Policy" means the policy of municipal bond insurance policy securing the payment of the principal of and interest on the Bonds, when due for payment.]

"Prior Trustee" means U.S. Bank National Association, as trustee under the Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010 pertaining to the 2007 Bonds.

"Qualified Reserve Fund Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee pursuant to Section 3.3(d) provided that all of the following requirements are met: (i) the long-term credit rating of such bank or insurance company at the time of delivery of such letter of credit or surety bond is rated in one of the two highest rating categories by Moody's or S&P; (ii) such letter of credit or surety bond has a term of at least twelve (12) months; (iii) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 3.3(d); and (iv) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the amounts available to repay the principal of and interest on the Bonds.

"Record Date" means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month preceding such Interest Payment Date.

"Redemption Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.2(c).

"Registration Books" means the books maintained by the Trustee pursuant to Section 2.7 for the registration and transfer of ownership of the Bonds.

"Reserve Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.3.

"Reserve Requirement" means, as of any date of calculation by the City, the least of (i) ten percent (10%) of the proceeds (within the meaning of section 148 of the Tax Code) of the Bonds; (ii) 125% of average Annual Debt Service as of the date issuance of the Bonds; or (iii) the Maximum Annual Debt Service for that and any subsequent year.

"Responsible Officer" means any Vice President, Assistant Vice President or Trust Officer or any other officer of the Trustee having regular responsibility for corporate trust matters related to this Indenture.

"Revenue Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.2.

"Revenues" means (a) all amounts received by the Authority or the Trustee pursuant or witb respect to the Installment Sale Agreement, including, without limiting the generality of the foregoing, all of the Installment Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), prepayments, insurance proceeds, and condemnation proceeds, but excluding any Additional Payments; (b) all moneys and amounts held in the funds and accounts established hereunder; and (c) investment income with respect to any moneys held by the Trustee hereunder.

"S&P" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business, its successors and assigns or, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a statistical rating organization, any other nationally recognized securities rating agency designated by the Authority.

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, N.Y. 10041-0099 Attn. Call Notification Department, Fax (212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Request of the Authority delivered to the Trustee.

"State" means the State of California.

"Supplemental Indenture" means any indenture, agreement, resolution or other instrument hereafter duly adopted or executed in accordance with the provisions of Section 7.1 of this Indenture.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bond, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

"Tax Regulations" means temporary and permanent regulations promulgated under or with respect to Section 103 of the Tax Code.

"Trustee" means U.S. Bank National Association, appointed by the Authority to act as trustee hereunder pursuant to Section 6.1, and its assigns or any other corporation or association which may at any time be substituted in its place, as provided in Section 6.1.

"Written Certificate", "Written Request" and "Written Requisition" of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

SECTION 1.2 Rules of Construction. All references in this Indenture to "Articles," "Sections," and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 1.3 Equal Security. In consideration of the acceptance of the Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract among the Authority, the City, the Trustee and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

SECTION 2.1 Authorization of Bonds. The Authority has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that, as of the date of issuance of the Bonds, all things, conditions, and acts required by law to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now authorized, pursuant to the Bond Law and each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture. Accordingly, the Authority hereby authorizes the issuance of the Bonds pursuant to the Bond Law and this Indenture.

SECTION 2.2 Terms of Bonds. The Bonds authorized to be issued by the Authority under and subject to the Bond Law and the terms of this Indenture shall be designated the "City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015", and shall be issued in the original principal amount of _____ Dollars ($[_____]).

The Bonds shall be issued in fully registered form without coupons in denominations of $5,000 or any integral multiple thereof, so long as no Bond shall have more than one maturity date. The Bonds shall be dated the Closing Date, shall mature on June 1 in each of the years and in the amounts, and shall bear interest at the rates, as follows:

Maturity Date (June 1)	Principal Amount	Interest Rate Per Annum

Interest on the Bonds shall be payable semiannually calculated based on a 360-day year of twelve (12) thirty-day months on each Interest Payment Date to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed on the Interest Payment Date by first class mail to the Owner at the address of such Owner as its appears on the Registration Books; provided however, that payment of interest will be made by wire transfer in immediately available funds to an account at a financial institution in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall fumish written wire instructions to the Trustee before the applicable Record Date. Any such written request shall remain in effect until rescinded in writing by the Owner. Principal of any Bond and any premium upon redemption shall be paid by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee. Principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America.

Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

SECTION 2.3 Redemption of Bonds.

(a) Special Mandatory Redemption. The Bonds shall be subject to special mandatory redemption as a whole or in part, on any date, from proceeds of an eminent domain award or proceeds of casualty insurance not used to repair or rebuild the Electric System, which proceeds may be used for such purpose pursuant to Sections 5.4 or 5.6 of the Installment Sale Agreement, at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, without premium.

(b) Redemption from Prepayments of Installment Payments. The Bonds maturing on or before June 1, 2025 shall not be subject to optional redemption prior to maturity. The Bonds maturing on or after June 1, 2026 shall be subject to redemption prior to their respective maturity dates, at the option of the Authority, by lot within a maturity on any date on or after June 1, 2025, from prepayment of Installment Payments made at the option of the City at the redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

(c) Mandatory Sinking Fund Redemption. The Bonds maturing on June 1, 20__ and June 1, 20__ are also subject to redemption prior to their respective stated maturities, on any June 1 on or after June 1, 20__ and June 1, 20__, respectively, in part by lot, from mandatory sinking account payments at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, without premium, as set forth below in the aggregate respective principal amounts and on the respective dates as set forth in the following tables; provided, however, that if some but not all of such Bonds have been redeemed pursuant to optional or special mandatory redemption provisions of the Indenture, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of $5,000. The City shall provide the Trustee with a revised sinking fund schedule.

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

(d) Notice of Redemption. The Trustee on behalf and at the expense of the Authority shall mail (by first-class mail, postage prepaid) notice of any redemption to: (i) the respective Owners of any Bonds designated for redemption, at least twenty (20) but not more than sixty (60) days prior to the redemption date, at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services, at least thirty (20) but not more than sixty (60) days prior to the redemption date; provided, however, that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. In addition to mailed notice, the notice to the Securities Depositories and Information Services shall be given by telephonically confirmed facsimile transmission or overnight delivery service or by such other means approved by such institutions. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the bond numbers and the maturity or maturities (in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Any notice given pursuant to this paragraph may be rescinded by Written Certificates given to the Trustee by the Authority and the Trustee shall provide notice of such rescission as soon thereafter as practicable in the same manner, and to the same recipients, as notice of such redemption was given pursuant to this Section, but in no event later than the date set for redemption.

(e) Selection of Bonds for Redemption. Whenever provision is made in the foregoing subsection (a) or (b) of this Section for the redemption of Bonds of more than one maturity, the Bonds to be redeemed shall be selected in inverse order of maturity or, at the election of the Authority evidenced by a Written Request of the Authority filed with the Trustee at least sixty (60) days prior to the date of redemption, on a pro rata basis among maturities (provided that, in any event, the principal and interest due on the Bonds Outstanding following such redemption shall be equal in time and amount to the unpaid

payments due under the Installment Sale Agreement); and in each case, the Trustee shall select the Bonds to be redeemed within any maturity by lot in any manner which the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, all Bonds shall be deemed to be comprised of separate $5,000 portions and such portions shall be treated as separate Bonds which may be separately redeemed.

(f) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same series and maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(g) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption shall have been duly provided, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. All Bonds redeemed pursuant to this Section shall be canceled and shall be destroyed by the Trustee.

SECTION 2.4 Form of Bonds. The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

SECTION 2.5 Execution of Bonds. The Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signature of its President and attested by the manual or facsimile signature of its Secretary. The Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though the individual who signed the same had continued to be such officer of the Authority. Also, any Bond may be signed on behalf of the Authority by any individual who on the actual date of the execution of such Bond shall be the proper officer although on the nominal date of such Bond such individual shall not have been such officer.

Only those Bonds that bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.6 Transfer and Exchange of Bonds.

(a) Transfer of Bonds. The registration of any Bond may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond or Bonds shall be surrendered for registration of transfer, the Trustee shall execute and deliver a new Bond or Bonds of the same maturity, interest rate and aggregate principal amount, in any authorized denominations. The Authority shall pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Bond Owner of any tax or other governmental charge required to be paid with respect to such transfer.

(b) Exchange of Bonds. Bonds may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same interest rate and maturity. The Authority shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee may require the payment by the Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) Limitations on Transfer or Exchange. The Trustee may refuse to transfer or exchange either (i) any Bond during the period established by the Trustee for the selection of Bonds for redemption pursuant to Section 2.3, or (ii) the portion of any Bond which the Trustee has selected for redemption pursuant to the provisions of Section 2.3.

SECTION 2.7 Registration Books. The Trustee will keep or cause to be kept, at its Office, sufficient records for the registration and transfer of the Bonds, which shall at all times during normal business hours, and upon reasonable notice, be open to inspection by the City and the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided.

SECTION 2.8 Issuance in Temporary Form. The Bonds may be issued initially in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and be registered and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds, it will execute and fumish definitive Bonds without delay, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

SECTION 2.9 Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series, tenor and authorized denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the order of, the Authority. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to the Trustee and indemnity for the Authority and the Trustee satisfactory to the Trustee shall be given, the Authority, at the expense of the Bond Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond the Trustee may pay the same without surrender thereof upon receipt of indemnity for the Authority and the Trustee satisfactory to the Trustee). The Authority may require payment of a reasonable fee for each new Bond issued under this Section and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original contractual obligation on the part of the Authority whether or not the Bond alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture wish all other Bonds secured by this Indenture.

SECTION 2.10 Book-Entry System; Limited Obligation. The Bonds shall be initially executed, authenticated and delivered in the form of a separate single fully registered Bond (which may he typewritten) for each of the maturities of the Bonds. Upon initial execution, authentication and delivery, the ownership of each such global Bond shall be registered in the Bond Register in the name of the Nominee as nominee of the Depository. Except as provided in Section 2.12 hereof, all of the Outstanding Bonds shall be registered in the Bond Register kept by the Trustee in the name of the Nominee and the Bonds may be transferred, in whole hut not in part, only to the Depository, to a successor Depository or to another nominee of the Depository or of a successor Depository. Each global Bond shall bear a legend substantially to the following effect: "UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OE TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Authority and the Trustee shall have no responsibility or obligation to any Depository Participant or to any person on behalf of which such a Depository Participant holds a heneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Authority and the Trustee shall have no responsihility or obligation with respect to (a) the accuracy of the records of the Depository, the Nominee or any Depository Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Depository Participant, beneficial owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any Redemption Notice, (c) the selection hy the Depository and the Depository Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Depository Participant, beneficial owner or any other person, other than the Depository, of any amount with respect to principal of, interest on, or premium, if any, of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on, the Bond, for the purpose of giving Redemption Notices with respect to the Bonds and other notices with respect to the Bonds, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

The Trustee shall pay all principal of, premium, if any, and interest on, the Bonds only to or upon the order of the respective Bond Owners, as shown in the Bond Register kept by the Trustee, or their respective attorneys duly authorized in writing, and all such payments shall be valid hereunder with respect to payment of principal of, premium, if any, and interest on, the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner, as shown in the Bond Register, shall receive a Bond evidencing the ohligation to make payments of principal of, premium, if any, and interest on, such Bond pursuant to this Indenture. Upon delivery by the Depository to the Trustee and the Authority of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word Nominee in this Indenture shall refer to such new nominee of the Depository.

SECTION 2.11 Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authorized Representative is hereby authorized to execute, countersign and deliver on behalf of the Authority to such Depository a letter from the Authority representing such matters as shall be necessary to so qualify the Bonds (the "Representation Letter"). The execution and delivery of

the Representation Letter shall not in any way limit the provisions of Section 2.10 hereof or in any other way impose upon the Authority or the City any obligation whatsoever with respect to persons having beneficial interests in the Bonds other than the Owners, as shown in the Bond Register kept by the Trustee. In the written acceptance by the Trustee of the Representation Letter, the Trustee shall agree, and hereby agrees, to take all actions necessary for all representations of the Trustee in the Representation Letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of the Representation Letter, the Authority Representative and all other officers of the Authority, and their respective deputies and designees, each is hereby authorized to take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

SECTION 2.12 Transfers Outside Book-Entry System. If at any time the Depository notifies the Authority that it is unwilling or unable to continue as Depository with respect to the Bonds or if at any time the Depository shall no longer be registered or in good standing under the Securities Exchange Act or other applicable statute or regulation and a successor Depository is not appointed by the Authority within 90 days after the Authority receives notice or becomes aware of such condition, as the case may be, Section 2.10 hereof shall no longer be applicable and the Authority shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. In addition, the Authority may determine at any time that the Bonds shall no longer be represented by global bonds and that the provisions of Section 2.10 hereof shall no longer apply to the Bonds. In any such event the Authority shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. Bonds executed, authenticated and delivered in exchange for global bonds pursuant to this Section 2.12 shall be registered in such names and delivered in such Authorized Denominations as the Depository, pursuant to instructions from the Depository Participants or otherwise, shall instruct the Authority and the Trustee. The Trustee shall deliver such bonds representing the Bonds to the persons in whose names such Bonds are so registered.

If the Authority determines to replace the Depository with another qualified securities depository, the Authority shall prepare or cause to be prepared a new fully-registered global bond for each of the maturities of the Bonds, registered in the name of such successor or substitute securities depository or its nominee, or make such other arrangements as are acceptable to the Authority, the Trustee and such securities depository and not inconsistent with the terms of this Indenture.

SECTION 2.13 Payments and Notices to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments of principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed by the Depository.

SECTION 2.14 Initial Depository and Nominee. The initial Depository under this Indenture shall be DTC. The initial Nominee shall be Cede & Co., as nominee of DTC.

ARTICLE III

ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS

SECTION 3.1 Issuance of Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver Bonds in the aggregate principal amount of _____ Dollars ($[_____]), and shall deliver the Bonds to the Trustee for authentication and delivery to the Original Purchasers upon the Written Request of the Authority.

SECTION 3.2 Application of Proceeds and Other Moneys. Upon the receipt of payment for the Bonds on the Closing Date, the Trustee shall deposit the full amount thereof as follows:

(a) The Trustee shall deposit into the Costs of Issuance Fund the amount of $[_____].

(b) The Trustee shall deposit into the Acquisition and Construction Fund the amount of $[_____].

(c) The Trustee shall transfer to the Escrow Agent for deposit into Escrow Fund the amount of $_____, representing the amount, together with the amount deposited therein from certain other funds and accounts held by the Prior Trustee, necessary to refund the 2007 Bonds.

(d) The Trustee shall deposit into the Reserve Fund the amount of $[_____] equaling the Reserve Requirement.

(e) [The Trustee shall deposit into the Bond Service Fund the amount of $[_____] representing capitalized interest on the Bonds.]

The Trustee may, in its discretion, establish a temporary fund or account in its books and records to facilitate such deposits.

SECTION 3.3 Reserve Fund. (a) There is hereby created a separate fund to be known as the "Reserve Fund", which shall be held in trust by the Trustee. An amount equal to the Reserve Requirement shall be maintained in the Reserve Fund at all times, subject to the provisions of Section 4.2(b), and any deficiency therein shall be replenished from the first available Revenues pursuant to Section 4.2(b).

(b) Moneys in the Reserve Fund sball be used solely for the purpose of paying the principal of and interest on the Bonds, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to Section 2.3(c), in the event that the moneys in the Bond Service Fund are insufficient therefor. In the event that the amount on deposit in the Bond Service Fund on any date is insufficient to enable the Trustee to pay in full the aggregate amount of principal of and interest on the Bonds coming due and payable, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to Section 2.3(c), the Trustee shall withdraw the amount of such insufficiency from tbe Reserve Fund and transfer sucb amount to the Bond Service Fund.

(c) In the event that the amount on deposit in the Reserve Fund exceeds the Reserve Requirement on the fifteenth (15th) calendar day of the month preceding any Interest Payment Date, the amount of such excess shall be withdrawn therefrom by the Trustee and transferred to the Bond Service Fund and credited against the Installment Payment or Installment Payments next due from tbe City.

(d) Tbe Authority may fund all or a portion of the Reserve Requirement with one or more Qualified Reserve Fund Credit Instruments. Upon deposit of any Qualified Reserve Fund Credit Instrument with the Trustee, the Trustee shall transfer any excess amounts then on deposit in the Reserve Fund into a segregated account of the Bond Service Fund, which monies shall be applied at the written direction of the Authority either (i) to the payment witbin one year of the date of transfer of capital expenditures of the Authority permitted by law, or (ii) to the redemption of Bonds on tbe earliest succeeding date on whicb such redemption is permitted hereby, and pending such application shall be held either not invested in investment property (as defined in section 148(b) of the Tax Code), or invested in such property to produce a yield that is not in excess of the yield on the Bonds; provided, however, that

the Authority may by written direction to the Trustee cause an alternative use of such amounts if the Authority shall first have obtained a written opinion of nationally recognized bond counsel substantially to the effect that such alternative use will not adversely affect the exclusion pursuant to section 103 of the Tax Code of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes.

In any case where the Reserve Fund is funded with a combination of cash and a Qualified Reserve Fund Credit Instrument, the Trustee shall deplete all cash balances before drawing on the Qualified Reserve Fund Credit Instrument. With regard to replenishment, any available moneys provided by the Authority shall be used first to reinstate the Qualified Reserve Fund Credit Instrument and second, to replenish the cash in the Reserve Fund. In the event the Qualified Reserve Fund Credit Instrument is drawn upon, the Authority shall make payment of interest on amounts advanced under the Qualified Reserve Fund Credit Instrument after making any payments pursuant to subsection (a) of Section 4.2.

SECTION 3.4 Costs of Issuance Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the "Costs of Issuance Fund". Except as otherwise provided herein, moneys in the Costs of Issuance Fund shall be used solely for the payment of the Costs of Issuance. The Trustee shall disburse moneys in the Costs of Issuance Fund from time to time to pay Costs of Issuance (or to reimburse the Authority for payment of Costs of Issuance) upon receipt by the Trustee of a Written Request of the Authority, substantially in the form of the first such request delivered by the Authority to the Trustee on the Closing Date, which: (a) states with respect to each disbursement to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment will be made, (iii) the amount to be disbursed, (iv) that each obligation mentioned therein is a proper charge against the Costs of Issuance Fund and has not previously been disbursed by the Trustee from amounts in the Costs of Issuance Fund, and (v) that the amount of such disbursement is for payment of Costs of Issuance incurred and payable by the Authority; (b) specifies in reasonable detail the nature of the obligation; and (c) is accompanied by a bill or statement of account (if any) for each obligation. Upon the earlier of 180 days from the Closing Date or the filing with the Trustee of a Written Certificate of the Authority stating that all Costs of Issuance have been paid, the Trustee shall withdraw all amounts then on deposit in the Costs of Issuance Fund and transfer such amounts to the Bond Service Fund.

SECTION 3.5 Acquisition and Construction Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the "Acquisition and Construction Fund." Except as otherwise provided herein, moneys in the Acquisition and Construction Fund shall be used solely for the payment of Acquisition and Construction Costs, as defined in the Installment Sale Agreement. Before any payment from the Acquisition and Construction Fund shall be made, the City shall file or cause to be filed with the Trustee, a Requisition of the City which shall be substantially in the form attached hereto as Exhibit B. The Trustee shall be entitled to rely on the representations of the City contained in such Requisition and shall not be required to independently verify the contents of such Requisition.

Within five (5) Business Days following receipt of each such Requisition, the Trustee shall pay the amount set forth in such Requisition as directed by the terms thereof out of the Acquisition and Construction Fund. Upon the Written Request of the City accompanied by a Written Certificate of the City stating that all Acquisition and Construction Costs have been paid or provision made for their payment, any unexpended moneys in the Acquisition and Construction Fund may be used to pay the costs associated with any other improvements to the Electric System, provided that in the opinion of Bond Counsel such use of the proceeds of the Bonds shall not adversely affect the exclusion of interest on the Bonds from gross income of the owners thereof. Any unexpended moneys in the Acquisition and Construction Fund subsequent to the payment of all Acquisition and Construction Cost which are not used to pay the cost of other improvements to the Electric System shall be transferred to the Bond Service Fund upon receipt by the Trustee of a Written Request of the City accompanied by a Written Certificate

of the City stating that all Acquisition and Construction Costs have been paid or provision made for their payment.

SECTION 3.6 Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be affected in any way by any proceedings taken by the Authority or the Trustee with respect to or in connection with the Installment Sale Agreement and the recital contained in the Bonds that the same are issued pursuant to the Bond Law shall be conclusive evidence of their validity and of the regularity of their issuance.

ARTICLE IV

REVENUES; FLOW OF FUNDS

SECTION 4.1 Assignment of Revenues. The Authority hereby assigns to the Trustee, on behalf of the Owners, all of the Authority's right, title and interest to and in the Revenues and all of the right, title and interest of the Authority in the Installment Sale Agreement (other than the rights of the Authority under Sections 4.10, 6.3 and 8.4 thereof). Subject to Section 4.3, all Revenues the Trustee collects and receives shall be applied to the payment of principal of and interest and premium (if any) on the Bonds equally, without priority for series, issue, number or date, in accordance with the terms hereof. So long as any of the Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that a portion of the Revenues may be used for purposes as expressly permitted by Section 4.2 hereof.

The assignment under this section to the Trustee is solely in the Trustee's capacity as Trustee under this Indenture and the duties, powers and liabilities of the Trustee in acting pursuant to such assignment shall be subject to the provisions of this Indenture, including, without limitation, the provisions of Article VI hereof. The Trustee shall not be responsible for any representations, warranties, covenants or obligations of the Authority.

SECTION 4.2 Receipt, Deposit and Application of Revenues. Except as provided in Section 4.3 hereof with regard to the deposit of earnings on investments, all of the Revenues shall be deposited by the Trustee immediately upon receipt in the Revenue Fund (which the Trustee shall establish and hold in trust hereunder) or as otherwise instructed by the City. Amounts in the Revenue Fund shall be applied solely for the uses and purposes set forth herein. The Trustee shall withdraw amounts on deposit in the Revenue Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:

(a) Bond Service Fund. On or before the fifteenth (15th) calendar day of the month preceding each Interest Payment Date, so long as any Bonds remain Outstanding hereunder, the Trustee shall withdraw from the Revenue Fund and deposit into the Bond Service Fund (which the Trustee shall establish and hold in trust hereunder) an amount which, together with other available amounts then on deposit in the Bond Service Fund, is at least equal to the sum of (i) the aggregate amount of principal of and interest coming due and payable on the Bonds on such Interest Payment Date, and (ii) the redemption price of the Term Bonds coming due and payable on such Interest Payment Date by operation of mandatory sinking fund redemption pursuant to Section 2.3(c).

Amounts in the Bond Service Fund shall be applied by the Trustee solely for the purpose of paying the principal of and interest on the Outstanding Bonds when and as such principal and interest becomes due and payable (including accrued interest on any Bonds purchased or redeemed pursuant hereto), and for the purpose of paying the principal of the Term Bonds at the maturity thereof or upon the mandatory sinking fund redemption thereof pursuant to Section 2.3(c).

If after all of the Bonds have been paid or deemed to have been paid, there are moneys remaining in the Bond Service Fund, sucb moneys shall be transferred by the Trustee to the City, after the payment of any outstanding fees and expenses of the Trustee.

(b) Reserve Fund. In the event that the amount on deposit in the Reserve Fund at any time falls below the Reserve Requirement, the Trustee shall promptly notify the City and the Authority of such fact and the Trustee shall promptly (i) withdraw the amount of such insufficiency from available Revenues on deposit in the Revenue Fund, and (ii) transfer such amount to the Reserve Fund. No deposit need be made in the Reserve Fund so long as the balance therein at least equals the Reserve Requirement.

(c) Redemption Fund. The Trustee shall deposit into the Redemption Fund all amounts required to redeem any Bonds which are subject to redemption pursuant to Sections 2.3(a) and (b) when and as such amounts become available. Amounts in the Redemption Fund shall be applied by the Trustee solely for the purpose of paying the redemption price of Bonds to be redeemed pursuant to Sections 2.3(a) and (b). Following any redemption of all of the Bonds, any moneys remaining in the Redemption Fund shall be transferred by the Trustee to the City.

SECTION 4.3 Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments, as directed pursuant to the Written Request of the City filed with the Trustee at least two (2) Business Days in advance of the making of such investments. In the absence of any such directions from the City, the Trustee shall invest any such moneys in Permitted Investments described in paragraph [(D) or paragraph (F)] of the definition thereof. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the fund or account from which such investment was made; except that all interest or gain derived from the investment of amounts in the Reserve Fund shall be deposited in the Bond Service Fund to the extent not required to maintain the Reserve Requirement on deposit in the Reserve Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee may act as sponsor, principal or agent in the acquisition or disposition of any investment. Tbe Trustee shall incur no liability for losses arising from any investments made pursuant to this Section.

Tbe Trustee may sell, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

The Authority (and the City by its execution of the Installment Sale Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority or the City the right to receive brokerage confirmations of security transactions as they occur, tbe Authority and the City specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority and the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

SECTION 4.4 Acquisition, Disposition and Valuation of Investments.

(a) Except as otherwise provided in subsection (b) of this Section, all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired and disposed of (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value, provided the Trustee is not responsible to determine Fair Market Value.

(b) Except as required pursuant to Section 5.7 hereof, the value of the investments held pursuant to this Indenture shall be determined as follows: "Value", which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows: (a) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times); the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination; (b) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times; the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; (c) as to certificates of deposit and bankers acceptances; the face amount thereof, plus accrued interest; and (d) as to any investment not specified above; the value thereof established by prior agreement between the Authority and the Trustee.

Notwithstanding anything to the contrary herein, in making any valuations of investments hereunder, the Trustee may utilize computerized securities pricing services that may be available to it, including those available through its regular accounting system and rely thereon.

ARTICLE V

COVENANTS OF THE AUTHORITY; SPECIAL TAX COVENANTS

SECTION 5.1 Punctual Payment; Compliance With Documents. The Authority shall punctually pay or cause to be paid the interest and principal to become due with respect to all of the Bonds in strict conformity with the terms of the Bonds and of this Indenture, and will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture and all Supplemental Indentures.

SECTION 5.2 Extension of Payment of Bonds. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest sball be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section 5.2 shall be deemed to limit the right of the Authority to issue bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

SECTION 5.3 Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 5.4 Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in

accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VI and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 5.5 Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds, the Revenues, the Installment Sale Agreement, and all funds and accounts held by the Trustee under this Indenture. Such books of record and account shall be available for inspection by the Authority and the City, during business hours and under reasonable circumstances.

SECTION 5.6 No Additional Obligations. The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

SECTION 5.7 Tax Covenants Relating to the Bonds.

(a) Special Definitions. When used in this Section, the following terms have the following meanings:

"Computation Date" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Facilities" means any property the acquisition, construction or improvement of which was financed directly or indirectly with Gross Proceeds of the Bonds.

"Gross Proceeds" means any proceeds as defined in section 1.148-1(b) of the Tax Regulations (referring to sales, investment and transferred proceeds), and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of the Bonds.

"Investment" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Nongovernmental Output Property" means any property (or interest therein) that prior to its acquisition by the City was used by (or manufactured for or to the order of or held for the use by) any Nongovernmental Person (whether actually so used or not) in connection with any electric and gas generation, transmission, distribution, or related facilities.

"Nongovernmental Person" refers to any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, or an agency or instrumentality acting solely on behalf thereof.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Tax Code, in which Gross Proceeds of the Bonds are invested and that is not acquired to carry out the governmental purposes of the Bonds.

"Prior Issue" refers to the 2007 Bonds.

"Rebate Amount" has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

"Tax Regulations" means the United States Treasury Regulations promulgated pursuant to sections 103 and 141 through 150 of the Tax Code.

"Yield" of

(1) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and

(2) the Bonds has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest to Become Taxable. The Authority and the City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner that if made or omitted, respectively, would cause the interest on any of the Bonds to fail to be excluded pursuant to section 103(a) of the Tax Code from the gross income of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Authority or the City receives a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Authority or the City, as the case may be, shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall at all times prior to the payment and cancellation of the last Bond to be paid and canceled:

(1) use their best efforts to ensure that the City exclusively own, operate and possess all of the Facilities that are to be refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity in respect of the use by any Nongovernmental Person of Gross Proceeds of the Bonds or the Prior Issue, or any of the Facilities, other than taxes of general application within the jurisdiction of the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

Without limiting the foregoing, except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, neither of the City nor the Authority will: (i) permit any Nongovernmental Person to hold any ownership, proprietary or possessory interest in the financed property; (ii) contract with any Nongovernmental Person for the provision of operating or other services with respect to any function of the financed property (unless either (A) such arrangement requires no payment of fees to such Nongovernmental Person other than as direct reimbursement of third party costs or reasonable administrative overhead, or (B) such arrangement conforms to administrative guidance of the Internal Revenue Service in order to assure that such arrangement does not create a private business use relationship of the Nongovernmental Person to

the financed property); or (iii) contract with any Nongovernmental Person for the sale of output or capacity of the financed property unless such contract is described either in section 1.141-7(c) of the Treasury Regulations (describing certain types of output contracts that do not have the effect of transferring the benefits of owning the property and the burdens of paying debt service on the financing of the property) or in section 1.141-7(f) of the Treasury Regulations (describing certain types of output contracts that while having the effect of transferring such benefits and burdens but nevertheless may be disregarded in evaluating private business use). As set forth above, for purposes of the preceding sentence, the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issues and the Original Issue.

Except as would not cause any Bond to be a "private activity bond", no portion of the Gross Proceeds will be used (directly or indirectly) for the acquisition of any interest in any Nongovernmental Output Property. As set forth above, for purposes of the preceding sentence, the City and the Authority will treat proceeds of the Bonds as used ratably for the same purposes as were the proceeds of the Prior Issue.

(d) No Private Loan. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not use Gross Proceeds of any Bond to make or finance loans to any Nongovernmental Person. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (a) property acquired, constructed or improved with sucb Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (b) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (c) indirect benefits of such Gross Proceeds, or burdens and benefits of ownership of any property acquired, constructed or improved with such Gross Proceeds, are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause any Bond to become an "arbitrage bond" within the meaning of section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not at any time prior to the final maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, would materially exceed the Yield of such Bond within the meaning of said section 148.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not take or omit to take any action that would cause any Bond to be "federally guaranteed" within the meaning of section 149(b) of the Tax Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The Authority shall timely file any information required by section 149(e) of the Tax Code with respect to the Bonds with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder:

(1) The Authority and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments

thereof) and shall retain all records of accounting for at least six years after the day on which the last Bond is discharged. However, to the extent permitted by law, the Authority or the City may commingle Gross Proceeds of the Bonds with its other money, provided that the Authority or the City, as the case may be, separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Authority and the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder. The Authority and the City shall maintain a copy of the calculation with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) In order to assure the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, the Authority and the City, jointly and severally but without duplication, shall pay to the United States the amount that when added to the future value of previous rebate payments made for the Bonds equals (A) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Tax Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (B) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, such rebate payments shall be made by the Authority or the City at the times and in the amounts as are or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Tax Code and the Tax Regulations and rulings thereunder for execution and filing by the Authority or the City.

(4) The Authority and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (i) and (ii) above, and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) or other provision of the Tax Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Tax Code and the Tax Regulations and rulings thereunder, the Authority shall not, at any time prior to the final maturity of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to paragraph (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the Bonds not been relevant to either party.

(j) Bonds Not Hedge Bonds.

(1) The Authority and the City each represents that neither the Refunded Bonds nor any Bonds are or will become "hedge bonds" within the meaning of section 149(g) of the Tax Code.

(2) Without limitation of paragraph (i) above, with respect to the Bonds (or to that portion of the Bonds that is to be applied to the refunding of the Refunded Bonds), either: (A) (I) on the date of issuance of the Refunded Bonds, the Authority or the City

reasonably expected that at least 85% of the spendable proceeds of the Refunded Bonds would be expended within the three-year period commencing on such date of issuance, and (II) no more than 50% of the proceeds of the Refunded Bonds were invested in Nonpurpose Investments having a substantially guaranteed yield for a period of four years or more; or (B) (I) the provisions of section 149(g) of the Tax Code did not apply to the Refunded Bonds, (II) the average maturity of the refunding bonds is not later than that of the Refunded Bonds, and (III) the amount of the refunding bonds is not in excess of the amount of the Refunded Bonds.

(3) For purposes of this paragraph (j), (A) "Refunded Bonds" shall refer to the bonds of any issue refunded or re-refunded (immediately or through multiple generations of prior issues) by the Bonds, (B) in applying paragraph (ii) above, "Refunded Bonds" shall refer only to bonds that are not refunding bonds, and (C) in applying clause (ii)(B) above, "refunding bonds" refers to, and said clause (ii)(B) has been applied separately to, each issue being refunded or re-refunded by the Bonds (and to the portion of each issue (treating such portion as a separate issue) to the extent such issue is being refunded or re-refunded by the Bonds) that was itself a refunding issue.

(k) Elections. The Authority hereby directs and authorizes any Authorized Representative of the Authority and the City hereby directs and authorizes any Authorized Representative of the City to make elections permitted or required pursuant to the provisions of the Tax Code or the Tax Regulations, as such Authorized Representative of the Authority or Authorized Representative of the City (after consultation with Bond Counsel) deems necessary or appropriate in connection with the Bonds, in the Tax Certificate relating to the Bonds or similar or other appropriate certificate, form or document.

SECTION 5.8 Installment Sale Agreement. The Trustee shall promptly collect all amounts due from the City pursuant to the Installment Sale Agreement. Subject to the provisions of Article VI, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Installment Sale Agreement.

SECTION 5.9 Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 5.10 Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Trustee and Owners of the Bonds the rights and benefits provided in this Indenture.

SECTION 5.11 Continuing Disclosure. The City covenants and agrees that it will comply with the continuing disclosure requirements with respect to the Bonds promulgated under Securities and Exchange Commission Rule 15c2-12(b)(5) as it may from time to time hereafter be amended or supplemented. The Authority shall have no liability to the Bondholders or to any other person with respect to such disclosure matters. Notwithstanding any other provisions of this Indenture, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Bondholder or Beneficial Owner may take, and the Trustee shall take, at the request of the Holders of at least 25% aggregate principal amount of Outstanding Bonds, and upon receipt of

satisfactory indemnification, such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under the Continuing Disclosure Agreement.

ARTICLE VI

THE TRUSTEE

SECTION 6.1 Appointment of Trustee. U.S. Bank National Association in Los Angeles, California, a national banking association organized and existing under and by virtue of the laws of the United States of America, is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority agrees that it will maintain a Trustee having a combined capital and surplus of at least One Hundred Million Dollars ($100,000,000), and subject to supervision or examination by federal or State authority, so long as any Bonds are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section 5.1 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

SECTION 6.2 Payment of Bonds; Registration Books. The Trustee is hereby authorized to pay the Bonds when duly presented for payment at maturity, or on redemption or purchase prior to maturity, and to cancel all Bonds upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Bonds paid and discharged. The Trustee will keep or cause to be kept at its Office sufficient books for the registration and transfer of the Bonds, which shall at all times during regular business hours be open to inspection by the City and the Authority. Upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, as provided in this Indenture with respect to the Bonds.

SECTION 6.3 Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall have no liability for the actions of any such attorney, agent or receiver chosen with reasonable care, and the Trustee shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder. The Trustee shall not be liable for any action taken or not taken in reliance upon advice or opinion of such counsel.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of

the Authority hereunder. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.3 of this Indenture.

(d) The Trustee shall not be accountable for the use of any proceeds of sale of the Bonds delivered hereunder. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the Authority with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Bonds, whether or not such committee shall represent the Owners of the majority in principal amount of the Bonds then Outstanding.

(e) In the absence of bad faith on its part, the Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, requisition, facsimile transmission, electronic mail or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith and without negligence pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be bound to recognize any person as an Owner of any Bond or to take any action at his request unless the ownership of such Bond by such person shall be reflected on the Registration Books.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Written Certificate of the City or a Written Certificate of the Authority as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default hereunder of which the Trustee has been given notice or is deemed to have notice, as provided in Section 6.3(h) hereof, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a Written Certificate of the Authority to the effect that an authorization in the form therein set forth has been adopted by the Authority, as conclusive evidence that such authorization has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder or under the Installment Sale Agreement, except failure by the City to make any of the payments to the Trustee required to be made by the City pursuant to the Installment Sale Agreement, or failure by the Authority to file with the Trustee any document required by this Indenture to be so filed subsequent to the issuance of the Bonds, unless a Responsible Officer the Trustee shall be specifically notified in writing of such default by the Owners of at least twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding and all notices or other instruments required by this Indenture or under the Installment Sale Agreement to be delivered to the Trustee must, in order to be effective, be delivered at the Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default hereunder or thereunder except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right (but not the duty) fully to inspect the Electric System, all books, papers and records of the City or the Authority pertaining to the Electric System and the Bonds, and to take such memoranda from and with regard thereto as may be desired but which is not privileged by statute or by law.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, as may be deemed desirable for the purpose of establishing the right of the Authority to the execution of any Bonds, or the right of the City or the Authority to the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Section 8.3 the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(n) No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Trustee shall provide the Authority and the City with seven days' notice prior to making any advance of its own funds hereunder, and, if the City or the Authority does not provide moneys in the amount needed, the Trustee shall be entitled to interest on the amounts advanced at a rate equal to the then 3-month certificates of deposit rate (by reference to the Wall Street Journal); provided that no such prior notice shall need be given and such interest on amounts advanced shall accrue from the date of any such advance following the occurrence of an Event of Default hereunder.

(o) The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(p) The Trustee shall not be liable for any action taken or not taken by it in accordance with the direction of a majority (or other percentage provided for herein) in aggregate principal amount of the Bonds outstanding relating to the exercise of any right, power or remedy available to the Trustee.

(q) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a

party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(r) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture provided, however, that: (i) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (ii) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (iii) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

SECTION 6.4 Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all reasonable advances, reasonable counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services, but solely from Additional Payments made by the City under the Installment Sale Agreement. Upon the occurrence of an Event of Default, the Trustee shall have a first lien with right of payment prior to payment of any Bond upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively.

SECTION 6.5 Notice to Bond Owners of Default. If an Event of Default hereunder occurs with respect to any Bonds, of which the Trustee has been given or is deemed to have notice, as provided in Section 6.3(h), then the Trustee shall promptly give written notice thereof by first-class mail to the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice.

SECTION 6.6 Intervention by Trustee. In any judicial proceeding to which the Authority is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of any of the Bonds, the Trustee may intervene on behalf of such Bond Owners, and subject to Section 6.3(l), shall do so if requested in writing by the Owners of a majority in aggregate principal amount of such Bonds then Outstanding.

SECTION 6.7 Removal of Trustee. The Owners of a majority in aggregate principal amount of the Outstanding Bonds, or the Authority (so long as no Event of Default has occurred or is continuing), may at any time remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee.

SECTION 6.8 Resignation by Trustee. The Trustee and any successor Trustee may at any time resign by giving written notice by registered or certified mail to the City and the Authority. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee in accordance with Section 6.9. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the successor Trustee shall mail notice thereof to the Bond Owners at their respective addresses set forth on the Registration Books.

SECTION 6.9 Appointment of Successor Trustee. In the event of the removal or resignation of the Trustee pursuant to Sections 6.6 or 6.7, respectively, the Authority shall promptly appoint a successor Trustee; provided that any such successor shall be a bank or trust company meeting the requirements of Section 6.1. In the event the Authority shall for any reason whatsoever fail to appoint a successor Trustee within sixty (60) days following the delivery to the Trustee of the instrument described in Section 6.6 or within sixty (60) days following the receipt of notice by the Authority

pursuant to Section 6.7, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 6.1. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the Authority purporting to appoint a successor Trustee following the expiration of such sixty (60) day period. Upon the acceptance by any successor Trustee of appointment as such, the successor Trustee shall cause notice thereof to be given by first class mail to the Bond Owners at their respective addresses set forth on the Registration Books.

SECTION 6.10 Merger or Consolidation. Any company into which the Trustee may be merged or converted or which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 6.1, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 6.11 Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the Written Request of the Authority, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

SECTION 6.12 Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 6.12 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Authority be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such

properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

SECTION 6.13 Indemnification; Limited Liability of Trustee. The Authority further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, costs, claims, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, costs, claims, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors or employees. No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder or pursuant to the Installment Sale Agreement. The Trustee shall not be liable for any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of Bonds Outstanding relating to the time, method and place of conducting any proceeding or remedy available to the Trustee under this Indenture. The obligations of the Authority under this paragraph shall be payable solely from Additional Payments made by the City under the Installment Sale Agreement and shall survive the resignation or removal of the Trustee under this Indenture or any defeasance of the Bonds. The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

The Trustee shall have no responsibility or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds. Before taking any action under Article VIII or this Article at the request of the Owners, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

ARTICLE VII

MODIFICATION AND AMENDMENT OF THIS INDENTURE

SECTION 7.1 Amendment by Consent of Bond Owners. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 7.2 hereof, are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without the consent of any Bond Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the Authority; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Authority may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners of the Bonds, in the opinion of Bond Counsel; or

(c) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds.

The Trustee shall not be required to enter into or consent to any amendment or modification which, in the sole judgment of the Trustee, might adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein.

SECTION 7.2 Disqualified Bonds. Bonds owned or held by or for the account of the City or the Authority (but excluding Bonds held in any employees' retirement fund) shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds in this article provided for, and shall not be entitled to consent to, or take any other action in this article provided for, unless all of the Outstanding Bonds shall be owned or held by or for the account of the City or the Authority, provided however, that the Trustee shall not be deemed to have knowledge that any Bond is owned by the Authority or the City or for the account of the Authority or the City unless the Authority or the City is a Registered Owner or the Trustee has received written notice that any other Registered Owner is the Owner of a Bond for the account of the City or Authority.

SECTION 7.3 Endorsement or Replacement of Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the Authority may determine that the Bonds shall bear a notation, by endorsement in form approved by the Authority, as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Office of the Trustee, a suitable notation as to such action shall be made on such Bond. If the Authority shall so determine, new Bonds so modified as, in the opinion of the Authority, shall be necessary to conform to such Bond Owners' action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Office of the Trustee, without cost to each Bond Owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

SECTION 7.4 Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Bond Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

SECTION 8.1 Events of Default and Acceleration of Maturities. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for mandatory sinking fund redemption, by declaration or otherwise.

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable.

(c) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such default shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the City and the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice (other than a default in the payment of any fees and expenses owing to the Trustee) can be corrected, but not within such sixty (60) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the Federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

(e) The occurrence and continuation of an Event of Default under and as defined in the Installment Sale Agreement.

Upon the occurrence and during the continuance of any Event of Default the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding, the Trustee shall, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority shall deposit with the Trustee a sum sufficient to pay all of the principal of and interest on the Bonds having come due prior to such declaration, with interest on such overdue principal and interest calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee, together with interest thereon at the prime rate of the Trustee then in effect, and any and all other defaults known to the Trustee (other than in the payment of the principal of and interest on the Bonds having come due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee or the Owners of a majority in aggregate principal

amount of the Bonds at the time Outstanding may, by written notice to the Authority and to the Trustee, on behalf of tbe Owners of all of the Outstanding Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 8.2 Application of Funds Upon Acceleration. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.

SECTION 8.3 Other Remedies: Rights of Bond Owners. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy, in addition to the remedy specified in Section 8.1, at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds, and to enforce any rights of the Trustee under or witb respect to this Indenture.

If an Event of Default shall have occurred and be continuing and if requested so to do by the Owners of a majority in aggregate principal amount of Outstanding Bonds and indemnified as provided in Section 6.3(l), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VIII, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as nay be deemed expedient.

SECTION 8.4 Power of Trustee to Control Proceeding. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw,

compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

SECTION 8.5 Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

SECTION 8.6 Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or conttact by the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or conttact, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Trustee or Bond Owners by the Bond Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Bond Owners, as the case may be.

SECTION 8.7 Rights and Remedies of Bond Owners. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, or the Installment Sale Agreement, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) the Trustee has not received any inconsistent direction during such 60-day period from the Owners of a majority in aggregate principal amount of the Outstanding Bonds.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, or the Installment Sale

Agreement, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

SECTION 8.8 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Authority, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE IX

[BOND INSURANCE]

SECTION 9.1 Insurer's Requirements to Govern. The provisions of this Article shall govern the terms and conditions of this Indenture, notwithstanding anything to the contrary set forth herein.

SECTION 9.2 Requirements of the Insurer. The Insurer has provided the following requirements for inclusion in this Indenture, and the Authority and the Trustee hereby agree to observe and uphold each and every such requirement applicable to each of them, respectively:

(a) The Insurer's consent is required for all amendments to this Indenture and the Installment Sale Agreement. The Insurer must be given prior notice of any such amendment. Copies of any such amendment consented to by the Insurer shall be provided to S&P.

(b) For any Supplemental Indenture executed for reasons other than (1) a refunding to obtain debt service savings, or (2) the issuance of additional bonds pursuant to this Indenture, the consent of the Insurer must be obtained by the Authority prior to the issuance of any additional bonds and/or the execution of any such Supplemental Indenture.

(c) The Insurer shall be deemed to be the sole Owner of the Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of tbe Bonds are entitled to take pursuant to Article VII and Article VIII hereof.

(d) Other than in connection with mandatory sinking fund redemptions, any acceleration of principal payments shall be subject to the prior written consent of the Insurer.

(e) The Insurer is a third-party beneficiary to this Indenture, with the power to enforce any right, remedy or claim conferred, given or granted hereunder.

(f) If the Insurer makes any payment of principal and/or interest due on the Bonds, the Bonds shall remain Outstanding for all purposes, and shall not be deemed defeased or otherwise satisfied, or paid by the Authority, and the assignment and pledge of the Revenues and all covenants, agreements

and other obligations of the Authority to the Owners hereunder shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of such Owners.

SECTION 9.3 Payments Under the Policy. If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date"), there is not on deposit with the Trustee under the Indenture, after making all transfers and deposits required under the Indenture, moneys sufficient to pay the principal of, and interest on, the Bonds due on such Payment Date, the Trustee shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent"), by telephone or telecopy, of the amount of such deficiency by 10:00 a.m., New York City time, on such Business Day. If, on the Business Day prior to the related Payment Date, there is not on deposit with the Trustee moneys sufficient to pay the principal of, and interest on, the Bonds due on such Payment Date, the Trustee shall make a claim under the Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of any deficiency in the amount available to pay principal and interest, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the related Insurer and the Insurer's Fiscal Agent by 10:00 a.m., New York City time, on such Business Day, by delivering the Notice of Nonpayment and Certificate.

For the purposes of the preceding paragraph, "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from the Trustee to the Insurer, which notice shall specify (a) the name of the entity making the claim, (b) the policy number, (c) the claimed amount and (d) the date such claimed amount will become Due for Payment. "Nonpayment" means the failure of the Authority to have provided sufficient funds to the Trustee for payment in full of all principal of, and interest on, the Bonds that are Due for Payment. "Due for Payment", when referring to the principal of Bonds, means when the stated maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments, acceleration or other advancement of maturity, unless the Insurer shall elect, in its sole discretion, to pay such principal due upon such acceleration; and when referring to interest on Bonds, means when the stated date for payment of interest has been reached. "Certificate" means a certificate in form and substance satisfactory to the Insurer as to the Trustee's right to receive payment under the Policy.

The Trustee shall designate any portion of payment of principal on Bonds paid by the Insurer at maturity on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of the Insurer, as the case may be, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Authority on any Bond or the subrogation rights of the Insurer.

The Trustee shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (as hereinafter defined) and the allocation of such funds to payment of interest on and principal paid with respect to any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

Upon payment of a claim under the Policy, the Trustee shall establish a separate special purpose trust account for the benefit of holders of Bonds referred to herein as the "Policy Payments Account" and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Policy in trust on behalf of holders of Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the

payments for which a claim was made. Such amounts shall be disbursed by the Trustee to holders of Bonds in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Limited Liability of Authority. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from any source of income other than the Revenues for the payment of the principal of or interest on the Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Revenues or any Additional Revenues). The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring indebtedness.

The Bonds shall be revenue bonds, payable exclusively from the Revenues and other funds pledged hereunder as in this Indenture provided. The general fund of the Authority is not liable, and the credit of the Authority is not pledged, for the payment of the interest on or principal of the Bonds. The Owners of the Bonds shall never have the right to compel the forfeiture of any property of the Authority. The principal of and interest on the Bonds, and any premiums upon the redemption of any thereof, shall not be a debt of the Authority, or a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues and other funds pledged to the payment thereof as in this Indenture provided.

SECTION 10.2 Benefits of Indenture Limited to Parties. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the City, the Authority, the Trustee and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Trustee and the Owners of the Bonds.

SECTION 10.3 Discharge of Indenture. If the Authority shall pay and discharge each Outstanding Bond in any one or more of the following ways -

(a) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and redemption premiums;

(c) by irrevocably depositing with the Trustee, in trust, Federal Securities in such amount as Bond Counsel or an Independent Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates; and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been mailed pursuant to Section 2.3(d) or provision satisfactory to the Trustee shall have been made for the mailing of such notice; or

(d) by delivering such Bonds to the Trustee for cancellation -

then, at the election of the Authority, and notwithstanding that any of such Bonds shall not have been surrendered for payment, the pledge of the Revenues and other funds provided for in this Indenture with respect to such Bonds, and all other pecuniary obligations of the Authority under this Indenture with respect to all such Bonds, shall cease and terminate, except only the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose as aforesaid, and all expenses and costs of the Trustee. Notice of such election shall be filed with the Trustee. Any funds thereafter held by the Trustee, which are not required for said purposes, shall be paid over to the City.

SECTION 10.4 Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture either the Authority is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions, with respect to the management, administration and control of the affairs of the Authority, that are presently vested in the Authority, and all the covenants, agreements and provisions contained in this Indenture by or on behalf of the Authority shall bind and inure to the benefit of its successors whether so expressed or not.

SECTION 10.5 Execution of Documents by Bond Owners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bond Owners in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Authority if made in the manner provided in this Section 10.5.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

The ownership of Bonds shall be provided by the Registration Books. Any request, consent, direction or vote of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in pursuance of such request, consent, direction or vote.

In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Authority (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Trustee shall be

protected in relying on any such demand, request, direction, consent or waiver, only Bonds which are registered in the name of the Authority or the Trustee has received written notice that any other Owner is holding Bonds for the account of the Authority shall be disregarded.

In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bond Owners upon such notice and in accordance with such rules and obligations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

SECTION 10.6 Waiver of Personal Liability. No member of the Authority's Board of Directors or, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the interest on or principal of the Bonds; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law.

SECTION 10.7 Partial Invalidity. If any one or more of the covenants or agreements, or portions thereof, provided in this Indenture on the part of the Authority (or of the Trustee) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Indenture or of the Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law. The Authority hereby declares that it would have entered into this Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 10.8 Destruction of Canceled Bonds. Whenever in this Indenture provision is made for the surrender to the Authority of any Bonds which have been paid or canceled pursuant to the provisions of this Indenture, Trustee shall destroy such Bonds and furnish to the Authority upon the Authority's Written Request a certificate of such destruction.

SECTION 10.9 Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the accounting records of the Authority or the Trustee, as the case may be, either as a fund or an account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account. All such records with respect to all such funds and accounts held by the Authority shall at all times be maintained in accordance with generally accepted accounting principles and all such records with respect to all such funds and accounts held by the Trustee shall be at all times maintained in accordance with corporate trust industry practices; in each case with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

SECTION 10.10 Notices. All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto [(except that any notice required to be given by any party shall also be given to the Insurer)] at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:	City of Banning 99 E. Ramsey Street Banning, California 92220 Attention: City Manager Telephone: (951) 922-3101 Facsimile: (951) 922-3112
If to the Authority:	City of Banning Financing Authority 99 E. Ramsey Street Banning, California 92220 Attention: Executive Director Telephone: (951) 922-3101 Facsimile: (951) 922-3112
If to the Trustee:	U.S. Bank National Association 633 W. Fifth Street, 24th Floor Los Angeles, California 90071 Attention: Corporate Trust Services Telephone: (213) 615-6002 Facsimile: (213) 615 6199
[If to the Insurer:	[BOND INSURER] _____ New York, New York _____ Attention: _____ Fax: (___) _____]

SECTION 10.11 Unclaimed Moneys. Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two (2) years after the date when such Bonds or interest thereon have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys if deposited with the Trustee after said date when such Bonds become due and payable, shall be repaid by the Trustee to the Authority, as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Authority for the payment of such Bonds; provided, however, that before being required to make any such payment to the Authority, the Trustee shall, at the Written Request of the Authority (and of its expense), cause to be mailed to the Owners of all such Bonds, at their respective addresses appearing on the Registration Books, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall not be less than thirty (30) days after the date of mailing of such notice, the balance of such moneys then unclaimed will be retumed to the Authority.

SECTION 10.12 Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 10.13 Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the CITY OF BANNING FINANCING AUTHORITY and the **CITY OF BANNING** have caused this Indenture to be signed in their names by their respective authorized officers, and **U.S. BANK NATIONAL ASSOCIATION**, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

CITY OF BANNING FINANCING AUTHORITY

By:_____
Title: Executive Director

CITY OF BANNING

By:_____
Title: City Manager

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By:_____
Authorized Officer

EXHIBIT A

[FORM OF BOND]

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

NEITHER THE PAYMENT OF THE PRINCIPAL OR ANY PART THEREOF NOR ANY INTEREST THEREON CONSTITUTES A DEBT, LIABILITY OR OBLIGATION OF THE CITY OF BANNING.

No. _____ $____

CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BOND
(ELECTRIC SYSTEM PROJECT), SERIES 2015

INTEREST RATE:	MATURITY DATE:	ISSUE DATE:	CUSIP:
_____%	June 1, 20__	August __, 2015	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The CITY OF BANNING FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority") for value received, hereby promises to pay (but only out of the Revenues and other assets pledged therefor as hereinafter mentioned) to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above (subject to any right of prior redemption hereinafter mentioned), the Principal Amount stated above, in lawful money of the United States of America; and to pay interest thereon in like lawful money from the Interest Payment Date next preceding the date of authentication of this Bond (unless this Bond is authenticated as of a day during the period commencing after the fifteenth day of the month preceding an Interest Payment Date and ending on or before such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or before November 15, 2015, in which event it shall bear interest from the Issue Date stated above) until payment of such principal sum shall be discharged as provided in the Indenture hereinafter mentioned, at the Interest Rate per annum stated above, payable semiannually on each June 1 and December 1, commencing December 1, 2015 (each, an "Interest Payment Date").

The principal (or redemption price) hereof is payable at the Office (as defined in the Indenture referred to below) of U.S. Bank National Association, Los Angeles, California (together with any successor trustee under the Indenture, the "Trustee"). Interest hereon is payable by check of the Trustee mailed on each Interest Payment Date to the Registered Owner as of the fifteenth (15th) day of the month preceding each Interest Payment Date at the address shown on the registration books maintained by the Trustee; provided however, that payment of interest will be made by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee before the fifteenth day of the month preceding the applicable Interest Payment Date.

It is hereby certified and recited that any and all things, conditions and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Bond Law and by the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Bond Law or by the Constitution and laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

This Bond is one of a duly authorized issue of bonds of the Authority designated as its "City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015" (the "Bonds"), in the aggregate principal amount of _____ Dollars ($[_____]), authorized pursuant to the provisions of Article 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6584) of the California Government Code (the "Bond Law"), and issued pursuant to an Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and among the Authority, the City of Banning (the "City"), and the Trustee.

Reference is hereby made to the Indenture (a copy of which is on file at said Office of the Trustee) and all indentures supplemental thereto and to the Bond Law for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Authority thereunder. The Registered Owner of this Bond, by acceptance hereof, assents and agrees to all the provisions of the Indenture.

The Bonds have been issued by the Authority to assist the City in financing and refinancing certain improvements to the Electric System. Pursuant to an Installment Sale Agreement, dated as of August 1, 2015, by and between the City and the Authority, the Authority will sell to the City such improvements and the City will pay, in consideration therefor, Installment Payments, secured by the Net Revenues of the Electric System, as defined in the Indenture. The scheduled Installment Payments are equal to the debt service payments on the Bonds.

The Bonds and the interest thereon are payable from Revenues (as such term is defined in the Indenture), consisting primarily of Installment Payments to be made by the City under the Installment Sale Agreement as consideration for the purchase of certain improvements to the Electric System, and are secured by a pledge and assignment of Revenues, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Bonds are special obligations of the Authority and are not a lien or charge upon the funds or property of the Authority, except to the extent of the aforesaid pledge and assignment.

The Bonds shall be subject to special mandatory redemption as a whole or in part, on any date, from proceeds of an eminent domain award or proceeds of casualty insurance not used to repair or rebuild the Electric System, which proceeds may be used for such purpose pursuant to the Installment Sale Agreement, at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, without premium.

The Bonds maturing on or before June 1, 2025 shall not be subject to optional redemption prior to maturity. The Bonds maturing on or after June 1, 2026 shall be subject to redemption prior to their respective maturity dates, at the option of the Authority, by lot within a maturity on any date on or after June 1, 2025, from prepayment of Installment Payments made at the option of the City at the redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

The Bonds maturing on June 1, 20__ and June 1, 20__ are also subject to redemption prior to their respective stated maturities, on any June 1 on or after June 1, 20__ and June 1, 20__, respectively, in part by lot, from mandatory sinking account payments at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, without premium, as set forth below in the aggregate respective principal amounts and on the respective dates as set forth in the following tables; provided, however, that if some but not all of such Bonds have been redeemed pursuant to optional or special mandatory redemption provisions of the Indenture, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of $5,000.

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

Schedule of Mandatory Sinking Fund Redemptions
Term Bonds Maturing June 1, 20__

Redemption Date (June 1)	Principal Amount
(maturity)	

The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to: (i) the respective Owners of any Bonds designated for redemption, at least twenty (20) but not more than sixty (60) days prior to the redemption date, at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services (as such terms are defined in the Indenture), at least twenty (20) but not more than sixty (60) days prior to the redemption; *provided, however,* that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Interest on the Bonds called for redemption will not accrue from and after the redemption date.

The Bonds are issuable as fully registered Bonds in denominations of $5,000 and any integral multiple thereof. Subject to the limitations provided in the Indenture, Bonds may be exchanged, at said Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity.

The Trustee has no obligation or liability to the Registered Owners to make payments of principal of or interest on the Bonds, except from amounts on deposit for such purposes with the Trustee. The Trustee's sole obligations are to administer for the benefit of the Registered Owners the various funds and accounts established under the Indenture and, to the extent provided in the Indenture, to enforce the rights of the Authority under the Installment Sale Agreement.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said Office of the Trustee, but only in the manner, subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond or Bonds, of authorized denomination or denominations, of the same maturity and for the same aggregate principal amount, will be issued to the transferee in exchange herefor.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all outstanding Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Indenture and the rights and obligations of the Authority and of the owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee, all as more fully set forth in the Indenture.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes and the Authority and the Trustee shall not be affected by any notice to the contrary.

STATEMENT OF INSURANCE

[TO COME, IF APPLICABLE].

IN WITNESS WHEREOF, the City of Banning Financing Authority has caused this Bond to be executed in its name and on its behalf by the manual signature of its President and attested to by the manual signature of its Secretary, all as of the Issue Date stated above.

CITY OF BANNING FINANCING AUTHORITY

By _____
President

Attest:

_____
Secretary

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated: August ____, 2015

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Officer

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

_____

(Name, Address and Tax Identification or Social Security Number)

the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

_____

Signature(s) must be guaranteed by a qualified guarantor.

_____

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT), SERIES 2015

(Issue Dated Date: August ___, 2015)

Requisition of the City
(Acquisition and Construction Fund)
(Section 3.5 of the Indenture)

Attention: Corporate Trust Department

Request No.: P-___ (to be sequentially numbered)

Project Component	Amount of This Draw	Aggregate Amount Draws Including This Draw

(Continue on Additional Sheet if Necessary)

Name and Address of party to whom payment is to be made:

_____

Purpose for which the obligation was incurred:

_____

The undersigned (the "City") hereby certifies that (i) each such cost or expense constitutes a proper charge against the Acquisition and Construction Fund for services rendered, and has not been the subject of any other payment request filed with you; and (ii) if the payment is to be made to the City for amounts that it has paid or will pay to third parties, then the City has either made payment or will make payment within three business days of receipt of moneys requisitioned hereunder and that the aggregate number of business days during this calendar year during which it has held such amounts before making payment does not exceed twenty.

Date: _____

CITY OF BANNING

By:_____
Title:_____

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ESCROW AGREEMENT

by and between the

CITY OF BANNING FINANCING AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION
as Escrow Agent

Dated as of August 1, 2015

ESCROW AGREEMENT

This ESCROW AGREEMENT, dated as of August 1, 2015, by and between the CITY OF BANNING FINANCING AUTHORITY (the "Authority"), a joint powers authority organized and existing under the laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Escrow Agent and as Prior Trustee (the "Escrow Agent" and the "Prior Trustee");

W I T N E S S E T H:

WHEREAS, the Authority has previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), of which $40,045,000 remain outstanding, pursuant to an Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010 (the "Prior Indenture"), by and among the Authority, the City of Banning, California and the Prior Trustee; and

WHEREAS, the Authority desires to refund the 2007 Bonds; and

WHEREAS, the Authority has approved the issuance of its Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds"), the proceeds of which are to be used in part to effect the refunding of the 2007 Bonds;

NOW, THEREFORE, in consideration of the mutual premises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. As used herein, the following terms shall have the following meanings:

"Authority" means the City of Banning Financing Authority.

"City" means the City of Banning.

"Code" means the Internal Revenue Code of 1986.

"Escrow Agent" means U.S. Bank National Association and its successors and assigns, and any other corporation or institution that may at any time be substituted in its place as provided in Section 14 hereof.

"Escrow Fund" means the Escrow Fund established and held by the Escrow Agent pursuant to Section 3 hereof.

"Escrow Requirements" means the amount sufficient to pay the principal and interest with respect to the 2007 Bonds becoming due prior to the Redemption Date and the redemption price on the Redemption Date.

"Escrow Securities" means the Federal Securities (as defined in the Prior Indenture) deposited in the Escrow Fund pursuant to Section 5 hereof.

"2007 Bonds" means the $45,790,000 City of Banning Financing Authority Revenue Bonds (Electric System Project), Series 2007.

"Prior Indenture" means the Indenture of Trust , dated as of June 1, 2007, by and among the Authority, the City, and the Prior Trustee, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010, relating to the 2007 Bonds.

"Prior Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the 2007 Bonds.

"Redemption Date" means June 1, 2017, the date on which the 2007 Bonds are to be redeemed.

"Refunding Bonds" means the Authority's Refunding Revenue Bonds (Electric System Project) Series 2015.

"Refunding Bonds Indenture" means the Indenture of Trust, dated as of August 1, 2015, by and among the Authority, the City, and the Refunding Bonds Trustee.

"Refunding Bonds Trustee" means U.S. Bank National Association, and its successors and assigns, as trustee for the Refunding Bonds.

SECTION 2. The Authority hereby appoints U.S. Bank National Association as Escrow Agent under this Escrow Agreement for the benefit of the holders of the 2007 Bonds. The Escrow Agent hereby accepts the duties and obligations of Escrow Agent under this Escrow Agreement and agrees that the irrevocable instructions to the Escrow Agent herein provided are in a form satisfactory to it. The applicable and necessary provisions of the Prior Indenture, including particularly the redemption provisions thereof, are incorporated herein by reference. Reference herein to, or citation herein of, any provisions of the Prior Indenture shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

SECTION 3. There is created and established with the Escrow Agent a special and irrevocable trust fund designated the "2007 Bonds Escrow Fund" (the "Escrow Fund"), to be held by the Escrow Agent separate and apart from all other funds and accounts, and used only for the purposes and in the manner provided in this Escrow Agreement.

SECTION 4. The Authority herewith deposits, or causes to be deposited, with the Escrow Agent into the Escrow Fund, to be held in irrevocable trust by the Escrow Agent and to be applied solely as provided in this Escrow Agreement, the sum of $_____, as follows:

(i) from the proceeds of the Refunding Bonds, the sum of $_____; and

(ii) from the Reserve Account created under the Prior Indenture, the sum of $_____.

The Authority hereby instructs the Prior Trustee that any moneys or investments remaining in the funds and accounts of the Prior Indenture which are not required to make the foregoing deposits or rebated to the U.S. Treasury are to be transferred on the Redemption Date, or as soon as practicable thereafter, to the Refunding Bonds Trustee for deposit into the Bond Service Fund under the Refunding Bonds Indenture.

SECTION 5. The Escrow Agent acknowledges receipt of the moneys described in Section 4 above. The Escrow Agent agrees immediately to invest $_____ of such amounts in the Escrow Securities set forth in Exhibit A hereto, to deposit such Escrow Securities in the Escrow Fund, and to retain the amount of $____ in cash in the Escrow Fund.

The Escrow Agent shall not have the power to sell, transfer, request the redemption of or otherwise dispose of any of the Escrow Securities or to substitute other securities therefor.

SECTION 6. As the principal of the Escrow Securities shall mature and be paid, and the investment income and earnings thereon are paid, the Escrow Agent shall not reinvest such moneys, except as may be provided in Exhibit A hereto. Such amounts shall be applied by the Escrow Agent to the payment of the Escrow Requirements for the equal and ratable benefit of the holders of the 2007 Bonds.

SECTION 7. The Authority has caused schedules to be prepared relating to the sufficiency of the anticipated receipts from the Escrow Securities listed in Exhibit A to pay the Escrow Requirements.

SECTION 8. The Authority hereby directs and the Escrow Agent hereby agrees that the Escrow Agent will take all the actions required to be taken by it hereunder, in order to effectuate this Escrow Agreement. The liability of the Escrow Agent for the payment of the Escrow Requirements shall be limited to the application, in accordance with this Escrow Agreement, of the principal amount of the Escrow Securities and the interest earnings thereon available for such purposes in the Escrow Fund.

SECTION 9. (a) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of defeasance to the owners of the 2007 Bonds substantially in the form of Exhibit B attached hereto.

(b) The Escrow Agent is hereby instructed to mail, by first-class mail, notice of redemption to the owners of the 2007 Bonds containing the information prescribed in Section 2.3 of the Prior Indenture, substantially in the form of Exhibit C attached hereto.

(c) The Escrow Agent is hereby further instructed to post a copy of such notices, when mailed, to (A) the Securities Depositories (as hereinafter defined) and (B) the Information Services (as hereinafter defined).

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attn. Call Notification Department, Fax (212) 855-7232, or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a Certificate of the City delivered to the Escrow Agent.

"Information Services" means the Electronic Municipal Market Access system (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at www.emma.msrb.org; or, in accordance with then-current guidelines of the Securities and Exchange Commission, to such other addresses and/or such other services providing information with respect to called bonds as the Authority may designate in a certificate of the Authority delivered to the Escrow Agent.

SECTION 10. The Authority irrevocably instructs the Escrow Agent and the Prior Trustee to pay to the respective owners of the 2007 Bonds presented for payment, through and including the Redemption Date, from amounts held in the Escrow Fund, the principal of the 2007 Bonds maturing prior to and on the Redemption Date plus in each case unpaid interest accrued thereon to the Redemption Date.

After such payment has been made on the Redemption Date, all moneys remaining in the Escrow Fund shall be transferred to the Trustee for deposit in the Bond Service Fund.

SECTION 11. The trust hereby created shall be irrevocable and the holders of the 2007 Bonds shall have an express lien limited to all moneys and Escrow Securities in the Escrow Fund, including the interest earnings thereon, until paid out, used and applied in accordance with this Escrow Agreement.

SECTION 12. This Escrow Agreement is made pursuant to and in furtherance of the Prior Indenture and for the benefit of the holders from time to time of the 2007 Bonds and it shall not be repealed, revoked, altered, amended or supplemented without the written consent of all such holders and the written consent of the Escrow Agent and the Authority; provided, however, that the Authority and the Escrow Agent may, without the consent of, or notice to, such holders enter into such amendments or supplements as shall not be inconsistent with the terms and provisions of this Escrow Agreement, for any one or more of the following purposes:

(a) to cure an ambiguity or formal defect or omission in this Escrow Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the 2007 Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and

(c) to transfer to the Escrow Agent and make subject to this Escrow Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to conclusively rely upon an opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the 2007 Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 13. In consideration of the services rendered by the Escrow Agent under this Escrow Agreement, the Authority agrees to and shall pay to the Escrow Agent its fees, plus expenses, including all reasonable expenses, charges, counsel fees and other disbursements incurred by it or by its attorneys, agents and employees in and about the performance of their powers and duties hereunder. Notwithstanding the foregoing, the Escrow Agent shall have no lien whatsoever upon any of the moneys or Escrow Securities in the Escrow Fund for the payment of such proper fees and expenses.

SECTION 14. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from the trusts hereby created by giving not less than 60 days' written notice to the Authority and the Prior Trustee, specifying the date when such resignation will take effect in the same manner as a notice is to be mailed pursuant to Section 9 hereof, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of the 2007 Bonds or by the Authority as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and to the Authority and the Prior Trustee and signed by the holders of a majority in principal amount of the 2007 Bonds.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in the case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Escrow Agent may be appointed by the holders of a majority in principal amount of the 2007 Bonds, by an instrument or concurrent instruments in writing, signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the Authority shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in principal amount of the 2007 Bonds, and any such temporary Escrow Agent so appointed by the Authority shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or the Authority pursuant to the foregoing provisions of this Section within 60 days after written notice of the removal or resignation of the Escrow Agent has been given to the Authority, the holder of any of the 2007 Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation or institution with trust powers organized under the financial institution laws of the United States or any state, and shall have at the time of appointment capital and surplus of not less than $100,000,000. For purpose of this Section 14, a corporation or institution with trust powers organized under the financial institution laws of the United States or any state shall be deemed to have combined capital and surplus of at least $100,000,000 if it has a combined capital surplus of at least $20,000,000 and is a wholly-owned subsidiary of a corporation having a combined capital and surplus of at least $100,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Authority, an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trust, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Authority execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor. Should any transfer, assignment or instrument in writing from the Authority be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instrument in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Any corporation or association into which the Escrow Agent, or any successor to it in the trusts created by this Escrow Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it shall be a party or any successor to a substantial portion of the Escrow Agent's corporate trust business, shall, if it meets the qualifications set forth in the fifth paragraph of this Section and if it is otherwise satisfactory to the Authority, be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 15. The Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement except as provided in Section 5 hereof. The Escrow Agent shall have no power or duty to transfer or otherwise dispose of the moneys held hereunder except as provided in this Escrow Agreement.

SECTION 16. To the extent permitted by law, the Authority hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the Authority or any other person under any other agreement or

instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant thereto, the retention of such securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement. The Authority shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's successors, assigns, agents and employees or the material breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the Authority or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement.

SECTION 17. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the Authority, and the Escrow Agent assumes no responsibility for the correctness thereof. The Escrow Agent makes no representation as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the defeasance of the 2007 Bonds pursuant to the Prior Indenture or to the validity of this Escrow Agreement as to the Authority and, except as otherwise provided herein, the Escrow Agent shall incur no liability in respect thereof. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence or willful misconduct, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may consult with counsel, who may or may not be counsel to the Authority, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel) may be deemed to be conclusively established by a written certification of the Authority. Whenever the Escrow Agent shall deem it necessary or desirable that a matter specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel be proved or established prior to taking, suffering, or omitting any such action, such matter may be established only by such a certificate or such an opinion. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to this Escrow Agreement.

No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business shall be the successor to the Escrow

Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 18. This Escrow Agreement shall terminate upon payment of all 2007 Bonds on the Redemption Date, or upon such later date on which all amounts held in the Escrow Fund have been disbursed as provided herein.

SECTION 19. THIS ESCROW AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 20. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Authority or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

All the covenants, promises and agreements in this Escrow Agreement contained by or on behalf of the Authority or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 21. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first-above written.

CITY OF BANNING FINANCING AUTHORITY

By_____
Executive Director

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent and as Prior Trustee

By_____
Authorized Officer

ACKNOWLEDGED:

CITY OF BANNING,

By: _____
Title: City Manager

Exhibit A
Schedule of Escrow Securities

Principal Amount	Security	Maturity Date	Coupon	Purchase Price

Exhibit B

NOTICE OF DEFEASANCE TO THE OWNERS OF

$45,790,000
City of Banning Financing Authority
Revenue Bonds (Electric System Project), Series 2007

NOTICE IS HEREBY GIVEN to the applicable owners of the outstanding City of Banning Financing Authority, $45,790,000 Revenue Bonds (Electric System Project), Series 2007, as listed below (the "Bonds"), that in connection with the Bonds maturing in the years 2016 through 2038, inclusive, and bearing the CUSIP numbers set forth below (the "Defeased Bonds"), there has been deposited with U.S. Bank National Association (the "Trustee"), moneys which will be sufficient to pay the redemption price of and interest on the Defeased Bonds through and including the redemption date of June 1, 2017. The redemption price of, and interest on, such Defeased Bonds shall be paid only from moneys deposited with the Trustee as aforesaid. As a result of such deposit, such Defeased Bonds are deemed to have been paid in accordance with the applicable provisions of the Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010, by and among the City of Banning Financing Authority, the City of Banning and the Trustee, pursuant to which the Bonds were issued.

Maturity Date (June 1)	Principal Amount	Interest Rate	CUSIP (066614)
2016	$ 970,000	5.00%	AH1
2017	1,020,000	5.00	AJ7
2018	1,070,000	5.00	AK4
2019	1,125,000	5.00	AL2
2020	1,180,000	5.00	AM0
2021	1,240,000	5.00	AN8
2022	1,305,000	5.00	AP3
2025	4,315,000	5.00	AT5
2027	3,240,000	4.50	AQ1
2028	1,730,000	5.00	AU2
2029	1,815,000	5.00	AV0
2032	6,010,000	5.00	AR9
2038	15,025,000	5.00	AS7

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2015

By: U.S. Bank National Association, as Trustee

Exhibit C

NOTICE OF REDEMPTION TO THE OWNERS OF

$45,790,000
City of Banning Financing Authority
Revenue Bonds (Electric System Project), Series 2007

NOTICE IS HEREBY GIVEN pursuant to the terms of the Indenture of Trust, dated as of June 1, 2007, as amended by Amendment No.1 to Indenture of Trust, dated June 8, 2010, by and among the City of Banning Financing Authority (the "Authority"), the City of Banning, and U.S. Bank National Association, as trustee, that all of the $45,790,000 City of Banning Financing Authority Revenue Bonds (Electric System Project), Series 2007, as listed below (the "Bonds"), initially issued on June 21, 2007, have been selected for redemption on June 1, 2017 (the "Redemption Date") at a redemption price equal to the principal amount of the Bonds to be redeemed (the "Redemption Price") together with interest accrued to the Redemption Date.

Maturity Date (June 1)	Principal Amount	Interest Rate	CUSIP (066614)
2017	$1,020,000	5.00%	AJ7
2018	1,070,000	5.00	AK4
2019	1,125,000	5.00	AL2
2020	1,180,000	5.00	AM0
2021	1,240,000	5.00	AN8
2022	1,305,000	5.00	AP3
2025	4,315,000	5.00	AT5
2027	3,240,000	4.50	AQ1
2028	1,730,000	5.00	AU2
2029	1,815,000	5.00	AV0
2032	6,010,000	5.00	AR9
2038	15,025,000	5.00	AS7

Pursuant to the governing documents, payment of the Redemption Price on the Bonds called for redemption will be paid upon presentation of the Bonds in the following manner:

If by First Class/Registered/Certified Mail: *Express Delivery Only:* *By Hand Only:*

Interest with respect to the principal amount of the Bonds designated to be redeemed shall cease to accrue on and after the Redemption Date.

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

**The undersigned shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness indicated in the Redemption Notice. They are included solely for the convenience of the Owners.*

Dated: [_____], 2017

By: U.S. Bank National Association, as Trustee

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CONTINUING DISCLOSURE AGREEMENT

THIS CONTINUING DISCLOSURE AGREEMENT (this "Disclosure Agreement"), dated as of August 1, 2015, is by and between the City of Banning, California (the "City") and Willdan Financial Services, as dissemination agent (the "Dissemination Agent"), in connection with the issuance by the City of Banning Financing Authority of it $_____ aggregate principal amount of Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds").

WITNESSETH:

WHEREAS, this Disclosure Agreement is being executed and delivered by the City and the Dissemination Agent for the benefit of the owners and beneficial owners of the Bonds and in order to assist the purchaser of the Bonds in complying with the Rule (as defined herein);

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Definitions. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Indenture of Trust, dated as of August 1, 2015 (the "Indenture"), by and among the City, the City of Banning Financing Authority and U.S. Bank National Association, as Trustee. In addition, the following capitalized terms shall have the following meanings:

"Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 2 and 3 hereof.

"Annual Report Date" means each March 31 after the end of the Fiscal Year.

"Disclosure Representative" means the [City Manager] of the City or his or her designee, or such other officer or employee as the City shall designate in writing to the Dissemination Agent and the Trustee from time to time.

"Dissemination Agent" means Willdan Financial Services, acting as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation.

"EMMA" means Electronic Municipal Market Access system, maintained on the internet at http://emma.msrb.org by the MSRB.

"Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any twelve-month or fifty-two week period hereafter selected by the City, with notice of such selection or change in Fiscal Year to be provided as set forth herein.

"Listed Events" means any of the events listed in Section 4 hereof and any other event legally required to be reported pursuant to the Rule.

"MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to he made through EMMA.

"Official Statement" means the Official Statement, dated _____, 2015, relating to the Bonds.

"Participating Underwriter" means any of the original purchaser(s) of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

"Repository" means, until otherwise designated by the SEC, EMMA.

"Rule" means Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same has been or may be amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

Section 2. Provision of Annual Reports.

(a) The City shall provide, or shall cause the Dissemination Agent to provide, to MSRB, through EMMA, not later than the Annual Report Date, an Annual Report which is consistent with the requirements of Section 3 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as provided by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 3 of this Disclosure Agreement. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent. If the Fiscal Year changes for the City, the City shall give notice of such change in the manner provided under Section 4(e) hereof.

(b) If by 15 Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, through EMMA, the Dissemination Agent has not received a copy of the Annual Report the Dissemination Agent shall contact the City to determine if the City is in compliance with subsection (a). The City shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder. The Dissemination Agent may conclusively rely upon such certification of the City and shall have no duty or obligation to review such Annual Report.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

(ii) (if the Dissemination Agent is other than the Trustee), to the extent appropriate information is available to it, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided.

Section 3. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the City for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental

entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) The following tables presented in the Official Statement, updated for the Fiscal Year covered by the Annual Report:

(i) [Table No. __ "City of Banning Electric System Customers, Retail Sales, Revenues and Demand – Historical";

(ii) Table No. __ "City of Banning Electric System Customers, Retail Sales, Revenues and Demand – Projected";

(iii) Table No. __ "City of Banning Electric System – Ten Largest Customers"; and

(iv) Table No. __ "City of Banning Electric System – Take or Pay Obligations";

(v) Table No. __ "City of Banning Elcctric System – Five Year History of Rates"; and

(vi) Table No. __ "City of Banning Electric System – Historical Operating Results."]

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the City is an "obligated person" (as defined by the Rule), which are available to the public on EMMA or filed with the SEC. The City shall clearly identify each such document to be included by reference.

Section 4. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 4, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, in a timely manner not more than ten (10) Business Days after the event:

(1) principal and interest payment delinquencies;

(2) defeasances;

(3) tender offers;

(4) rating changes;

(5) adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax- status of the Bonds;

(6) unscheduled draws on the debt service reserves reflecting financial difficulties;

(7) unscheduled draws on credit enhancements reflecting financial difficulties;

(8) substitution of credit or liquidity providers or their failure to perform; or

(9) bankruptcy, insolvency, receivership or similar proceedings.

For these purposes, any event described in the immediately preceding paragraph (9) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(b) Pursuant to the provisions of this Section 4, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

(1) mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the City or their termination;

(2) appointment of a successor or additional Trustee or the change of the name of a Trustee;

(3) nonpayment related defaults;

(4) modifications to the rights of Owners;

(5) a notice of redemption; or

(6) release, substitution or sale of property securing repayment of the Bonds.

(c) Whenever the City obtains knowledge of the occurrence of a Listed Event, described in subsection (b) of this Section 4, the City shall as soon as possible determine if such event is material under applicable federal securities law.

(d) If the City determines that the occurrence of a Listed Event described in subsection (b) of this Section 4 is material under applicable federal securities law, the City shall promptly notify the Dissemination Agent in writing and instruct the Dissemination Agent to report the occurrence to the Repository in a timely manner not more than ten (10) Business Days after the event.

(e) If the Dissemination Agent has been instructed by the City to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB.

Section 5. **Filings with the MSRB**. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 6. **Termination of Reporting Obligation**. The City's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 4 hereof.

Section 7. **Dissemination Agent**. The City may, from time to time, appoint or engage another Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. .

Section 8. **Amendment; Waiver**. Notwithstanding any other provision of this Disclosure Agreement, the City may amend this Disclosure Agreement, provided no amendment increasing or affecting the obligations or duties of the Dissemination Agent shall be made without the consent of such party, and any provision of this Disclosure Agreement may be waived if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the City and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

Section 9. **Additional Information**. Nothing in this Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the City shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 10. **Default**. In the event of a failure of the City or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee, at the written direction of any Participating Underwriter or the holders of at least 25% of the aggregate amount of principal evidenced by Outstanding Bonds and upon being indemnified to its reasonable satisfaction, shall, or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City, Trustee or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the City, the Trustee or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

Section 11. **Duties, Immunities and Liabilities of Trustee and Dissemination Agent**. [Article VI of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture.] The Dissemination Agent shall not be responsible for the form or content of any Annual Report or notice of Listed Event. The Dissemination Agent shall receive reasonable compensation for its services provided under this Disclosure Agreement. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorney's fees) of defending against any claim of liability, but excluding liabilities due to the

Dissemination Agent's negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 12. **Beneficiaries**. This Disclosure Agreement shall inure solely to the benefit of the City, the Trustee, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 13. **Counterparts**. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Disclosure Agreement as of the date first above written.

CITY OF BANNING, CALIFORNIA

By:_____
Responsible Officer

WILLDAN FINANCIAL SERVICES, as Dissemination Agent

By:_____
Authorized Officer

EXHIBIT A

NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF FAILURE TO FILE ANNUAL REPORT

Name of Obligor: CITY OF BANNING

Name of Issue: CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS, (ELECTRIC SYSTEM PROJECT)
SERIES 2015

Date of Issuance: August __, 2015

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-captioned Bonds as required by the Continuing Disclosure Agreement, dated as of August 1, 2015, by and between the City and [Willdan Financial Services] [The City anticipates that the Annual Report will be filed by _____.]

Dated: _____, 20__ [_____], on behalf of the City

cc: City of Banning, California

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$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

BOND PURCHASE CONTRACT

_____ __, 2015

City of Banning Financing Authority
99 East Ramsey Street
Banning, California 92220
Attention: Executive Director

City of Banning
99 East Ramsey Street
Banning, California 92220
Attention: City Manager

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the "Representative"), as representative of itself and The Williams Capital Group, L.P. (together with the Representative, the "Underwriters"), offers to enter into this Bond Purchase Contract (this "Purchase Contract") with the City of Banning Financing Authority (the "Authority") and the City of Banning (the "City"). This offer is made subject to the Authority's and the City's acceptance by execution of this Purchase Contract and delivery of the same to the Underwriters on or before 11:59 p.m. on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the Authority and the City at any time prior to such acceptance. Upon the Authority's and the City's acceptance hereof, the Purchase Contract will be binding upon the Authority, the City and the Underwriters. Capitalized terms used in this Purchase Contract and not otherwise defined herein shall have the respective meanings set forth for such terms in the Trust Indenture (defined below).

Section 1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations set forth in this Purchase Contract, the Underwriters agree to purchase from the Authority, and the Authority agrees to sell and deliver to the Underwriters, all (but not less than all) of the $_____ City of Banning Financing Authority Refunding Revenue Bonds (Electric System Project) Series 2015 (the "Bonds") at a purchase price of $_____ (being an amount equal to the principal amount of the Bonds, plus/less a net original issue premium/discount of $_____ and less an Underwriters' discount of $_____). The obligations of the Underwriters to purchase, accept delivery of and pay for the Bonds shall be conditioned on the sale and delivery of all of the Bonds by the Authority to the Underwriters at Closing (as such term is defined herein).

Section 2. Bond Terms; Authorizing Instruments. (a) The Bonds shall be dated their date of delivery and shall mature and bear interest as shown on Exhibit A attached hereto. The Bonds shall be as described in, and shall be issued and secured under, an Indenture of Trust, dated as

of August 1, 2015 (the "Trust Indenture"), by and among the Authority, the City and U.S. Bank National Association, as trustee (the "Trustee"). The Bonds are payable and subject to redemption as provided in the Trust Indenture and as described in the Official Statement.

(b) The Bonds will be issued pursuant to Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584, and are payable from and secured by the Authority's pledge of "Revenues" under and as defined in the Trust Indenture, consisting primarily of Installment Payments to be made by the City to the Authority pursuant to an Installment Sale Agreement, dated as of August 1, 2015 (the "Installment Sale Agreement"), by and between the Authority and the City.

(c) The net proceeds of the sale of the Bonds will be used: (i) to finance certain capital improvements to the City's electric system (the "Enterprise"); (ii) to refund the Authority's Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"); and (iii) to pay the costs of issuing the Bonds. [UPDATE TO REFLECT INSURANCE, RESERVE FUND AND CAPITALIZED INTEREST AS NECESSARY]

Section 3. Public Offering. The Underwriters agree to make an initial bona fide public offering of all of the Bonds, at not in excess of the initial public offering yields or prices set forth on Exhibit A attached hereto. Following the initial public offering of the Bonds, the offering prices may be changed from time to time by the Underwriters. The City and the Authority acknowledge and agree that: (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction among the City, Authority and the Underwriters; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principal and are not acting as Municipal Advisors (as such term is defined in Section 15B of The Securities Exchange Act of 1934, as amended) to the City or the Authority; (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the City or the Authority with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or is currently providing other services to the City or the Authority on other matters); (iv) the Underwriters have financial interests that may differ from and be adverse to those of the City or the Authority; and (v) the City and Authority have consulted their own legal, financial and other advisors to the extent that they have deemed appropriate.

Section 4. Official Statement; Continuing Disclosure. (a) The Authority has delivered to the Underwriters the Preliminary Official Statement dated _____ __, 2015 (the "Preliminary Official Statement") and will deliver to the Underwriters the final Official Statement dated the date of this Purchase Contract (as amended and supplemented from time to time pursuant to Section 5(i) of this Purchase Contract, the "Official Statement").

(b) The Authority hereby authorizes the use of the Official Statement and the information contained therein by the Underwriters in connection with the public offering and the sale of the Bonds. The Authority consents to the use by the Underwriters prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds. The Underwriters hereby agree that they will not send any confirmation requesting payment for the purchase of any Bonds unless the confirmation is accompanied by or preceded by the delivery of a copy of the Official Statement. The Underwriters agree: (1) to provide the Authority with final pricing information on the Bonds on a timely basis prior to the Closing; and (2) to take any and all

other actions necessary to comply with applicable Securities and Exchange Commission rules and Municipal Securities Rulemaking Board (the "MSRB") rules governing the offering, sale and delivery of the Bonds to ultimate purchasers.

(c) In connection with the issuance of the Bonds, and in order to assist the Underwriters in complying with the provisions of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"), the City will execute a Continuing Disclosure Agreement, dated as of August 1, 2015 (the "Continuing Disclosure Undertaking"), with Willdan Financial Services, as dissemination agent (the "Dissemination Agent"), under which the City will undertake to provide certain financial and operating data as required by Rule 15c2-12. The form of the Continuing Disclosure Undertaking is attached as an appendix to the Preliminary Official Statement.

Section 5. Representations, Warranties and Covenants of the Authority. The Authority hereby represents, warrants and agrees with the Underwriters that:

(a) The Commission of the Authority has taken official action by resolution (the "Authority Resolution") adopted by a majority of the members of the Commission of the Authority at a regular meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the Trust Indenture, the Installment Sale Agreement, the Escrow Agreement, dated as of August 1, 2015 (the "Escrow Agreement"), by and between the Authority and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), this Purchase Contract (together with the Trust Indenture, the Installment Sale Agreement and the Escrow Agreement, the "Authority Agreements") and the Official Statement, and the taking of any and all such action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated hereby.

(b) The Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "State") and has all necessary power and authority to adopt the Authority Resolution and to enter into and perform its duties under the Authority Agreements.

(c) By all necessary official action, the Authority has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the Bonds and the Authority Agreements, and the consummation by it of all other transactions contemplated by the Authority Resolution, the Authority Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered, the Authority Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the Authority, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the Authority's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement under the caption "THE AUTHORITY" and the information and statements in the Official Statement relating to the Authority under the caption "LITIGATION" do not and will not contain any untrue

statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) As of the date hereof, except as described in the Preliminary Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against, and notice of which has been served on and received by, the Authority or, to the best knowledge of the Authority, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the Authority, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of Authority Agreements or the Bonds, or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, or any other agreement or instrument to which the Authority is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the Authority required for the execution and delivery of this Purchase Contract and the other Authority Agreements or the consummation by the Authority of the transactions contemplated by the Official Statement or the Authority Agreements.

(g) Any certificate signed by any official of the Authority authorized to do so shall be deemed a representation and warranty by the Authority to the Underwriters as to the statements made therein.

(h) The Authority is not in default, and at no time has the Authority defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i) If any event occurs of which the Authority has knowledge between the date of this Purchase Contract and the date of the Closing that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Authority shall notify the Representative and if, in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will cooperate with the Underwriters in causing the Official Statement to be amended or supplemented in a form and in a manner approved by the Representative. All expenses thereby incurred will be paid by the Authority, and the Underwriters will file, or cause to be filed, the amended or supplemented Official Statement with the MSRB's Electronic Municipal Market Access database ("EMMA").

(j) The Authority will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order: (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate; and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions. The Authority will not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(k) The Authority is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of any state or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or any loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, which breach or default has or may have an adverse effect on the ability of the Authority to perform its obligations under the Authority Agreements, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the adoption, execution and delivery of the Authority Agreements, if applicable, and compliance with the provisions on the Authority's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the Authority is a party, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Authority or under the terms of any such law, regulation or instrument, except as may be provided by the Authority Agreements.

(l) Except as set forth in the Official Statement under the caption "CONTINUING DISCLOSURE," the Authority has complied in all material respects with its continuing disclosure undertakings in the past five years.

Section 6. Representations, Warranties and Covenants of the City. The City hereby represents, warrants and agrees with the Underwriters that:

(a) The City Council (the "City Council") of the City has taken official action by Resolution (the "City Resolution") adopted by a majority of the members of the City Council at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the Indenture, the Installment Sale Agreement, the Continuing Disclosure Undertaking, this Purchase Contract (together with the Indenture, the Installment Sale Agreement and the Continuing Disclosure Agreement, the "City Agreements") and the Official Statement and the taking of any and all such action as may be required on the part of the City and carry out, give effect to and consummate the transactions contemplated hereby.

(b) The City is a municipal corporation and general law city duly organized and existing under the laws of the State and has all necessary power and authority to adopt the City Resolution and to enter into and perform its duties under the City Agreements.

(c) By all necessary official action, the City has duly adopted the City Resolution, has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the City Agreements, and the consummation by it of all other transactions contemplated by the City Resolution, the City Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered, the City Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto, as applicable) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy,

insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the City's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement (other than under the caption "THE AUTHORITY" and statements relating to the Authority under the caption "LITIGATION") do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that no representation is made with respect to information relating to DTC (as such term is defined herein) or DTC's book-entry system).

(e) As of the date hereof, except as described in the Preliminary Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against, and notice of which has been served on and received by, the City or, to the best knowledge of the City, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the City, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of City Agreements or the Bonds; or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, or any other agreement or instrument to which the City is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the City required for the execution and delivery of this Purchase Contract and the City Agreements or the consummation by the City of the transactions contemplated by the Official Statement or the City Agreements.

(g) Any certificate signed by any official of the City authorized to do so shall be deemed a representation and warranty by the City to the Underwriters as to the statements made therein.

(h) The City is not in default, and at no time has the City defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i) If any event occurs of which the City has knowledge between the date of this Purchase Contract and the date of the Closing that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Representative and, if in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will cooperate with the Underwriters in causing the Official Statement to be amended or supplemented in a form and in a manner approved by the Representative. All expenses thereby incurred will be paid by the City, and the Underwriters will file, or cause to be filed, the amended or supplemented Official Statement with EMMA.

(j) Except as set forth in the Official Statement under the caption "CONTINUING DISCLOSURE," the City has complied in all material respects with its continuing disclosure undertakings in the past five years.

(k) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order: (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate; and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions. The City will not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(l) The City is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of any state or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or any loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party, which breach or default has or may have an adverse effect on the ability of the City to perform its obligations under the City Agreements, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the adoption, execution and delivery of the City Agreements, if applicable, and compliance with the provisions on the City's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City or under the terms of any such law, regulation or instrument, except as may be provided by the City Agreements.

(m) The financial statements relating to the receipts, expenditures and cash balances of the City as of June 30, 2014 attached as an appendix to the Official Statement fairly represent the receipts, expenditures and cash balances of the City as of such date. Except as disclosed in the Official Statement or otherwise disclosed in writing to the Representative, there has not been any materially adverse change in the financial condition of the City or the Enterprise or in the City's operations or the operations of the Enterprise since June 30, 2014, and there has been no occurrence, circumstance or combination thereof which is reasonably expected to result in any such materially adverse change.

Section 7. The Closing. (a) At 8:00 A.M., Pacific Time, on _____ __, 2015, or on such earlier or later time or date as may be agreed upon by the Representative, the Authority and the City (the "Closing"), the Authority shall deliver or cause to be delivered to the Trustee, the Bonds in definitive form, registered in the name of Cede & Co., as the nominee of The Depository Trust Company, New York, New York ("DTC") (so that the Bonds may be authenticated by the Trustee and credited to the account specified by the Representative under DTC's FAST procedures). Prior to the Closing, the Authority shall deliver, at the offices of Norton Rose Fulbright US LLP ("Bond Counsel") in Los Angeles, California, or such other place as is mutually agreed upon by the Representative, the City and the Authority, the other documents described in this Purchase Contract.

On the date of the Closing, the Underwriters shall pay the purchase price of the Bonds as set forth in Section 1 of this Purchase Contract in immediately available funds to the order of the Trustee.

(b) The Bonds shall be issued in fully registered form and shall be prepared and delivered as one Bond for each maturity registered in the name of a nominee of DTC. It is anticipated that CUSIP identification numbers will be inserted on the Bonds, but neither the failure to provide such numbers nor any error with respect thereto shall constitute a cause for failure or refusal by the Underwriters to accept delivery of the Bonds in accordance with the terms of this Purchase Contract.

Section 8. Conditions to Underwriters' Obligations. The Underwriters have entered into this Purchase Contract in reliance upon the representations and warranties of the Authority and the City contained herein and to be contained in the documents and instruments to be delivered on the date of the Closing, and upon the performance by the Authority and the City of their respective obligations to be performed hereunder and under such documents and instruments to be delivered at or prior to the date of the Closing. The Underwriters' obligations under this Purchase Contract are and shall also be subject to the following conditions:

(a) The representations and warranties of the Authority and the City contained in this Agreement shall be true and correct in all material respects on the date of this Purchase Contract and on and as of the date of the Closing as if made on the date of the Closing.

(b) As of the date of the Closing, the Official Statement shall not have been amended, modified or supplemented, except in any case as may have been agreed to by the Representative.

(c) (i) As of the date of the Closing, the Authority Resolution, the City Resolution, the Authority Agreements and the City Agreements shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by the Authority, the City and the Representative; (ii) the Authority shall perform or have performed all of its obligations required under or specified in the Authority Resolution, the Authority Agreements and this Purchase Contract to be performed at or prior to the date of the Closing; and (iii) the City shall perform or have performed all of its obligations required under or specified in the City Resolution, the City Agreements and this Purchase Contract to be performed at or prior to the date of the Closing.

(d) As of the date of the Closing, all necessary official action of the Authority relating to the Authority Agreements, the Authority Resolution and the Official Statement, and all necessary official action of the City relating to the City Agreements, the City Resolution, and the Official Statement, shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect.

(e) Subsequent to the date of this Purchase Contract, up to and including the date of the Closing, there shall not have occurred any change in the financial affairs of the Authority or the City, or in the operations of the Enterprise, as described in the Official Statement, which in the reasonable professional judgment of the Representative materially impairs the investment quality of the Bonds.

(f) As of or prior to the date of the Closing, the Underwriters shall have received each of the following documents:

(A) Certified copies of the Authority Resolution and the City Resolution.

(B) Duly executed copies of the Authority Agreements and the City Agreements.

(C) The Preliminary Official Statement and the Official Statement, with the Official Statement duly executed on behalf of the Authority and the City.

(D) An approving opinion of Bond Counsel, dated as of the Closing, as to the validity of the Bonds and the exclusion of interest on the Bonds from federal and State income taxation, addressed to the Authority and the City substantially in the form attached as an appendix to the Official Statement, and a reliance letter with respect thereto addressed to the Underwriters and the Trustee.

(E) A supplemental opinion of Bond Counsel, addressed to the Underwriters, to the effect that:

(1) The Purchase Contract has been duly executed and delivered by the Authority and the City and is valid and binding upon the Authority and the City, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles;

(2) The Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Trust Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(3) The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE BONDS" (other than statements relating to DTC or its book-entry system), "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "TAX MATTERS," and in Appendices C and D, insofar as such statements purport to describe certain provisions of the Bonds, or to state legal conclusions and the opinion of Bond Counsel regarding the tax exempt nature of the Bonds for federal and State income tax purposes, present a fair and accurate summary of the provisions thereof.

(F) A defeasance opinion of Bond Counsel relating to the 2007 Bonds, in form and substance satisfactory to Bond Counsel, the Trustee and the Underwriters.

(G) A letter, dated the Closing Date and addressed to the Underwriters, of Norton Rose Fulbright US LLP, Disclosure Counsel, to the effect that Disclosure Counsel is not passing upon and has not undertaken to determine independently or to verify the accuracy or completeness of the statements contained in the Official Statement, and is, therefore, unable to make any representation to the Underwriters in that regard, but on the basis of its participation in conferences with representatives of the City, the City Attorney, the Authority, Bond Counsel, the City's Financial Advisor, representatives of the Underwriters and others, during which conferences the content of the Official Statement and related matters were discussed, and its examination of certain documents, and, in reliance thereon and based on the information made available to it in its role as Disclosure Counsel and its understanding of applicable law, Disclosure Counsel advises the Underwriters as a matter of fact, but not opinion, that no information has come to the attention of the attorneys in the firm working on such matter which has led them to believe that the Official Statement (excluding therefrom the financial and statistical data, forecasts, charts, numbers, estimates, projections, assumptions and expressions of opinion included in the Official Statement, information regarding DTC and its book entry system and the information set forth in Appendices A, F and G, as to all of

which no opinion is expressed) as of its date and as of the Closing contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and advising the Underwriters that, other than reviewing the various certificates and opinions required by this Purchase Contract regarding the Official Statement, Disclosure Counsel has not taken any steps since the date of the Official Statement to verify the accuracy of the statements contained in the Official Statement.

(H) An opinion of the City Attorney, dated as of the Closing addressed to the Authority, the City and the Underwriters, substantially in the form attached hereto as Exhibit E.

(I) An executed Rule 15c2-12 certificate of the Authority and the City, dated as of the date of the Preliminary Official Statement, in the form attached hereto as Exhibit B.

(J) An executed closing certificate of the Authority, dated as of the Closing, in the form attached hereto as Exhibit C.

(K) An executed closing certificate of the City, dated as of the Closing, in the form attached hereto as Exhibit D.

(L) The opinion or opinions of counsel of the Trustee and the Escrow Agent, dated as of the Closing, addressed to the Authority, the City and the Underwriters, in form and substance satisfactory to Bond Counsel and the Representative.

(M) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Trustee to the effect that the Trustee has accepted the duties imposed by the Trust Indenture and is authorized to carry out such duties.

(N) A certificate or certificates, dated as of the Closing, in form and substance acceptable to the Representative, of an authorized officer of officers of the Escrow Agent to the effect that the Escrow Agent has accepted the duties imposed by the Escrow Agreement and is authorized to carry out such duties.

(O) Evidence of required filings with the California Debt and Investment Advisory Commission.

(P) A copy of the executed Blanket Issuer Letter of Representations by and between the Authority and DTC relating to the book entry system.

(Q) Evidence that the rating or ratings assigned to the Bonds as of the date of the Closing are as set forth in the Official Statement.

(R) A certified copy of the general resolution of the Trustee and the Escrow Agent authorizing the execution and delivery of certain documents by certain officers of the Trustee and the Escrow Agent, which resolution authorizes the execution and delivery of the Trust Indenture and the Escrow Agreement and the authentication and delivery of the Bonds by the Trustee.

(S) An opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, counsel to the Underwriters, addressed to the Underwriters and in form and substance satisfactory to the Representative.

(T) A report of [Digital Assurance Certification LLC] as to compliance by the City and related entities with their respective continuing disclosure undertakings.

(U) A tax arbitrage certificate with respect to the Bonds, in form and substance satisfactory to Bond Counsel and the Representative.

(V) A certificate of the Dissemination Agent to the effect that the Continuing Disclosure Undertaking has been duly executed and delivered by the Dissemination Agent and, subject to due authorization and delivery by the City, is valid and binding upon the Dissemination Agent, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles.

(W) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters or Bond Counsel may reasonably request to evidence compliance by the Authority and the City with legal requirements, the truth and accuracy, as of the date of the Closing, of the representations of the Authority and the City herein contained and of the Official Statement and the due performance or satisfaction by the Authority and the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Authority and the City.

All of the opinions, letters, certificates, instruments and other documents mentioned in this Purchase Contract shall be deemed to be in compliance with the provisions of this Purchase Contract if, but only if, they are in form and substance satisfactory to the Representative. If the Authority and the City are unable to satisfy the conditions to the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds contained in this Purchase Contract, or if the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriters, the Authority nor the City shall be under further obligations hereunder, except that the respective obligations of the Authority, the City and the Underwriters set forth in Section 12 of this Purchase Contract shall continue in full force and effect.

Section 9. Conditions to Authority's and City's Obligations. The performance by the Authority and the City of their respective obligations under this Purchase Contract are conditioned upon: (i) the performance by the Underwriters of their obligations hereunder; and (ii) receipt by the Authority and the City of opinions addressed to the Authority and the City, receipt by the Underwriters of opinions addressed to the Underwriters, and the delivery of certificates being delivered on the date of the Closing by persons and entities other than the Authority and the City.

Section 10. Termination Events. The Underwriters shall have the right to terminate the Underwriters' obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds by notifying the Authority and the City of its election to do so if, after the execution hereof and prior to the Closing, any of the following events occurs:

(A) the marketability of the Bonds or the market price thereof, in the reasonable opinion of the Representative, has been materially and adversely affected by any decision issued by a

court of the United States (including the United States Tax Court) or of the State, by any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Department of the Treasury of the United States, the Intemal Revenue Service, or other governmental agency of the United States, or any governmental agency of the State, or by a tentative decision or announcement by any member of the House Ways and Means Committee, the Senate Finance Committee, or the Conference Committee with respect to contemplated legislation or by legislation enacted by, pending in, or favorably reported to either the House of Representatives or either House of the Legislature of the State, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State by the Governor of the State in an executive communication, affecting the tax status of the Authority or the City, their property or income, their debt or contractual obligations (including the Bonds) or the interest thereon or any tax exemption granted or authorized by the Internal Revenue Code of 1986, as amended;

(B) the United States becomes engaged in hostilities that result in a declaration of war or a national emergency, or any other outbreak of hostilities occurs, or a local, national or international calamity or crisis occurs, financial or otherwise, the effect of such outbreak, calamity or crisis being such as, in the reasonable opinion of the Representative, would affect materially and adversely the ability of the Underwriters to market the Bonds;

(C) there occurs a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States, New York or State authorities;

(D) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission is issued or made to the effect that the issuance, offering or sale of the Bonds is or would be in violation of any provision of the Securities Act of 1933, as then in effect, or of the Securities Exchange Act of 1934, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(E) legislation is enacted by the House of Representatives or the Senate of the Congress of the United States of America, or a decision by a court of the United States of America is rendered, or a ruling or regulation by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter is made or proposed to the effect that the Bonds are not exempt from registration, qualification or other similar requirements of the Securities Act of 1933, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(F) in the reasonable judgment of the Representative, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be materially and adversely affected because additional material restrictions not in force as of the date hereof are imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(G) the Office of the Comptroller of the Currency, The New York Stock Exchange or other national securities exchange, or any governmental authority, imposes, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increases materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, or financial responsibility requirements of the Underwriters;

(H) a general banking moratorium is established by federal, New York or State authorities;

(I) any legislation, ordinance, rule or regulation is introduced in or enacted by any governmental body, department or agency in the State or a decision of a court of competent jurisdiction within the State is rendered, which, in the reasonable opinion of the Representative, after consultation with the Authority and the City, materially adversely affects the market price of the Bonds;

(J) any federal or State court, authority or regulatory body takes action materially and adversely affecting the collection of Revenues under the Trust Indenture or Gross Revenues under the Installment Sale Agreement; or

(K) any rating of the Bonds is downgraded, suspended or withdrawn by a national rating service, which, in the reasonable opinion of the Representative, materially adversely affects the marketability or market price of the Bonds;

(L) an event occurs which in the reasonable opinion of the Representative requires a supplement or amendment to the Official Statement and: (i) the Authority or the City refuses to prepare and furnish such supplement or amendment; or (ii) in the reasonable judgment of the Representative, the occurrence of such event materially and adversely affects the marketability of the Bonds or renders the enforcement of the sale contracts of the Bonds impracticable;

(M) an order, decree or injunction issued by any court of competent jurisdiction, or order, ruling, regulation (final, temporary or proposed), official statement or other form of notice or communication issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental authority having jurisdiction of the subject matter, to the effect that: (i) obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Trust Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended; or (ii) the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(N) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any domestic governmental authority or by any domestic national securities exchange, which are material to the marketability of the Bonds; or

(O) the commencement of any action, suit or proceeding described in Section 5(e) or Section 6(e).

Section 11. Changes in Official Statement. After the Closing, neither the Authority nor the City will adopt any amendment of or supplement to the Official Statement to which the Representative shall reasonably object in writing unless the Authority or its counsel determines that such amendment or supplement is required under applicable law. Within 90 days after the Closing or within 25 days following the "end of the underwriting period" (as such term is defined below), whichever occurs first, if any event relating to or affecting the Bonds, the Enterprise, the Trustee, the City or the Authority shall occur as a result of which it is necessary, in the opinion of the

Representative, to amend or supplement the Official Statement in order to make the Official Statement not misleading in any material respect in the light of the circumstances existing at the time it is delivered to a purchaser, the Authority will forthwith prepare and furnish to the Underwriters an amendment or supplement that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to purchaser, not misleading. The City and the Authority shall cooperate with the Underwriters in the filing by the Underwriters of such amendment or supplement to the Official Statement with the MSRB. As used herein, the term "end of the underwriting period" means the later of such time as: (i) the Authority delivers the Bonds to the Underwriters; or (ii) the Underwriters do not retain, directly or as members of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Notwithstanding the foregoing, unless the Representative gives notice to the contrary, the "end of the underwriting period" shall be the date of the Closing. Any notice delivered pursuant to this provision shall be written notice delivered to the Authority and the City at or prior to the date of the Closing and shall specify a date (other than the date of the Closing) to be deemed the "end of the underwriting period."

Section 12. Payment of Expenses. (a) The Underwriters shall be under no obligation to pay, and the City shall pay the following expenses incident to the performance of the Authority's and the City's obligations hereunder:

(i) the fees and disbursements of Bond Counsel and Disclosure Counsel;

(ii) the cost of printing and delivering the Bonds, the Preliminary Official Statement and the Official Statement (and any amendment or supplement prepared pursuant to Section 11 of this Purchase Contract);

(iii) the fees and disbursements of accountants, advisers and of any other experts or consultants retained by the Authority or the City, including the City Attorney; and

(iv) any other expenses and costs of the Authority and the City incident to the performance of their respective obligations in connection with the authorization, issuance and sale of the Bonds, including out of pocket expenses and regulatory expenses, and any other expenses agreed to by the parties.

(b) The Underwriters shall pay all expenses incurred by it in connection with the public offering and distribution of the Bonds including, but not limited to:

(i) all advertising expenses in connection with the offering of the Bonds; and

(ii) all out-of-pocket disbursements and expenses incurred by the Underwriters in connection with the offering and distribution of the Bonds (including without limitation the fees and expenses of its counsel and the MSRB, CUSIP Bureau, California Debt and Investment Advisory Commission and California Public Securities Association fees, if any), except as provided in clause (a) above.

Section 13. Notices. Any notice or other communication to be given to the Authority or the City under this Purchase Contract may be given by delivering the same in writing to the Authority and the City at the addresses set forth on the first page of this Purchase Contract, and any

notice or other communication to be given to the Underwriters under this Purchase Contract may be given by delivering the same in writing to

Stifel, Nicolaus & Company Incorporated, as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104
Attention: Guillermo Garcia

Section 14. Survival of Representations, Warranties, Agreements. All of the Authority's and the City's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect regardless of: (a) any investigations made by or on behalf of the Underwriters; or (b) delivery of and payment for the Bonds pursuant to this Purchase Contract. The agreements contained in this Section and in Section 12 shall survive any termination of this Purchase Contract.

Section 15. Benefit; No Assignment. This Purchase Contract is made solely for the benefit of the Authority, the City and the Underwriters (including their successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. The rights and obligations created by this Purchase Contract are not subject to assignment by the Underwriters, the Authority or the City without the prior written consent of the other parties hereto.

Section 16. Severability. In the event that any provision of this Purchase Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Purchase Contract.

Section 17. Counterparts. This Purchase Contract may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute the Purchase Contract by signing any such counterpart.

Section 18. Governing Law. This Purchase Contract shall be governed by the laws of the State.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Section 19. Effectiveness. This Purchase Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the Authority and the City, and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

STIFEL, NICOLAUS & COMPANY
INCORPORATED, as Representative

By: _____
Title: Authorized Officer

Accepted:

CITY OF BANNING

By:_____
City Manager

Time of Execution: _____ Pacific Time

CITY OF BANNING FINANCING AUTHORITY

By:_____
Executive Director

Time of Execution: _____ Pacific Time

EXHIBIT A

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

MATURITY SCHEDULE

Principal Payment Date (June 1)	*Principal*	*Coupon*	*Yield*	*Price*
	$	%	%	

(C) Priced to first optional redemption date of June 1, 20__ at par.

EXHIBIT B

$_____*
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

15c2-12 CERTIFICATE

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the City of Banning (the "City") and the City of Banning Financing Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate on behalf of the City and the Authority, and further hereby certifies and reconfirms on behalf of the City and the Authority as follows:

(1) This Certificate is delivered in connection with the offering and sale of the above captioned bonds (the "Bonds") in order to enable the underwriter of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule").

(2) In connection with the offering and sale of the Bonds, there has been prepared a Preliminary Official Statement, setting forth information concerning the Bonds, the Authority and the City (the "Preliminary Official Statement").

(3) As used herein, "Permitted Omissions" means the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters, all with respect to the Bonds.

(4) The Preliminary Official Statement is, except for the Permitted Omissions, deemed final within the meaning of Rule 15c2-12, and the information therein is accurate and complete except for the Permitted Omissions.

Dated: _____ __, 2015

CITY OF BANNING

By:_____
City Manager

* *Preliminary, subject to change.*

CITY OF BANNING FINANCING AUTHORITY

By:_____
Executive Director

EXHIBIT C

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

CLOSING CERTIFICATE OF THE AUTHORITY

The undersigned hereby certifies and represents that he is the duly appointed and acting representative of the City of Banning Financing Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the Authority as follows:

(i) The representations, warranties and covenants of the Authority contained in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and among the Authority, the City of Banning and Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, are true and correct and in all material respects on and as of the date of the Closing, with the same effect as if made on the date of the Closing.

(ii) The Authority Resolution is in full force and effect at the date of the Closing and has not been amended, modified or supplemented, except as agreed to by the Authority and the underwriters.

(iii) The Authority has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) The statements and descriptions in the Official Statement pertaining to the Authority do not contain any untrue or misleading statement of a material fact and do not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given to such terms in the Purchase Contract.

Dated: _____ __, 2015

CITY OF BANNING FINANCING AUTHORITY

By:_____
Executive Director

EXHIBIT D

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

CLOSING CERTIFICATE OF THE CITY

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the City of Banning (the "City"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the City as follows:

(i) The representations, warranties and covenants of the City contained in the Bond Purchase Contract, dated as of _____ __, 2015 (the "Purchase Contract"), by and among the City, the City of Banning Financing Authority, and Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, are true and correct and in all material respects on and as of the date of the Closing, with the same effect as if made on the date of the Closing.

(ii) The City Resolution is in full force and effect at the date of the Closing and has not been amended, modified or supplemented, except as agreed to by the City and the Underwriters.

(iii) The City has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) Subsequent to the date of the Official Statement and on or prior to the date of this certificate, there has been no adverse change in the condition (financial or otherwise) of the City, whether or not arising in the ordinary course of operations, as described in the Official Statement that would materially and adversely affect the Bonds or the City's performance under the City Agreements.

(v) The Official Statement (other than under the caption "THE AUTHORITY," information pertaining to the Authority under the caption "LITIGATION" and information relating to DTC and its book-entry system) does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given to such terms in the Purchase Contract.

Dated: _____ __, 2015

CITY OF BANNING

By:_____
City Manager

EXHIBIT E

_____ __, 2015

City of Banning Financing Authority
99 East Ramsey Street
Banning, California 92220

Stifel, Nicolaus & Company, Incorporated,
as Representative
One Montgomery Street, 35th Floor
San Francisco, California 94104

City of Banning
99 East Ramsey Street
Banning, California 92220

Opinion of City Attorney and Authority Counsel

with reference to

$_____
CITY OF BANNING FINANCING AUTHORITY
REFUNDING REVENUE BONDS (ELECTRIC SYSTEM PROJECT)
SERIES 2015

Ladies and Gentlemen:

In my capacity as the General Counsel to the City of Banning Financing Authority (the "Authority") and the City Attorney of the City of Banning (the "City"), in connection with the issuance by the Authority of the above-referenced bonds (the "Bonds"), I have examined such documents, certificates and records as I have deemed relevant and necessary as the basis for the opinion set forth herein. Capitalized terms used and not otherwise defined herein shall have the same meanings as assigned to them in the Bond Purchase Contract, dated _____ __, 2015 (the "Purchase Contract"), by and among Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters, the City and the Authority.

Relying on my examination described above and pertinent law and subject to the limitations and qualifications set forth hereinafter, I am of the following opinion:

1. The City is a municipal corporation and general law city organized and validly existing under the laws of the State of California.

2. Resolution No. ___ of the City Council of the City (the "City Resolution") has been duly adopted at a meeting of such City Council that was duly called and held on July __, 2015 pursuant to law, with all required public notice and at which a quorum was present and acting throughout. The City Resolution is in full force and effect and has not been amended or repealed.

3. The City has duly authorized, executed and delivered the City Agreements. Assuming due authorization, execution and delivery by the other parties thereto, as necessary, the

City Agreements constitute legal, valid and binding agreements of the City enforceable against the City in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, debt adjustment, fraudulent conveyance or transfer, moratorium, reorganization or other laws affecting the enforcement of creditors' rights generally and equitable remedies if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and limitations on remedies against public agencies.

4. Except as disclosed in the Official Statement, there is no action, suit or proceeding before or by any court, public board or body pending (with service of process having been accomplished on the City) or, to the best of my knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the City or the titles of its officers to their respective offices; (b) in any way question or affect the validity or enforceability of the City Agreements or the Bonds; (c) find illegal, invalid or unenforceable the City Agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Bonds to which the City is a party; or (d) have a material adverse effect on the ability of the City to make Installment Payments when due.

5. The execution and delivery of the City Agreements and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, trust agreement, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound in a manner which would materially adversely affect the City's performance under the City Agreements.

6. The Authority is a joint exercise of powers authority organized and validly existing under the laws of the State of California.

7. Resolution No. ____ of the Authority (the "Authority Resolution") has been duly adopted at a regular meeting of the Commission of the Authority that was duly called and held on July __, 2015 pursuant to law, with all required public notice and at which a quorum was present and acting throughout. The Authority Resolution is in full force and effect and has not been amended or repealed.

8. The Authority has duly authorized, executed and delivered the Official Statement, and the Authority Agreements. Assuming due authorization, execution and delivery by the other parties thereto, as necessary, the Authority Agreements constitute legal, valid and binding agreements of the Authority enforceable against the Authority in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, debt adjustment, fraudulent conveyance or transfer, moratorium, reorganization or other laws affecting the enforcement of creditors' rights generally and equitable remedies if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and limitations on remedies against public agencies.

9. The execution and delivery by the Authority of the Authority Agreements, the Official Statement and the other instruments contemplated by any of such documents to which the

Authority is a party, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, trust agreement, contract, agreement or other instrument to which the Authority is a party or is otherwise subject or bound in a manner which would materially adversely affect the Authority's performance under the Authority Agreements.

10. There is no action, suit or proceeding before or by any court, public board or body pending (with service of process having been accomplished on the Authority) or, to the best of my knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the Authority or the titles of its officers to their respective offices; (b) in any way question or affect the validity or enforceability of the Authority Agreements or the Bonds; or (c) find illegal, invalid or unenforceable the Authority Agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Bonds to which the Authority is a party.

The opinion is based on such examination of the laws of the State of California as I deemed relevant for the purposes of this opinion. I have not considered the effect, if any, of the laws of any other jurisdiction upon matters covered by this opinion. I have assumed the genuineness of all documents and signatures, presented to me. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in such documents. I express no opinion as to the status of the Bonds or the interest thereon, the Authority Agreements or the City Agreements under any federal securities laws or any state securities or "Blue Sky" law or any federal, state or local tax law. Further, I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained in the Authority Agreements and the City Agreements. Without limiting any of the foregoing, I express no opinion as to any matter other than as expressly set forth above.

I am furnishing this opinion as General Counsel to the Authority and City Attorney to the City. Except for the Authority and the City, no attorney-client relationship has existed or exists between me and the addressees hereof in connection with the Bonds or by virtue of this opinion. This opinion is rendered solely in connection with the financing described herein, and may not be relied upon by you for any other purpose. I disclaim any obligation to update this opinion. This opinion shall not extend to, and may not be used, quoted, referred to, or relied upon by any other person, firm, corporation or other entity without my prior written consent.

Respectfully submitted,

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RESOLUTION NO. 2015-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING AND APPROVING AN INDENTURE OF TRUST, AN INSTALLMENT SALE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, A BOND PURCHASE AGREEMENT, AN ESCROW AGREEMENT, AND A PRELIMINARY OFFICIAL STATEMENT, AND THE TAKING OF CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Banning (the "City") owns and operates that certain electric system referred to herein as the "Electric System"; and

WHEREAS, the City of Banning Financing Authority (the "Authority"), is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and the powers of such Authority include the power to issue bonds for any of its corporate purposes; and

WHEREAS, the Authority previously issued its $45,790,000 Revenue Bonds (Electric System Project), Series 2007 (the "2007 Bonds"), currently outstanding in the aggregate principal amount of $40,045,000; and

WHEREAS, the Authority desires to issue its Refunding Revenue Bonds (Electric System Project), Series 2015 (the "2015 Bonds") to refund the 2007 Bonds currently outstanding and finance certain capital improvements to the Electric System; and

WHEREAS, the Authority has reviewed the documentation related to the issuance of the 2015 Bonds.

NOW, THEREFORE, the City Council of the City of Banning, California does hereby resolve as follows:

SECTION 1. All of the above recitals are true and correct and the City Council so finds.

SECTION 2. The City hereby approves the Indenture of Trust relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by the Mayor, the City Manager, the Finance Director or any member of this City Council (each, a "Responsible Officer") with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The City hereby approves the Installment Sale Agreement, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. The City hereby approves the Continuing Disclosure Agreement relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City and Disclosure Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 5. The City hereby approves the Bond Purchase Agreement relating to the 2015 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 6. The City hereby approves the Escrow Agreement relating to the 2007 Bonds, substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 7. The City hereby approves the Preliminary Official Statement relating to the 2015 Bonds (the "Preliminary Official Statement"), substantially in the form annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the City. Each of the Responsible Officers is hereby authorized to execute and deliver a certificate deeming the Preliminary Official Statement final for purposes of SEC Rule 15c2-12. Upon the pricing of the 2015 Bonds, each of the Responsible Officers is hereby authorized to prepare and execute a final Official Statement (the "Official Statement"), substantially the form of the Preliminary Official Statement, with such additions thereto and changes therein as approved by any Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The City hereby authorizes the distribution of the Preliminary Official Statement and the Official Statement by the underwriter in connection with the offering and sale of the 2015 Bonds.

SECTION 8. Each Responsible Officer is hereby authorized and directed to execute and deliver any and all documents and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution including, but not limited to, the arrangement for the insuring of all or any portion of the 2015 Bonds with any municipal bond insurer.

SECTION 9. The City Clerk shall certify to the adoption of this Resolution, which shall be in full force and effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Banning, California, at a regular meeting held on the 14th day of July, 2015.

CITY OF BANNING, CALIFORNIA

_____
Deborah Franklin, Mayor

ATTEST

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM

_____
[_____]
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-74 was duly adopted by the City Council of the City of Banning at a joint meeting thereof held on the 14th day of July, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBITS TO RESOLUTION NO. 2015-74

ARE THE SAME AS THE EXHIBITS

INCLUDED IN RESOLUTION NO. 2015-02FA