

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

March 25, 2008  
Council Chambers  
6:30 p.m.

Banning Civic Center  
99 E. Ramsey St.

*Per City Council Resolution No. 1997-33 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the councilmembers present and voting.*

**I. CALL TO ORDER**

- . Pledge of Allegiance
- . Invocation
- . Roll Call – Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas

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

Report by City Attorney

PUBLIC COMMENTS – *On Items Not on the Agenda*

*A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for 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

*Our Mission as a City is to provide a safe, pleasant and prosperous  
community in which to live, work and play. We will achieve this in  
a cost effective, citizen friendly and open manner.*

## PRESENTATIONS

1. A. Presentation of Certificate of Appreciation to the City of Banning  
from Arc Riverside
- B. Presentation of Proclamation to Arc Riverside Proclaiming March  
as National Development Disabilities Awareness Month ..... 1

## APPOINTMENTS

1. Appointment to the Planning Commission. .... 1A

## ANNOUNCEMENTS/COUNCIL REPORTS:

*(Upcoming Events/Other Items and Reports if any) (ORAL)*

### **III. A. CONSENT ITEMS**

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

**Motion: That the City Council approve Consent Item 1 through 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 – Regular Meeting – 02/12/08 ..... 2
2. Resolution No. 2008-36, Amending the Ormat Geothermal Energy  
Projects Power Sales Agreement between Southern California  
Public Power Authority (SCPPA) and the City of Banning ..... 12
3. Letter Agreements with California Parties regarding California's  
Energy market participants ..... 102
4. Resolution No. 2008-37, Authorizing the City Engineer to Submit  
a Grant Application to the California Department of Transportation  
(Caltrans) Traffic Light Synchronization Program for Traffic  
Signal Synchronization along Ramsey Street, from Hargrave  
Street to Sunset Avenue. .... 129
5. Public Improvements Acceptance and Performance/Labor and  
Material Bond Release for Tract No. 31748 ..... 133
6. \$5,000 Donation to the American Cancer Society in Sponsorship  
of the Fifth Annual Relay for Live Event. .... 135
7. Adoption of One Year Goals for City Council ..... 136
8. Approval of Accounts Payable and Payroll Warrants for Month  
of February 2008 ..... 139

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

#### IV. REPORTS OF OFFICERS

1. Brian Nakamura, City Manager
  - A. City of Banning License to Use and Maintain Premises Agreement granted to Banning Chamber of Commerce for use of the facilities described as bus shelters and bus benches with signs located throughout the City of Banning . . . 143

Recommendations:

1. **That the City Council consider entering into a License to Use and Maintain Premises Agreement granted to the Banning Chamber of Commerce for use of the facilities Described as bus shelters and bus benches with signs located throughout the City of Banning, as more particularly described in attached Agreement Exhibit "A:, and**
2. **If the City Council wishes to pursue a License to Use and Maintain Premises Agreement with the Banning Chamber of Commerce, direct staff to provide an accurate cost accounting before final approval of Agreement of all repairs necessary to bring all facilities listed in Agreement Exhibit "A" to an acceptable baseline standard for transfer to the Banning Chamber of Commerce. Acceptable baseline standard as defined and agreed to by and between the Riverside Transportation Agency (RTA) and City of Banning.**

2. Bonnie Johnson, Finance Director
  - A. Transit Management Services . . . . . 150

**Recommendation: That the City Council approve the attached contract with Professional Transit Management, Ltd. (PTM) To operate and manage the City's Transit System.**

- B. Discussion and possible action regarding amending the scope of services for the professional services contract with Godbe Research to incorporate the public education and pre-electoral planning elements related to a possible revenue generating ballot measure . . . . . 175

Recommendations:

1. **The City Council provide direction to staff on whether or not to proceed to Phase II of the ballot measure process.**
2. **If the Council desires to move into Phase II of the ballot measure process the following motion are recommended:**
  - **Adopt Resolution No. 2008-29, amending the Scope of services for the professional services contract with Godbe Research to incorporate the public education and pre-electoral planning elements of the project**

(Phase II) and approve an additional appropriation in the amount of \$47,500 to fund the contract.

- Direct staff to work with the City's ballot measure Consultants regarding public education and pre-Electoral planning for the following ballot measure(s) (*ideally Council would pick one*): increase in Transient Occupancy Tax Rate (TOT), increase in sales tax one-quarter or one-half cent, or implementation of a warehouse tax.

## V. ITEMS FOR FUTURE AGENDAS

### New Items –

### Pending Items –

1. Review of "Green Plan" in All Departments (*Machisic-10/9/07*) (*Earhart*) (*ETA 4/08*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Comm. Dev.*) (*ETA 4/08*)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*) (*City Atty.*)
4. Schedule Meeting with the Beaumont City Council (*Salas- 11/27/07*) (*City Mgr.*)
5. Schedule Special Jt. Meeting the Banning United School District Board – (*Botts – 11/27/07*) (*City Mgr.*)
6. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
7. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 3/08*)
8. Ordinances in Regards to Group Homes (*Botts – 12/11/07*) (*City Atty. & Purvis*) (*ETA 4/22/08*)
9. Need to Set Date for Meeting with Morongo Band of Mission Indians regarding The Banning Municipal Airport (*Hanna -2/12/08*) (*City Mgr.*)

## VI. CLOSED SESSION

1. Pending Litigation  
The City Council will meet in closed session to confer with legal counsel pursuant to the provisions of Government Code Section 54956.9(a) with regard to the following matters of pending litigation:
  - Highland Springs Conference and Training Center v. City of Banning – (RIC 460950)
  - Center for Biological Diversity v. City of Banning – (RIC 460967)
  - Cherry Valley Pass Acres and Neighbors, and Cherry Valley Environmental Planning Group v. City of Banning – (RIC 461035)
  - Banning Bench Community of Interest Association, Inc. v. City of Banning – (RIC 461069)

2. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to City Manager evaluation.
  - A. Opportunity for Public to address closed session items.
  - B. Convene to Closed Session

## **VII. ADJOURNMENT**

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

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

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (909) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].



## PROCLAMATION

***WHEREAS**, developmental disabilities affect more than seven million Americans and their families; and*

***WHEREAS**, people with developmental disabilities have value and contribute to the betterment of our communities; and*

***WHEREAS**, the month of March has been designated National Developmental Disabilities Awareness Month, with more than 120,000 members and 1,000 chapters of The Arc undertaking public awareness, educational, and fundraising initiatives; and*

***WHEREAS**, Arc Riverside is conducting a variety of community activities in March in support of its FASD prevention efforts, including the NineZero Games, a signature fundraising event taking place in the San Geronio Pass Area of Southern California on October 11-12, 2008; and*

***WHEREAS**, the Arc of the United States is the nation's leading volunteer-based organization advocating for and with the people with developmental disabilities and their families.*

***NOW, THEREFORE, I**, Brenda Salas, Mayor of the City of Banning, California, along with the City Council, do hereby proclaim March 2008 as **"Developmental Disabilities Month"** and **DECLARE** October 11-12, 2008 **"NineZero Games"** weekend in our city and urge all our citizens to give full support in efforts to enable individuals with mental retardation to live productive lives and achieve their full potential.*

***IN WITNESS WHEREOF**, I have set my hand and caused the seal of the City of Banning, California to be affixed this 25<sup>th</sup> day of March, 2008.*

\_\_\_\_\_  
Brenda Salas, Mayor

\_\_\_\_\_  
Debbie Franklin, Mayor Pro Tem

\_\_\_\_\_  
Robert Botts, Council Member

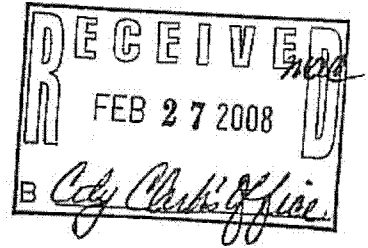
\_\_\_\_\_  
Barbara Hanna, Council Member

\_\_\_\_\_  
John Machisic, Council Member

**ATTEST:**

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

/



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board on  
which you would like to serve: PLANNING COMMISSION

Name: Salvatore F. {Joe} Formino

Address: 4881 Silverado Avenue, Banning, Ca. 92220-7119

Telephone Numbers: Home 951-769-1775 Office \_\_\_\_\_

If employed, where you work and position Retired

Length of residence in Banning Nine Years

Are you a registered voter in Banning? Yes X No \_\_\_\_\_

Requested below is information that will be used by the City Council as a screening process to determine which applicants will be interviewed for membership on City committees and boards. Ample space is provided; please do not submit supplemental materials.

Provide a Biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

Majored in Economics and Education at Loyola Un., taught business law and business math.  
1<sup>st</sup>. Lt. U.S. Air Force. 23 years with St Regis Paper Co., retired as Western Regional Manager in 1980. 5 years with Technical Equities Corp, appointed President and CEO of Badger Paper Co. of L.A. and Acme Converting Corp. of Temple City. Restructured both companies from losers to being profitable and saleable. They had total sales of 15 million dollars when sold in 1985. Acquired Inland Express Services, Inc. in December of 1985. Owned and operated the airport shuttle company for 13 years, sold in 1997.  
Elected to Hacienda La Puente School District Board, was President for three of five years on the Board. The Board managed 50 properties and acquired land for future sites. Member of Board of Directors of L A X Transportation Committee, President and Member of Board of Directors of Friends of Ontario Int. Airport, a lobby group. Member of U.S. Federal Govt. Part 150 Program involving land, homes and businesses adjacent to Ontario Int. Airport. Pres. and Member of Board of Directors at Sun Lakes Country Club.

1A

What types of major issues does should this committee or board deal with?

Obviously, the Planning Commission deals with land use in our city. They must apply the municipal code and ordinances to all applications submitted to the Commission. The General Plan is the outline or guideline that all applications are measured by. The Planning Commission is entrusted with an objective evaluation of all applications and should be reluctant to issue variances unless there are valid reasons for their actions.

Please identify specific problems facing the committee or board on which you would like to serve and explain how you feel they might be resolved:

In the near future there will be a surge to buy land and build in Banning. With the surrounding communities expanding, Banning will be a target for future building. The Commission will be faced with all kinds of requests for zone changes, inappropriate buildings or plans and requests for variances. These specific problems must be considered on a one to one basis. Each problem should be investigated and evaluated on its own merit. The Commission must be consistent in its studies, consistent in its evaluations and certainly consistent in its decisions.

Your name will be considered by the City Council upon receipt of your application.

Please return to: City Clerk's Office/ City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

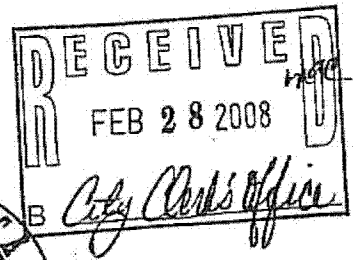
**RETURN BY:** Feb. 29, 2008  
5:00 p.m.

Thank you for your willingness to serve your local government.

Date: 2-26-08

Signed: [Signature]

1B



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board on  
which you would like to serve: PLANNING COMMISSION

Name: NEIL E. McLEAN

Address: 916 LINDA VISTA DR

Telephone Numbers: Home 922-9238 Office 849-0324

If employed, where you work and position OWNER BANNING FORK LIFT SERVICE

Length of residence in Banning 20 YEARS

Are you a registered voter in Banning? Yes ☒ No ☐

Requested below is information that will be used by the City Council as a screening process to determine which applicants will be interviewed for membership on City committees and boards. Ample space is provided; please do not submit supplemental materials.

Provide a Biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

My work experience includes 40 years as a national sales and marketing manager for a mid-size office furniture manufacturer. My duties included styling furniture, designing laying out and setting up 7 showrooms across the U.S. and working with architects and designers for several major banks and savings and loans. I am the son of an LA building contractor and grew up in the construction field. I completed 2 years at LACC with an AA degree in business, spent 10 years with Norton Corp. As field engineer. In addition, I have attended USC and UCLA extension courses covering a wide range of subjects in my field. During my past 22 years in Banning, I have owned and operated 5 business. Having the responsibility of reasonable and proactive decision making in my past positions, I would like to use my experience and concern for Banning to help make decisions that are good for the people of Banning and the city as a whole.

1C

What types of major issues does should this committee or board deal with?

I believe the planning commissioner's role is to informed of laws and projects, make recommendation when appropriate to the General Plan, speak and listen to public officials and the public regarding the plan, and assist in adhering to the plan. In addition, a planning commissioner's job is to review plans, maps, projects relating to Banning and to make decisions that reflect the best interest of the people of Banning with short term and a long term plans in mind.

Please identify specific problems facing the committee or board on which you would like to serve and explain how you feel they might be resolved:

A specific problem for Banning is business. We need small businesses and light industry here. We have not been able to get it, and from what I hear, "Banning is not business friendly". I am unaware of what incentives Banning is giving businesses who want to settle here, but I do believe that we must offer something to encourage businesses to come to Banning, something that in the long run will benefit the owner and the city of Banning.

Your name will be considered by the City Council upon receipt of your application.

Please return to: City Clerk's Office/ City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

**RETURN BY: Feb. 29, 2008**  
**5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 27 FEB 08

Signed: \_\_\_\_\_

*[Handwritten Signature]*

1D

City Clerk's office use



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board on  
which you would like to serve: PLANNING COMMISSION

Name: Charles W. "Bill" Westrick

Address: 2708 Hazy Way

Telephone Numbers: Home 951-922-8320 Office \_\_\_\_\_

If employed, where you work and position \_\_\_\_\_

Length of residence in Banning 4+ Years

Are you a registered voter in Banning? Yes X No \_\_\_\_\_

Requested below is information that will be used by the City Council as a screening process to determine which applicants will be interviewed for membership on City committees and boards. Ample space is provided; please do not submit supplemental materials.

Provide a Biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

Ret UCLA - School of Dentistry - Management Service Office

Executive VP - Dentalloy Dental Products + Director Publicly Held Co. Manufacturer  
of dental gold alloys. Stanton CA; Manager Dental Division, W. L. Kinison  
Co., Westlake Village, CA; Ret Asst Professor of Restorative Dentistry, Loma  
Linda University.

\* Planning Commissioner City of Yucaipa

Education UCLA Dental Technology; El Camino College / UCLA - Instructor  
Training, Teaching CREDENTIA Community College State of Calif.

\* VP Serrano Del Vista, Board of Directors HOA; VP HOA Fremont

Heights Mobil Home Estates, Yucaipa, CA. I have always been  
active in my community affairs and  
volunteered for various projects as time

OVER →

1E

What types of major issues does should this committee or board deal with?

This <sup>Commissioner</sup> committee must deal with the orderly planning for growth of the City of Banning.

Please identify specific problems facing the committee or board on which you would like to serve and explain how you feel they might be resolved:

Attracting new business to Banning using the Master Plan as the guidelines for development. Maximizing our water availability. Continuation of the development of the East Ramsey Street area.

Your name will be considered by the City Council upon receipt of your application.

Please return to: City Clerk's Office/ City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

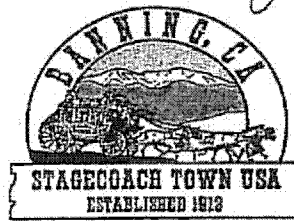
**RETURN BY:** Feb. 29, 2008  
5:00 p.m.

Thank you for your willingness to serve your local government.

Date: 02-29-08

Signed: Charles W "Bill" Westrich Ph.D., CDT

1F



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board on  
which you would like to serve: PLANNING COMMISSION

Name: KEVIN PAUL SILVA  
Address: 47955 MORONE RD (PO Box 373) BANNING CA 92220  
Telephone Numbers: Home 951 797 3474 Office 951 892-4293

If employed, where you work and position DISABLED/VOLUNTEER WORK  
CONSULTING INDIAN AFFAIRS

Length of residence in Banning LIFETIME RESIDENCE

Are you a registered voter in Banning? Yes ☒ No ☐

Requested below is information that will be used by the City Council as a screening process to determine which applicants will be interviewed for membership on City committees and boards. Ample space is provided; please do not submit supplemental materials.

Provide a Biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

GRADUATE BANNING HIGH SCHOOL 1974. ATTENDED (RAFTON)  
IN COLLEGE BUSINESS, SOCIOLOGY (NO DEGREE).  
25 YRS IN FOOD SERVICE INDUSTRY ALL ASPECTS OF RESTAURANT  
BUSINESS. MARRIED,  
FOR THE PAST TEN YEARS I HAVE BEEN THE PROJECT DIRECTOR  
+ ENTITLEMENT DIRECTOR FOR MY FEDERALLY RECOGNIZED INDIAN  
NATION. THE LOS CAYOTES BAND OF INDIANS. AS THE RESERVATION  
IS LOCATED IN SAN DIEGO COUNTY, I HAVE BEEN ACTIVE IN  
THE PLANNING AND DEVELOPMENT OF TRANSPORTATION AND  
BORDER ISSUES ESPECIALLY  
INDUSTRY DEVELOPMENT ON RESERVATIONS IN THE COUNTY  
POLITICAL, COMMUNITY AND TRANSPORTATION IMPACTS.

What types of major issues does should this committee or board deal with?

The Long Range Planning issues that face our Fair  
City in the development of Industry, as well as the  
Responsibility for providing the Best Possible Effort  
To meet the needs of our Citizens. in areas of Economic  
Development, Expansion, and Land use issues are paramount  
in decisions, and/or Recommendation for our City Government  
Please identify specific problems facing the committee or board on which you would like to serve and explain how you feel they might be resolved:

Some Times a Fresh Outlook is necessary to view  
from a different vantage areas of concern, Traffic  
Problems arise as development and population increases.  
I hope to share thought and ideas for Land use planning  
To develop and redevelop areas of the City that I know  
and love. Especially downtown and the South side  
of our city. Community Development and Incentive  
one of great importance in meeting the need of our  
Your name will be considered by the City Council upon receipt of your application. Community

Please return to: City Clerk's Office/ City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

**RETURN BY: Feb. 29, 2008**  
**5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 2-26-08

Signed: \_\_\_\_\_



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

02/12/08  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on February 12, 2008 at 6:35 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, City Manager  
Julie Hayward Biggs, City Attorney  
Bonnie Johnson, Finance Director  
Oscar Orci, Community Development Director  
Duane Burk, Public Works Director  
Chris Paxton, Human Resources Manager  
Leonard Purvis, Deputy Police Chief  
Ted Yarbrough, Fire Marshal/Fire Prevention Officer  
Kim Clinton, Senior Planner  
Marie A. Calderon, City Clerk

Mayor Salas invited the audience and public to join her in the Pledge of Allegiance to the Flag. The invocation was given by the Councilmember Barbara Hanna.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS  
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney - None

PUBLIC COMMENTS

Patti Hanley, Banning Public Library Director addressed the Council regarding the upcoming "Love Your City Event" to be held on Feb. 19<sup>th</sup> from 6:30 to 8 p.m. at the Banning City Hall. There will be readings, games, crafts and refreshments.

Matthew Clark, 1036 Charles Ave. addressed the Council stating that previous he submitted a 14 page report of observation and made himself available for commentary and discussion and he is here again this evening to make himself available for that.

CORRESPONDENCE: None

ANNOUNCEMENTS/COUNCIL REPORTS: *(Upcoming Events/Other Items & Reports if any)*

Franklin reported on:

- Public Benefit Program and available rebates to residents and businesses - you can call 849-5224 and information is available on the City's website.
- Attended Transportation Summit Meeting

Machisic reported on:

- Passcom Meeting and people interested in becoming an Amateur Radio Operator
- Letter regarding 90 ft. wind mill to be built east of Sun Lakes (he asked City Manager to investigate this.)
- Reports on different things from WRCOG
- Legislation to tax incoming freight
- BIA - California Green Builder Program
- RCA – Hired new Executive Dir. Charles Landry

Hanna reported on:

- The Art Institute of California – Inland Empire has just re-named it the International Culinary School at the Art Institute. They offer Associate of Science in graphic Design and Culinary Arts and a bachelor of Science in Game Art & Design; Graphic Design; Interactive Media Design; Interior Design, Media Arts & Animation; and Culinary Management. Their address is 630 East Brier Drive, San Bernardino, CA 92408 and you can contact them at 800-353-0812. They are also looking for community service projects and partnering opportunities.
- Attended a presentation regarding the Palm Springs Follics – wonderful form of entertainment and example of tourism

Mayor Salas welcomed new City Manager Brian Nakamura.

- Reported Date Festival happening in Indio
- In the near future Councilman Botts is working on a reception with our Sheriff, as well as, the District Attorney to introduce them to the public and the date set it March 13<sup>th</sup> at will be held at the Hampton Inn.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 01-22-08

Recommendation: That the minutes of the Regular Meeting of January 22, 2008 be approved.

2. Resolution No. 2008-12, Approving a One-Year Extension of Time for Tentative Tract Map 33013 (TTM 33013) Previously Approved by the City Council on January 11, 2005.

Recommendation: That the City Council approve Resolution No. 2008-12.

3. Resolution No. 2008-14, Supporting the Display of the POW/MIA Flag.

Recommendation: That the City Council adopt Resolution No. 2008-14.

4. Resolution No. 2008-17, Approving the Reimbursement Agreement for Transportation Uniform Mitigation Fee (TUMF) Program Funds with the Western Riverside Council of Governments (WRCOG) for Project No. 2006-05, Sunset Avenue Grade Separation and Authorize the Mayor to Execute the Reimbursement Agreement with WRCOG.

Recommendation: That the City Council adopt Resolution No. 2008-17 and authorize the Mayor to execute the Reimbursement Agreement with WRCOG attached herewith as Attachment "A".

5. Resolution No. 2008-18, Amending Resolution No. 2007-71 to Amend the Classification & Compensation Plan for the City of Banning.

Recommendation: That the City Council adopt Resolution No. 2008-18, Amending the City's Classification Plan to reflect new job classifications in accordance with approved budget authorizations and labor agreements. Approve by minute order those changes noted in attached "Exhibit A".

6. Resolution No. 2008-20, Approving a Memorandum of Understanding Between the International Brotherhood of Electrical Workers General Unit (IBEW-General Unit) and the City of Banning.

Recommendation: That the City Council adopt Resolution No. 2008-20, approving a Memorandum of Understanding (MOU) with the International Brotherhood of Electrical Workers (IBEW) - General Unit Employees in all departments.

7. Resolution No. 2008-21, Approving the Projects and Funding Adjustment Requests for Fiscal Year 2008-2009 Community Development Block Grant (CDBG) Program.

Recommendation: That the City Council adopt Resolution No. 2008-21, Approving the Projects for Fiscal Year 2008-2009 Community Development Block Grant (CDBG) Program and authorize staff to adjust original funding requests for City Council approved projects previously submitted to the Riverside County Economic Development Agency.

8. Resolution No. 2008-22, Amending the Agreement with Whitmore Construction, Inc. for Repair Services on an As Needed Basis to Include An Additional \$15,000.00.

Recommendation: That the City Council adopt Resolution No. 2008-22.

9. Resolution No. 2008-23, Declaring an Emergency Condition Existed Related to Severe Rainstorms, and Awarding an Emergency Repair and Cleanup Contract to Merlin Johnson Construction, Inc. in an Amount Not to Exceed \$167,692.58.

Recommendation: That the City Council adopt Resolution No. 2008-23, Declaring an emergency condition existed related to severe rainstorms. Authorize the Director of Finance to make the necessary budget appropriations and transfers from the General Fund to the Gas Tax Fund in the amount of \$52,395.52 in order to cover a portion of this expense. And awarding an emergency repair and cleanup contract to Merlin Johnson, Inc. of Mentone, California.

10. Resolution NO. 2008-24, Approving Amendment No. 2 to the Joint Exercise of Power Agreement (JPA) creating the Western Riverside County Regional Conservation Authority (RCA).

Recommendation: That the City Council adopt Resolution No. 2008-24.

11. Notice of Completion for Project No. 2007-10, Demolition of the Former Community Redevelopment Agency Building.

Recommendation: That the City Council accept Project No. 2007-10, Demolition of the former Community Redevelopment Agency Building, as complete and direct the City Clerk to record the Notice of Completion.

12. Auditor's Report for Fiscal Year 2006-2007.

Recommendation: That the City Council accept and place on file the auditor's report from Lance, Soll & Lunghard, LLP for the fiscal year ended June 30, 2007.

13. Approval of Accounts Payable and Payroll Warrants for Month of December 2007.

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

**Motion Botts/Machisic to approve Consent Items 1 through 13.** Mayor Salas asked if there were any public comments. There were none. **Motion carried, all in favor.**

#### PUBLIC HEARINGS

1. General Plan Amendment and Zone Change #07-2502: A Request to Change the General Plan Land Use Map and Zoning Map Designations from Low Density Residential (0-5 Units/Acre) to Professional Office at 935 E. Williams Street.  
APN: 541-121-022.  
(Staff Report - Kim Clinton, Senior Planner)

Ms. Clinton addressed the Council giving the staff report as contained in the agenda packet. This property is located north of Hargrave Street between Nicolet and Williams Street. When the Council took testimony and considered the item they felt it was a compatible use and it could successfully integrate the special office uses with the residential uses through careful design making it more compatible through the architectural use of residential type

architecture and also site planning to protect the low density residential uses to the north. To the south there are office uses that are existing.

Mayor Pro Tem Franklin said with talking about it being a professional building or starting office as a professional office building is there anything that can be done to preclude other types of businesses that may not be the kind that we would have desirable in any kind of neighborhood coming in in the future.

Ms. Clinton said that there are a couple of processes and one is through design of a building that is primarily an office type building to be used for professional offices and constructing a building that is designed in that manner. The second manner is through the conditional use process. She knows that there was concern over liquor store use and some other uses that could be permitted through the conditional use permit but if you study the conditional use matrix more intense uses are required to have a conditional use permit and that would go through the public hearing process and the uses could be screened if they were considered to be in compatible at that time.

Councilmember Machisic said he asked the developer a question and it was not included in the minutes of the last meeting and he wanted it included when he asked her will you build only an office building her response was yes; and when will you build the building and it was stated within one year.

Mayor Salas opened the public hearing for comments from the public.

Maurice Calderon, 1501 Ridge Street, Redlands addressed the Council stating he was a native son of Banning and lived here for 45 years and he is also a property owner and currently owns two homes in Banning. He talking to this the proposals always come up in regards to housing versus the jobs and this is just one way to convert it to commercial use and he would advocate for the construction of this. Every community has this dilemma especially in Riverside County and wherever you draw the line just make sure that you have residents and jobs and there is a balance. Where you draw it is important but there is no one way to do it. He is urging the Council to approve this plan. He has known the developer for about 20 years and witnessed projects that they have worked in various communities from start to finish.

Rhea Cardona, 1084 Aspen Lane and a resident of Banning for 37 years and owned several homes in the community. She knows of the area where they want to put these professional buildings and feels that the Council should go for something like that in that area. It could only be a boost to the area. She has seen this in downtown Riverside where they have both professional offices and residences and it works very well. She wants the best for Banning and this would be a great move for Banning.

Vanessa Guzman, 749 N. Cherry Street addressed the Council and has lived in that area for about six years and this whole time all she sees is an undeveloped town. She is in favor of rezoning the area to professional property and she thinks that will help clean up the neighborhood.

Ingle Schuler, 1030 W. Westward addressed the Council stating that she is a little concerned about this development. Having been on the GPAC (General Plan Advisory Committee) she listed to the people who lived in area and at the GPAC hearings heard that anything that would smack of a possibility of liquor stores, check cashing, etc. was not exactly desirable in the area. She doesn't think that it would remove blight, it would contribute to the blight long term. There are some nice developments on the east side and they are being kept up very nicely. She would submit to the Council that many of the people who live there are renters or as some people refer to just renters who don't have a vote but she is concerned that this development that is then opened to any of these other uses that are indicated in the zoning and General Plan will not remain professional office buildings for attorneys, doctors, etc. She thinks that we have enough of these other establishments in town. She thinks that maybe we should use the rule of thumb that if we don't want it next to us, we probably shouldn't inflict it on anybody else.

Mayor Salas said that she wanted to clarify that whether you rent, own or live on the east side the Council is just glad to hear your comments this evening.

Elena Labastida, VicSeth Construction and resident of Banning residing at 1071 S. 12<sup>th</sup> Street addressed the Council stating that if they had any questions she would be more than happy to answer them. Also she brought some conceptual renderings of what they had in mind for the parcel.

Gail Paparian resident of Banning said that she also served on the GPAC and she thinks that all of the people were well intended or most of them were but she is not sure that is the Holy Grail as a document. It was well intended by volunteers and professionals didn't do it. The economy has changed substantially and nobody knows when it is going to turn around. She watched this on the Planning Commission and she feels as if a quality project which this appears to be. She knows that Gary Carlton up until a year ago had a professional building on the corner of Hargrave and Ramsey and he couldn't make it and if Gary Carlton can't make it with his courage, then few people can. Now it is a thriving county office. If this woman feels that she lives in Banning and she wants to see it progress she would encourage the Council to think along the lines that economy is changing, economy of scales change and if this works it may be a whole new set of planning that Banning may consider.

Elizabeth Rojas, 1221 12<sup>th</sup> Street, new Banning resident addressed the Council stating that she came from a city where it was housing and they really didn't have any professional buildings and right now that is exactly what is happening over there. She has been a loan processor and there are a lot of empty houses and right now she doesn't see the need for housing. She sees the need for more professional development in our community so that we don't have to commute so far.

Al Lopez resident and businessman of Banning stating that he has seen this city grow and we need in our community projects like this. He is here in support of this and let's hope that we can get more projects like this to improve our city.

Mayor Salas closed the public hearing.

Councilmember Hanna quoted from the staff report and said she is in favor of this development and this is a very blighted area and the key to the successful integration of this office development in to the community would be high quality architectural design with a residential character, innovative site planning and the screen of incoming uses through the conditional use permit process. The Council will have to rely on the City staff or the conditional use permit process that would go to the Planning Commission. She thinks that unattractive uses will be controlled through the conditional use permit especially given the blight and its proximity to Ramsey Street and Hargrave that this is a good development.

Mayor Pro Tem Franklin said that at the last meeting she did vote against the project and not so much against the project as much as against the change in the zoning and that is still her concern. The project itself looks very nice if it was in an area that was zoned already for professional buildings she would be 100% for it. She said that the Council has heard from the residents time and time again and she doesn't think that we should discount what residents have said in putting together the General Plan because that was an effort of the community to talk about what the community wanted. She would still have to stand with what the residents asked for at that time.

Councilmember Botts said that we need to listen to everyone and certainly we listened to the GPAC folks and listened to the people who bought this property years and years ago and the rules and the zoning were changed on them. The City Attorney lectured them that zoning doesn't go with the property which we all know but we have put the applicant through a lot of hoops for years and he is less concerned about the economy that has changed. But if you just look at the area high density apartment adjacent to this, commercial immediately adjacent to it and yes there are some family residential but if you look at what is a good project that could significantly improve the area not to discount some people that came and said they wanted single family residential but to go from high density and to go to low density. This project seems to be good for the area. He is hopeful that within a short period of time we will be able to talk about the fact that we are going to have a mid-county government center with six or eight courts with houses that are just down the street. He has to trust staff that we make sure that it is a professional building and through the CUP and other processes that it is maintained as a professional building.

Mayor Pro Tem Franklin said that in regards to the building owned by Gary Carlton when that was developed the idea was that would be commercial development and bring in tax dollars for the City and his buildings are a good example of how things have changed from what we expect to be there. Now we have some office buildings there that are being run by the Department of Social Services and her understanding is that there is no guarantee that in the future that may turn into a place where people are going for services. And that was one of the concerns before and may not be beneficial to the community. You cannot guarantee what is going to be in there. That is something we to keep in mind. When you start talking about professional offices and you cannot guarantee what is going to be in there even as we do CUP's one of the things she looks at is if a business comes in and it is under the zoning

for professional offices how are going to definitely going to be able to tell them that they cannot be there if they fall within that territory.

Ms. Clinton said if you look at the use matrix it will say it is permitted or you need a conditional use permit and that means that it is not an outright right to put that type of use there. We can examine it and decide what is appropriate.

Councilmember Machisic asked Ms. Clinton if she was saying that if the Council approves this project tonight that the developer would have to come back if they wanted to do anything other than an office building; yes or no. Ms. Clinton said no.

**Motion Botts/Hanna that the City Council adopt Resolution No. 2008-25, Adopting the Negative Declaration of Environmental Impact. Approved 3/2 with Councilmembers Franklin and Machisic voting no.**

Mayor Salas asked the City Clerk to read the Title of Ordinance No. 1385. City Clerk read: Ordinance No. 1385, An Ordinance of the City Council of the City of Banning, California, Approving General Plan/Zoning Map Amendment #07-2502 to Change the Zoning Classification from Low Density Residential to Professional Office at 935 E. Williams Street – APN 541-121-002.

**Motion Botts/Hanna to waive further reading of Ordinance No. 1385. Approved 3/2 with Councilmembers Franklin and Machisic voting no.**

**Motion Botts/Hanna that Ordinance No. 1385 pass its first reading. Approved 3/2 with Councilmembers Franklin and Machisic voting no.**

#### ITEMS FOR FUTURE AGENDAS

##### New Items –

Mayor Pro Tem Franklin commented about the groundbreaking held today for the electric substation on the northern part of Mountain Avenue. It is something that is going to be very beneficial to our city.

Councilmember Hanna mentioned that the City is accepting applications for our Planning Commission. There is a vacancy and it is a very important role and the City is looking for people interested in sitting on that commission. Applications are available at City Hall. She also said that the Council agreed to delay the airport master plan until we had a meeting with the Morongo Band of Mission Indians and she hasn't heard of a date set for that meeting and that needs to be established.

Councilmember Machisic said that we have been talking about bus shelters for a long time and he was told that there was a contact in process and in the last month we have had some severe rains storms and he noted in a number of bus stops the people who are waiting for buses were getting rained on. His understanding is that we are talking about

selling advertising and one of the things that he would like to make clear and with the Council's concurrence he would like to make sure that the bus stops are good bus stops, efficient bus stops and they protect our residents from rain. A lot of the bus stops do not have any panels in them for protection. There are people with children, with bags, handicapped people and when we do those bus stops we need to make those bus stops protected. Additionally the other thing he noted when he drove home several nights ago is that some of the bus stops for instance the one behind K-Mart is an area extremely black and dark and he would hate to have someone sitting in that dark area waiting for a bus. He would recommend that if we have bus stops that we have some type of solar so that the lights are on at night. It is important for that segment of our population that doesn't have a care for whatever reason to have a good quality bus stop to protect them from the elements. When we right that contact he would like those bus stops to be just like that. He would hope the Council would support him.

Mayor Salas said that this has been an on-going request for many years so she is hoping that this will be done and hopefully before the summer and would like the City Manager to address it.

Mayor Pro Tem Franklin said being on the committee for transit and they have been working on this for a year she has been assured by staff that this will be coming to the Council at the March 5<sup>th</sup> meeting. One of the things that they have talked about was not only the bus stops but also the bus benches. She also has had a chance to speak with the Public Works Director in regards to some of the concerns that have been brought up in the community and that includes the bus stops. Also in regards to some of the locations such as the one at K-Mart this is something that was brought up by the bus drivers and in having conversations with the manager at K-Mart and with the utility manager the property that we are talking about is actually private property so there is a question of what we can and cannot do there. Mr. Earhart has made the commitment to look further into what we can do in that particular location because that has been brought up as a dark area. But this is something that is being worked on along with some other transportation issues.

Councilmember Botts said that in regards to the airport master plan his calendar says March 5<sup>th</sup>.

City Manager asked for clarification about the March 1st Redevelopment Agency visioning meeting and wanted to confirm so that it could be placed on the calendar.

Mayor Salas said that would be a Council retreat from 9:00 a.m. to however long they need. It would be general items along with Redevelopment.

Mayor Salas would like to have letters written with one to the County to ask them in the future with the County Building down at the end of Ramsey Street, Gary Carlton's property, that they consider not allowing walk-ups now or in the future so that they have that on file from the City to the County Supervisors as well as to the facilities so that they know our position.

Councilmember Hanna said that she would like to have a discussion on that because the Council hasn't set a position on that so it should be on an agenda. Mayor Salas said that they could do that.

Mayor Salas would also like a letter sent to Morongo congratulating them on their efforts in regards to the positions just passed.

#### Pending Items –

1. Review of "Green Plan" in All Departments (*Machisic-10/9/07*) (*Earhart*) (ETA 4/08)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Orci*) (ETA 3/08)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*) (*City Atty.*)
4. Schedule Special Meeting with the Beaumont City Council (*Salas- 11/27/07*)
5. Schedule Special Jt. Meeting the Banning United School District Board – (*Botts – 11/27/07*)
6. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
7. Review of Development Fees (*Hanna – 12/11/07*) (*Orci*) (ETA 3/08)
8. Time Frames for Demolition of Buildings (*Franklin – 12/11/07*) (*Orci*) (ETA 2/08)
9. Ordinances in Regards to Group Homes (*Botts – 12/11/07*) (*Orci & Purvis*) (ETA 3/08)
10. Performance Review of City Attorney's Office (*Franklin – 1/22/08*) (ETA 3/08)

#### FUTURE MEETINGS

1. Regular City Council Meeting scheduled for February 26, 2008 has been rescheduled to March 5, 2008 at 6:30 p.m. (*this is due to Council being out of the area and not having a quorum for the February 26<sup>th</sup> meeting*)
2. Council Meeting Workshop – March 5, 2008 at 4:00 p.m. to discuss feasibility study (Phase I) consultants regarding a possible revenue ballot measure and consider moving Phase II

#### ADJOURNMENT

By common consent the meeting adjourned at 7:23 p.m.

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Marie A. Calderon, City Clerk

THE ACTION MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE CITY COUNCIL. AUDIOTAPES OF THE ACTUAL MEETING ARE AVAILABLE FOR LISTENING IN THE OFFICE OF THE CITY CLERK OR A COPY OF THE MEETING CAN BE REQUESTED IN WRITING.

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** March 25, 2008  
**TO:** Honorable Mayor and City Council  
**FROM:** James D. Earhart, Electric Utility Director  
**SUBJECT:** Resolution No. 2008-36 Amending the Ormat Geothermal Energy Projects Power Sales Agreement Between SCPPA and the City of Banning

**RECOMMENDATION:** The City Council adopt Resolution No. 2008-36, approving the amendments to the Ormat Geothermal Energy Projects Power Sales Agreement ("Agreement") between the Southern California Public Power Authority ("SCPPA") and the City of Banning, attached herewith as Exhibit "A".

**JUSTIFICATION:** It is essential that the City of Banning Electric Utility ("Utility") continue increasing its level of renewable energy resources to meet the Renewables Portfolio Standard ("RPS") goal of 33 percent by 2020, as revised by the Banning City Council in June 2007. The amendments to the Ormat Agreement will increase Banning's share of the Ormat project from 1 megawatt to 1.4 megawatts, which will result in an increase in renewable resources of 2 percent, for a total 8 percent.

**BACKGROUND:** In response to Senate Bill 1078, the Banning City Council approved Resolution 2004-31 on March 23, 2004, establishing a RPS for the City of Banning. The City's RPS at that time reflected the State's goal of 20 percent by December 31, 2017. Since that time there have been increased efforts on the State and Federal level to accelerate the implementation of renewable energy in the electric industry. The California Legislature passed Senate Bill 107, which became law on January 1, 2007, and thereby accelerated the State's RPS goal to 20 percent by 2010. In addition, there is current legislation being considered which would increase the State's goal to 33 percent by 2020. In response to this, the Banning City Council approved Resolution 2007-72, revising the City's RPS to reach 33 percent renewable energy by December 31, 2020.

The public policy goal of both SB 1078 and SB 107 is to move electric retailers toward more diverse power portfolios in order to: (1) improve statewide reliability by lessening dependence on conventional fuel sources such as natural gas or coal, and (2) increase utilization of power resources that generate public health and environmental benefits.

Beginning in 2003, SB 1078 required Investor Owned Utilities ("IOU") to increase the share of renewable energy in their power portfolios by at least one percent per year until a 20 percent share is reached, and SB 107 further accelerated that requirement. By contrast, a Publicly Owned Utility ("POU") such as Banning Electric Utility has the flexibility to define and enforce its own RPS, provided that the local governing body approves it. The Utility's local governing body is the Banning City Council. However, there have been attempts to eliminate or reduce the compliance flexibility that POU's currently enjoy, because certain groups misrepresented that POU's were not doing their part to contribute to the State's RPS goals. Due to strong efforts by

the California Municipal Utilities Association ("CMUA") and SCPPA, including a joint effort to educate State and Federal elected officials of the POU community's actual contributions, these attempts have not been successful.

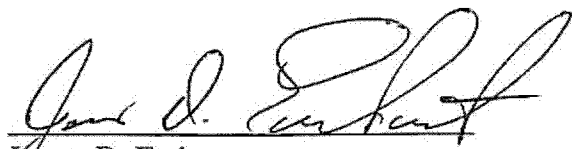
In 2005 the Banning City Council approved participation in the original Ormat geothermal renewable energy project, and since that time the City has been receiving approximately 6 percent of its energy requirements from this renewable resource. If Council approves the proposed amendments to the Ormat Agreement, Banning's renewable resources will be increased to over 8 percent, moving us closer to our 33 percent RPS goal.

Staff recommends the City Council approve the amendments to the Ormat Agreement, attached herewith as Exhibit "A".

**FISCAL DATA:** The cost for the original energy allocation of 1 megawatt will continue at the pricing levels agreed to in the original agreement, which is currently \$55.50 per megawatt hour with an annual inflator of 1.5%. The additional .4 megawatts of energy will have an initial price of \$75 per megawatt hour, and will also have an annual inflator of 1.5%. The term of the original agreement, executed in 2005, will remain unchanged at 25 years. The total annual cost for the first full year of energy deliveries (based on a 95 percent capacity factor) will be approximately \$710,000.

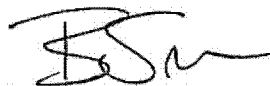
Funds are available in account number 670-7010-473.27-60 to cover the original contract amount, as well as the additional .4 megawatt allocation, per the proposed amendments.

**RECOMMENDED BY:**

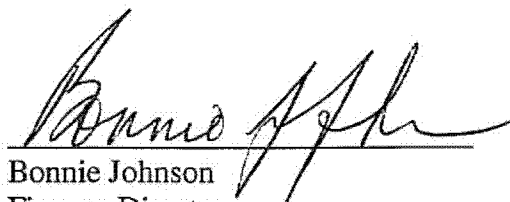


James D. Earhart  
Electric Utility Director

**APPROVED BY:**



Brian Nakamura  
City Manager



Bonnie Johnson  
Finance Director

Prepared by: Fred Mason, Power Resource & Revenue Administrator

**RESOLUTION NO. 2008-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE AMENDMENTS TO THE ORMAT GEOTHERMAL ENERGY PROJECTS POWER SALES AGREEMENT BETWEEN THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY AND THE CITY OF BANNING**

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

**WHEREAS**, the Banning City Council approved Resolution 2007-72 implementing a Renewables Portfolio Standard ("RPS") of 33 percent by December 31, 2020, in support of California Senate Bills 1078 and 107; and

**WHEREAS**, the City of Banning wishes to ensure that it meets the RPS goal through increased acquisition of renewable energy resources; and

**WHEREAS**, the City currently has a long-term power sales agreement with the Southern California Public Power Authority ("SCPPA") to provide renewable geothermal energy from an Ormat facility; and

**WHEREAS**, SCPPA has proposed amendments to the existing contract which would increase the City's allocation from 1 megawatt to 1.4 megawatts, which would increase the City's renewable resources from 6 percent to over 8 percent. Amended agreement is attached herewith as Exhibit "A"; and

**WHEREAS**, the cost for the original energy allocation of 1 megawatt will continue at the pricing levels agreed to in the original agreement, which is currently \$55.50 per megawatt hour with an annual inflator of 1.5%. The additional .4 megawatts of energy will have an initial price of \$75 per megawatt hour, and will also have an annual inflator of 1.5%. The term of the original agreement, executed in 2005, will remain unchanged at 25 years. The total annual cost for the first full year of energy deliveries (based on a 95 percent capacity factor) will be approximately \$710,000; and

**WHEREAS**, funds are available in account number 670-7010-473.27-60 to cover the ongoing cost of the amended agreement;

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

1. Adopt Resolution No. 2008-36 approving the amended Ormat Geothermal Energy Projects Power Sales Agreement between SCPPA and the City of Banning, attached herewith as Exhibit "A", and authorize the City Manager, or his designee, to execute the necessary documents, and take such actions as necessary to administer and maintain said Agreement.
2. Authorize the Mayor to execute Resolution No. 2008-36. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 25<sup>th</sup> day of March 2008.

\_\_\_\_\_  
Brenda Salas, Mayor  
City of Banning

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

\_\_\_\_\_  
Burke, Williams & Sorensen, LLP  
City Attorney

**ATTEST:**

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

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-36 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 25th day of March, 2008 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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



# Exhibit "A"



**FIRST AMENDMENT TO THE  
ORMAT GEOTHERMAL ENERGY PROJECTS**

**POWER SALES AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**CITY OF BANNING, CALIFORNIA**

**FIRST AMENDMENT TO THE  
ORMAT GEOTHERMAL ENERGY PROJECTS  
POWER SALES AGREEMENT**

1. **PARTIES.** This First Amendment to the Ormat Geothermal Energy Project Power Sales Agreement ("First Amendment"), made and entered into as of this 1st day of March, 2008, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," created under the provisions of the Act, and the CITY OF BANNING, California, a municipal corporation organized and existing under the laws of the State of California, hereinafter designated as "Banning," each sometimes hereinafter referred to individually as "Party" and together as "Parties."
2. **RECITALS.** This First Amendment is made with reference to the following facts among others:
  - 2.1 On or about April 26, 2005, SCPPA and Banning entered into the Ormat Geothermal Energy Projects Power Sales Agreement ("SCPPA/Banning Agreement") by which SCPPA agreed to sell to Banning ten (10) percent of SCPPA's share of the project output of two geothermal energy projects to be developed by Ormat Technologies, Inc., an independent energy services company with significant expertise in the development and operation of such projects ("Ormat").
  - 2.2 SCPPA's entitlement to project output was set forth in two Power Purchase Agreements between SCPPA and two wholly owned Ormat subsidiaries named OrHeber 2, LLC, and OrMesa, LLC, ("Original PPAs"), which were attached as Appendix C to the SCPPA/Banning Agreement and made a part thereof. Under the SCPPA/Banning Agreement, Banning is obligated to pay its proportionate share of the costs incurred by SCPPA for energy and environmental attributes purchased by SCPPA under the Original PPAs
  - 2.3 The OrHeber 2 project was completed in early 2006 and Banning has been receiving its share of OrHeber 2 energy and environmental attributes since said completion pursuant to the SCPPA/Banning Agreement. OrMesa was never completed for various reasons beyond Ormat's control, and no energy or environmental attributes are expected to be produced from the OrMesa project; however, the Original PPAs are performance contracts, so SCPPA and Banning only pay for delivered products, and there have been no payments made for the OrMesa project.
  - 2.4 The OrHeber 2 project is currently served from two 5 MW geothermal units named Gould 1 and Gould 2, which have produced less than their rated capacity due to reservoir conditions. Ormat has proposed to serve the OrHeber 2 project with a new 14 MW geothermal unit named Heber South, which is expected to produce close to its rated capacity, however a higher price is proposed for the additional 4 MW because the cost to construct the new unit is higher than that of Gould 1 and Gould 2, which were built in 2005. The Original PPA pricing would be maintained for the amount of energy expected to be produced from Gould 1 and Gould 2, which is 95% of 10 MW, or 9.5 MWh/hr, and a new price would be paid for the incremental energy produced above 9.5 MWh/hr.

2.5 Pursuant to Section 6.1 of the Original PPAs, on January 25, 2007 SCPPA executed the First Amendment to the SCPPA-OrHeber2 Power Purchase Agreement, which reduced the price paid by SCPPA/Banning for energy and environmental attributes by \$2 per MWh as a share of production tax credits not available upon execution.

3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows.
4. **AMENDMENT TO SCPPA/BANNING AGREEMENT.** The SCPPA/Banning Agreement is hereby amended by making the following changes to Appendix C therein: (i) deleting the Power Purchase Agreement between SCPPA and OrMesa, LLC; (ii) incorporating the First Amendment to the Power Purchase Agreement between SCPPA and OrHeber2, LLC, which is attached hereto as Appendix C-1; and (iii) incorporating the Second Amendment to the Power Purchase Agreement between SCPPA and OrHeber2, LLC, which is attached hereto as Appendix C-2.
5. **EFFECT OF AMENDMENT.** Except as provided here, all other terms and conditions of the SCPPA/Banning Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalf by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

By: \_\_\_\_\_  
David H. Wright, President

Attest: \_\_\_\_\_  
Bill D. Carnahan, Assistant Secretary

CITY OF BANNING, CALIFORNIA

By: \_\_\_\_\_

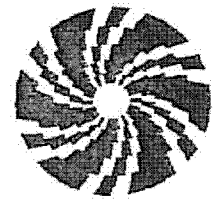
Name: \_\_\_\_\_

Its: \_\_\_\_\_

**APPENDIX C-1**

**FIRST AMENDMENT TO THE  
POWER PURCHASE AGREEMENT BETWEEN  
SCPPA AND ORHEBER 2, LLC**

# ORMAT®



January 25, 2007

Mr. Bill D. Carnahan  
Executive Director  
Southern California Public Power Authority  
225. S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

Subject: **SCPPA-OrHeber 2, Inc. Power Purchase Agreement**

Dear Bill,

I am sending this letter to confirm our agreement to amend the December 8, 2005 Long Term Power Purchase Agreement ("PPA") between Southern California Public Power Authority ("Buyer") and OrHeber 2, Inc. ("Supplier"). All initially-capitalized terms shall have the same meaning as in the PPA, unless otherwise defined herein.

As we have discussed, Buyer and Supplier have agreed to amend Section 6.1 of the PPA concerning the transfer of a percentage of Production Tax Credits ("PTCs") from Supplier to Buyer. In particular, in exchange for Buyer's agreement to eliminate Supplier's obligation in Section 6.1 to share PTC benefits with Buyer, Supplier has agreed to reduce the Product Rate paid to Supplier under the PPA by \$2.00 per MWh. Accordingly, the Parties have agreed to amend the PPA as follows.

1. Section 6.1 is deleted in its entirety and replaced with the following:

"The Parties agree that the price of the Product as provided for in Section 4 (Price of Product) and as specified in Exhibit 2 accounts for state, local, and/or Federal tax credit[s], including investment tax credit[s] specific to investments in renewable energy production and deliver facilities (if any) ("Tax Credit[s]") and all other Financial Incentives."

2. The Product Rate, as specified in Exhibit 2, shall be amended by adding the following sentence at the end of Exhibit 2:

"After the calculation of the Product Rate as set forth above, the Product Rate shall be reduced by \$2.00 per MWh."

3. The changes described to the PPA as set forth above shall take effect, prospectively only, beginning on the first day of the first full month following execution of this letter by both Parties.

A handwritten signature in dark ink, appearing to be 'J. J. R.', is located in the bottom right corner of the page.

4. Except as expressly set forth above, the PPA is not being modified.

If the foregoing correctly reflects Buyer's understanding, please return two fully executed copies of this letter to me. Thank you very much for your consideration.

**BUYER:**

Southern California Public Power Authority

By: 

David H. Wright  
President

Date: 2/5/07

**SELLER:**

OrHeber 2, Inc.


By: 

Name: RAJ RAVIV

Title: AUTHORIZED REPRESENTATIVE

Date: 1/25/2007

**ATTEST:**

  
Bill D. Carnahan  
Assistant Secretary

**APPENDIX C-2**

**SECOND AMENDMENT TO THE**

**POWER PURCHASE AGREEMENT BETWEEN**

**SCPPA AND ORHEBER 2, LLC**

**SECOND AMENDMENT TO  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ORHEBER 2, INC.**

This Second Amendment to the Power Purchase Agreement ("Second Amendment") is entered into by and between SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency established pursuant to the laws of the State of California ("Buyer"), and ORHEBER 2, INC., a Delaware corporation ("Supplier"), hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties". All capitalized terms used but not defined herein shall have the meanings given to them in the PPA, as defined below.

**RECITALS**

WHEREAS, Buyer and Supplier entered into that certain Power Purchase Agreement, dated December 8, 2005, as amended by the letter agreement, dated January 25, 2007 ("First Amendment") (the amended Power Purchase Agreement being the "PPA"); and

WHEREAS, Buyer and Supplier have agreed to further amend the PPA as set forth in this Second Amendment, including changes to reflect (i) the supply of electricity from the Heber South generating facility in lieu of from OrHeber 2, Units 3 and 4 (also known as Gould Units 1 and 2); and (ii) an increase in the amount of electricity to be bought and sold to up to approximately 14 MW.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Buyer and Supplier agree as follows:

**1. Amendment to the PPA**

- (a) The text of Section 1.20 shall be deleted in its entirety and replaced with "[Reserved]".
- (b) The text of Section 1.21 shall be deleted in its entirety and replaced with "[Reserved]".
- (c) The text of Section 1.22 shall be deleted in its entirety and replaced with "[Reserved]".
- (d) The definition of "Environmental Attributes" in Section 1.26 shall be modified by:
  - (i) adding the phrase "laws or regulations or" immediately after the word "federal" in clause (iv) of the final sentence; and

- (ii) adding the phrase ", including any required credits, allowances, offsets or other attributes associated with GHG regulations to be adopted in the future" to the end of the final sentence.
- (e) The following new definition shall be added in alphabetical order and all section numbers in Article 1 shall be adjusted accordingly:

"Forward Certificate Transfer" has the meaning set forth in the WREGIS Operating Rules.
- (f) The definition of "Generating Facilities" in Section 1.33 (as it may be renumbered in accordance with this Second Amendment) shall be modified by:
  - (i) deleting the text ", separately metered from the pre-existing generating facilities already under contract to a third party,"; and
  - (ii) replacing "10.0 MW" with "14 MW".
- (g) The definition of "Invoice" in Section 1.39 (as it may be renumbered in accordance with this Second Amendment) shall be modified by deleting the text ", EA Shortfall, Residual EA Shortfall".
- (h) The definition of "Maximum Amount" in Section 1.43 (as it may be renumbered in accordance with this Second Amendment) shall be modified by replacing "13.0 MWh" with "17.0 MWh".
- (i) The definition of "Residual EA Shortfall" in Section 1.61 (as it may be renumbered in accordance with this Second Amendment) and all text in such subsection shall be deleted and replaced with "[Reserved]".
- (j) The following new definitions shall be added in alphabetical order and numbered appropriately:

"WREGIS" means Western Renewable Energy Generation Information System, or its successor; provided that said successor is capable of performing substantially similar functions and is acceptable to both Parties.

"WREGIS Certificates" has the meaning set forth in WREGIS Operating Rules.

"WREGIS Operating Rules" means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS and as may be amended from time to time.
- (k) Section 3.1 shall be modified by:
  - (i) deleting the phrase "Subject to Section 3.5 below," at the beginning of the first sentence; and

- (ii) deleting the phrase "Other than as provided in Section 6.1," at the beginning of the second sentence.
- (l) Section 3.2 shall be modified by deleting the text "(other than as set forth in Section 3.5)" in the second sentence.
- (m) Section 3.5 shall be deleted in its entirety.
- (n) Section 5.1 shall be modified by:
  - (i) adding the title "Generating Facilities Certification." before the first sentence; and
  - (ii) deleting the text "Generated and Delivered Amounts and any substitute environmental attributes provided under Section 3.5.1" in the first sentence and replacing it with "Energy"; and
  - (iii) deleting the text "and any substitute environmental attributes under section 3.5.1" in the last sentence.
- (o) New Section 5.2 shall be added with the following text:

Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Supplier to purchase and sell Energy on the terms and conditions set forth herein, Supplier shall transfer to Buyer, and Buyer shall receive from Supplier, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Supplier or that hereafter come into existence or are acquired by Supplier during the Agreement Term, for all Energy. Supplier agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Supplier's production or acquisition of the Environmental Attributes. Supplier shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer. Buyer and Supplier acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Product Rate. Notwithstanding the foregoing, Supplier shall not transfer and may retain for its own use any emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal laws or regulations or operating and/or air quality permits, including any required credits, allowances, offsets or other attributes associated with GHG regulations to be adopted in the future.

- (p) New Section 5.3 shall be added with the following text:

Reporting of Ownership of Environmental Attributes. During the Agreement Term, Supplier shall not report to any Person or entity that the Environmental Attributes granted hereunder to Buyer belong to any Person other

than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

(q) New Section 5.4 shall be added with the following text:

Use of WREGIS to Transfer Certain Environmental Attributes. Supplier shall use commercially reasonable efforts to use WREGIS to evidence the transfer of renewable energy certificates ("RECs" or "WREGIS Certificates") on and after the effective date of Amendment 2, which shall be deemed a part of Environmental Attributes associated with Energy in accordance with WREGIS reporting protocols, and as such shall register the Facility with WREGIS as soon as practical after the effective date of Amendment 2. The Parties agree that the Generating Facilities will be registered with WREGIS, initially, as geothermal. Supplier shall be responsible for the costs of registering in WREGIS and for any mandatory ongoing WREGIS costs. During the Term, any optional actions regarding WREGIS or WREGIS Certificates shall be made by Supplier at the direction of Buyer; provided, however, that such actions are accepted by Supplier in its reasonable discretion and Buyer compensates Supplier for any costs associated with such optional actions. After the Facility is registered with WREGIS, at Buyer's option, Supplier agrees to transfer WREGIS Certificates to Buyer using the Forward Certificate Transfer method, as described in WREGIS Operating Rules and as designated by Buyer. Supplier shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account and subsequent transferring or retiring of WREGIS Certificates. Forward Certificate Transfers will occur monthly in accordance with the certificate creation time-line established by the WREGIS Operating Rules. As of the Effective Date, the certificate creation time line is established as not later than ninety (90) days following the end of each Month. For example, for MWhs generated in January 2009, the certificates will be created in WREGIS not later than April 30, 2009. Supplier shall be responsible for, at its expense, validating and disputing data with WREGIS in its reasonable discretion prior to certificate creation each month. Except as the Parties may otherwise agree in writing, in the event that WREGIS is not in operation, or WREGIS does not track Supplier's transfer of WREGIS Certificates to Buyer, or its designees, on or before the 30th day of each calendar month, Supplier shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Buyer an attestation for the Environmental Attributes produced by the Facility, in whole MWh, in the preceding calendar quarter. The form of attestation shall be substantially in the form as set forth in Exhibit 6; provided, however, Buyer may change the form of attestation from time to time during the Term by giving at least thirty (30) Days prior notice to Supplier, subject to Supplier's approval (which Supplier shall not unreasonably withhold, condition or delay). If Supplier has not objected to Buyer's proposed changes to the form of attestation within thirty (30) Days after receiving it, the changes shall be deemed approved. Notwithstanding anything herein to the contrary, if Supplier's cost

associated with WREGIS in connection with this Agreement or compliance with this Section 5.4 exceeds \$15,000 in any Contract Year, Buyer shall reimburse Supplier for the amount in excess of \$15,000.

(r) Section 6.1 shall be modified by

- (i) deleting the text "(Price of Products)"; and
- (ii) adding the text "and production" immediately after the word "investment".

(s) Section 7.2 shall be modified by:

- (i) adding the phrase "each hour in" immediately after the word "for" in subsection 7.2.2.1;
- (ii) adding the phrase "each hour in" immediately after the word "for" in subsection 7.2.2.2;
- (iii) deleting the text of subsection 7.2.2.4 in its entirety and replacing it with "Supplier shall provide the information electronically in a format to be agreed upon by Buyer in its reasonable discretion.";
- (iv) deleting subsection 7.2.2.5 in its entirety;
- (v) modifying subsection 7.2.3 by deleting the text "and substitute environmental attributes under Section 3.5.1, if any,"; and
- (vi) deleting the text of Section 7.2.4 in its entirety and replacing it with "[Reserved]".

(t) Subsection 13.1.2 shall be deleted in its entirety and replaced with the following text:

"13.1.2 Scheduling Protocols. Supplier and Buyer shall follow mutually agreeable scheduling protocols pursuant to which Supplier, or its agent, shall be responsible for the scheduling of Energy to the Delivery Point, and Buyer, or its agent, shall be responsible for scheduling the receipt of such Energy at, and the delivery of such Energy from, the Delivery Point. Additionally, in the event that Supplier designates the Mirage substation as the Delivery Point, Buyer shall be responsible for the scheduling of Energy with the California Independent System Operator."

(u) Section 16.2 shall be modified by deleting the text "EA Replacement Costs and Replacement Costs owing under Sections 3.5 (Replacement Costs) and" in the second sentence.

- (v) Subsection 21.1.3 shall be modified by deleting the text "(not including failure to deliver Energy or Environmental Attributes, for which the Parties agree that the EA Replacement Costs set forth in Section 3.5 are the sole remedy)".
- (w) Exhibit 1 shall be deleted in its entirety and replaced with a new Exhibit 1 attached hereto.
- (x) Exhibit 2 shall be deleted in its entirety and replaced with a new Exhibit 2 attached hereto.
- (y) Exhibit 3 shall be deleted in its entirety and replaced with a new Exhibit 3 attached hereto.
- (z) Exhibit 4 shall be deleted in its entirety and replaced with a new Exhibit 4 attached hereto.
- (aa) New Exhibit 6 shall be added in accordance with New Exhibit 6 attached hereto.

## **2. No Other Modifications**

No provision of the PPA, other than the terms addressed in this Second Amendment, shall be deemed modified, amended, waived, or otherwise affected by this Second Amendment. If there is a conflict between the terms of the PPA and those of this Second Amendment, this Second Amendment shall control; and if there is a conflict between the terms of the First Amendment and those of this Second Amendment, this Second Amendment shall control. This Second Amendment may not be amended or modified except by a written agreement duly executed by both Parties.

## **3. Counterparts**

This Second Amendment may be signed in counterparts, each of which shall be deemed an original. This Second Amendment may be executed and delivered by facsimile and the Parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Second Amendment by the Parties to the same extent that an original signature could be used.

*[SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF, each Party has caused this Second Amendment to be executed by their authorized representatives, effective as of March 1, 2008. By signing this Second Amendment, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

**BUYER:**

**Southern California Public Power Authority**

\_\_\_\_\_  
By:  
Title:  
Date: \_\_\_\_\_

**SUPPLIER:**

**OrHeber 2, Inc.**

\_\_\_\_\_  
By:  
Title:  
Date: \_\_\_\_\_

**EXHIBIT 1**

**DESCRIPTION OF GENERATING FACILITY**

1. Name of Facility: Heber South
  - (a) Location: Heber, Imperial County, California
2. Owner: OrHeber 2, Inc.
3. Operator: Ormat Nevada, Inc.
4. Equipment:
  - (a) Type of Facility: Geothermal
  - (b) Capacity:

Total nominal gross nameplate capacity (under expected average site conditions):  
17.0 MW

Total nominal net capacity (under expected average site conditions): 14.0 MW
5. Commercial Operation Date: June 18, 2006

**EXHIBIT 2**

**PRODUCT RATE**

The Product Rate through the end of the First Full Contract Year shall be \$55.50 per MWh for the first 9.5 MWh delivered per hour. Upon the effective date of this Second Amendment, for each MWh delivered per hour in excess of the first 9.5 MWh, the Product Rate shall be \$75.00 per MWh.

The Product Rate shall be increased at the beginning of each subsequent Contract Year by an amount equal to one and one-half (1.5%) percent of the Product Rate for the previous Contract Year, for the duration of the Agreement.

For the avoidance of doubt, for the first 9.5 MWh delivered per hour, the Product Rate shall be \$56.36 per MWh for the Contract Year ending on December 31, 2007 and \$57.21 per MWh for the Contract Year ending on December 31, 2008. For each MWh in excess of the first 9.5 MWh, the Product Rate shall be \$76.13 per MWh for the Contract Year ending on December 31, 2008 and \$77.27 per MWh for the Contract Year ending on December 31, 2009.

**EXHIBIT 3**

**NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

**Supplier:**

Operating Representative  
Address:

947 Dogwood Road,  
Heber, CA  
Attn: Plant Manager  
Phone: 760-353-8200 Ext 227  
Fax: 760-353-9189  
Email: [mailto:bharms@ormat.com](mailto:mailto:bharms@ormat.com)

Contract Representative  
Address:

980 Greg Street  
Sparks, NV 89431-6039  
Attn: Asset Manager  
Phone: 775/356-9039  
Fax: 775/356-9039  
Email:  
[mailto:jpeterson@ormat.com](mailto:mailto:jpeterson@ormat.com)

**Payment Check:**

Address:

Wealth Management, a division  
of Hudson United Bank,  
90 Post Road East,  
Westport, CT 06880  
Attention: James N. Donaldson,  
Senior Vice President

**Payment Wire Transfer:**

ABA #061000227/Washovia  
National Bank  
A/C #2080000692834  
FBO: Hudson United Bank/  
OrCal Geo Revenue  
A/C # 2897400361

**Invoice:**

Address:

980 Greg Street  
Sparks, NV 89431-6039  
Attn, Asset Manager  
Phone: 775/356-9029  
Fax: 775/356-9039  
[email: jpeterson@ormat.com](mailto:jpeterson@ormat.com)

Operating Notifications:

(i) Pre-Schedule Phone: 760-353-8200 Ext 304  
Fax: 760-353-9038  
Email: [ljensen@ormat.com](mailto:ljensen@ormat.com)

(ii) Real Time Phone: 760-353-8200 Ext 321  
Fax: 760-353-9038  
Email:

(iii) Monthly Checkout Person Phone: 760-353-8200 Ext 304  
Fax: 760-353-9038  
Email: [ljensen@ormat.com](mailto:ljensen@ormat.com)

Buyer:

(a) Operating Representative  
Address: (To be provided)  
Phone: 626-793-9364  
Fax: 626-793-9461

[mailto:Email : shomer@scppa.org](mailto:shomer@scppa.org)

(b) Invoices U.S. Post Office:  
(Via Certified Mail)  
Address:  
Attn: Finance Manager  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101  
Telephone: 626-793-9364  
Fax: 626-793-9461  
[email: ckoebler@scppa.org](mailto:ckoebler@scppa.org)

(c) Scheduling

(i) Pre-Schedule

Primary Name:  
Charles Guss  
Alternate Name:  
Kelly Nguyen

(ii) Real Time:

(iii) Monthly Checkout:

Dana Davidson

Contract Representative  
Address:  
Attn: Project Administrator  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

Overnight Delivery  
Address:  
Attn: Finance Manager  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

Phone: 714-765-4242  
E-Mail: [cguss@anaheim.net](mailto:cguss@anaheim.net)  
Phone: 714-765-4145  
E-Mail: [knguyen@anaheim.net](mailto:knguyen@anaheim.net)  
Phone: 714-765-5109  
E-Mail: [scheduler@anaheim.net](mailto:scheduler@anaheim.net)  
Phone: 714-765-5279  
E-Mail: [ddavidson@anaheim.net](mailto:ddavidson@anaheim.net)

**EXHIBIT 4**

**GENERATION CONNECTION [Ormat to Update]**

[[Exhibit 4 shall be added after execution of the Agreement and shall contain a description of the Generating Connection Facilities and the Delivery Point, which shall be reasonably satisfactory to Buyer.]]

**EXHIBIT 6**

**FORM OF ATTESTATION**

\_\_\_\_\_  
(Supplier) Environmental Attribute Attestation and Bill of Sale

OrHeber 2, Inc. ("Supplier") hereby sells, transfers and delivers to the Southern California Public Power Authority ("Buyer") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location: \_\_\_\_\_

Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

As applicable: CEC Reg. no. \_\_\_\_ Energy Admin. ID no. \_\_\_\_ Q.F. ID no. \_\_\_\_

Dates

\_\_\_\_\_  
200  
\_\_\_\_\_  
200  
\_\_\_\_\_  
200

MWhrs

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

in the amount of one Environmental Attribute or its equivalent for each megawatt hour listed above; and Supplier further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated above as undifferentiated Energy; and
- iv) Supplier owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Supplier to Buyer all of Supplier's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person: \_\_\_\_\_ tel: \_\_\_\_\_

*[Conformed to reflect Amendments 1 and 2]*

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**LONG TERM  
POWER PURCHASE AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**ORHEBER 2, INC.**

**December 8, 2005**

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## LONG TERM POWER PURCHASE AGREEMENT

This Long Term Power Purchase Agreement is made and entered into as of December 8, 2005 (the "Effective Date") by and between the Southern California Public Power Authority, a joint powers agency established pursuant to the laws of the State of California ("Buyer"), and OrHeber 2, Inc., a Delaware corporation ("Supplier"). Buyer and Supplier are referred to individually as a "Party" and collectively as the "Parties".

**WHEREAS**, Supplier (or its affiliates) desires to construct new geothermal generating equipment at the Heber Known Geothermal Resource Area and to supply electricity generated from these new facilities up to approximately 14 MW of firm unit contingent energy to Buyer, and Buyer desires to purchase such electricity from Supplier upon the terms and conditions set forth herein;

**WHEREAS**, Supplier desires to sell to Buyer any and all environmental attributes associated with the electricity sold to Buyer hereunder, and Buyer wishes to purchase such environmental attributes from Supplier, upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 "Agreement" means this Long Term Power Purchase Agreement together with the Exhibits attached hereto, as such may be amended from time to time.

1.2 "Availability Notice" means a notice delivered by Supplier to Buyer pursuant to Section 13.1 (Scheduling Notification) notifying Buyer of the availability of the Generating Facilities.

1.3 "Billing Period" has the meaning ascribed to that term in Section 7.2.1 (Invoicing and Payment).

1.4 "Business Day" means any day other than Saturday, Sunday, and any day that is a holiday observed by Federal Reserve member banks in Los Angeles, California.

1.5 "Buyer" has the meaning set forth in the preamble of this Agreement.

1.6 "Commercial Operation" means that all of the Generating Facilities have been constructed in accordance with Good Utility Practice and have delivered Energy to the Delivery Point, and all of the requirements set forth in Section 8.3 (Commercial Operation Date) have been satisfied.

1.7 "Commercial Operation Date" means the date on which Commercial Operation first occurs.

1.8 "Confidential Information" has the meaning ascribed to that term in Section 32.1 (Confidential Information).

1.9 "Contract Representative" of a Party means the individual designated by that Party in Exhibit 3 responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 25 (Notices).

1.10 "Contract Year" shall mean each year beginning on January 1 and ending on December 31 of such year following the Commercial Operation Date; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the following December 31.

1.11 "Control Area" has the meaning set forth in the OATT of the Control Area Operator.

1.12 "Control Area Operator" means a Person, its agents and successors that are responsible for the operation of the Transmission System and for maintaining reliability of the electrical transmission system(s), including the Transmission System, within the Control Area. At the time of execution of this Agreement, the Control Area Operator is the Transmission Provider.

1.13 "CPUC" means the Public Utilities Commission of the State of California.

1.14 "Cure Period" has the meaning ascribed to that term in Section 21.2.

1.15 "Defaulting Party" has the meaning ascribed to that term in Section 21.1.

1.16 "Delivery Point" means the Devers substation; provided that Supplier may designate the Mirage substation as an additional or alternate Delivery Point in the event of a circumstance that precludes or limits deliveries at Devers or increases the cost of deliveries at Devers beyond the cost to deliver at Mirage, and provided that Supplier provides sufficient notice to Buyer to permit Buyer to receive energy at Mirage.

1.17 "Disclosing Party" has the meaning ascribed to that term in Section 32.1 (Confidential Information).

1.18 "Dispatch Hour" means each hour from the Operation Date through the end of the Term.

1.19 "Dispute" has the meaning ascribed to that term in Section 18.1 (Dispute or Claim).

1.20 [Reserved].

1.21 [Reserved].

1.22 [Reserved].

1.23 "Effective Date" has the meaning ascribed to that term in the preamble of this Agreement.

1.24 "Emergency" means any circumstance or combination of circumstances or any condition of the Generating Facilities, the Interconnection Facilities, the Transmission System, or the transmission system of other electric utilities, which is reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or is reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of other electric utilities. Emergency does not include interruptions of service that result from congestion, financial matters or contractual considerations, or are not manifested by a physical condition as described in the preceding sentence.

1.25 "Energy" means electrical energy (measured in MWh) that is generated by the Generating Facilities from and after the Operation Date.

1.26 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include, without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facilities, (ii) Tax Credit and Financial Incentives, (iii) fuel-related subsidies or 'tipping fees' that may be paid to Supplier to accept certain fuels, or local subsidies received by the Supplier for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal laws or regulations or operating and/or air quality permits, including any required credits, allowances, offsets or other attributes associated with GHG regulations to be adopted in the future.

1.27 "Event of Default" has the meaning ascribed to that term in Section 21.1.

1.28 "Financial Incentives" means any direct or indirect financial benefit, credit (tax or otherwise), payment, award, subsidy or compensation attributable to the development, financing, construction, ownership or operation of the Generating Facilities, including: (i) federal production tax credits; (ii) supplemental energy or other payments from the State of California; or (iii) payments for environmental easements or similar unique attributes of the Generating Facilities not directly associated with energy generation of the Generating Facilities.

1.29 "First Full Contract Year" means the period beginning on the Commercial Operation Date and ending on the first December 31 that is at least a full calendar year thereafter.

1.30 "Force Majeure" has the meaning set forth in Section 17 (Force Majeure).

1.31 "Forced Outage" means the removal of service availability, unavailability, constraint on availability, or reduction of capacity, of the Generating Facilities, the transmission line serving the Generating Facilities if under the Supplier's control, for mechanical or operational (and not purely financial) reasons other than a Force Majeure or Planned Outage.

1.32 "Forward Certificate Transfer" has the meaning set forth in the WREGIS Operating Rules.

1.33 "Generated and Delivered Amount" means, with respect to any Dispatch Hour, the amount of Energy included in the Scheduled and Delivered Amount.

1.34 "Generating Facilities" means the geothermal generating power plants to be owned and operated by Supplier or its affiliates located in Imperial County California and described in Exhibit 1, with aggregate installed capacity of approximately 14 MW and including any associated facilities and equipment required to deliver Energy to the Transmission Provider for transmission to the Delivery Point.

1.35 "Good Utility Practice" means (i) the applicable practices, methods and acts required by or consistent with applicable Laws, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or (ii) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and timing considerations. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region and industry. Good Utility Practice shall include compliance with applicable Laws and regulations, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended from time to time, including the criteria, rules and standards of any successor organizations.

1.36 "Governmental Authority" means, as to any person, any Federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.

1.37 "Indemnified Party" has the meaning provided in Section 15.1 (Third Party Claims).

1.38 "Indemnifying Party" has the meaning provided in Section 15.1 (Third Party Claims).

1.39 "Interconnection Facilities" means the equipment and facilities, including any modifications, additions and upgrades made to such facilities, which are necessary to connect the Generating Facilities to the Transmission System as described in Exhibit 4.

1.40 "Invoice" means the statements described in Section 7.2 (Invoices) setting forth, as applicable, the Generated and Delivered Amounts, Scheduled and Delivered Amounts and the associated payment due for the Billing Period.

1.41 "Law" means any federal, state, local or other law, common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, which is binding on a Party or any of its property.

1.42 "Loss" means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, judgments, damages, losses or expenses in connection with any claim by a third party against an Indemnified Party pursuant to Section 15 (Indemnification).

1.43 "Material Adverse Effect" means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations or financial condition of such Party.

1.44 "Maximum Amount" means, with respect to a Dispatch Hour, an amount of electrical energy equal to 17.0 MWh.

1.45 "Meter" means any of the physical metering devices, data processing equipment and apparatus associated with the meters owned by Supplier or Transmission Provider or its designee, required for an accurate determination of the quantities of Energy generated by the Generating Facilities and for recording other related parameters required for the reporting of data to Supplier.

1.46 "MW" means megawatts of electrical power.

1.47 "MWh" means megawatt hours of electrical energy.

1.48 "NERC" means the North American Electric Reliability Council and any successor entity thereto.

1.49 "Non-Defaulting Party" means the Party other than the Defaulting Party.

"OATT" means Transmission Provider's or Control Area Operator's then-effective Open Access Transmission Tariff.

1.50 "Operating Representative" of a Party means any of the individuals designated by that Party, as set forth in Exhibit 3, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 25 (Notices) herein.

1.51 "Operation Date" means the first date on which one or more of the Generating Facilities are energized, operate in parallel with the Transmission System and deliver Energy to the Delivery Point.

1.52 "PPT" means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing.

1.53 "Party" or "Parties" means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.

1.54 "Person" or "Persons" means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

1.55 "Planned Operation Date" means the date specified in Item 5 of Exhibit 1 as the date on which the Operation Date is expected to occur.

1.56 "Planned Outage" has the meaning ascribed to that term in Section 10 (Planned Outages).

1.57 "Product" means (i) all Energy produced by the Generating Facilities, except Station Usage, and (ii) all Environmental Attributes associated with such Energy, in each case up to the Maximum Amount. Product does not include Tax Credits or Financial Incentives.

1.58 "Product Rate" means the rate set forth in Exhibit 2 of this Agreement under "Product Rate," as such rate may be adjusted from time to time pursuant thereto.

1.59 "Production Tax Credits" means those tax credits available under Section 45 of the Internal Revenue Code, as amended, applicable to the production of electricity using a geothermal resource.

1.60 "Receiving Party" has the meaning ascribed to that term in Section 32.1 (Confidential Information).

1.61 [Reserved].

1.62 "RPS Legislation" The State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11 *et seq.* or any successor to this legislation.

1.63 "Scheduled and Delivered Amount" means, with respect to any Dispatch Hour, the actual amount of electric energy scheduled (in accordance with the protocols to be adopted

under Section 13.1.2) and delivered by or on behalf of Supplier to Buyer at the Delivery Point during such Dispatch Hour (whether or not generated by the Generating Facilities), not to exceed the Maximum Amount.

1.64 "Station Usage" means all Energy used by the Generating Facilities and by the generating facilities of Supplier's affiliates at the Heber Known Geothermal Resource Area.

1.65 "Supplier" has the meaning set forth in the preamble of this Agreement.

1.66 "Tax" or "Taxes" means any Federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

1.67 "Tax Credits" has the meaning ascribed to that term in Section 6.1.

1.68 "Term" has the meaning ascribed to that term in Section 2 (Term).

1.69 "Transmission Provider" means the Imperial Irrigation District, or any successor operator or owner of the Transmission System.

1.70 "Transmission System" means the facilities used for the transmission of electric energy in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.

1.71 "WECC" means the Western Electricity Coordinating Council (formerly Western System Coordinating Council) and any successor entity thereto.

1.72 "WREGIS" means Western Renewable Energy Generation Information System, or its successor; provided that said successor is capable of performing substantially similar functions and is acceptable to both Parties.

1.73 "WREGIS Certificates" has the meaning set forth in WREGIS Operating Rules.

1.74 "WREGIS Operating Rules" means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS and as may be amended from time to time.

## 2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Effective Date. This Agreement shall become effective on the Effective Date.

2.2 Term. Supplier's obligation to deliver Product, and Buyer's obligation to accept and pay for the Scheduled and Delivered Amounts, under this Agreement shall commence on the Operation Date and shall continue for a period of 25 years from January 1 immediately following the Commercial Operation Date, subject to earlier termination of this Agreement pursuant to the terms hereof ("Term").

2.3 Termination.

2.3.1 Unilateral. Either Party may, in its sole and unlimited discretion and without liability of any kind whatsoever (other than for previously accrued obligations), terminate this Agreement as of January 1 immediately following the 15<sup>th</sup> or 20<sup>th</sup> anniversary of the Commercial Operation Date, by providing written notice to the other Party no later than 180 days prior to either such date. Failure to provide timely the required notice shall constitute a waiver of such termination right.

2.3.2 Mutual Agreement. This Agreement may be terminated at any time by written agreement of the Parties.

2.3.3 For Cause. This Agreement may be terminated at any time by the Non-Defaulting Party upon 14 days' prior notice to the Defaulting Party if an Event of Default has occurred and is continuing after the applicable Cure Period (if any) set forth in Section 21.2 has expired.

2.3.4 Force Majeure. Except as set forth immediately below, this Agreement may be terminated by either Party if the other Party's material obligations hereunder have been excused by the occurrence of an event of Force Majeure pursuant to Section 17 (Force Majeure) for longer than 12 consecutive months. If an event of Force Majeure has caused a catastrophic failure of major equipment (such as but not limited to the turbine or generator) used to provide Product, and if Supplier documents that the replacement or repair time for that major equipment exceeds 12 months, Buyer may not exercise its rights under this paragraph until the Supplier's obligations hereunder have been excused for longer than 18 consecutive months.

2.4 Effect of Termination - Survival of Obligations. Any default under or termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:

2.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of breach of, this Agreement;

2.4.2 Indemnity obligations contained in Section 15 (Indemnification), which shall survive to the full extent of the statute of limitations period applicable to any third party claim;

- 2.4.3 Limitation of liability provisions contained in Section 16 (Limitation of Liability);
- 2.4.4 For a period of one year after the termination date, the right to submit a payment dispute pursuant to Section 18 (Disputes);
- 2.4.5 The resolution of any dispute submitted pursuant to Section 18 (Disputes) prior to, or resulting from, termination; or
- 2.4.6 The obligations under Section 32 (Confidentiality).

### 3. SUPPLY SERVICE OBLIGATIONS

3.1 Dedication. Supplier shall use commercially reasonable efforts to schedule (in accordance with the protocols to be developed under Section 13.1.2), deliver and/or transfer to Buyer at the Delivery Point all Product from the Generating Facilities (other than Product not purchased by Buyer as a result of an event of default by Buyer or a Force Majeure affecting Buyer) throughout the Term of this Agreement. Financial Incentives and Tax Credits are not so dedicated and are retained by Supplier. It shall not be a default under Section 13 of this Agreement or otherwise, and there shall be no liability of Supplier under this Agreement, if Supplier fails to schedule, deliver and/or transfer to Buyer at the Delivery Point all of the Product from the Generating Facilities (other than Product not purchased by Buyer as a result of an event of default by Buyer or a Force Majeure affecting Buyer) throughout the Term of this Agreement, so long as Supplier uses commercially reasonable efforts as provided in this Section 3.1. Supplier shall not intentionally sell to third parties Product committed to Buyer hereunder in order to obtain a price higher than the prices set forth herein.

3.2 Delivered Amounts. Supplier shall use commercially reasonable efforts to schedule (in accordance with the protocols to be developed under Section 13.1.2) and deliver to Buyer at the Delivery Point an amount of Energy such that the Scheduled and Delivered Amounts equals the Generated and Delivered Amounts in each Dispatch Hour. It shall not be a default under Section 13 of this Agreement or otherwise, and there shall be no liability of Supplier under this Agreement, if the Scheduled and Delivered Amounts fails to equal the Generated and Delivered Amounts, so long as Supplier uses commercially reasonable efforts as provided in this Section 3.2.

3.3 Buyer's Obligation and Delivery. Buyer shall accept and take delivery of the Scheduled and Delivered Amounts at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for all costs associated with delivery of the Scheduled and Delivered Amounts to the Delivery Point. Buyer shall be responsible for all costs associated with the transmission of the Scheduled and Delivered Amounts from the Delivery Point.

3.4 Consumption. Supplier shall acquire at its sole cost standby service necessary to meet the electrical requirements of the Generating Facilities.

#### 4. PRICE OF PRODUCT

4.1 Product Payments. Supplier shall be paid for the Product based on the Scheduled and Delivered Amounts, as follows:

4.1.1 From and after the Operation Date and prior to the Commercial Operation Date, all Product associated with Scheduled and Delivered Amounts shall be paid for by Buyer at 95% of the Product Rate.

4.1.2 On and after the Commercial Operation Date, all Product associated with Scheduled and Delivered Amounts shall be paid for by Buyer at the Product Rate.

4.2 Line Losses. Supplier shall be responsible for line losses to the Delivery Point.

#### 5. ENVIRONMENTAL ATTRIBUTES

5.1 Generating Facilities Certification. Supplier has not and will not convey to any person or entity other than Buyer any Environmental Attributes associated with the Energy throughout the term of this Agreement. Supplier shall use commercially reasonable efforts to ensure that: (i) the Generating Facilities are certified by the California Energy Commission ("CEC") as an Eligible Renewable Energy Resource ("ERR") for purposes of the RPS Legislation; and (ii) all electrical output delivered to Buyer from the Generating Facilities is certified by the CEC as an ERR for purposes of the RPS Legislation. Supplier shall cooperate reasonably with Buyer and provide such certifications or attestations to Buyer as are reasonably necessary to verify that all Environmental Attributes attributable to the Energy have been transferred to Buyer.

5.2 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Supplier to purchase and sell Energy on the terms and conditions set forth herein, Supplier shall transfer to Buyer, and Buyer shall receive from Supplier, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Supplier or that hereafter come into existence or are acquired by Supplier during the Agreement Term, for all Energy. Supplier agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Supplier's production or acquisition of the Environmental Attributes. Supplier shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer. Buyer and Supplier acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Product Rate. Notwithstanding the foregoing, Supplier shall not transfer and may retain for its own use any emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal laws or regulations or operating and/or air quality permits, including any required credits, allowances, offsets or other attributes associated with GHG regulations to be adopted in the future.

5.3 Reporting of Ownership of Environmental Attributes. During the Agreement Term, Supplier shall not report to any Person or entity that the Environmental Attributes granted

hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

5.4 Use of WREGIS to Transfer Certain Environmental Attributes. Supplier shall use commercially reasonable efforts to use WREGIS to evidence the transfer of renewable energy certificates ("RECs" or "WREGIS Certificates") on and after the effective date of Amendment 2, which shall be deemed a part of Environmental Attributes associated with Energy in accordance with WREGIS reporting protocols, and as such shall register the Facility with WREGIS as soon as practical after the effective date of Amendment 2. The Parties agree that the Generating Facilities will be registered with WREGIS, initially, as geothermal. Supplier shall be responsible for the costs of registering in WREGIS and for any mandatory ongoing WREGIS costs. During the Term, any optional actions regarding WREGIS or WREGIS Certificates shall be made by Supplier at the direction of Buyer; provided, however, that such actions are accepted by Supplier in its reasonable discretion and Buyer compensates Supplier for any costs associated with such optional actions. After the Facility is registered with WREGIS, at Buyer's option, Supplier agrees to transfer WREGIS Certificates to Buyer using the Forward Certificate Transfer method, as described in WREGIS Operating Rules and as designated by Buyer. Supplier shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account and subsequent transferring or retiring of WREGIS Certificates. Forward Certificate Transfers will occur monthly in accordance with the certificate creation time-line established by the WREGIS Operating Rules. As of the Effective Date, the certificate creation time line is established as not later than ninety (90) days following the end of each Month. For example, for MWhs generated in January 2009, the certificates will be created in WREGIS not later than April 30, 2009. Supplier shall be responsible for, at its expense, validating and disputing data with WREGIS in its reasonable discretion prior to certificate creation each month. Except as the Parties may otherwise agree in writing, in the event that WREGIS is not in operation, or WREGIS does not track Supplier's transfer of WREGIS Certificates to Buyer, or its designees, on or before the 30th day of each calendar month, Supplier shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Buyer an attestation for the Environmental Attributes produced by the Facility, in whole MWh, in the preceding calendar quarter. The form of attestation shall be substantially in the form as set forth in Exhibit 6; provided, however, Buyer may change the form of attestation from time to time during the Term by giving at least thirty (30) Days prior notice to Supplier, subject to Supplier's approval (which Supplier shall not unreasonably withhold, condition or delay). If Supplier has not objected to Buyer's proposed changes to the form of attestation within thirty (30) Days after receiving it, the changes shall be deemed approved. Notwithstanding anything herein to the contrary, if Supplier's cost associated with WREGIS in connection with this Agreement or compliance with this Section 5.4 exceeds \$15,000 in any Contract Year, Buyer shall reimburse Supplier for the amount in excess of \$15,000.

## 6. TAX CREDITS AND FINANCIAL INCENTIVES

6.1 The Parties agree that the price of the Product as provided for in Section 4 and as specified in Exhibit 2 accounts for state, local and/or Federal tax credit[s], including investment

and production tax credit[s] specific to investments in renewable energy production and delivery facilities (if any) ("Tax Credit[s]") and all other Financial Incentives.

6.2 Supplier and Buyer agree that the Product Rate set forth in Exhibit 2 is not subject to adjustment or amendment if Supplier receives existing or new, or fails to receive any existing or new Tax Credits or other Financial Incentives, or if such Tax Credits or other Financial Incentives expire, are repealed or otherwise cease to apply to the Supplier or the Generating Facility in whole or in part, or Supplier or its investors are unable to benefit from such Tax Credit or other Financial Incentives.

## 7. METERING, INVOICING AND PAYMENTS

### 7.1 Metering.

7.1.1 Meters. The Meters shall be installed, maintained and operated in accordance with the Transmission Provider's OATT and shall be used for quantity measurements under this Agreement. Such equipment shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity.

### 7.2 Invoices.

7.2.1 Invoicing and Payment. On or before the 10th Business Day following receipt of Transmission Provider's monthly transmission report to Supplier, Supplier shall send to Buyer an Invoice for the prior month (a "Billing Period").

7.2.2 Monthly Invoice Calculation. In each monthly Invoice, Supplier shall state the following amounts:

7.2.2.1 The Generated and Delivered Amounts for each hour in the Billing Period;

7.2.2.2 The Scheduled and Delivered Amounts for each hour in the Billing Period;

7.2.2.3 The amount due from Buyer for the Scheduled and Delivered Amounts for the Billing Period (i.e., the product of the amount set forth in Section 7.2.2.2 and the applicable price set forth in Section 4.1);

7.2.2.4 Supplier shall provide the information electronically in a format to be agreed upon by Buyer in its reasonable discretion.

7.2.3 Attestation. Concurrently with each Invoice, Supplier shall provide to Buyer an attestation showing the amount of Environmental Attributes delivered to Buyer during the relevant Billing Period.

7.2.4 [Reserved].

7.2.5 Method of Payment. By the later of the 25<sup>th</sup> day of each calendar month or 10 calendar days from delivery of the Invoice, Buyer shall remit the full amount indicated as due in such Invoice, without offset or withholding, by wire or electronic fund transfer or otherwise pursuant to the instructions stated in Exhibit 3.

7.2.6 Examination and Correction of Invoices. As soon as practicable, but no later than 60 days after receipt of the Invoice, Buyer shall notify Supplier in writing of any alleged error in the Invoice.

7.2.6.1 The Parties agree to make good faith efforts to reconcile the billing and mutually agree on the appropriate remedy, if any.

7.2.6.2 If a correction is determined to be required, Supplier shall provide an adjusted Invoice to Buyer. If such error results in an additional payment to Supplier, Buyer's payment in the amount due Supplier shall be made in accordance with Section 7.2.5. If such error resulted in a refund owed to Buyer, Supplier shall pay Buyer the amount of the Invoice within ten calendar days of the date of the Invoice or at Supplier's option, Supplier may offset such amount against the subsequent monthly payment to Supplier.

7.2.6.3 If Buyer fails to provide notice of an alleged error within 60 days of receipt of an Invoice, then Buyer shall be deemed to have waived all rights to object to the Invoice for the subject Billing Period.

7.3 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated pursuant to 18 C.F.R. § 35.19a.

## 8. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS

8.1 Construction of Generating Facilities. Supplier shall construct the Generating Facilities in accordance with Good Utility Practices.

8.2 Progress Towards Completion. Supplier shall notify Buyer promptly (and in any event within ten days) following its becoming aware of information that leads to a reasonable conclusion that the Commercial Operation Date will not occur on or before November 1, 2005, and shall convene a meeting with Buyer to discuss the situation not later than 15 days after becoming aware of this information.

8.3 Commercial Operation Date. Within seven days of the successful completion of its performance tests confirming Commercial Operation, Supplier shall provide Buyer with

written notification of Commercial Operation, including any relevant data demonstrating that Commercial Operation has occurred.

8.4 Modification. Supplier has the right to make any modification to the Generating Facilities it deems necessary. However, Supplier shall obtain Buyer's written consent, which shall not be unreasonably withheld or delayed, if Supplier plans to make modifications to the Generating Facilities that reasonably could be expected to adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement. Any such modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time.

8.5 Operation and Maintenance. Supplier, at all times shall install, operate, maintain and repair the Generating Facilities in accordance with Good Utility Practice. Supplier agrees (i) to maintain adequate records of all operations of the Generating Facilities, and (ii) to follow such regulations, directions and procedures of Buyer, the Control Area Operator, the Transmission Provider, WECC, NERC and any applicable Governmental Authority as are reasonably necessary to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Generating Facilities.

8.6 Right to Review. Buyer and Supplier each shall have the right to review during normal business hours the relevant books and records of the other Party to confirm the accuracy of such as they pertain only to transactions under this Agreement. The review shall be consistent with standard business practices and shall follow reasonable notice to the other Party. Reasonable notice for a review of the previous month's records shall be a minimum of seven Business Days.

## 9. EMERGENCY

9.1 In the event of an Emergency, Buyer and Supplier shall promptly comply with any applicable requirements of any Governmental Authority, NERC, WECC, Control Area Operator, Transmission Provider, transmission operator, or any successor of any of them, regarding the reduced or increased generation of the Generating Facilities.

9.2 Each Party shall provide prompt oral and written notification to the other Party of any Emergency. If requested by the other Party, the Party declaring the Emergency shall provide a description in reasonable detail of the Emergency and any steps employed to cure it.

9.3 In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid or mitigate injury, danger, damage or loss to its own equipment and facilities, or to expedite restoration of service; provided, however, that the Party taking such action shall give the other Party prior notice, if practicable, before taking any action. This Section shall not be construed to supersede Sections 9.1 and 9.2.

9.4 In the event of an Emergency, Buyer can request Supplier not to institute a Planned Outage of the Generating Facilities and Supplier agrees to take all commercially reasonable steps to avoid instituting the Planned Outage until such time as the condition of the Emergency has passed. Supplier may present a reasonable estimate of costs expected to be incurred as a result of the Supplier not instituting the Planned Outage. If Buyer agrees to the

estimated costs, Supplier shall be required not to institute the Planned Outage and Buyer shall reimburse Supplier for actual costs incurred, not to exceed the estimated amounts.

## 10. PLANNED OUTAGES

10.1 Within 90 days prior to the Commercial Operation Date and on or before October 1 of each Contract Year, Supplier shall provide Buyer with a schedule of proposed Planned Outages for the upcoming Contract Year. The proposed Planned Outages schedule will designate the days and amount (in MWs) in which the Generating Facilities output will be reduced in whole or in part. Each proposed schedule shall include all applicable information, including the following: month, day and time of requested outage, facilities impacted, duration of outage, purpose of outage, and other relevant information.

10.2 Buyer shall promptly review Supplier's proposed schedule and may request modifications to the proposed schedule within 30 days of Buyer's receipt of such schedule. If Buyer requests changes, Supplier shall use commercially reasonable efforts, consistent with Good Utility Practice, to accommodate such request. Supplier shall use commercially reasonable efforts to accomplish all Planned Outages in accordance with the approved schedule.

10.3 Supplier shall not start a Planned Outage without notification of the approved Planned Outage to Buyer's Operating Representative seven days prior to the start of such Planned Outage.

## 11. REPORTS; OPERATIONAL LOG

11.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating that Supplier or its Generating Facilities is in violation of Laws which relate to Supplier or operation or maintenance of the Generating Facilities which could have an adverse effect on Buyer. Supplier shall keep Buyer apprised of the status of any such matters.

11.2 Notices of Change in Generating Facilities. In addition to any consent required pursuant to Section 8.4 (Modification), Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics of the Generating Facilities. Such notice shall describe any changes, expected or otherwise, to the total capacity of the Generating Facilities, the rate of production and delivery of Energy, interconnection and transmission issues, and such additional information as may be required by Buyer.

### 11.3 Project Reports and Project Review Meetings.

11.3.1 After Commercial Operation Date. Each February during the Term, the Parties shall meet to conduct an annual review of the Generating Facilities and their performance. Additional data and meetings may be required as necessitated by Generating Facilities performance.

- 11.3.2 Operational Log. Supplier shall maintain an operations log, which shall include the aggregate Generated and Delivered Amounts for the Contract Year, planned and unplanned maintenance outages, circuit breaker trip operations requiring a manual reset, partial deratings of equipment, and any other significant event or information related to the operation of the Generating Facilities. The operations log shall be available for inspection by Buyer upon reasonable advance request.

## 12. COMMUNICATIONS

12.1 Supplier's Operating Representative or designated alternate shall be available to address and make decisions on all operational matters under this Agreement on a 24 hour, seven day per week basis. Supplier shall, at its expense, maintain and install a 24 hour, seven day per week communication link with Buyer's Operating Representative at Buyer's operations center and with Buyer's schedulers as listed in Exhibit 3, to maintain communications between personnel on site at the Generating Facilities, Buyer and the Control Area Operator at all times. Supplier shall provide at its expense equipment to transmit to and receive telecopies and email from Buyer and the Control Area Operator, including cellular telephones.

## 13. SCHEDULING NOTIFICATION

13.1 Scheduling Notification. Supplier, or its agent, shall provide to Buyer, or its agent, notices containing Supplier's good faith daily and hourly forecast of the Generated and Delivered Amount, Generating Facilities Planned Outages, Forced Outages and similar events that may affect the Scheduled and Delivered Amount.

13.1.1 Availability Notice. No later than 0700 PPT each day, Supplier, or its agent, shall deliver to Buyer an Availability Notice in the form set forth in Exhibit 5 for the next succeeding day. The Availability Notice shall be a good faith estimate and shall not be binding.

13.1.2 Scheduling Protocols. Supplier and Buyer shall follow mutually agreeable scheduling protocols pursuant to which Supplier, or its agent, shall be responsible for the scheduling of Energy to the Delivery Point, and Buyer, or its agent, shall be responsible for scheduling the receipt of such Energy at, and the delivery of such Energy from, the Delivery Point. [Note: George will send a protocols document.] Additionally, in the event that Supplier designates the Mirage substation as the Delivery Point, Buyer shall be responsible for the scheduling of Energy with the California Independent System Operator.

13.2 Scheduled and Delivered Amounts. Notwithstanding anything herein to the contrary, Buyer shall pay Supplier at the rates set forth in Section 4 for all Scheduled and Delivered Amounts. In the event that the Scheduled and Delivered Amounts exceed the Generated and Delivered Amounts in any time interval, Supplier shall bear any costs and retain any revenues associated with the provision of the Scheduled and Delivered Amounts. In the event that the Generated and Delivered Amounts exceed the Scheduled and Delivered Amounts

in any time interval, Supplier shall bear any costs and retain any revenues associated with the excess generation.

#### 14. COMPLIANCE

14.1 Each Party shall comply with all relevant Laws and regulations and shall, at its sole expense, maintain in full force and effect all relevant permits, authorizations, licenses and other authorizations material to the maintenance of its facilities and the performance of obligations under this Agreement. Each Party and its representatives shall comply with all relevant requirements of the Control Area Operator, Transmission Provider and each Governmental Authority to ensure the safety of its employees and the public.

14.2 Buyer and Supplier shall perform, or cause to be performed, their obligations under this Agreement in all material respects in accordance with Good Utility Practices and in good faith.

#### 15. INDEMNIFICATION

15.1 Third Party Claims. Each Party to this Agreement (the "Indemnifying Party") shall indemnify, defend and hold harmless, the other Party, its parent and affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (each an "Indemnified Party") from and against any and all Losses arising out of, relating to, or resulting from the Indemnifying Party's breach of, or the performance or non-performance of its obligations under this Agreement (including Taxes, and failure to maintain insurance at levels required by this Agreement, Penalties, fines, reasonable attorneys' fees); provided, however, that no Party shall be indemnified hereunder for any Loss to the extent resulting from its own gross negligence, fraud or willful misconduct.

15.1.1 In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have against the Indemnified Party under applicable workers' compensation laws.

15.1.2 In claims against any Indemnified Party by an agent of the Indemnifying Party, or anyone directly or indirectly employed by them or anyone for whose acts the Indemnifying Party may be liable, the indemnification obligation under this Section 15 (Indemnification) shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

15.2 No Negation of Existing Indemnities; Survival. Each Party's indemnity obligations under this Agreement shall not be construed to negate, abridge or reduce other indemnity or other rights or obligations, which would otherwise exist at Law or in equity. The obligations contained herein shall survive any termination, cancellation, expiration, or suspension of this Agreement to the extent that any third party claim is commenced during the applicable statute of limitations period.

### 15.3 Indemnification Procedures.

15.3.1 Any Indemnified Party seeking indemnification under this Agreement for any Loss shall give the Indemnifying Party notice of such Loss promptly but in any event on or before 30 days after the Indemnified Party's actual knowledge of such claim or action. Such notice shall describe the Loss in reasonable detail, and shall indicate the amount (estimated if necessary) of the Loss that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice.

15.3.2 In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party may, at its sole option, elect to assume the defense at the Indemnifying Party's expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it:

15.3.2.1 May result in injunctions or other equitable remedies with respect to the Indemnified Party that would affect its business or operations in any materially adverse manner;

15.3.2.2 May result in material liabilities which may not be fully indemnified hereunder; or

15.3.2.3 May have a significant adverse impact on the business or the financial condition of the Indemnified Party (including a material adverse effect on the tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full.

15.3.3 Subject to Section 15.3.2, neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior written consent of the other Party; provided, however, said consent shall not be unreasonably withheld or delayed.

## 16. LIMITATION OF LIABILITY

16.1 Responsibility for Damages. Except where caused by the other Party's negligence or willful misconduct, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it and any physical injury or death to natural Persons resulting there from, and shall not seek recovery or reimbursement from the other Party for such damage.

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16.2 Limitation on Damages. To the fullest extent permitted by Law and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement. For purposes of clarification, amounts determined under Sections 15 (Indemnification), 7.4 (Taxes) or 24.6 (Supplier's Minimum Insurance Requirements), shall not be considered special, indirect, incidental, multiple, punitive, consequential or incidental damages under this Section. In addition, this limitation on damages shall not apply with respect to claims brought by third parties for which a Party is entitled to indemnification under this Agreement.

16.3 Survival. The provisions of this Section 16 (Limitation of Liability) shall survive any termination, cancellation, expiration, or suspension of this Agreement.

## 17. FORCE MAJEURE

17.1 Excuse. Subject to Section 17.4 (Conditions), neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure, but only to the extent that:

17.1.1 such event of Force Majeure is not attributable to fault or negligence on the part of that Party;

17.1.2 such event of Force Majeure is caused by factors beyond that Party's reasonable control; and

17.1.3 despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

17.2 Definition. "Force Majeure" means, subject to Section 17.3 (Exclusions):

17.2.1 Acts of God such as storms, floods, lightning and earthquakes;

17.2.2 Sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

17.2.3 Transmission System or generating equipment failure;

17.2.4 War, riot, acts of a public enemy or other civil disturbance;

17.2.5 Strike, walkout, lockout or other significant labor dispute;

17.2.6 Curtailment by the Transmission Provider;

17.2.7 Curtailment by the California Independent System Operator, or its successor, resulting from an Emergency; or

17.2.8 Action or inaction of a Governmental Authority (including expropriation, requisition or material change in Law imposed by a Governmental Authority).

17.3 Exclusion. Economic hardship of either Party shall not constitute an event of Force Majeure. Notwithstanding anything to the contrary herein, in the event of a Force Majeure event pursuant to Section 17.2.7, the Supplier shall have the right to sell Product to any third party so long as such Force Majeure event is continuing.

17.4 Conditions. In addition to the conditions set forth in Section 17.1 (Excuse) above, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:

17.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

17.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

17.4.3 Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute;

17.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party; and

17.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

## 18. DISPUTES

18.1 Dispute or Claim. Any action, claim or dispute which either Party may have against the other arising out of or relating to this Agreement or the transactions contemplated hereunder, or the breach, termination or validity thereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and documentation that support the claim.

18.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.

18.3 Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party.

18.4 Arbitration. In the event the Parties are unable to resolve the Dispute through informal negotiations as described above, the Parties may elect to pursue arbitration pursuant to the rules of the American Arbitration Association, or any other method chosen by the Parties, subject to the express prior written agreement of both Parties. Such written agreement shall include all guidelines to be followed by the Parties in such arbitration or dispute resolution prior to the commencement of such arbitration. Neither Party shall be obligated to pursue arbitration over any other method of dispute resolution.

18.5 Litigation Rights. In the event the Parties are unable to satisfactorily resolve the Dispute within 30 days from the receipt of notice of the Dispute, subject to any extensions of time as may be mutually agreed upon in writing, or any arbitration agreement, either Party may initiate litigation in a court of law with jurisdiction located in Los Angeles, California which shall be the exclusive venue to litigate disputes.

18.6 Recovery Costs. In the event any action is brought at law or in equity in court to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including, court costs and the prevailing Party's reasonable attorney's fees and related costs and expenses of litigation.

## 19. NATURE OF OBLIGATIONS

19.1 The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture, or to impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.

19.2 By this Agreement, neither Party dedicates any part of its facilities or the service provided under this Agreement to the public.

## 20. ASSIGNMENT

20.1 Buyer may, without the consent of Supplier (and without relieving itself from liability hereunder) assign this Agreement or assign or delegate its rights and obligations under this Agreement, if such assignment is made to: (i) one or more of its member municipal utilities; (ii) where such assignment does not occur by operation of law, any successor to Buyer provided such successor is a municipal utility or public utility holding a certificate of public convenience and necessity granted by the CPUC; or (iii) as otherwise required by Law; provided that, in the case of any such assignment without consent, the assignee must have an underlying rating that is considered Investment Grade by Moody's Investor Services, Inc., Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or Fitch Ratings on either its senior, unsecured and unenhanced long-term debt or on any obligation (not supported by third party credit enhancement) secured by a pledge of electricity revenues on a basis that is not subordinate to any pledge in favor of any other obligation.

20.2 Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, pledge, encumber, or assign this Agreement or the account, revenues or proceeds hereof in connection with any financing or other financial arrangements for the Generating Facilities; (ii) transfer or assign this Agreement to an affiliate in connection with a transfer of the Generating Facilities; or (iii) transfer or assign this Agreement to any entity that has a credit position equal to or better than that of Supplier.

20.3 Except as stated above, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by either Party, including by operation of Law, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

20.4 A Party's assignment or transfer of rights or obligations pursuant to Section 20 (Assignment) of this Agreement shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement in form and substance reasonably satisfactory to the other Party.

20.5 This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

## **21. DEFAULT AND REMEDIES**

21.1 Except to the extent excused due to an event of Force Majeure in accordance with Section 17 (Force Majeure), an event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events:

21.1.1 in the case of either Buyer or the Supplier, failure to make timely payments due under this Agreement;

21.1.2 in the case of the Supplier, its failure to achieve Commercial Operation by November 1, 2005; and

21.1.3 in the case of either Buyer or the Supplier, failure to perform its other material obligations under this Agreement.

21.2 Upon the occurrence of an Event of Default, the Defaulting Party shall be entitled to a period (the "Cure Period") of: (i) 5 days from the date payment is due for an Event of Default set forth in Section 21.1.1; or (ii) 30 days from written notification of such default by the Non-Defaulting Party for an Event of Default set forth in Section 21.1.3; provided that such 30 day period shall be reasonably extended so long as the Defaulting Party is making diligent efforts to cure such Event of Default during which time the duties and obligations of the Non-Defaulting Party under this Agreement are suspended.

21.3 If an Event of Default is not cured by the Defaulting Party during the Cure Period, the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement.

## 22. REPRESENTATIONS AND WARRANTIES OF SUPPLIER

22.1 The Supplier represents and warrants to Buyer as follows:

22.1.1 Organization. The Supplier is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and/or operate its properties and to carry on its business as is now being conducted. The Supplier is duly qualified or licensed to do business as a foreign corporation and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

22.1.2 Authority Relative to this Agreement. The Supplier has full authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, deliver and performance of this Agreement. No other proceedings or approvals on the part of the Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.

22.1.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by the Supplier shall not (i) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of the Supplier; (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which the Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

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22.1.4 Title. Supplier owns all Product attributable to the Generating Facilities and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third party.

## 23. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to the Supplier as follows:

23.1 Organization; Qualification. Buyer is a joint powers agency established pursuant to the laws of the State of California, and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a joint powers agency and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

23.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement to which it is a party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.

23.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Buyer shall not (i) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except (a) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (b) for those consents, authorizations, approvals, permits, filings and notices which become applicable to Buyer as a result of specific regulatory status of Buyer (or any of its affiliates) or as a result of any other facts that specifically relate to the business or activities in which Buyer (or any of its affiliates) is or proposes to be engaged, which consents, approvals, authorizations, permits, filings and notices have been obtained or made by Buyer; or (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

23.4 Related Agreements. Buyer warrants that it has entered into or will enter into all necessary and material agreements related to Buyer's obligations under this Agreement.

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## 24. INSURANCE

24.1 General Requirements. Supplier or its affiliates shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to the Generating Facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier or its affiliates shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If converted to an occurrence form policy, the new policy shall be endorsed to provide coverage back to a reasonable retroactive date.

24.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of California and with the equivalent, on a continuous basis, of a "Best Rating" of "A-" or better and shall include provisions or endorsements:

24.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;

24.2.2 Stating that no reduction, cancellation or expiration of the policy shall be effective until 30 days from the date notice thereof is actually received by Buyer; provided, that upon Buyer's receipt of any notice of reduction, cancellation or expiration, that Party shall immediately provide notice thereof to the other Party; and

24.2.3 Naming Buyer as an additional insured on the general liability insurance policies as its interests may appear with respect to this Agreement.

24.3 Certificates of Insurance. Within 30 days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within 30 days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:

24.3.1 The name of insurance company, policy number and expiration date;

24.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier maintaining such policy; and

24.3.3 A statement indicating that Buyer shall receive at least 30 days prior notice of cancellation or expiration of a policy or of a reduction of liability limits with respect to a policy.

24.4 Certified Copies of Insurance Policies. At Buyer's request, in addition to the foregoing certifications, Supplier shall deliver to Buyer a copy of each insurance policy, certified

as a true copy by an authorized representative of the issuing insurance company or insurance broker.

24.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at the Supplier's place of business during regular business hours.

24.6 Supplier's Minimum Insurance Requirements.

24.6.1 Worker's Compensation. Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than \$1,000,000 per occurrence and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable.

24.6.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least \$2,000,000 per occurrence and at least \$2,000,000 annual aggregate.

24.6.3 Automobile Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least \$1,000,000 per occurrence and at least \$1,000,000 aggregate.

24.6.4 Failure to Comply. If Supplier fails to comply with the provisions of this Section 24 (Insurance), Supplier shall save harmless and indemnify Buyer from any direct or indirect loss and liability, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Section 24 (Insurance), in accordance with Section 15 (Indemnification).

25. NOTICES

25.1 All notices hereunder shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in Exhibit 3 or as modified from time to time by the receiving Party by notice to the other Party. Any changes to Exhibit 3 shall not constitute an amendment to this Agreement.

25.2 All notices or submittals required by this Agreement shall be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, electronic mail or facsimile transmission. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail or facsimile transmission shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 4:00 p.m. PPT, and if transmitted after that time, on the following Business Day; provided, however, that if any notice or submittal is tendered to

an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

25.3 All oral notifications required under this Agreement shall be made to the receiving Party's Operating Representative and shall promptly be followed by notice as provided in the other provisions of this Section 25 (Notices).

25.4 Notices of Force Majeure or an Event of Default pursuant to Section 17 (Force Majeure) or pursuant to Section 21 (Default and Remedies), respectively and notices of a change to Exhibit 3 shall be sent either by hand delivery, registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery. Such notices will be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

25.5 Any payments required to be made under this Agreement shall be made pursuant to the instructions in Exhibit 3 as such instructions may be changed by any Party from time to time by notice.

## 26. MERGER

26.1 This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter.

## 27. COUNTERPARTS AND INTERPRETATION

27.1 This Agreement may be executed in two counterparts, both of which shall be deemed an original.

27.2 In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

27.3 Any reference to any Federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

27.4 The words "include", "includes" and "including" in this Agreement shall not be limiting and shall be deemed in all instances to be followed by the phrase "without limitation".

27.5 References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated.

27.6 The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

## 28. SEVERABILITY

28.1 If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect.

28.2 The Parties shall endeavor in good faith to replace such invalid, void, or unenforceable provisions with valid and enforceable provisions that achieve the purpose intended by the Parties to the greatest extent permitted by law.

## 29. WAIVERS; REMEDIES CUMULATIVE

29.1 No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

## 30. AMENDMENTS

30.1 Amendments to this Agreement shall be mutually agreed upon by the Parties, produced in writing and shall be executed by an authorized representative of each Party.

## 31. TIME IS OF THE ESSENCE

31.1 Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.

## 32. CONFIDENTIALITY

32.1 Confidential Information. "Confidential Information" means this Agreement and information provided by one Party (the "Disclosing Party") to the other (the "Receiving Party") in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the Disclosing Party as "confidential" or "proprietary" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, excluding, however, information excluded as provided in Section 32.3 (Excluded Information).

32.2 Treatment of Confidential Information. The Receiving Party shall treat any Confidential Information with at least the same degree of care regarding its secrecy and confidentiality as the Receiving Party's similar information is treated within the Receiving Party's organization. The Receiving Party shall keep confidential and not disclose the Confidential Information of the Disclosing Party to third parties (except as stated hereinafter) nor

use it for any purpose other than the performance under this Agreement, without the express prior written consent of the Disclosing Party. The Receiving Party further agrees that it shall restrict disclosure of Confidential Information as follows:

32.2.1 Disclosure shall be restricted solely to (i) its agents as may be necessary to enforce the terms of this Agreement, (ii) its Affiliates, shareholders, directors, officers, employees, advisors, lenders and representatives as necessary, (iii) any Governmental Authority in connection with seeking any required regulatory approval, (iv) to the extent required by applicable Law, (v) in the case of Buyer only, potential transferees of Energy or Environmental Attributes obtained by Buyer and (vi) potential assignees of this Agreement (together with their agents, advisors and representatives), as may be necessary in connection with any such assignment (which assignment or transfer shall be in compliance with Section 20 (Assignment)) in each case after advising those agents of their obligations under this Section.

32.2.2 In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable Disclosing Party to seek an appropriate protective order or other remedy and to consult with Disclosing Party with respect to Disclosing Party taking steps to resist or narrow the scope of such request or legal process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. In the absence of such protective order, and provided that the Receiving Party is advised by its counsel that it is compelled to disclose the Confidential Information, the Receiving Party shall:

32.2.2.1 Furnish only that portion of the Confidential Information which the Receiving Party is advised by counsel is legally required; and

32.2.2.2 Use its commercially reasonable efforts, at the expense of the Disclosing Party, to ensure that all Confidential Information so disclosed will be accorded confidential treatment.

This Section 32.2.2 shall not apply to information disclosed as contemplated by 32.2.1(iii).

32.3 Excluded Information. Confidential Information shall be deemed not to include the following:

32.3.1 Information which is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party;

32.3.2 Information which was available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party; and

32.3.3 Information which becomes available to the Receiving Party on a non-confidential basis from a person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose the information to the Receiving Party.

32.4 Injunctive Relief Due to Breach. The Parties agree that remedies at Law may be inadequate to protect each other in the event of a breach of this Section, and the Receiving Party hereby in advance agrees that the Disclosing Party shall be entitled to seek without proof of actual damages, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining the Receiving Party from committing or continuing any breach of this Section.

32.5 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby and the Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, except as determined by each Party with respect to its public filing obligations. It shall not be deemed a violation of this Section to disclose this Agreement to Buyer's Board of Directors or members, or the members' governing bodies; provided that Buyer must employ reasonable efforts to maintain in confidence any Confidential Information.

### 33. CHOICE OF LAW

33.1 This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of California.

### 34. FURTHER ASSURANCES

34.1 The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party, may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

### 35. NO THIRD PARTY BENEFICIARY

35.1 Except with respect to the rights of the Indemnified Party in Section 15.1 (Third Party Claims) and except as to any rights or interests as may exist by reason of Section 20 herein, (i) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (ii) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and (iii) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representative on the date first stated above.

**BUYER:**

**Southern California Public Power Authority**

By: \_\_\_\_\_

Name:

Title:

**SUPPLIER:**

**OrHeber 2, Inc.**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT 1**

**DESCRIPTION OF GENERATING FACILITY**

1. Name of Facility: Heber South
  - (a) Location: Heber, Imperial County, California
2. Owner: OrHeber 2, Inc.
3. Operator: Ormat Nevada, Inc.
4. Equipment:
  - (a) Type of Facility: Geothermal
  - (b) Capacity:

Total nominal gross nameplate capacity (under expected average site conditions):  
17.0 MW

Total nominal net capacity (under expected average site conditions): 14.0 MW
5. Commercial Operation Date: June 18, 2006

## EXHIBIT 2

### PRODUCT RATE

The Product Rate through the end of the First Full Contract Year shall be \$55.50 per MWh for the first 9.5 MWh delivered per hour. Upon the effective date of the Second Amendment, for each MWh delivered per hour in excess of the first 9.5 MWh, the Product Rate shall be \$75.00 per MWh.

The Product Rate shall be increased at the beginning of each subsequent Contract Year by an amount equal to one and one-half (1.5%) percent of the Product Rate for the previous Contract Year, for the duration of the Agreement.

For the avoidance of doubt, for the first 9.5 MWh delivered per hour, the Product Rate shall be \$56.36 per MWh for the Contract Year ending on December 31, 2007 and \$57.21 per MWh for the Contract Year ending on December 31, 2008. For each MWh in excess of the first 9.5 MWh, the Product Rate shall be \$76.13 per MWh for the Contract Year ending on December 31, 2008 and \$77.27 for the Contract Year ending on December 31, 2009.

**EXHIBIT 3**

**NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

**Supplier:**

Operating Representative  
Address:

947 Dogwood Road,  
Heber, CA  
Attn: Plant Manager  
Phone: 760-353-8200 Ext 227  
Fax: 760-353-9189  
Email: <mailto:bharms@ormat.com>

Contract Representative  
Address:

980 Greg Street  
Sparks, NV 89431-6039  
Attn: Asset Manager  
Phone: 775/356-9039  
Fax: 775/356-9039  
Email:  
<mailto:jpeterson@ormat.com>

**Payment Check:**

Address:

Wealth Management, a division  
of Hudson United Bank,  
90 Post Road East,  
Westport, CT 06880  
Attention: James N. Donaldson,  
Senior Vice President

**Payment Wire Transfer:**

ABA #061000227/Washovia  
National Bank  
A/C #2080000692834  
FBO: Hudson United Bank/  
OrCal Geo Revenue  
A/C # 2897400361

**Invoice:**

Address:

980 Greg Street  
Sparks, NV 89431-6039  
Attn, Asset Manager  
Phone: 775/356-9029  
Fax: 775/356-9039  
[email: jpeterson@ormat.com](mailto:jpeterson@ormat.com)

Operating-Notifications:

(i) Pre-Schedule

Phone: 760-353-8200 Ext 304  
Fax: 760-353-9038  
Email: [ljensen@ormat.com](mailto:ljensen@ormat.com)

(ii) Real Time

Phone: 760-353-8200 Ext 321  
Fax: 760-353-9038  
Email:

(iii) Monthly Checkout Person

Phone: 760-353-8200 Ext 304  
Fax: 760-353-9038  
Email: [ljensen@ormat.com](mailto:ljensen@ormat.com)

Buyer:

(a) Operating Representative  
Address: (To be provided)

Phone: 626-793-9364  
Fax: 626-793-9461

[mailto:Email : shomer@scppa.org](mailto:shomer@scppa.org)

(b) Invoices U.S. Post Office:  
(Via Certified Mail)

Address:

Attn: Finance Manager  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

Telephone: 626-793-9364  
Fax: 626-793-9461

[email: ckoehler@scppa.org](mailto:ckoehler@scppa.org)

(c) Scheduling

(i) Pre-Schedule

Contract Representative

Address:

Attn: Project Administrator  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

Overnight Delivery

Address:

Attn: Finance Manager  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

(ii) Real Time:

(iii) Monthly Checkout:

Primary Name:

Charles Guss

Alternate Name:

Kelly Nguyen

Dana Davidson

Phone: 714-765-4242

E-Mail: [cguss@anaheim.net](mailto:cguss@anaheim.net)

Phone: 714-765-4145

E-Mail: [knguyen@anaheim.net](mailto:knguyen@anaheim.net)

Phone: 714-765-5109

E-Mail: [scheduler@anaheim.net](mailto:scheduler@anaheim.net)

Phone: 714-765-5279

E-Mail: [ddavidson@anaheim.net](mailto:ddavidson@anaheim.net)

**GENERATION CONNECTION**

*Generating Facility And Site Description*

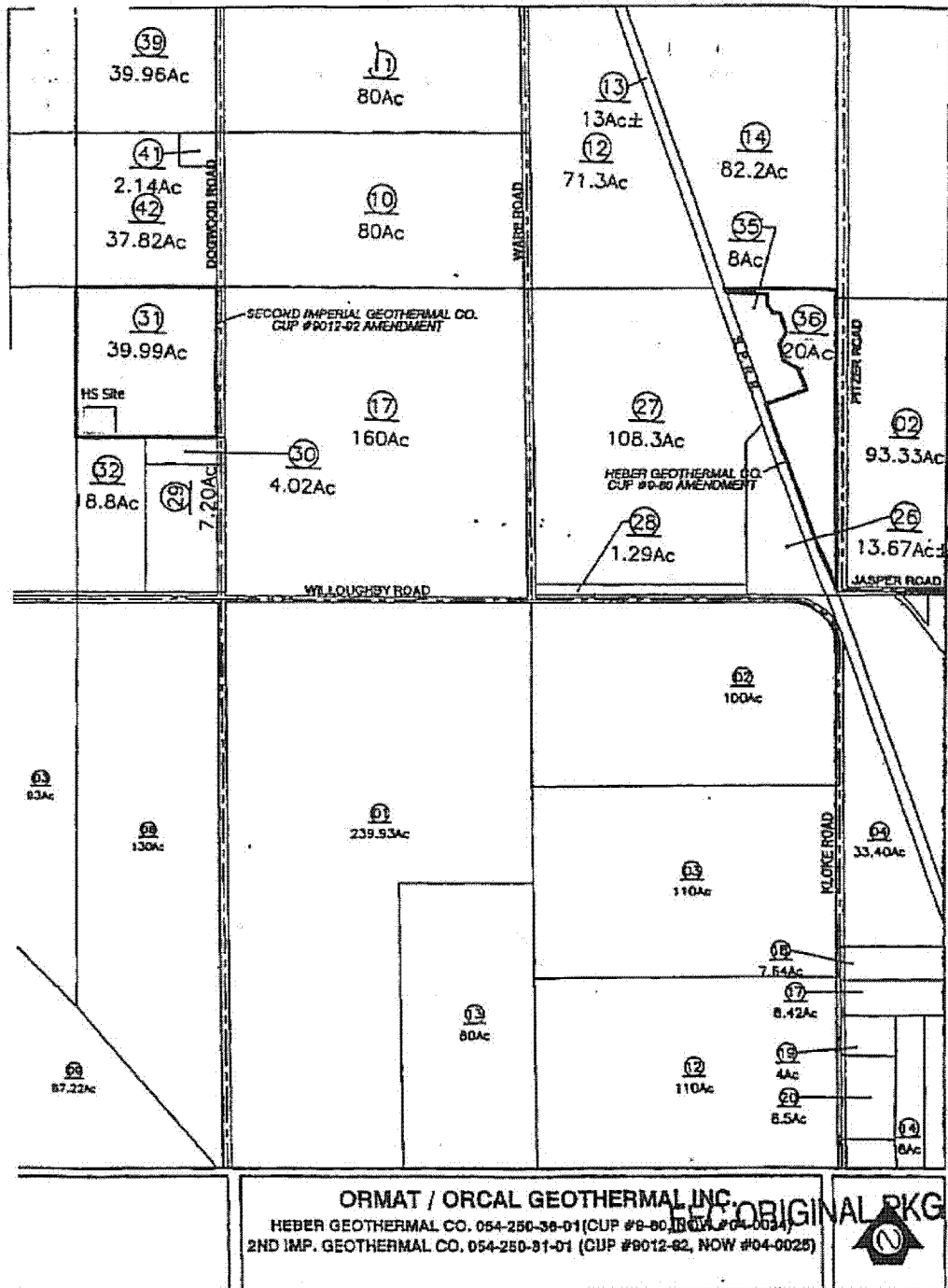
**1. Generating Facility Description**

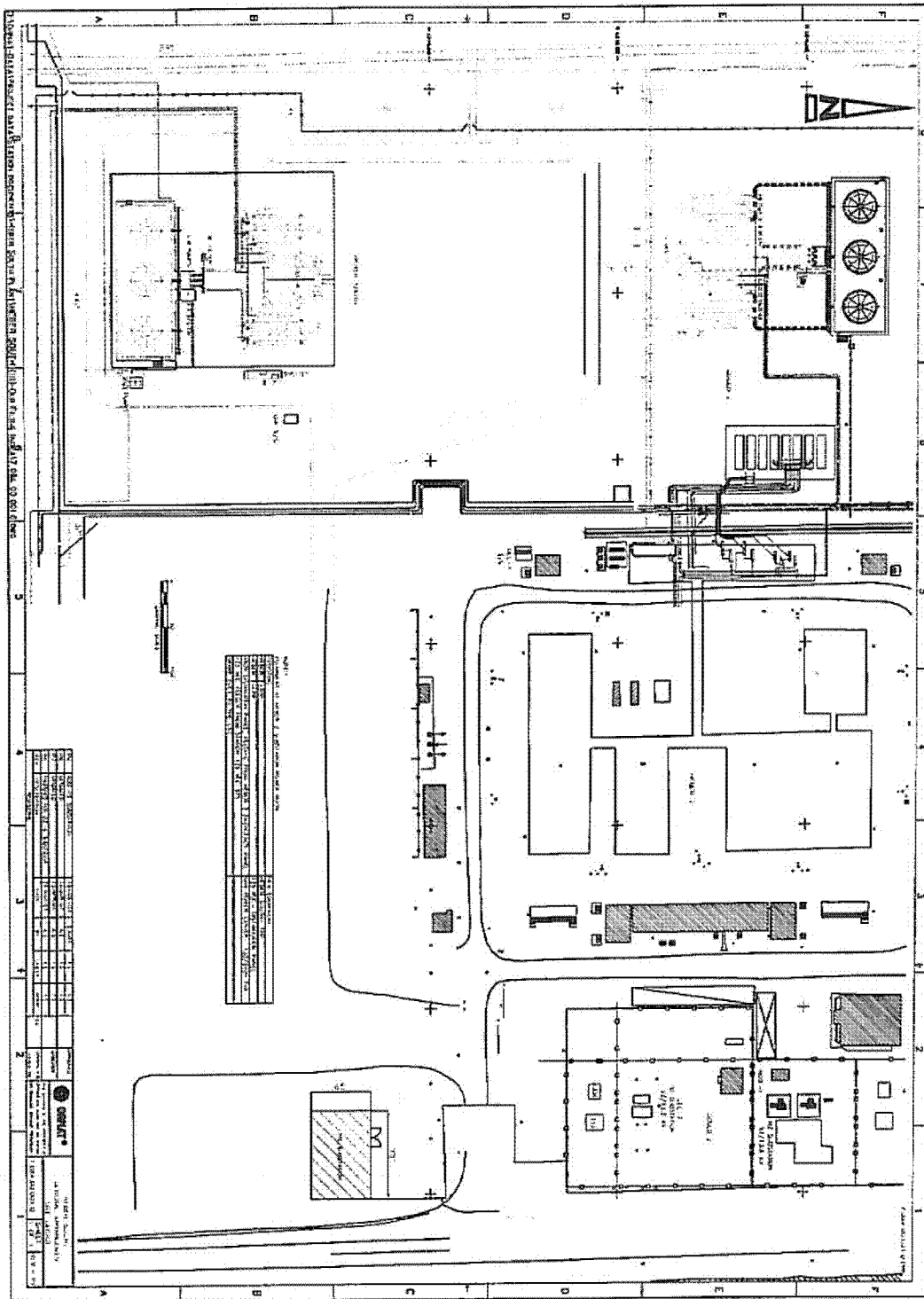
The Power Plant configuration consists of one (1) Integrated Two Level Ormat Energy Converter units, incorporating one (1) 16 MW double ended shaft generator driven by two (2) 1800 RPM direct coupled special organic fluid turbines, a cooling system consisting of a three (3) cell cooling tower and three (3) cooling pumps, and all other related systems as further described in this document and presented in the attached one line diagram.



## **2. Site Description**

The Site encompasses an approximately 5 acre footprint located in Southern California at an altitude of about 100 feet above sea level, at the site commonly referred to as the Heber South Site in Imperial County, California. The Site is depicted on the attached map.





**EXHIBIT 5**

**FORM OF AVAILABILITY NOTICE**

Date of Notice:

Time of Notice:

Supplier:

Name of Supplier's Representative:

Buyer:

Availability Date:

Contact Information:

Hour Ending	Availability From Plant (MWhs)
0700	
0800	
0900	
1000	
1100	
1200	
1300	
1400	
1500	
1600	
1700	
1800	
1900	
2000	
2100	
2200	
2300	
2400	
0100	
0200	
0300	
0400	
0500	
0600	
0700	
0800	
0900	
1000	
1100	
1200	
1300	
1400	
1500	
1600	
1700	
1800	
1900	
2000	

Hour Ending	Availability From Plant (MWhs)
2100	
2200	
2300	
2400	

**FORM OF ATTESTATION**

\_\_\_\_\_  
(Supplier) Environmental Attribute Attestation and Bill  
of Sale

OrHeber 2, Inc. ("Supplier") hereby sells, transfers and delivers to the Southern California Public Power Authority ("Buyer") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location: \_\_\_\_\_

Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

As applicable: CEC Reg. no. \_\_\_\_ Energy Admin. ID no. \_\_\_\_ Q.F. ID no. \_\_\_\_

<u>Dates</u>	<u>MWhrs</u>
_____ 200__	_____
_____ 200__	_____
_____ 200__	_____

in the amount of one Environmental Attribute or its equivalent for each megawatt hour listed above; and Supplier further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated above as undifferentiated Energy; and
- iv) Supplier owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Supplier to Buyer all of Supplier's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person: \_\_\_\_\_ tel: \_\_\_\_\_

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Exhibit 4	Generation Connection
Exhibit 5	Form of Availability Notice

**SECOND AMENDMENT TO  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ORHEBER 2, INC.**

This Second Amendment to the Power Purchase Agreement ("Second Amendment") is entered into by and between SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency established pursuant to the laws of the State of California ("Buyer"), and ORHEBER 2, INC., a Delaware corporation ("Supplier"), hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties". All capitalized terms used but not defined herein shall have the meanings given to them in the PPA, as defined below.

**RECITALS**

WHEREAS, Buyer and Supplier entered into that certain Power Purchase Agreement, dated December 8, 2005, as amended by the letter agreement, dated January 25, 2007 ("First Amendment") (the amended Power Purchase Agreement being the "PPA"); and

WHEREAS, Buyer and Supplier have agreed to further amend the PPA as set forth in this Second Amendment, including changes to reflect (i) the supply of electricity from the Heber South generating facility in lieu of from OrHeber 2, Units 3 and 4 (also known as Gould Units 1 and 2); and (ii) an increase in the amount of electricity to be bought and sold to up to approximately 14 MW.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Buyer and Supplier agree as follows:

**1. Amendment to the PPA**

- (a) The text of Section 1.20 shall be deleted in its entirety and replaced with "[Reserved]".
- (b) The text of Section 1.21 shall be deleted in its entirety and replaced with "[Reserved]".
- (c) The text of Section 1.22 shall be deleted in its entirety and replaced with "[Reserved]".
- (d) The definition of "Environmental Attributes" in Section 1.26 shall be modified by:

- (i) adding the phrase "laws or regulations or" immediately after the word "federal" in clause (iv) of the final sentence; and
  - (ii) adding the phrase ", including any required credits, allowances, offsets or other attributes associated with GHG regulations to be adopted in the future" to the end of the final sentence.
- (e) The following new definition shall be added in alphabetical order and all section numbers in Article 1 shall be adjusted accordingly:

"Forward Certificate Transfer" has the meaning set forth in the WREGIS Operating Rules.
- (f) The definition of "Generating Facilities" in Section 1.33 (as it may be renumbered in accordance with this Second Amendment) shall be modified by:
  - (i) deleting the text ", separately metered from the pre-existing generating facilities already under contract to a third party,"; and
  - (ii) replacing "10.0 MW" with "14 MW".
- (g) The definition of "Invoice" in Section 1.39 (as it may be renumbered in accordance with this Second Amendment) shall be modified by deleting the text ", EA Shortfall, Residual EA Shortfall".
- (h) The definition of "Maximum Amount" in Section 1.43 (as it may be renumbered in accordance with this Second Amendment) shall be modified by replacing "13.0 MWh" with "17.0 MWh".
- (i) The definition of "Residual EA Shortfall" in Section 1.61 (as it may be renumbered in accordance with this Second Amendment) and all text in such subsection shall be deleted and replaced with "[Reserved]".
- (j) The following new definitions shall be added in alphabetical order and numbered appropriately:

"WREGIS" means Western Renewable Energy Generation Information System, or its successor; provided that said successor is capable of performing substantially similar functions and is acceptable to both Parties.

"WREGIS Certificates" has the meaning set forth in WREGIS Operating Rules.

"WREGIS Operating Rules" means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS and as may be amended from time to time.

(k) Section 3.1 shall be modified by:

- (i) deleting the phrase "Subject to Section 3.5 below," at the beginning of the first sentence; and
- (ii) deleting the phrase "Other than as provided in Section 6.1," at the beginning of the second sentence.

(l) Section 3.2 shall be modified by deleting the text "(other than as set forth in Section 3.5)" in the second sentence.

(m) Section 3.5 shall be deleted in its entirety.

(n) Section 5.1 shall be modified by:

- (i) adding the title "Generating Facilities Certification." before the first sentence; and
- (ii) deleting the text "Generated and Delivered Amounts and any substitute environmental attributes provided under Section 3.5.1" in the first sentence and replacing it with "Energy"; and
- (iii) deleting the text "and any substitute environmental attributes under section 3.5.1" in the last sentence.

(o) New Section 5.2 shall be added with the following text:

Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Supplier to purchase and sell Energy on the terms and conditions set forth herein, Supplier shall transfer to Buyer, and Buyer shall receive from Supplier, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Supplier or that hereafter come into existence or are acquired by Supplier during the Agreement Term, for all Energy. Supplier agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Supplier's production or acquisition of the Environmental Attributes. Supplier shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer. Buyer and Supplier acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Product Rate. Notwithstanding the foregoing, Supplier shall not transfer and may retain for its own use any emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal laws or regulations or operating and/or air quality permits, including any required credits, allowances, offsets or other attributes associated with GHG regulations to be adopted in the future.

(p) New Section 5.3 shall be added with the following text:

Reporting of Ownership of Environmental Attributes. During the Agreement Term, Supplier shall not report to any Person or entity that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

(q) New Section 5.4 shall be added with the following text:

Use of WREGIS to Transfer Certain Environmental Attributes. Supplier shall use commercially reasonable efforts to use WREGIS to evidence the transfer of renewable energy certificates ("RECs" or "WREGIS Certificates") on and after the effective date of Amendment 2, which shall be deemed a part of Environmental Attributes associated with Energy in accordance with WREGIS reporting protocols, and as such shall register the Facility with WREGIS as soon as practical after the effective date of Amendment 2. The Parties agree that the Generating Facilities will be registered with WREGIS, initially, as geothermal. Supplier shall be responsible for the costs of registering in WREGIS and for any mandatory ongoing WREGIS costs. During the Term, any optional actions regarding WREGIS or WREGIS Certificates shall be made by Supplier at the direction of Buyer; provided, however, that such actions are accepted by Supplier in its reasonable discretion and Buyer compensates Supplier for any costs associated with such optional actions. After the Facility is registered with WREGIS, at Buyer's option, Supplier agrees to transfer WREGIS Certificates to Buyer using the Forward Certificate Transfer method, as described in WREGIS Operating Rules and as designated by Buyer. Supplier shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account and subsequent transferring or retiring of WREGIS Certificates. Forward Certificate Transfers will occur monthly in accordance with the certificate creation time-line established by the WREGIS Operating Rules. As of the Effective Date, the certificate creation time line is established as not later than ninety (90) days following the end of each Month. For example, for MWhs generated in January 2009, the certificates will be created in WREGIS not later than April 30, 2009. Supplier shall be responsible for, at its expense, validating and disputing data with WREGIS in its reasonable discretion prior to certificate creation each month. Except as the Parties may otherwise agree in writing, in the event that WREGIS is not in operation, or WREGIS does not track Supplier's transfer of WREGIS Certificates to Buyer, or its designees, on or before the 30th day of each calendar month, Supplier shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Buyer an attestation for the Environmental Attributes produced by the Facility, in whole MWh, in the preceding calendar quarter. The form of attestation shall be substantially in the form as set forth in Exhibit 6; provided, however, Buyer may change the form of attestation from time to time during the Term by giving at least thirty (30) Days prior notice to Supplier, subject to Supplier's approval (which Supplier shall not unreasonably withhold, condition or

delay). If Supplier has not objected to Buyer's proposed changes to the form of attestation within thirty (30) Days after receiving it, the changes shall be deemed approved. Notwithstanding anything herein to the contrary, if Supplier's cost associated with WREGIS in connection with this Agreement or compliance with this Section 5.4 exceeds \$15,000 in any Contract Year, Buyer shall reimburse Supplier for the amount in excess of \$15,000.

(r) Section 6.1 shall be modified by

- (i) deleting the text "(Price of Products)"; and
- (ii) adding the text "and production" immediately after the word "investment".

(s) Section 7.2 shall be modified by:

- (i) adding the phrase "each hour in" immediately after the word "for" in subsection 7.2.2.1;
- (ii) adding the phrase "each hour in" immediately after the word "for" in subsection 7.2.2.2;
- (iii) deleting the text of subsection 7.2.2.4 in its entirety and replacing it with "Supplier shall provide the information electronically in a format to be agreed upon by Buyer in its reasonable discretion.";
- (iv) deleting subsection 7.2.2.5 in its entirety;
- (v) modifying subsection 7.2.3 by deleting the text "and substitute environmental attributes under Section 3.5.1, if any,"; and
- (vi) deleting the text of Section 7.2.4 in its entirety and replacing it with "[Reserved]".

(t) Subsection 13.1.2 shall be deleted in its entirety and replaced with the following text:

"13.1.2 Scheduling Protocols. Supplier and Buyer shall follow mutually agreeable scheduling protocols pursuant to which Supplier, or its agent, shall be responsible for the scheduling of Energy to the Delivery Point, and Buyer, or its agent, shall be responsible for scheduling the receipt of such Energy at, and the delivery of such Energy from, the Delivery Point. Additionally, in the event that Supplier designates the Mirage substation as the Delivery Point, Buyer shall be responsible for the scheduling of Energy with the California Independent System Operator."

- (u) Section 16.2 shall be modified by deleting the text "EA Replacement Costs and Replacement Costs owing under Sections 3.5 (Replacement Costs) and" in the second sentence.
- (v) Subsection 21.1.3 shall be modified by deleting the text "(not including failure to deliver Energy or Environmental Attributes, for which the Parties agree that the EA Replacement Costs set forth in Section 3.5 are the sole remedy)".
- (w) Exhibit 1 shall be deleted in its entirety and replaced with a new Exhibit 1 attached hereto.
- (x) Exhibit 2 shall be deleted in its entirety and replaced with a new Exhibit 2 attached hereto.
- (y) Exhibit 3 shall be deleted in its entirety and replaced with a new Exhibit 3 attached hereto.
- (z) Exhibit 4 shall be deleted in its entirety and replaced with a new Exhibit 4 attached hereto.
- (aa) New Exhibit 6 shall be added in accordance with New Exhibit 6 attached hereto.

## **2. No Other Modifications**

No provision of the PPA, other than the terms addressed in this Second Amendment, shall be deemed modified, amended, waived, or otherwise affected by this Second Amendment. If there is a conflict between the terms of the PPA and those of this Second Amendment, this Second Amendment shall control; and if there is a conflict between the terms of the First Amendment and those of this Second Amendment, this Second Amendment shall control. This Second Amendment may not be amended or modified except by a written agreement duly executed by both Parties.

## **3. Counterparts**

This Second Amendment may be signed in counterparts, each of which shall be deemed an original. This Second Amendment may be executed and delivered by facsimile and the Parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Second Amendment by the Parties to the same extent that an original signature could be used.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, each Party has caused this Second Amendment to be executed by their authorized representatives, effective as of March 1, 2008. By signing this Second Amendment, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

BUYER:

SUPPLIER:

Southern California Public Power Authority

OrHeber 2, Inc.

\_\_\_\_\_  
By:

Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
By:

Title:

Date: \_\_\_\_\_

**EXHIBIT 1**

**DESCRIPTION OF GENERATING FACILITY**

1. Name of Facility: Heber South
  - (a) Location: Heber, Imperial County, California
2. Owner: OrHeber 2, Inc.
3. Operator: Ormat Nevada, Inc.
4. Equipment:
  - (a) Type of Facility: Geothermal
  - (b) Capacity:

Total nominal gross nameplate capacity (under expected average site conditions):  
17.0 MW

Total nominal net capacity (under expected average site conditions): 14.0 MW
5. Commercial Operation Date: June 18, 2006

**EXHIBIT 2**

**PRODUCT RATE**

The Product Rate through the end of the First Full Contract Year shall be \$55.50 per MWh for the first 9.5 MWh delivered per hour. Upon the effective date of this Second Amendment, for each MWh delivered per hour in excess of the first 9.5 MWh, the Product Rate shall be \$75.00 per MWh.

The Product Rate shall be increased at the beginning of each subsequent Contract Year by an amount equal to one and one-half (1.5%) percent of the Product Rate for the previous Contract Year, for the duration of the Agreement.

For the avoidance of doubt, for the first 9.5 MWh delivered per hour, the Product Rate shall be \$56.36 per MWh for the Contract Year ending on December 31, 2007 and \$57.21 per MWh for the Contract Year ending on December 31, 2008. For each MWh in excess of the first 9.5 MWh, the Product Rate shall be \$76.13 per MWh for the Contract Year ending on December 31, 2008 and \$77.27 per MWh for the Contract Year ending on December 31, 2009.

EXHIBIT 3

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

Supplier:

Operating Representative  
Address:

947 Dogwood Road,  
Heber, CA  
Attn: Plant Manager  
Phone: 760-353-8200 Ext 227  
Fax: 760-353-9189  
Email: <mailto:bharms@ormat.com>

Contract Representative  
Address:

980 Greg Street  
Sparks, NV 89431-6039  
Attn: Asset Manager  
Phone: 775/356-9039  
Fax: 775/356-9039  
Email:  
<mailto:jpeterson@ormat.com>

Payment Check:

Address:

Wealth Management, a division  
of Hudson United Bank,  
90 Post Road East,  
Westport, CT 06880  
Attention: James N. Donaldson,  
Senior Vice President

Payment Wire Transfer:

ABA #061000227/Washovia  
National Bank  
A/C #2080000692834  
FBO: Hudson United Bank/  
OrCal Geo Revenue  
A/C # 2897400361

Invoice:

Address:

980 Greg Street  
Sparks, NV 89431-6039  
Attn, Asset Manager  
Phone: 775/356-9029  
Fax: 775/356-9039  
email: [jpeterson@ormat.com](mailto:jpeterson@ormat.com)

Operating Notifications:

(i) Pre-Schedule Phone: 760-353-8200 Ext 304  
Fax: 760-353-9038  
Email: [ljensen@ormat.com](mailto:ljensen@ormat.com)

(ii) Real Time Phone: 760-353-8200 Ext 321  
Fax: 760-353-9038  
Email:

(iii) Monthly Checkout Person Phone: 760-353-8200 Ext 304  
Fax: 760-353-9038  
Email: [ljensen@ormat.com](mailto:ljensen@ormat.com)

Buyer:

(a) Operating Representative  
Address: (To be provided)  
Phone: 626-793-9364  
Fax: 626-793-9461

<mailto:Email:shomer@scppa.org>

(b) Invoices U.S. Post Office:  
(Via Certified Mail)

Address:  
Attn: Finance Manager  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101  
Telephone: 626-793-9364  
Fax: 626-793-9461

[email:ckochler@scppa.org](mailto:email:ckochler@scppa.org)

(c) Scheduling

(i) Pre-Schedule

Contract Representative  
Address:  
Attn: Project Administrator  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

Overnight Delivery  
Address:  
Attn: Finance Manager  
225 S. Lake Avenue  
Suite 1250  
Pasadena, CA 91101

Primary Name:  
Charles Guss  
Alternate Name:  
Kelly Nguyen

Phone: 714-765-4242  
E-Mail: [cguss@anaheim.net](mailto:cguss@anaheim.net)  
Phone: 714-765-4145  
E-Mail: [knguyen@anaheim.net](mailto:knguyen@anaheim.net)  
Phone: 714-765-5109  
E-Mail: [scheduler@anaheim.net](mailto:scheduler@anaheim.net)  
Phone: 714-765-5279  
E-Mail: [ddavidson@anaheim.net](mailto:ddavidson@anaheim.net)

(ii) Real Time:

(iii) Monthly Checkout:

Dana Davidson

GENERATION CONNECTION

*Generating Facility And Site Description*

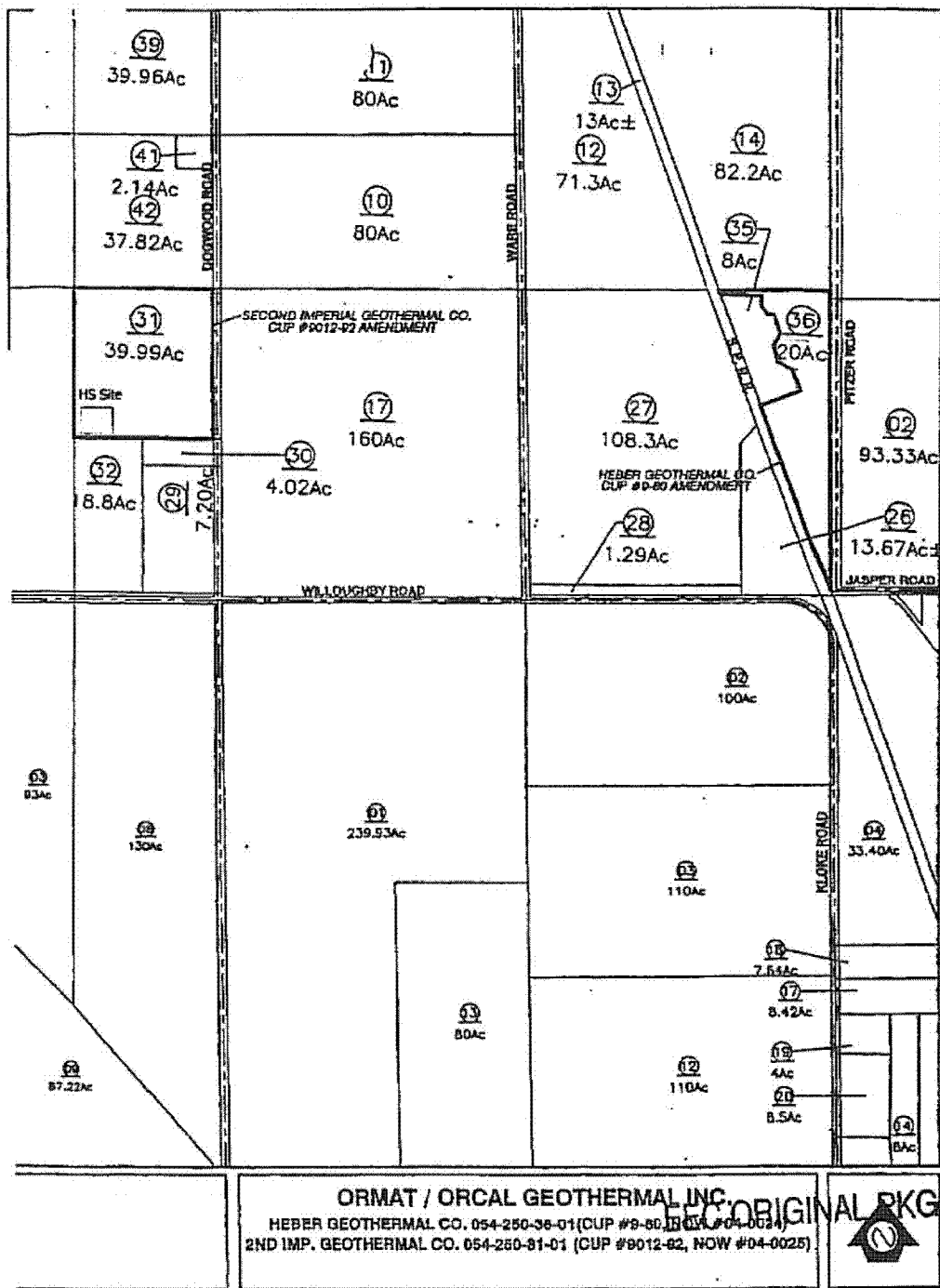
**1. Generating Facility Description**

The Power Plant configuration consists of one (1) Integrated Two Level Ormat Energy Converter units, incorporating one (1) 16 MW double ended shaft generator driven by two (2) 1800 RPM direct coupled special organic fluid turbines, a cooling system consisting of a three (3) cell cooling tower and three (3) cooling pumps, and all other related systems as further described in this document and presented in the attached one line diagram.

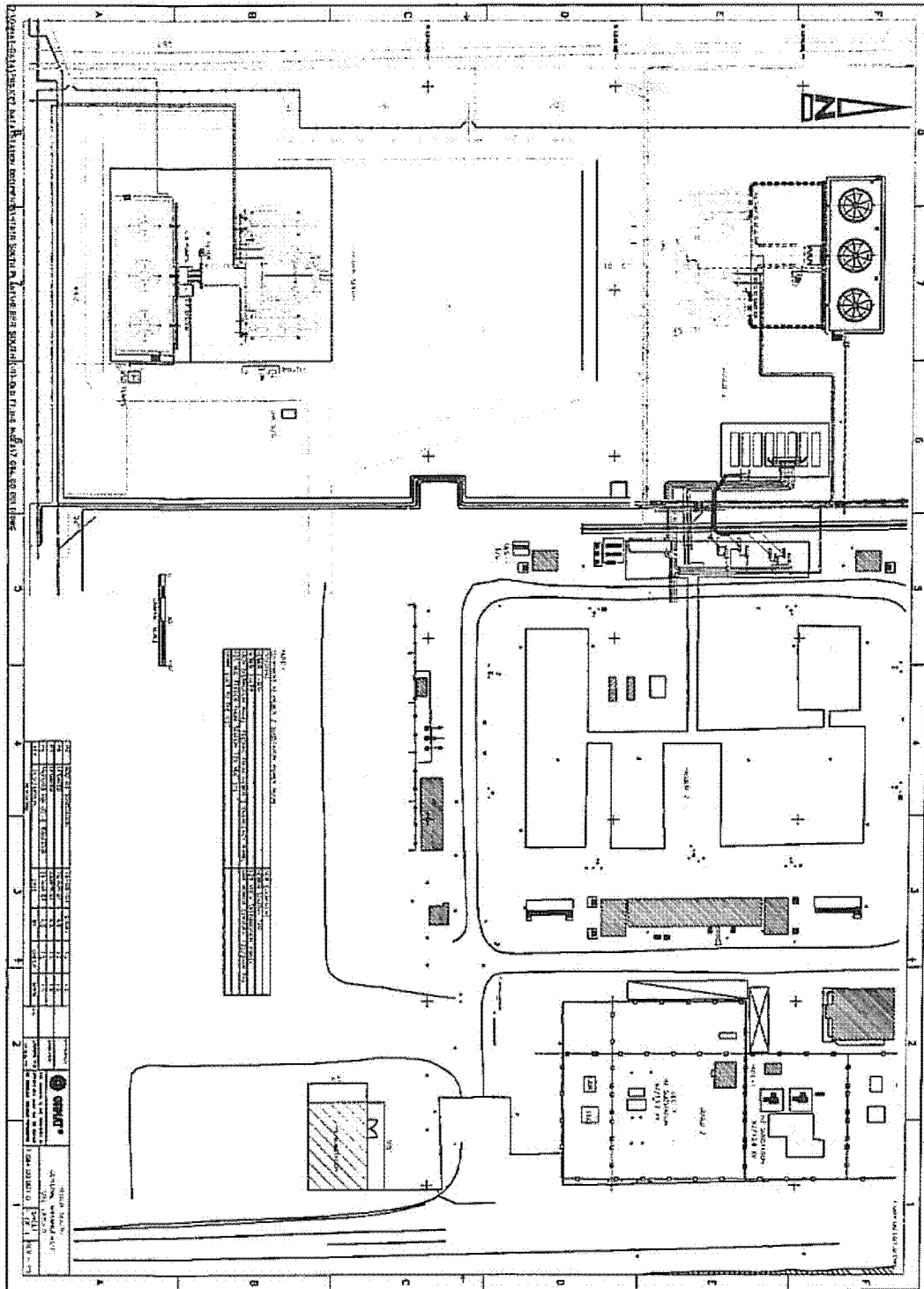


## **2. Site Description**

The Site encompasses an approximately 5 acre footprint located in Southern California at an altitude of about 100 feet above sea level, at the site commonly referred to as the Heber South Site in Imperial County, California. The Site is depicted on the attached map.



99



**FORM OF ATTESTATION**

\_\_\_\_\_  
(Supplier) Environmental Attribute Attestation and Bill of Sale

OrHeber 2, Inc. ("Supplier") hereby sells, transfers and delivers to the Southern California Public Power Authority ("Buyer") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location: \_\_\_\_\_

Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

As applicable: CEC Reg. no. \_\_\_\_\_ Energy Admin. ID no. \_\_\_\_\_ Q.F. ID no. \_\_\_\_\_

<u>Dates</u>	<u>MWhrs</u>
_____ 200	_____
_____ 200	_____
_____ 200	_____

in the amount of one Environmental Attribute or its equivalent for each megawatt hour listed above; and Supplier further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated above as undifferentiated Energy; and
- iv) Supplier owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Supplier to Buyer all of Supplier's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person: \_\_\_\_\_ tel: \_\_\_\_\_

101

**CITY COUNCIL AGENDA  
CONSENT**

**Date:** March 25, 2008  
**TO:** Honorable Mayor and City Council  
**FROM:** James D. Earhart, Electric Utility Director  
**SUBJECT:** Letter Agreements with California Parties

**RECOMMENDATION:** The City Council accept this report on steps the City has taken to end its involvement in litigation pertaining to the California energy market.

**JUSTIFICATION:** It is in the best interest of the City to end its involvement in the ongoing litigation between the California Parties and California's energy market participants.


**BACKGROUND:** After the energy crisis of 2000-2001 a large number of entities, including state and federal government agencies, initiated a variety of legal and investigative measures to determine if any entities had manipulated the market and whether the market prices were just and reasonable. These activities culminated in retroactively adjusted (reduced) Market Clearing Prices ("MCP") for the period of May 2000 through June 2001. The result of this was the Federal Energy Regulatory Commission ("FERC") imposing refund obligations on market participants that had sold power into the market during the affected period, and had received payments based on the original inflated MCPs.

A number of Publicly Owned Utilities ("POU") filed appeals against the FERC stating that it did not have jurisdiction over them and therefore could not impose refund obligations on them. After years of legal fighting the Federal Court of Appeals ruled that the FERC did not have the authority to impose refund obligations on POUs. In response to the ruling, a number of entities, including the California Parties, filed suit in the State of California citing Breach of Contract on the part of the POUs that were market participants. They alleged that if the POUs did not pay their refund obligations they would be breaching the contract they had entered with the California Independent System Operator ("CAISO") when they became Scheduling Coordinators. The City of Banning was included as a Party in that lawsuit.

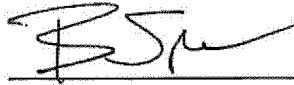
Because Banning Electric Utility is relatively small and the energy transactions it completed during the affected period were insignificant in the overall picture, Banning's FERC attorney, Bonnie Blair of Thompson and Coburn, was able to negotiate Letter Agreements with the California Parties and the State Water Project to affect mutual releases regarding any claims each party had against the other pertaining to this matter (executed copies of the Letter Agreements are attached for your reference). With the execution of these Letter Agreements, Banning's potential liability in this matter is resolved.

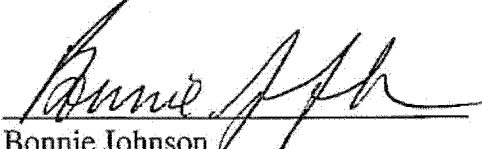
**FISCAL DATA:** The City will avoid additional legal costs and unknown potential expense if it was determined that Banning was liable for refund obligations under the CAISO Agreements.

**RECOMMENDED BY:**

  
James D. Earhart  
Electric Utility Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

  
Bonnie Johnson  
Finance Director

Report Prepared By: Fred Mason, Power Resource & Revenue Administrator



## City of Banning

### Electric Department

January 9, 2008

Raphael A. Torres, Deputy Director  
California Department of Water Resources  
1416 Ninth Street, Room 1115-9  
Sacramento, CA 95814

**Subject: Mutual Release of Claims Arising from Transactions during the Period January 1, 2000 through June 21, 2001**

Dear Mr. Torres:

This letter sets out the agreement ("Letter Agreement") between the City of Banning, California ("City") and the California Department of Water Resources ("CDWR"), in its capacity as the operator of the State Water Resources Development System (commonly referred to as the "State Water Project"), but not in regard to its responsibilities being carried out by its California Energy Scheduling Division pursuant to Water Code Section 80000 et seq., with respect to disputes arising in connection with the California and western electricity crisis of 2000 and 2001 ("Energy Crisis"). CDWR and City are "Parties" to this Agreement.

1. This Letter Agreement shall be effective, and the obligations of the Parties and mutual releases established in this Letter Agreement shall be binding, upon the Effective Date of the Settlement Agreement between the City and the "California Parties" in connection with Federal Energy Regulatory Commission ("FERC") Docket No. EL00-95-000.

2. Upon the effectiveness of this Letter Agreement, City shall if not already dismissed, prepare and file with the California Victims Compensation and Government Claims Board ("CVCGCB") a letter request and stipulation for dismissal for the purpose of dismissing with prejudice any and all claim(s) filed by City against CDWR with the CVCGCB arising out of the Energy Crisis, including that claim filed on or about September 5, 2006 with the CVCGCB by Thompson Coburn LLP, Attorneys at Law on behalf of the City.

3. Upon the effectiveness of this Letter Agreement, each Party shall, if not already dismissed, prepare and file a stipulation for dismissal for the purpose of dismissing with prejudice any and all claim(s) filed by such Party against the other Party arising out of the Energy Crisis in any court or other tribunal, or any such claims for which such Party sought mediation or arbitration.

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4. Upon the effectiveness of this Letter Agreement, CDWR and City hereby provide to one another the releases set forth in the attached **Appendix**, which is incorporated herein as though set forth in full.

5. The Parties expressly acknowledge that the Federal Energy Regulatory Commission ("FERC") did not find any improper conduct by either Party in the gaming and partnership proceedings in FERC Docket Nos. EL03-137, *et al.*, and EL03-180, *et al.*, or in any other proceeding. The Parties also expressly acknowledge that neither Party attached or associated any financial value or consideration under this Letter Agreement to allegations or evidence of market manipulation by the other Party during the period January 1, 2000 through June 21, 2001 (the "Settlement Period").

6. The Parties agree to deal with each other in good faith and to cooperate with each other as reasonably required to carry out the purposes of this Letter Agreement, and to exchange on a confidential basis such information as reasonably necessary to effectuate this Letter Agreement. Specifically, but without limitation, if any order of the FERC would require CDWR to pay refunds to the City or require the City to pay refunds to CDWR, the Parties will cooperate in promptly taking such actions as needed to effectuate the releases set forth in this Letter Agreement.

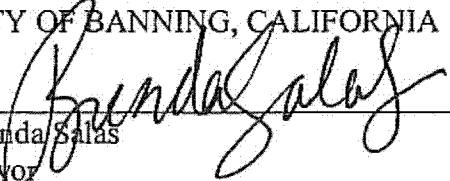
7. The Parties agree to execute and deliver such additional instruments or documents as reasonably necessary to carry out the purposes of this Letter Agreement.

8. No provision of this Letter Agreement shall be construed as an acknowledgement or admission on the part of either Party that: (i) FERC has jurisdiction over any of the sales by either Party that occurred during the Energy Crisis; (ii) FERC has jurisdiction over the consideration provided under this Letter Agreement; (iii) any of the consideration provided under this Letter Agreement constitutes a refund under the Federal Power Act; (iv) either Party has or has not complied with the claim requirements of Government Code sections 910, 911 and 911.2; or (v) either Party owes any refund or is subject to any mitigation under the Federal Power Act for its Energy Crisis transactions.

Please have CDWR's representative indicate CDWR's agreement to the above terms and such representative's authorization to act on behalf of CDWR by executing this Letter Agreement in the space provided below and returning a copy to me for City's files. This Letter Agreement may be executed by signature via facsimile transmission or PDF file image, which shall be deemed the same as an original signature.

Very truly yours,

CITY OF BANNING, CALIFORNIA

  
Brenda Salas  
Mayor

ACCEPTED AND AGREED TO on behalf of the California Department of Water Resources in its capacity as the operator of the State Water Resources Development System (commonly referred to as the "State Water Project"), but not CERS, on this \_\_\_\_\_ day of January, 2008

  
Ralph Torres, Deputy Director

**APPENDIX**  
**RELEASES AND WAIVERS**

*A. Defined Terms.*

Capitalized terms used in this **Appendix** shall have the meaning ascribed to them in the foregoing (attached) **Letter Agreement** and, if not defined in the **Letter Agreement**, then as set forth below or as otherwise set forth in this **Appendix**:

1. **"California Markets"** means those markets for electric capacity, energy, and/or ancillary services operated by the ISO and PX.
2. **"FERC Proceedings"** means the FERC proceedings conducted in FERC Docket Nos. EL00-95, *et al.*, EL01-10, *et al.*, the Gaming/Partnership Proceeding, the ISO Re-Run Proceeding, and the Physical Withholding Investigation, and related appeals of orders in those proceedings and any proceeding upon remand. The term "FERC Proceedings" also includes the FERC proceedings conducted in Docket No. PA02-2 insofar as that proceeding concerns a Party's sales into the California Markets.
3. **"Gaming/Partnership Proceeding"** means the proceedings in FERC Docket Nos. EL03-137, *et al.*, and EL03-180, *et al.* and any related appeals and/or petitions for review and any proceedings on remand.
4. **"ISO"** means the California Independent System Operator Corporation, a California public benefit corporation.
5. **"ISO Re-Run Proceeding"** means the FERC proceeding conducted in Docket No. ER03-746 concerning ISO re-run activity from October 2, 2000 through and including June 20, 2001, and any related appeals and/or petitions for review and any proceedings on remand.
6. **"Physical Withholding Investigation"** means FERC'S undocketed fact-finding investigation regarding alleged physical withholding of generation, as described in Initial Report on Physical Withholding by Generators Selling into the California Market and Notification to Companies, issued by FERC staff on August 1, 2003.
7. **"PX"** means the California Power Exchange Corporation, a California public benefit corporation.
8. **"Refund Offsets"** means and includes all claims for recovery of (i) fuel costs incurred by a market participant's generating units between October 2, 2000 and June 20, 2001 pursuant to FERC orders in FERC Docket No. EL00-95, *et al.* (See, e.g., *San Diego Gas & Electricity Co. v. Sellers of Energy and Ancillary Services*, 110 FERC ¶ 61,293 (2005)); (ii) emission costs incurred by a market participant's

generating units during the same time period as adopted by FERC (*See e.g., San Diego Gas & Electricity Co. v. Sellers, et al.*, 102 FERC ¶ 61,317 at P 5(BB) (Mar. 26, 2003)); and (iii) any other offset against refunds in the EL00-95 Proceeding based upon costs incurred by the market participant claiming the offset (*See, e.g., San Diego Gas & Elec. Co. v. Sellers, et al.*, 114 FERC ¶ 61,070 (Jan. 26, 2006)). The EL00-95, *et al.* proceeding in this definition includes any related appeals and/or petitions for review and any proceedings on remand.

9. “**Market participants**” means those entities that directly sold energy to or purchased energy from the ISO and/or PX during part or all of the Settlement Period.

*B. Scope.*

1. This **Appendix** sets out the releases and waivers provided by the City of Banning, California (“City”) and the California Department of Water Resources (“CDWR”), in its capacity as the operator of the State Water Resources Development System (commonly referred to as the “State Water Project”), but not in regard to its responsibilities being carried out by its California Energy Scheduling Division pursuant to Water Code Section 80000 et seq., and in furtherance of their **Letter Agreement** concerning disputes arising in connection with the California and western electricity crisis of 2000 and 2001 (“Energy Crisis”). CDWR and City are “Parties” to the **Letter Agreement**.
2. All claims as between the Parties for damages, refunds, disgorgement of profits, costs and attorneys’ fees, or other monetary or non-monetary remedies arising out of the Energy Crisis shall be deemed settled and resolved, subject to Section E herein.
3. As between the Parties, each Party shall be solely responsible for the satisfaction of any obligation it may be found to owe to any third party arising from the Energy Crisis.
4. As between the Parties, each Party shall be solely responsible for the payment of any fees paid or payable by such Party to the California Victims Compensation and Government Claims Board (“CVCGCB”), any court or tribunal, and any arbitration or mediation service retained to decide, or facilitate a joint decision, regarding the claims.
5. Except to the extent set forth in Section E, with respect to transactions related to sales of electricity and ancillary services by either Party to the other Party, or transmission congestion charges applicable to such sales, the Parties waive and release any disputes regarding existing California ISO settlements and/or PX settlements for the Settlement Period.

*C. FERC and Federal Power Act Releases.*

1. Subject to Section E below, the Parties shall be deemed to have released each other from any and all existing and future claims arising during the Settlement Period that:
  - a) The other Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms or conditions for electric capacity, energy, ancillary services, or transmission congestion in Western energy markets;
  - b) The other Party manipulated Western energy markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of electricity market manipulation discussed in the Final Report issued by FERC staff on March 26, 2003 in Docket No. PA02-2 (the "Final Staff Report"), or any other forms of electricity market manipulation), or otherwise violated any applicable tariff, regulation, law, rule, or order relating to Western energy markets;
  - c) Either Party is liable for payments to the other Party for congestion charges, transmission line losses, energy, or ancillary services.
2. Each Party agrees to forgo any claim for refunds resulting from any mitigation of sales by the other Party in the California Markets, as well as any interest, credits or other payments associated with such sales.

*D. Civil Claims Releases.*

1. Subject to Section E below, the Parties shall be deemed to have forever released each other from all past, existing, and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations that, during the Settlement Period:
  - a) The other Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms or conditions for electric capacity, energy, ancillary services, or transmission congestion in Western energy markets;
  - b) The other Party manipulated Western energy markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final Staff Report, or any other forms of market manipulation);
  - c) The other Party was unjustly enriched by the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule, or order relating to transactions in Western energy markets ; or
  - d) Either Party is liable for payments to the other Party for congestion charges, transmission line losses, energy, or ancillary services;

- e) CDWR is liable based on the matters alleged in the September 5, 2006 Claim for Damages filed with the CVC GCB by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California.

*E. Limitations on Releases.*

1. Each Party may continue to cooperate with all state and federal investigations and to participate in all matters before FERC; provided that each Party shall withdraw from and not prosecute any litigation, administrative proceedings, or investigations with respect to the other Party insofar as such prosecution would be inconsistent with the foregoing released claims.
2. Each Party shall remain free to initiate or participate, without limitation, in any existing or future proceeding that may determine the rights and/or obligations of other parties and to initiate or participate in any existing or future proceeding that may determine the rights and/or obligations of either Party to the extent not inconsistent with the releases set forth in Sections C and D, including proceedings addressing, prospectively, generic issues concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation. Subject to the foregoing sentence, all defenses, claims, or allegations made or asserted, or that could be made or asserted, in any such proceeding are unaffected by this **Letter Agreement** and expressly retained and preserved by the Parties.
3. Nothing in this **Letter Agreement** affects any obligation that either Party may have to pay Refund Offsets or other charges that may be assessed on account of sales during the Energy Crisis by a non-Party or on account of sales by either Party to any non-Party, and such Party shall remain obligated to pay all such charges to the same extent it would be obligated absent this **Letter Agreement**. Nothing in this **Letter Agreement** shall be construed as restricting in any way the ability of any Party to express or pursue any position regarding the method or methods for calculating or allocating Refund Offsets.
4. Notwithstanding anything to the contrary contained in the **Letter Agreement**, the releases set forth in this Appendix do not cover, and all Parties retain all rights in relation to, the charges at issue in FERC Docket No. EL03-54 and related review proceedings.

*F. Waiver of Appeals and Requests for Rehearing.*

1. Each of the Parties shall (i) forego any rights to seek rehearing of, or appeal, any and all of the claims released and matters settled herein by each of them with respect to transactions by either Party; and (ii) take appropriate steps to withdraw any pending requests for rehearing or appeals (including interventions in appeals) with respect to such released claims and matters as against the other Party. Nothing herein shall affect the Parties' rights to maintain such rehearing or appeals with respect to other entities.

2. Nothing in this **Letter Agreement** shall preclude either Party from participating fully in any request for rehearing or appellate proceeding to the extent those proceedings relate to claims by such Party against entities other than the other Party or to claims against either Party by any other non-Party entity.

G. *Effectiveness of Releases; Waiver of Unknown Claims.*

*The Parties acknowledge and agree that, except as expressly reserved in Section E, it is their intention that the releases granted pursuant to this Appendix shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses, and liabilities of every kind, known or unknown, suspected or unsuspected, hereinabove specified in this Appendix. In furtherance of this intention, each Party, with respect to the specific matters released herein, knowingly, voluntarily, intentionally, and expressly waives, as against the other Party, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:*

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those that they know or believe to be true and with respect to the subject matter of this **Letter Agreement**, but that it is their intention hereby, except as expressly reserved in Section E, to fully, finally, and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this **Appendix**. This **Letter Agreement** is intended to include in its effect, without limitation, other than the limitations set forth in Section E, all claims encompassed within the settlement and releases set forth in this **Appendix**, including those that the Parties may not know or suspect to exist at the time of execution of this **Letter Agreement**, and this **Letter Agreement** contemplates the extinguishment of all such claims, except as expressly reserved in Section E. The releases set forth in this **Appendix** shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of this **Letter Agreement**. Notwithstanding the waiver of California Civil Code Section 1542, the Parties acknowledge and agree that the releases provided for in this **Letter Agreement** are specific to the matters set forth in this **Appendix** and are not intended to create general releases as to all claims, or potential claims, between the Parties.

January 9, 2008



## City of Banning Electric Department

January 9, 2008

California Parties  
c/o Richard L. Roberts  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Re: Banning – California Parties Settlement Agreement

Dear California Parties:

This letter sets out the agreement between the California Parties<sup>1</sup> and the City of Banning, California ("Banning") with respect to disputes arising in connection with the California and western electricity crisis of 2000 and 2001 ("Agreement"). Banning and each of the California Parties is a "Party," and collectively they are "Parties" to this Agreement.

1. Upon execution of this Agreement by the Parties, (1) the relevant California Parties shall file a stipulation for dismissal to dismiss Banning with prejudice from the litigation pending in the United States District Court for the Eastern District of California, Sacramento Division, Case No. 2:06-cv-00559-MCE and that is now subject to appeal in the Ninth Circuit Court of Appeals from a judgment of dismissal (Ninth Circuit Docket No. 07-15638), and/or the Superior Court of California, County of Los Angeles, Case No. BC369141, and/or consolidated in J.C.C.P. Case No. 4512 in the Superior Court of California, County of Los Angeles; and (2) Banning shall withdraw its support of any pending motion to dismiss the complaints in that litigation; and (3) Banning shall file a stipulation for dismissal to dismiss with prejudice any action relating to any and all claim(s) filed by Banning against CERS with the California Victims Compensation and Government Claims Board.

---

<sup>1</sup> For purposes of this Agreement, the California Parties are the People of the State of California, *ex rel.* Edmund G. Brown, Jr., Attorney General; the California Department of Water Resources acting solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code, and not under its powers and responsibilities with respect to the State Water Resources Development System ("CERS"); the California Electricity Oversight Board; the California Public Utilities Commission; Southern California Edison Company; Pacific Gas and Electric Company; and San Diego Gas & Electric Company.

2. The California Parties, on the one hand, and Banning, on the other hand, hereby provide to one another the releases set forth in Appendix 1.

3. Banning shall not seek or accept refunds or other relief from the California Independent System Operator Corporation ("ISO") and/or the California Power Exchange Corporation ("PX") in any proceedings related to the May 1, 2000 to June 20, 2001 period ("Settlement Period"), including the Federal Energy Regulatory Commission ("FERC") proceedings in Docket Nos. EL00-95-000 *et al.* and EL00-98-000, *et al.* ("Refund Proceedings"), in excess of Banning's Net Refund Amount. For purposes of this Agreement, "Banning's Net Refund Amount" shall mean the amount of refunds to which Banning would be entitled on Banning's gross purchases of energy and ancillary services in the ISO and PX markets, reduced by the amount of refunds that Banning would owe on its gross sales of energy and ancillary services into the ISO and PX markets during the Settlement Period, if Banning were not within the scope of Section 201(f) of the Federal Power Act, reduced further for any refunds to Banning that result from sales by CERS to the ISO, but not less than zero. For purposes of this Agreement, the term "refunds" includes any claim for amounts resulting from any mitigation of sales into the ISO and/or PX markets for the Settlement Period, as well as any interest, surcharges, or other charges or payments associated with such sales, that may be payable if calculated pursuant to the methodology established by order of FERC or a reviewing court in the Refund Proceedings (whether or not such order is directly applicable to Banning). If the ISO and/or PX pay to Banning an amount of refunds in excess of Banning's Net Refund Amount ("Excess Refunds"), Banning shall pay to the California Parties the amount of such Excess Refunds within five (5) Business Days after the ISO and/or PX pay such Excess Refunds to Banning. In the event that Banning's Net Refund Amount is thereafter changed as a result of a FERC order on rehearing and/or an order on appeal from a FERC order, Banning and the California Parties shall, within 5 business days after such order, true-up by way of payment from the California Parties to Banning or from Banning to the California Parties such that the final amount paid by Banning to the California Parties shall equal the Excess Refunds.

4. The Parties expressly acknowledge that FERC did not allege any improper conduct by Banning in the gaming and partnership proceedings in FERC Docket Nos. EL03-137, *et al.*, and EL03-180, *et al.* The Parties also expressly acknowledge that no Party attached or associated any financial value or consideration under this Agreement to allegations or evidence of market manipulation by any other Party during the Settlement Period.

5. The Parties agree to deal with each other in good faith and to cooperate with each other as reasonably required to carry out the purposes of this Agreement, and to exchange on a confidential basis such information as reasonably necessary to effectuate this Agreement.

6. The Parties agree to execute and deliver such additional instruments or documents as reasonably necessary to carry out the purposes of this Agreement.

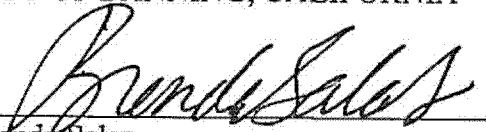
7. Banning disclaims FERC jurisdiction over any aspect of this Agreement or the consideration provided under this Agreement. No provision of this Agreement shall be construed as an acknowledgement or admission on the part of Banning that: (i) FERC has jurisdiction over any of the transactions involving Banning that are addressed in this Agreement; (ii) FERC has jurisdiction over the consideration provided under this Agreement; (iii) any of the

consideration provided under this Agreement constitutes a refund under the Federal Power Act; or (iv) Banning owes any refund or is subject to any mitigation under the Federal Power Act. For purposes of this Agreement, the California Parties take no position on Banning's disclaimer of FERC jurisdiction.

Please have representatives of each of the California Parties indicate their agreement to the above terms and their authorization to act on behalf of that Party by executing this Agreement in the spaces provided below and returning a copy to me for the City of Banning's files, with copies to each of the other Parties. This Agreement may be executed by signature via facsimile transmission or PDF file image, which shall be deemed the same as an original signature.

Very truly yours,

CITY OF BANNING, CALIFORNIA

  
Brenda Salas  
Mayor

ACCEPTED AND AGREED TO  
this 8<sup>th</sup> day of ~~January~~, 2008  
February

People of the State of California, *ex rel.* Edmund G. Brown, Jr.

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Electricity Oversight Board

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Public Utilities Commission

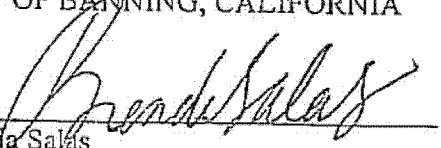
By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

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Very truly yours,

CITY OF BANNING, CALIFORNIA

  
Brenda Salas  
Mayor

ACCEPTED AND AGREED TO  
this \_\_\_\_ day of January, 2008

People of the State of California, *ex rel.* Edmund G. Brown, Jr.

By   
Its Supervising Deputy Atty. General  
Dated: 2-8-08

California Electricity Oversight Board

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Public Utilities Commission

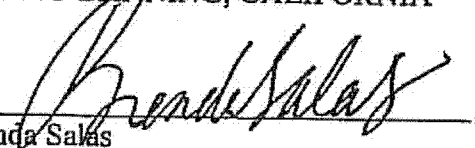
By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

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Very truly yours,

CITY OF BANNING, CALIFORNIA

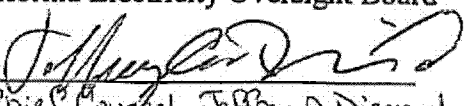
  
Brenda Salas  
Mayor

ACCEPTED AND AGREED TO  
this \_\_\_\_ day of January, 2008

People of the State of California, *ex rel.* Edmund G. Brown, Jr.

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Electricity Oversight Board

By   
Its Chief Counsel, Jeffrey A. Diamerol  
Dated: January 14, 2008

California Public Utilities Commission

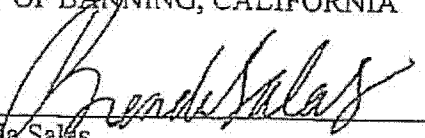
By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

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Please have representatives of each of the California Parties indicate their agreement to the above terms and their authorization to act on behalf of that Party by executing this Agreement in the spaces provided below and returning a copy to me for the City of Banning's files, with copies to each of the other Parties. This Agreement may be executed by signature via facsimile transmission or PDF file image, which shall be deemed the same as an original signature.

Very truly yours,

CITY OF BANNING, CALIFORNIA

  
Brenda Salas  
Mayor

ACCEPTED AND AGREED TO  
this \_\_\_\_ day of January, 2008


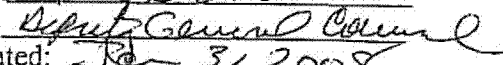
People of the State of California, *ex rel.* Edmund G. Brown, Jr.

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Electricity Oversight Board

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Public Utilities Commission

By   
Its   
Dated: Jan 31, 2008

Pacific Gas and Electric Company

By William V. Manheim

Its William V. Manheim

Dated: January 14, 2008

San Diego Gas & Electric Company

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

Southern California Edison Company

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

California Department of Water Resources Acting Solely Under Authority and Powers  
Created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, Codified in  
Sections 80000 Through 80270 of the California Water Code

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

Pacific Gas and Electric Company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

San Diego Gas & Electric Company

By *Lee Schavien*  
Its LEE SCHAVIEN  
Dated: JANUARY 14, 2008

Southern California Edison Company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Department of Water Resources Acting Solely Under Authority and Powers  
Created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, Codified in  
Sections 80000 Through 80270 of the California Water Code

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

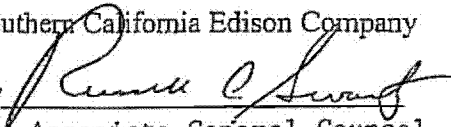
Pacific Gas and Electric Company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

San Diego Gas & Electric Company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

Southern California Edison Company

By   
Its Associate General Counsel  
Dated: February 1, 2008

California Department of Water Resources Acting Solely Under Authority and Powers  
Created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, Codified in  
Sections 80000 Through 80270 of the California Water Code

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

Pacific Gas and Electric Company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

San Diego Gas & Electric Company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

Southern California Edison Company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated: \_\_\_\_\_

California Department of Water Resources Acting Solely Under Authority and Powers  
Created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, Codified in  
Sections 80000 Through 80270 of the California Water Code

By ASRehal  
Its Acting chief, Financial Management office - CERS  
Dated: 1-14-08

## *APPENDIX 1*

### *RELEASES AND WAIVERS*

#### **A. Scope of Settlement.**

1. All claims as between the City of Banning, on the one hand, and the California Parties, on the other hand, relating to transactions in the Western Energy Markets during the Settlement Period for damages, refunds, disgorgement of profits, costs and attorneys' fees, or other monetary or non-monetary remedies shall be deemed settled and resolved, subject to Section D.
2. Banning shall be solely responsible for the payment of any refunds and/or for remedies payable by Banning to any entities that are not parties to the Agreement and any interest awarded by FERC thereon including payments of any refunds and interest awarded thereon resulting from the FERC Proceedings or any proceedings on remand from orders in the FERC Proceedings.
3. Except to the extent set forth in Section D, with respect to transactions related to sales of electricity and ancillary services by Banning, or transmission congestion charges applicable to such sales, the Parties waive and release any disputes regarding existing ISO settlements and/or PX settlements for the Settlement Period.

#### **B. FERC and Federal Power Act Releases.**

1. Subject to Section D below, the California Parties, on the one hand, and Banning, on the other hand, shall be deemed to have released the other from all existing and future claims before FERC and/or under the Federal Power Act that:
  - a. Banning or any California Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms or conditions for electric capacity, energy, ancillary services, or transmission congestion in the Western Energy Markets during the Settlement Period;
  - b. Banning or any California Party manipulated the Western Energy Markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of electricity market manipulation discussed in the Final Report issued by FERC staff on March 26, 2003 in Docket No. PA02-2 (the "*Final Staff Report*"), or any other forms of electricity market manipulation), or otherwise violated any applicable tariff, regulation, law, rule, or order relating to the Western Energy Markets during the Settlement Period;
  - c. Any California Party is liable for payments to Banning for congestion charges, transmission line losses, energy, or ancillary services during the Settlement Period; or

- d. Banning is liable to any California Party for congestion charges, transmission line losses, energy, or ancillary services during the Settlement Period.
2. Banning agrees to forgo any claim for refunds resulting from any mitigation of sales by CERS in the California Markets during the Settlement Period, as well as any interest, credits or other payments associated with such sales. Banning hereby assigns, sells, transfers, conveys, and delivers to CERS all of its right, title, and interest in and to any such refunds, interest, credits and other payments that are either directly or indirectly through others allocated to Banning, and represents, warrants, and covenants with and to CERS that such assignment is and shall be free and clear of all liens, claims, and encumbrances.

**C. Civil Claims Releases.**

1. Subject to Section D below, the California Parties, on the one hand, and Banning, on the other hand, shall be deemed to have forever released the other from all past, existing, and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations that:
  - a. Banning or any California Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms or conditions for electric capacity, energy, ancillary services, or transmission congestion in the Western Energy Markets during the Settlement Period;
  - b. Banning or any California Party, during the Settlement Period, manipulated Western Energy Markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final Staff Report, or any other forms of market manipulation);
  - c. Banning or any California Party was unjustly enriched by the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule, or order relating to transactions in the Western Energy Markets during the Settlement Period;
  - d. Any California Party is liable for payments to Banning for congestion charges, transmission line losses, energy, or ancillary services during the Settlement Period;
  - e. Banning is liable for payment to any California Party for congestion charges, transmission line losses, or energy, or ancillary services during the Settlement Period; or
  - f. Any California Party is liable based on the matters alleged in the September 5, 2006 Claim for Damages filed with the California Victims

Compensation and Government Claims Board by the Cities of Anaheim,  
Azusa, Banning, Colton, Pasadena and Riverside, California.

**D. Limitations on Releases.**

1. The California Parties may continue to cooperate with all state and federal investigations and to participate in all matters before FERC; provided that the California Parties shall withdraw from and not prosecute any litigation, administrative proceedings, or investigations with respect to Banning insofar as such prosecution would be inconsistent with the foregoing released claims.
2. Banning may continue to cooperate with all state and federal investigations and to participate in all matters before FERC; provided that Banning shall withdraw from and not prosecute any litigation, administrative proceedings, or investigations with respect to the California Parties insofar as such prosecution would be inconsistent with the foregoing released claims.
3. The releases set forth in Sections B and C do not constitute a waiver or release of any claims by the California Attorney General for any actions of or omissions by Banning either before or subsequent to the Settlement Effective Date that are either: (a) willfully fraudulent; provided, however, that this release does extend to such claims (if any) that are based solely upon acts or omissions of Banning that (1) occurred prior to the execution of the Agreement, and (2) are currently known by the California Attorney General's Office; or (b) criminal.
4. All Parties shall remain free to initiate or participate, without limitation, in any existing or future proceeding that may determine the rights and/or obligations of parties other than Banning, and to initiate or participate in any existing or future proceeding that may determine the rights and/or obligations of Banning to the extent not inconsistent with the releases set forth in Sections B and C, including proceedings addressing, prospectively, generic issues concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation. Subject to the foregoing sentence, all defenses, claims, or allegations made or asserted, or that could be made or asserted, in any such proceeding are unaffected by this Agreement and expressly retained and preserved by the Parties.
5. Nothing in this Agreement affects any obligation that any Party may have to pay Refund Offsets or other charges that may be assessed in the FERC Proceedings on account of sales by entities other than Banning or the California Parties, and such Party shall remain obligated to pay all such charges to the same extent it would be obligated absent this Agreement. Nothing in this Agreement shall be construed as restricting in any way the ability of any Party to express or pursue any position regarding the method or methods for calculating or allocating Refund Offsets.
6. The releases set forth in this Appendix 1 do not include and do not limit, impair, invalidate, diminish, release, discharge or otherwise affect in any way whatsoever

any defenses, claims, or allegations made or asserted, or that could be made or asserted, in FERC Docket Nos. EL02-60 and EL02-62 by any party to those proceedings, including associated appeals. Nothing in the preceding sentence, however, is or shall be construed to permit any California Party to seek monetary or equitable relief from Banning with respect to any defenses, claims or allegations made or asserted or that could be made or asserted, in FERC Docket Nos. EL02-60 and EL02-62 by any party to those proceedings, including associated appeals.

7. The releases set forth in this Appendix 1 do not constitute a waiver or release of any claims arising from a bilateral purchase or sale of energy, capacity and/or ancillary services that any Party, excluding CERS, has or may claim to have against Banning, or that Banning has or may claim to have against any Party other than CERS, nor do the releases in this Appendix 1 constitute a waiver or release of any claims arising under a bilateral agreement for transmission service or a bilateral agreement providing for the interconnection of two or more transmission systems. With respect to CERS, the releases set forth in this Appendix 1 shall, except as expressly provided herein (including Section D), constitute a waiver and release of all claims arising from a bilateral purchase or sale of energy, capacity and/or ancillary services during the Settlement Period that CERS has or may claim to have against Banning, and that Banning has or may claim to have against CERS, including all claims in the EL01-10 Proceeding.
8. Notwithstanding anything to the contrary contained in this Agreement, the releases set forth in this Appendix 1 do not cover, and all Parties retain all rights in relation to, the charges at issue in FERC Docket No. EL03-54 and related review proceedings.

**E. Waiver of Appeals and Requests for Rehearing.**

1. Each of the Parties shall (a) forego any rights to seek rehearing of, or appeal, any and all of the claims released and matters settled herein by each of them with respect to transactions by Banning; and (b) take appropriate steps to withdraw any pending requests for rehearing or appeals (including interventions in appeals) with respect to such released claims and matters as against Banning. Nothing herein shall affect the Parties' rights to maintain such rehearing or appeals with respect to parties other than Banning.
2. Banning shall (a) forego any rights to seek rehearing of, or appeal, any and all of the claims released and matters settled herein by Banning with respect to any of the California Parties and (b) take appropriate steps to withdraw any pending requests for rehearing or appeals (including interventions in appeals) with respect to such released claims as against any such California Parties.
3. Nothing in this Agreement shall preclude any of the California Parties from participating fully in any request for rehearing or appellate proceeding to the extent those proceedings relate to claims by such California Party against entities

other than Banning or to claims against a California Party by any entity other than Banning. Nothing in this Agreement shall preclude Banning from participating fully in any request for rehearing or appellate proceeding to the extent those proceedings relate to claims by Banning against entities other than the California Parties or to claims against Banning by any entity other than the California Parties.

- F. **Effectiveness of Releases; Waiver of Unknown Claims.** The Parties acknowledge and agree that, except as expressly reserved in Section D, it is their intention that the releases granted pursuant to this Appendix 1 shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses, and liabilities of every kind, known or unknown, suspected or unsuspected, hereinabove specified in this Appendix 1. In furtherance of this intention, Banning, on the one hand, and the California Parties, on the other hand, with respect to the specific matters released herein, each knowingly, voluntarily, intentionally, and expressly waives, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those that they know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby, except as expressly reserved in Section D, to fully, finally, and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this Appendix 1. This Agreement is intended to include in its effect, without limitation, other than the limitations set forth in Section D, all claims encompassed within the settlement and releases set forth in this Appendix 1, including those that the Parties may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims, except as expressly reserved in Section D. The releases set forth in this Appendix 1 shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of this Agreement. Notwithstanding the waiver of California Civil Code Section 1542, the Parties acknowledge and agree that the releases provided for in this Agreement are specific to the matters set forth in this Appendix 1 and are not intended to create general releases as to all claims, or potential claims, between the California Parties, or any of them, and Banning.

**G. Defined Terms.**

Capitalized terms used in this Appendix shall have the meaning ascribed to them in the Agreement and, if not defined in the Agreement, then as set forth below or as otherwise set forth in this Appendix:

1. "Agreement" has the meaning given to it in the attached settlement agreement between the City of Banning, California and the California Parties.
2. "California Markets" means those markets for electric capacity, energy, and/or ancillary services operated by the ISO and PX.
3. "FERC" means the Federal Energy Regulatory Commission.
4. "FERC Proceedings" means the FERC proceedings conducted in FERC Docket Nos. EL00-95, *et al.*, EL01-10, *et al.*, and IN03-10, *et al.*, the Gaming/Partnership Proceeding, the ISO Re-Run Proceeding, and the Physical Withholding Investigation, and related appeals of orders in those proceedings and any proceeding upon remand. The term "FERC Proceedings" also includes the FERC proceedings conducted in Docket No. PA02-2 insofar as that proceeding concerns a Party's sales into the California Markets.
5. "Gaming/Partnership Proceeding" means the proceedings in FERC Docket Nos. EL03-137, *et al.*, and EL03-180, *et al.* and any related appeals and/or petitions for review and any proceedings on remand.
6. "ISO Re-Run Proceeding" means the FERC proceeding conducted in Docket No. ER03-746 concerning ISO re-run activity from October 2, 2000 through and including June 20, 2001, and any related appeals and/or petitions for review and any proceedings on remand.
7. "Physical Withholding Investigation" means FERC's undocketed fact-finding investigation regarding alleged physical withholding of generation, as described in Initial Report on Physical Withholding by Generators Selling into the California Market and Notification to Companies, issued by FERC staff on August 1, 2003.
8. "Refund Offsets" means and includes all claims for recovery of (i) fuel costs incurred by a market participant's generating units between October 2, 2000 and June 20, 2001 pursuant to FERC orders in FERC Docket No. EL00-95, *et al.* (See, e.g., *San Diego Gas & Electricity Co. v. Sellers of Energy and Ancillary Services*, 110 FERC ¶ 61,293 (2005)); (ii) emissions costs incurred by a market participant's generating units during the same time period as adopted by FERC (See e.g., *San Diego Gas & Elec. Co. v. Sellers, et al.*, 102 FERC ¶ 61,317 at P 5(BB) (Mar. 26, 2003)); and (iii) any other offset against refunds in the EL00-95 Proceeding based upon costs incurred by the market participant claiming the offset (See, e.g., *San Diego Gas & Elec. Co. v. Sellers, et al.*, 114 FERC ¶ 61,070

(Jan. 26, 2006)). "Market participants" means those entities that directly sold energy to or purchased energy from the ISO and/or PX during part or all of the Settlement Period. The EL00-95, *et al.* proceeding in this definition includes any related appeals and/or petitions for review and any proceedings on remand.

9. "Western Energy Markets" means those markets for electric capacity, energy, and/or ancillary services in the territories covered by the Western Electricity Coordinating Council (f/k/a the Western Systems Coordinating Council) including the California Markets.

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** March 25, 2008

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** Resolution No. 2008-37, "Authorizing the City Engineer to Submit a Grant Application to the California Department of Transportation (Caltrans) Traffic Light Synchronization Program for Traffic Signal Synchronization along Ramsey Street, from Hargrave Street to Sunset Avenue"

**RECOMMENDATION:**

- I. Adopt Resolution No. 2008-37, "Authorizing the City Engineer to Submit a Grant Application to the California Department of Transportation (Caltrans) Traffic Light Synchronization Program for Traffic Signal Synchronization along Ramsey Street, from Hargrave Street to Sunset Avenue."
- II. Authorize the City Engineer to execute the application that Engineering Division staff will submit to Caltrans.

**JUSTIFICATION:** It is essential for the City Council to authorize the execution of the application for the grant, and its subsequent submittal to Caltrans, in order to be considered for funds for the traffic signal synchronization project on Ramsey Street.

**BACKGROUND:** The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 was approved by California voters as Proposition 1B on November 7, 2006. Proposition 1B allotted \$250 million for the Traffic Light Synchronization Program (TLSP) to fund traffic light synchronization projects and other technology-based improvements to enhance safety, operations, and the effective capacity of local streets and roads. The passage of Senate Bill 88 in 2007 designated the California Transportation Commission (CTC) as the administrative agency responsible for programming TLSP funds and the agency authorized to adopt guidelines for the program. Funding has been made available to Caltrans for this project, as allocated by the California Transportation Commission (CTC).

Caltrans will develop a proposed program of projects for the TLSP on the basis of project applications prepared by regional agencies or recipient local agencies. The CTC will adopt the program upon finding that it is consistent with the program guidelines, which were adopted in February, 2008. In developing the proposed program of projects, Caltrans will give priority to projects that result in an effective and sustainable integrated local or regional transportation system. Caltrans will evaluate project nominations on the basis of regional mobility and safety benefits, especially in highly congested corridors, in terms of congestion reduction benefits or time savings and estimated reduction in deaths and injuries. Under statute, applicant agencies must provide a funding plan that demonstrates that non-TLSP funds in the plan (local, state, or federal) are reasonably expected to be available and sufficient to complete the project.

Project applications will be scored competitively, based on effectiveness in providing transportation benefits, including the improvement of safety, operations, energy conservation, and effective capacity of local streets and roads in a corridor, and the commitment to sustain these benefits; the date by which the projects will be ready for award of the construction contract; the degree to which the project contributes to emissions reduction of particulates and other pollutants; and the degree of financial contribution from non-state funds by the local agency in the capital costs of the TLSP project.

Six traffic signals currently exist on Ramsey Street, the City's main thoroughfare, between Hargrave Street and Sunset Avenue. The Traffic Signal Synchronization Program will reduce congestion and improve traffic safety, traffic circulation, effective traffic-carrying capacity, and the air quality of Ramsey Street.

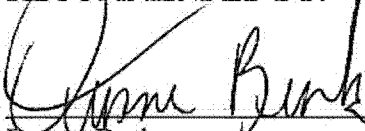
The proposed improvements to be performed by the Contractor include the collection of peak hour traffic volume counts at each of the six signalized intersections on Ramsey Street in order to provide data for "SYNCHRO" signal timing and synchronization analysis, review of existing traffic signal controller timings and evaluation of these timings against peak hour traffic demands to determine the extent of existing intersection traffic delays, and a complete field inventory of intersection traffic signals along Ramsey Street to appropriate performance of existing signal control components and to determine whether corrective action or upgrades are needed.

Engineering Division staff has hired Traffic Safety Engineers, Inc. of Orange, CA to prepare the City of Banning's grant application and, pending City Council approval of the application submittal, the City would anticipate receiving the results of Caltrans' competitive scoring by June of 2008.

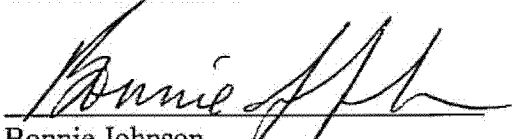
Project applications must be submitted to Caltrans by March 28, 2008, and Caltrans will nominate projects to the CTC for programming on April 30, 2008. The CTC plans to adopt the TLSP programming and award the grants by June of 2008.

**FISCAL DATA:** The preliminary cost estimate to complete all phases of the project, including preparation of the grant application, data collection, design, construction, etc., is approximately \$500,000.00. Staff is requesting a grant in the total amount of \$500,000.00.

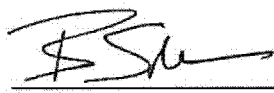
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
Bonnie Johnson  
Director of Finance

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**RESOLUTION NO. 2008-37**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE CITY ENGINEER TO SUBMIT AN APPLICATION TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) TRAFFIC LIGHT SYNCHRONIZATION PROGRAM FOR TRAFFIC SIGNAL SYNCHRONIZATION ALONG RAMSEY STREET, FROM HARGRAVE STREET TO SUNSET AVENUE**

**WHEREAS**, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 was approved by California voters as Proposition 1B on November 7, 2006; and

**WHEREAS**, the Bond Act allocated \$250 million for the Traffic Light Synchronization Program (TLSP) to fund traffic light synchronization projects and other technology-based improvements to enhance safety, operations, and the effective capacity of local streets and roads; and

**WHEREAS**, the passage of Senate Bill 88 in 2007 designated the California Transportation Commission (CTC) as the administrative agency responsible for programming TLSP funds and the agency authorized to adopt guidelines for the program; and

**WHEREAS**, proposed improvements include the collection of peak hour traffic volume counts at each of the six signalized intersections on Ramsey Street, between Hargrave Street and Sunset Avenue, in order to provide data for "SYNCHRO" signal timing and synchronization analysis, review of existing traffic signal controller timings and evaluation of these timings against peak hour traffic demands to determine the extent of existing intersection traffic delays, and a complete field inventory of intersection traffic signals along Ramsey Street to appropriate performance of existing signal control components and to determine whether corrective action or upgrades are needed; and

**WHEREAS**, applications will be scored and ranked based on effectiveness in providing transportation benefits, including the improvement of safety, operations, energy conservation, and effective capacity of local streets and roads in a corridor, and the commitment to sustain these benefits; the date by which the projects will be ready for award of the construction contract; the degree to which the project contributes to emissions reduction of particulates and other pollutants; and the degree of financial contribution from non-state funds by the local agency in the capital costs of the TLSP project; and

**WHEREAS**, it is essential for the City Council to authorize the execution of an application for CTC Traffic Signal Synchronization Program grant funds, and its subsequent submittal to Caltrans, in order to be considered for TLSP funds for traffic signal synchronization along Ramsey Street, from Hargrave Street to Sunset Avenue.

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

**Section I.** The City Council of the City of Banning hereby authorizes the City Engineer to submit a grant application for TLSP funds to Caltrans for Traffic Signal Synchronization along Ramsey Street, from Hargrave Street to Sunset Avenue.

**Section II.** The City Council of the City of Banning hereby authorizes the City Engineer to execute the application that Engineering Division staff will submit to Caltrans.

**PASSED, ADOPTED AND APPROVED** this 25<sup>th</sup> day of March, 2008.

\_\_\_\_\_  
Brenda Salas, Mayor

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

\_\_\_\_\_  
Burke, Williams & Sorensen, LLP  
City Attorney

**ATTEST:**

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-37 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 25<sup>th</sup> day of March, 2008.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** March 25, 2008

**TO:** Honorable Mayor and City Council

**FROM:** Kahono Oei, City Engineer

(A)

**SUBJECT:** Public Improvements Acceptance and Performance/Labor and Material Bond Release for Tract No. 31748

**RECOMMENDATION:** Accept the public improvements and release portion (90%) of the Performance/Labor and Material Bond for Tract No. 31748.

**JUSTIFICATION:** All of the required public improvements have been inspected and completed in conformance with the approved plans.

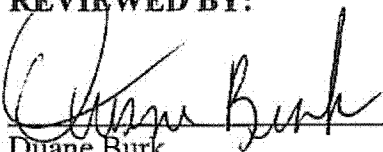
**BACKGROUND:** Tract No. 31748 is located at the northeast corner of San Gorgonio Avenue and Wesley Street. Prior to the City Council approval of each tract map, the developer is required to post a Performance/Labor & Material Bond.

All of the required public improvements and monumentation for said Tract have been inspected and completed in conformance with the approved plans and specifications. Typically, once the improvements are completed it is prudent to release a portion of said Bonds. The bond amount being released is as follows:

<u>Bond No.</u>	<u>Bond Amount</u>	<u>Bond Amount Being Released</u>	<u>Remaining Bond Balance</u>
661116315	\$225,000.00	\$202,500.00	\$22,500.00

**FISCAL DATA:** Not applicable.

**REVIEWED BY:**



Duane Burk  
Director of Public Works

**APPROVED BY:**



Brian Nakamura  
City Manager



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** March 25, 2008

**TO:** City Council

**FROM:** Brian Nakamura, City Manager

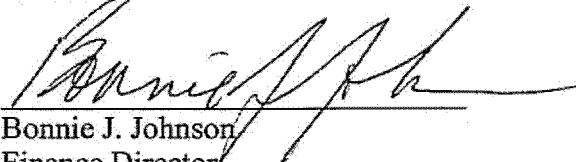
**SUBJECT:** \$5,000 Donation to the American Cancer Society in sponsorship of the Fifth Annual Relay for Life Event

**RECOMMENDATION:** "That the City Council approve a \$5,000 donation to the American Cancer Society in sponsorship of the Fifth Annual Relay for Life Event."

**BACKGROUND/ANALYSIS:** The City Council has made donations toward a wide range of community/charitable events in the past. This event has been sponsored by the City of Banning as well as other Pass area communities in prior years. As in the past, the Annual Relay for Life Event will be held at the Beaumont Sports Park.

**FISCAL DATA:** Funds are available in the City Council's community Support Fund.

**PREPARED BY:**

  
\_\_\_\_\_  
Bonnie J. Johnson  
Finance Director

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** March 11, 2008  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Brian S. Nakamura, City Manager  
**SUBJECT:** Adoption of 2008 City Council Year One Goals

**RECOMMENDATION:**

That the City Council approve the attached year one 2008 goals, which also provides clear direction to staff regarding administrative objectives.

**BACKGROUND:**

On March 1, 2008, the City Council held a public workshop to discuss and determine its year one goals for 2008.

In addition, the City Council is also considering adopting a formal vision statement and tag-line (which were to be submitted to Diane Wirth and presented to the Council for consideration and are attached for future discussion).

At this time the City has been using the tag-line "Historic Values, Modern Opportunities," which may be what the City Council wishes to continue using.

**FISCAL DATA:**

N/A.

City Council  
RECOMMENDED BY:

BSN  
REVIEWED BY:

BSN  
APPROVED BY:

Banning City Council  
Goals for 2008

- ❖ Develop water resources – research a new urban water management plan.
- ❖ Develop a comprehensive green sustainable program.
- ❖ Have a developer agreement in place for Sun Lakes commercial 47 acre parcel.
- ❖ Complete Foreign trade zone.
- ❖ Have a fixed based operator in place for airport.
- ❖ Have a developer agreement in place for San Geronimo Inn Plaza, a mixed use development.

## Tag lines for *Banning...*

The Portal to Progress

Born for Business

Banning is a welcoming community for all ages in a modern managed growth city in a scenic setting

Next stage to the future

The old and young are welcomed in a historic but modern growing city

Community of Action

Energized for the Future

The affordable green city

City of the future

Banning – a scenic, friendly city, managing its growth while welcoming people and business

The Place to be [because.....]

The “Go to” City

Pass to the future

Banning, a scenic city of managed growth, good for people, good for business

A community on the creative edge

Some like the tag line we have on some literature – *historic values, modern opportunities*

Banning: A way of Life in the Pass

Banning: Arts. Work. Life.

Banning: Where Arts work in the Pass

Banning: Honoring the past, working for the future

Banning: The Stagecoach line to the future

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** March 25, 2008

**TO:** City Council

**FROM:** Bonnie Johnson, Finance Director

**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of  
February 2008

**RECOMMENDATION:** "The City Council review and ratify the following reports per the California Government Code."

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of February 2008.

The reports are:

Expenditure approval lists

February 7, 2008	981,888.05
February 14, 2008	957,591.73
February 21, 2008	325,921.73
February 28, 2008	470,064.47

March 4, 2008	3,473,825.28 (February Month End)
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Payroll check registers

February 1, 2008	5,911.30
Manual check dated Feb. 6, 2008	1,258.03
February 15, 2008	7,918.37
Manual check dated Feb. 19, 2008	2,456.54
Manual check dated Feb. 22, 2008	1,326.56
Manual check dated Feb. 22, 2008	236.55
February 29, 2008	7,946.20

Payroll direct deposits\*

February 1, 2008	326,666.97
February 15, 2008	332,591.14
February 29, 2008	428,229.08

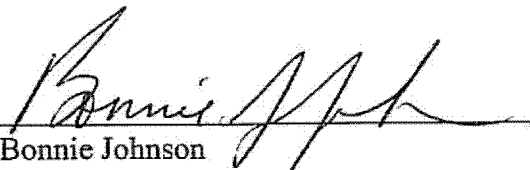
As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

\* Included on the FEBRUARY month end expenditure approval list o 3/4/2008

<sup>(1)</sup> Due to Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

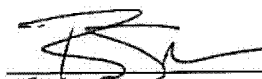
Report Prepared by: Michelle Green, Accounting Manager

**RECOMMENDED BY:**



Bonnie Johnson  
Finance Director

**APPROVED BY:**



Brian Nakamura  
City Manager

**Fund/Department Legend:**

**General Fund – 001**

**Departments**

0001 – General	2400 – Fire
1000 – City Council	2700 – Building Safety
1200 – City Manager	2800 – Planning
1300 – Human Resources	3000 – Engineering
1400 – City Clerk	3200 – Building Maintenance
1500 – Elections	3600 – Parks
1800 – City Attorney	4000 – Recreation
1900 – Fiscal Services	4010 – Aquatics
1910 – Purchasing & A/P	4050 – Senior Center
2060 – TV Government Access	4060 – Sr. Center Advisory Board
2200 – Police	4500 – Central Services
2210 – Dispatch	4800 – Debt Service
2300 – Animal Control	5400 – Community Enhancement

**All Other Funds**

100 – Gas Tax Street Fund	600 – Airport Fund
101 – Measure A Street Fund	610 – Transit Fund
103 – SB 300 Street Fund	660 – Water Fund
104 – Article 3 Sidewalk Fund	661 – Water Capital Facilities
110 – CDBG Fund	662 – Irrigation Water Fund
111 – Landscape Maintenance	663 – BUA Water Capital Project Fund
132 – Air Quality Improvement Fund	666 – Water Participation CTF 86
140 – Asset Forfeiture-Police Fund	667 – Water Participation CTF 89
144 – Local Law Enforcement Block Grant	669 – BUA - Water Debt Service
145 – COPS MORE Grant Fund	670 – Electric Fund
146 – San Geronio Gang Task Force	671 – Electric Capital Facility Fund
148 – Supplemental Law Enforcement	672 – Rate Stability Fund
149 – Public Safety Sales Tax Fund	673 – Electric Improvement Fund
150 - State Park Bond Fund	674 - '07 Elec Revenue Bond Project Fund
170 – Peacock Valley II	675 – Public Benefit Fund
200 – Special Donation Fund	678 - '07 Elec Revenue Bond Debt Service Fund
201 – Sr. Center Activities Fund	680 – Wastewater Fund
202 – Animal Control Reserve Fund	681 – Wastewater Capital Facility Fund
203 – Police Volunteer Fund	683 – BUA Wastewater Capital Project Fund
204 – D.A.R.E. Donation Fund	685 – State Revolving Loan Fund
300 – City Administration COP Debt Service	687 – Wastewater Participation CTF 89
360 – Sun Lakes CFD #86-1	689 – BUA Wastewater Debt Service Fund
365 – Wilson Street #91-1 Assessment Debt	690 – Refuse Fund
370 – Area Police Computer Fund	700 – Insurance Fund
375 – Fair Oaks #2004-01 Assessment Debt	702 – Fleet Maintenance
376 – Cameo Homes	703 – Information Systems Services
400 – Police Facilities Development	761 – Utility Billing Administration
410 – Fire Facility Development	810 – CRA – Low/Mod Fund
420 – Traffic Control Facility Fund	830 – CRA – Debt Service Fund
421 – Ramsey/Highland Home Road Signal	850 – CRA - Administration Fund
430 – General Facilities Fund	854 – CRA Low/Mod Bond Fund
451 – Park Development Fund	855 - 2007 TABS Bond Proceeds
470 – Capital Improvement Fund	856 – 2003 TABS Bond Proceeds
475 – Fair Oaks #2004-01 Assessment District	857 – 2003 TABS Bond Proceeds Low/Mod
	860 – CRA - Project Fund

# PAYROLL

## DIRECT DEPOSIT TOTALS

PAY PERIOD ENDING	DIRECT DEPOSIT DATES	DIRECT DEPOSIT AMOUNTS
01/27/2008	02/01/2008	\$326,666.97
02/10/2008	02/15/2008	\$332,591.14
02/24/2008	02/29/2008	\$428,229.08

## MANUAL CHECKS ISSUED

CHECK DATE	CHECK #	CHECK AMOUNT	
02/06/2008	5426	\$1,258.03	Lonnie Conner
02/19/2008	5443	\$2,456.54	Brian Nakamura
02/22/2008	5444	\$1,326.56	William Broderick
02/22/2008	5445	\$236.55	William Broderick

**COUNCIL MEETING  
DIRECTOR'S REPORT**

**DATE:** March 25, 2008

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

**FROM:** Brian S. Nakamura, Executive Director

**SUBJECT:** City of Banning License to Use and Maintain Premises Agreement granted to Banning Chamber of Commerce for use of the facilities described as bus shelters and bus benches with signs located throughout the City of Banning.

**RECOMMENDATION:**

This recommendation is twofold:

1. That the City Council consider entering into a License to Use and Maintain Premises Agreement granted to the Banning Chamber of Commerce for use of the facilities described as bus shelters and bus benches with signs located throughout the City of Banning, as more particularly described in attached Agreement Exhibit "A" and;
2. If the City Council wishes to pursue a License to Use and Maintain Premises Agreement with the Banning Chamber of Commerce, direct staff to provide an accurate cost accounting before final approval of Agreement of all repairs necessary to bring all facilities listed in Agreement Exhibit "A" to an acceptable baseline standard for transfer to the Banning Chamber of Commerce. Acceptable baseline standard as defined and agreed to by and between the Riverside Transportation Agency (RTA) and City of Banning.

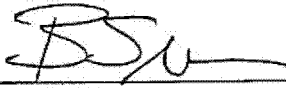
**BACKGROUND:**

The Banning Chamber of Commerce is proposing to use and maintain ten (10) bus shelters and thirty-seven (37) bus stop benches with signs throughout the City, for a total of forty-seven (47) individual premises. All premises are used by the public for the purpose of awaiting public transportation and specifically bus shelters are in place to protect the public from inclement weather.

**FISCAL DATA:**

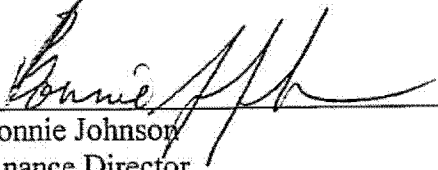
A comprehensive fiscal analysis will be provided to the City Council prior to initiating any work on the bus shelters and bus benches.

**RECOMMENDED/APPROVED BY:**



Brian S. Nakamura  
Executive Director

**REVIEWED BY:**



Bonnie Johnson  
Finance Director

## LICENSE TO USE AND MAINTAIN PREMISES (Bus Shelters Citywide)

The City of Banning, a municipal corporation ("Licensor"), hereby grants a license to the Banning Chamber of Commerce, a \_\_\_\_\_ ("Licensee"), for use of the facilities described below upon the following terms and conditions:

1. **Premises.** The premises licensed hereby consist of bus shelters and bus benches with signs located throughout the City of Banning, California, as more particularly described in Exhibit "A", attached hereto and by this reference made a part of this License ("Premises"). There are ten (10) shelters and thirty-seven (37) benches with signs throughout the City, for a total of forty-seven (47) individual Premises.

2. **Use.**

2.1 The Premises are used by the public for the purpose of awaiting public transportation. The shelters provide seating and protection from the elements. The benches provide seating. Both types of Premises also denote locations at which public transportation will stop to pick up and drop off passengers.

2.2 The advertising displays on the Premises have been used by the Licensor for advertising City of Banning events as well as for raising revenue through the placement of commercial advertisements. The shelters include glass-enclosed displays in which commercial advertisements can be placed. The benches include bench backs that serve as banner-type displays that are left open to the elements.

2.3 Pursuant to this agreement, the advertising displays shall be used by Licensee primarily for the purpose of displaying commercial advertising materials, the placement of which shall be in the control of Licensee. Licensee shall contract with commercial advertisers and shall keep all of the revenue generated by the commercial advertising.

2.4 The Premises shall not be used by Licensee for any purpose other than the public display of advertising without first obtaining the written consent of Licensor, which consent shall be in the absolute discretion of Licensor.

3. **Term.** The term of this non-exclusive License shall be for \_\_\_\_\_ ( ) years commencing \_\_\_\_\_, 2007 through \_\_\_\_\_, 20\_\_.

4. **Fee.** Other and sufficient consideration being received from Licensee in the form of ongoing maintenance of the Premises, Licensee shall pay a fee of One Dollar and No Cents (\$1.00) for the \_\_\_\_\_ ( ) year term of this License.

5. **Custodial/Utilities/Maintenance.** Licensee shall provide for all necessary maintenance to maintain the Premises, including but not limited to structural, custodial, and refuse services, for both the portion utilized by Licensee for advertising displays and the portion utilized by the public for awaiting public transportation.

6. **Protection of Person and Premises.** Licensor shall be responsible for the health, safety and welfare of the property and persons of its licensees, invitees and guests in connection with the continued use of the Premises for awaiting public transportation, and Licensor shall take any and all necessary precautions, steps, measures and actions in order to fully discharge such responsibility. Notwithstanding the foregoing, Licensee shall be responsible for the protection and maintenance of the commercial advertising materials placed on the Premises by Licensee.

7. **Rights of Licensee.** Licensee, through its authorized representatives, shall have full and unrestricted right to enter the Premises for the purpose of doing any and all things which it is obligated and has a right to do under this License.

8. **Signs.** Excepting the commercial advertising anticipated by this License to be placed in the glass enclosures on the shelters and on the bench backs of the open-air benches, Licensee may not erect, maintain or display signs or other forms of advertising upon the Premises without first obtaining the written approval of Licensor, which approval shall not be unreasonably withheld.

9. **Compliance with Government Regulations.** Licensee, at Licensee's sole cost and expense, shall comply with all maintenance-related and advertising-related requirements of all local, state and federal statutes, regulations, rules, ordinances and orders now in force or which may be hereafter in force, pertaining to the Premises.

10. **Insurance.**

10.1 Licensor is self-insured through the California Joint Powers Insurance Authority. Licensor shall maintain self-insurance throughout the term of this License. Should Licensor cease self-insurance at any time during the term of this License, Licensor shall obtain and maintain, for the mutual benefit of Licensor and Licensee, general public liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Premises and on, or resulting from, the use by the public of the Premises for awaiting public transportation.

10.2 Licensee shall, at Licensee's cost and expense, but for the mutual benefit of Licensor and Licensee, maintain general liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Premises and on, or resulting from, Licensee's use and maintenance of the Premises, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in general aggregate limit. Licensee shall cause such policy or policies of insurance to name Licensor as an additional insured and to provide that Licensor will receive a notice from the insurer within thirty (30) days of insurer's decision to cancel such policy, or in any other event which causes such policy(ies) to lapse.

11. **Indemnification.** In addition to, and without limiting, both parties' other obligations under this License, each party agrees to indemnify, protect, defend (by counsel reasonably satisfactory to the other) and hold the other and its officials, officers, agents and employees, and each of them, harmless from and against all claims, losses, liabilities, actions, judgments, costs and expenses (including reasonable attorneys' fees and costs) which they, or

any of them, may suffer or incur arising from or relating to (a) that party's use of the Premises, (b) any negligence, act or omission of that party, its agents, employees, contractors, guests or invitees in or about the Premises or (c) any default by that party under this License. .

12. **Nonassignability.** Licensee cannot assign any of its rights, duties, or obligations under this License to any person or entity without the written consent of Licensor being first obtained. This includes the ability to subcontract all or a portion of its rights, duties and obligations hereunder.

13. **Termination by Licensor.** Licensor may terminate this License upon the occurrence of any of the following events:

13.1 Licensee (or any successor in interest) assigns or attempts to assign the License or any rights in violation of this License;

13.2 Licensee (or any successor in interest) becoming insolvent or Licensee (or any successor in interest) voluntarily or involuntarily making an assignment or transfer for the benefit of creditors other than Licensor, and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of Licensee's property;

13.3 Licensee fails to maintain the Premises as required by this License; or

13.4 Licensee is otherwise in breach or default of any term or provision of this License and fails to cure such default within thirty (30) days of being notified of such default by Licensor.

13.5 If, after the occurrence of any of the above-entitled events, Licensor elects, in its sole discretion, to terminate this License, then all rights of Licensee and any person or entity claiming by or through Licensee arising under this License or with regard to the Premises as may arise under this License shall immediately cease and be terminated, except that any obligations of the Licensee to indemnify or reimburse Licensor shall continue in full force and effect and Licensor shall have all of the remedies to enforce a breach or a default of this Agreement as may be provided hereunder and under the law.

14. **Employees and Agents of Licensee.** It is understood and agreed that all persons hired or engaged by Licensee in connection with the display and removal of the commercial advertising materials, and the maintenance of the Premises shall be considered to be employees or agents of Licensee and not of Licensor.

15. **Waiver of Performance.** No waiver by either party at any time of any of the terms and conditions of this License shall be deemed or construed as a waiver at any time thereafter of the same or of any other terms or conditions contained herein or of the strict and timely performance of such terms and conditions.

16. **Severability.** The invalidity of any provision in this License as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

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

18. **Attorneys' Fees.** In the event of any litigation or legal or dispute resolution between Licensor and Licensee to enforce any of the provisions of this License or any right of either party hereto, the unsuccessful party to such litigation or proceeding agrees to pay to the prevailing party (as defined in Code of Civil Procedure §1032) all cost and expenses, including reasonable attorneys' fees, incurred therein by the prevailing party, all of which shall be included in and as a part of the judgment rendered in such litigation or arbitration.

19. **Notices.** Any notices required or desired to be served by either party upon the other shall be addressed to the respective parties as set forth below:

**LICENSOR**

City of Banning  
Attn: City Manager  
99 East Ramsey Street  
Banning, CA 92220

**ADDITIONAL NOTICES**

City of Banning  
Attn: City Attorney  
99 East Ramsey Street  
Banning, CA 92220

**LICENSEE**

Banning Chamber of Commerce  
Attn: \_\_\_\_\_  
60 East Ramsey Street  
Banning, CA 92220

or to such other addresses as from time to time shall be designated by the respective parties.

20. **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 of language of this License.

21. **Entire License.** This License is intended by the parties hereto as 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 licenses, therewith. This License may be changed or modified only upon the written consent of the parties hereto.

22. **Binding.** The License shall not be binding or consummated until its execution by the Chairman of the Board of Directors.

IN WITNESS WHEREOF, the authorized representatives of the parties acknowledge and execute this License as follows:

LICENSOR

CITY OF BANNING

By: \_\_\_\_\_  
Brian S. Nakamura, City Manager

ATTEST:

By: \_\_\_\_\_  
Marie Calderon  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Burke, Williams & Sorensen, LLP  
City Attorney

LICENSEE:

BANNING CHAMBER OF COMMERCE

By: \_\_\_\_\_  
[requires attestation by a Notary Public]

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**CITY COUNCIL AGENDA  
REPORTS OF OFFICERS**

**Date:** March 25, 2008

**TO:** City Council

**FROM:** Bonnie J. Johnson, Finance Director

**SUBJECT:** Transit Management Services

**RECOMMENDATION:** "That the City Council approve the attached contract with Professional Transit Management, Ltd. (PTM) to operate and manage the City's Transit System."

**JUSTIFICATION:** Responsibilities related to the City's transit operation are currently divided up amongst several City departments. Staff is seeking to centralize the operation once again as well as continue to focus on regional transit issues.

**BACKGROUND & ANALYSIS:** The cities of Banning and Beaumont both provide transit services to their respective citizens. For quite some time, efforts had been made to expand transit services in the pass area as well as make it more seamless to the ridership. To assist with the effort a technical advisory committee (TAC) was formed. The TAC consisted of two elected officials from each City as well as a member from RCTC and RTA. The TAC was looking for ways to improve and expand transit services in the pass area. After the resignation of Banning's Community Services Director, who managed the transit operation, as well as Beaumont's transit manager leaving their City around the same time, the TAC began looking at ways to further coordinate the operation of the two systems.

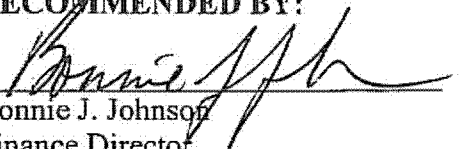
In August of 2007, the cities of Banning and Beaumont issued a joint Request for Proposal for Transit Management Services (RFP). The intent was to hire one professional transit management company that would manage both the transit operations and in doing so could identify ways to further merge the two separate operations as well as work with RTA and RCTC in developing a more regional approach to transit services in the pass area.

Two companies responded to the RFP. The City of Beaumont selected and has since hired one of those companies to manage their transit services. Banning staff and its two TAC members were not comfortable moving forward with either company that submitted a proposal. As a result, Banning solicited a proposal from a third company, PTM, and is very confident that they will be a good fit for the City. PTM has vast experience operating transit systems of all sizes. Staff has spent significant time going over all details and expectations with PTM. Under the contract, PTM will supply an on-site operations manager as well as support from their corporate office as needed. The on-site manager will function as a quasi department head in that he will take direction from the City Manager as well as attend Council meetings and other regional meetings when necessary. All current transit staff will remain employed by the City, but report to the contract transit manager. The transit manager and customer service/dispatch will have an office at the Community Center.

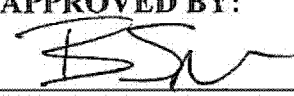
**FISCAL DATA:** The City's transit operation is approximately 10% funded by fairbox revenue and 90% funded through grants from RCTC. Staff has confirmed with RCTC that this contract is an eligible expenditure under the grant. There are funds available in the current grant to pay for the 2007-08 portion of the contract. Staff will request funds on an annual basis from RCTC. The City can immediately terminate the contract if future funding is not approved by RCTC.

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RECOMMENDED BY:

  
\_\_\_\_\_  
Bonnie J. Johnson  
Finance Director

APPROVED BY:

  
\_\_\_\_\_  
Brian Nakamura  
City Manager

# **CONSULTANT SERVICES AGREEMENT**

**By and Between**

**THE CITY OF BANNING,  
a municipal corporation**

**and**

**PROFESSIONAL TRANSIT MANAGEMENT, LTD  
an Ohio limited liability company**

**AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
PROFESSIONAL TRANSIT MANAGEMENT, LTD**

This Agreement for Consultant Services ("Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between the City of Banning, a municipal corporation ("City") and Professional Transit Management, Ltd., an Ohio limited liability company ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by the issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 2 of this Agreement.

B. Consultant, following the submission of a proposal or bid for the performance of the services defined and described in Section 2 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 and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for the performance of those services defined and described in Section 2 of this Agreement and further desire that the terms of such performance be as particularly defined and described herein.

E. The Parties acknowledge and agree that (i) the City owns the transit system that is the subject of this Agreement, along with all of the facilities, equipment, and other assets necessary for the operation of the transit system; (ii) the City, and not Consultant, employs all employees of the City's transit; and (iii) Consultant is being hired, pursuant to the terms of this Agreement, to manage the operation of the transit system.

**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:

**SECTION 1. TERM OF AGREEMENT.**

(a) The term of this Agreement shall commence on the 1<sup>st</sup> day of April, 2008 and shall terminate on the 31<sup>st</sup> day of March 2011. This Agreement may be renewed or extended by mutual agreement of the Parties for two additional consecutive one-year periods, ending on the 31<sup>st</sup> day of March, 2013.

(b) Subject to the provisions of Section 19 [Termination of Agreement] of this Agreement, the scope of services set forth in Exhibit "A" "Scope of Services" shall be completed pursuant to the schedule specified in Exhibit "A." Should the scope of services not be completed pursuant to that schedule, the Consultant shall be deemed to be in Default of this Agreement pursuant to Section 20 of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Consultant to continue performing the scope of services until such services are complete.

## **SECTION 2. SCOPE OF SERVICES.**

Consultant agrees to perform the services set forth in Exhibit "A" "Scope of Services" and made a part of this Agreement.

## **SECTION 3. ADDITIONAL SERVICES.**

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit "A" "Scope of Services," unless such additional services are authorized in advance and in writing by the City Council or City Manager of City. Consultant shall be compensated for any such additional services in the amounts and in the manner mutually agreed to by the Parties.

## **SECTION 4. COMPENSATION AND METHOD OF PAYMENT.**

(a) City agrees to pay Consultant the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement. The total compensation for the first year of this Agreement which shall be from April 1, 2008 to March 31, 2009, including reimbursement for actual expenses, shall not exceed One Hundred Nineteen Thousand Six Hundred Seventy-Six dollars (\$119,676.00), unless additional compensation is approved in writing by the Parties. City agrees to pay Consultant a monthly fee of Nine Thousand Nine Hundred Seventy Three dollars (\$9,973.00). The total compensation which shall be paid for the second year (April 1, 2009 through March 31, 2010) and third year (April 1, 2010 to March 31, 2011) is set forth in Exhibit "B". Consultant shall submit a monthly invoice for services rendered and City will process invoice for payment within ten (10) days of receipt.

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

(c) City acknowledges that it owns and operates the City transit system which is the subject of this Agreement. Operation of the City's transit system includes, but is not limited to, maintenance and upkeep of City busses and other related transit vehicles, payment of wages and other City benefits to City employees who work in the transit division, costs of fuel and other related supplies, insurance premiums and deductibles for the City's insurance regarding the transit system, uninsurable losses, judgments, settlements and awards arising from the City's operation of the transit system, and all other costs and expenses pertaining to the operation of the transit system (City's Transit System Expenses). Consultant shall not be responsible for any of the City's Transit System Expenses, but rather has been selected by the City to provide a General Manager to manage the City's transit system subject to the provisions of this Agreement. City

agrees and acknowledges that City is responsible for the City's Transit System Expenses and that this responsibility will survive the termination or expiration of this Agreement.

(d) Both City and Consultant acknowledge that funding for payments by City to Consultant under this Agreement is contingent upon City receiving sufficient yearly grant monies from the Riverside County Transportation Commission (RCTC). City agrees to use its best efforts to secure such grant monies each year during the term of this Agreement. City shall only have the obligation to make payments to the Consultant pursuant to this Agreement if City is awarded sufficient grant funding from RCTC each year during the term of this Agreement. If City is not awarded sufficient grant monies from RCTC, then this Agreement shall terminate and City shall have no obligation to make payments to Consultant under the terms of this Agreement.

#### **SECTION 5. OWNERSHIP OF DOCUMENTS.**

(a) All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. Upon completion, expiration or termination of this Agreement, Consultant shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents, but may retain copies of such materials.

(b) If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement, Consultant's guarantees and warrants related to Standard of Performance and found in Section 8 of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

#### **SECTION 6. CONSULTANT'S BOOKS AND RECORDS.**

(a) Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of services pursuant to this Agreement. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement. Any and all such documents or records shall be maintained for three years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours at City's sole cost and expense, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for

inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to the City and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

## **SECTION 7. STATUS OF CONSULTANT.**

(a) Consultant shall provide to City the services of Consultant's employee John Andoh to serve as General Manager of the City's transit system. City hereby acknowledges and approves the appointment of John Andoh as General Manager. Because John Andoh is an employee of Consultant, he will be subject to and participate in employee benefit programs and employment policies of Consultant.

(b) Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant 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.

(c) The personnel performing the services under this Agreement on behalf of Consultant shall, as an employee of Consultant, remain under Consultant's direction and control, subject to the terms of this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. 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 or employees of City.

(d) 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.

(e) The California Public Employees' Retirement System (Cal PERS) found in Government Code §§ 20000 *et seq.* or may require the payment of employee and employer contributions to a retirement fund, including but not limited to, Cal PERS. City and Consultant both acknowledge and agree that Consultant is an independent contractor as set forth more fully in Section 7 [Status of Consultant] of this Agreement and that there will be no employer or employee contributions made to a retirement fund, including but not limited to Cal PERS, in connection with this Agreement. However, 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 Cal PERS requirements.

## **SECTION 8. STANDARD OF PERFORMANCE.**

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. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement, Consultant's guarantees and warranties related to Standard of Performance shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

## **SECTION 9. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

## **SECTION 10. PREVAILING WAGE LAWS**

It is the understanding of City and Consultant that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

## **SECTION 11. NONDISCRIMINATION.**

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

## **SECTION 12. 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 willfully employ unauthorized aliens as defined therein. Should Consultant so willfully 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, 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.

## **SECTION 13. CONFIDENTIAL INFORMATION; 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 shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide 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."

(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 shall 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 thereunder. City retains the right, but has no obligation, to represent Consultant (at City's cost) 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.

## **SECTION 14. INDEMNIFICATION.**

(a) Consultant agrees to hold harmless, defend, and indemnify City against all actions, claims, or demands for injury, death, loss, or damage, by anyone whomsoever (except where such injury, death, loss, or damage was solely due to the willful acts or willful omissions of City, its agents, servants, or employees), whenever such injury, death, loss or damage is a consequence of, or arises out of the negligent acts or omissions of Consultant, its agents and employees or Consultant's breach of its obligations under this Agreement; provided, however, to

the extent any such claim, demand, loss or damage is covered by the insurance which the City is required to provide then Consultant shall have no obligation to indemnify the City as provided herein.

(b) City agrees to hold harmless, defend, and indemnify Consultant against all actions, claims, or demands for injury, death, loss or damages by anyone whomsoever (except where such injury, death, loss, or damage was solely due to the willful acts or willful omissions of Consultant, its agents, servants, or employees), whenever such injury, death, loss, damage or claim is a consequence of, or arises out of the activities or operation of the City's transit system or the breach by the City of its obligations under this Agreement; provided, however, to the extent any such claim, demand, loss or damage is covered by the insurance which the Consultant is required to provide then City shall have no obligation to indemnify the Consultant as provided herein.

(c) The provision of indemnity set forth in this Section shall not be construed to obligate a party to pay any liability, including but not limited to punitive damages, which by law would be contrary to public policy or otherwise unlawful.

#### **SECTION 15. INSURANCE.**

(a) Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. The insurance to be carried by Consultant pursuant to this Section 15(a) is solely for the purpose of insuring Consultant and its activities in the course of providing management services to the City pursuant to this Agreement. Under no circumstance shall such policies be construed as insuring the activities and operations of the City's transit system. Consultant agrees to provide City with copies of required policies upon request.

(b) City agrees to obtain and maintain, in full force and effect during the term of this Agreement, the insurance policies set forth in Exhibit "D" and made part of this Agreement. City agrees to provide Consultant with copies of required policies upon request. The insurance to be carried by City pursuant to this Section 15(b) is for the purpose of insuring the City and the Consultant and its affiliates (as an additional insured) for the activities and operations of the City's transit system.

#### **SECTION 16. ASSIGNMENT.**

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.

## **SECTION 17. CONTINUITY OF PERSONNEL.**

(a) The expertise and experience of John Andoh as the General Manager for City's transit system are material considerations for this Agreement. Therefore, Consultant agrees that it shall not remove John Andoh as the General manager for the City's transit system without the City's prior written consent. City agrees that, for a period of one (1) year after the termination for any reason of this Agreement, City shall not hire or attempt to hire John Andoh in any capacity.

## **SECTION 18. TERMINATION OF AGREEMENT.**

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.

(b) Consultant may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in Section 4 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 of this Agreement.

## **SECTION 19. 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 Section 19. 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 out of any provision of this Agreement.

## **SECTION 20. EXCUSABLE DELAYS.**

Consultant shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal,

state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

#### **SECTION 21. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit "A" "Scope of Services," shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

#### **SECTION 22. NOTICES.**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: City of Banning  
Attn: City Manager  
99 East Ramsey Street  
Banning, CA 92220

To Consultant: Professional Transit Management, Ltd.  
Attn: Tom Hock  
6405 Branch Hill Guinea Pike  
Loveland, Ohio 45140

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

#### **SECTION 23. AUTHORITY TO EXECUTE.**

The persons executing this Agreement on behalf of the Parties represent and warrant that he/she/they has/have the authority to so execute this Agreement and to bind the Parties to the performance of their obligations hereunder.

#### **SECTION 24. BINDING EFFECT.**

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

#### **SECTION 25. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Parties. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 26. 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.

**SECTION 27. LAW TO GOVERN; VENUE.**

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

**SECTION 28. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 29. ENTIRE AGREEMENT.**

This Agreement, including the attached Exhibits "A" through "C," is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other Agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other Agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the Parties or their authorized representatives.

**SECTION 30. SEVERABILITY.**

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

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

**CITY OF BANNING**

By: \_\_\_\_\_  
Brian S. Nakamura, City Manager

**ATTEST:**

\_\_\_\_\_  
Marie Calderon  
City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Julie Hayward Biggs  
City Attorney

**CONSULTANT  
PROFESSIONAL TRANSIT MANAGEMENT, LTD**

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

**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 \_\_\_\_\_ before me, \_\_\_\_\_ personally  
appeared \_\_\_\_\_,

who 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 \_\_\_\_\_ (Seal)

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

☐

INDIVIDUAL

☐

CORPORATE OFFICER

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

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

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

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

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER \_\_\_\_\_

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

#### SIGNER IS REPRESENTING:

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

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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally  
appeared \_\_\_\_\_,

who 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 \_\_\_\_\_ (Seal)

### OPTIONAL

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

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
	_____	
	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	<input type="checkbox"/> LIMITED
		<input type="checkbox"/> GENERAL
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	DATE OF DOCUMENT
	_____	
SIGNER IS REPRESENTING:		_____
(NAME OF PERSON(S) OR ENTITY(IES))		SIGNER(S) OTHER THAN NAMED ABOVE
_____		
_____		

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**I. Consultant will perform the following Services:**

- A. Provide a General Manager with the necessary management and administrative expertise to ensure efficient operation of services including scheduling of personnel on routes and other daily functions;
- B. Operate and manage existing ADA/Dial-A-Ride service at optimal levels;
- C. Operate and manage existing Fixed Route service at optimal levels;
- D. Collect all fares from passengers and submit cash revenue to the City's Finance department daily in a secure manner;
- E. Provide call center services in accordance with current business operating hours;
- F. Safety and training for all transit personnel;
- G. Coordinate fleet maintenance operations with the Fleet Maintenance Manager for proper maintenance, ensuring full operability, body-damage free, and clean vehicles;
- H. Representation at all meetings involving RCTC in which City personnel's attendance is required;
- I. Interface with RCTC regarding grants and any other matters as they arise;
- J. Provide immediate supervisory personnel response for all emergencies;
- K. Maintain cleanliness and safety of all transit facilities including bus shelters;
- L. TransTrack and data entry relating to routes, passengers and fares;
- M. Management oversight of operating budgets and related procurement functions, policies and procedures; and compliance with laws and regulations;
- N. Provide necessary management and administrative tasks and duties as appropriate to effectively supervise and manage the City's transit division.
- O. Provide a Regional Manager to travel to City each quarter to attend meetings with City regarding transit system operations.

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

- A. Complete and comprehensive annual Short Range Transit Plan;
- B. CHP annual terminal inspection, safety compliance report, and air quality reports with satisfactory ratings in all categories;
- C. Written and oral reports to City Council as necessary;
- D. Written and oral reports to TAC or Pass Transit Agency as may be necessary.

**III. During performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**

A. Monthly Operating Report to include monthly operating data as follows:

- Vehicle Revenue Hours
- Vehicle Revenue Miles
- Vehicle Productivity
- Total Vehicle Hours
- Total Vehicle Miles
- Deadhead Hours
- Deadhead Hours from Gate to First Pick-Up
- Deadhead Hours from Last Drop-Off to the Yard
- Deadhead Miles
- Scheduled Trips
- Total Trips
- Total Passengers by Fare Type
- No-Shows and Cancelled Trips on Service Day
- Missed Trips
- Average Ride Time
- On Time Performance

- All Trip Denials
- Cash Fare Receipts by Day (projected and actual)
- Wheelchair/ADA Passengers
- Odometer by Vehicle/Peak Vehicle Activity and Vehicle Failures
- Monthly Operating Report data entry into RCTC's web-based TransTrack software program
- Maintenance reports, driver manifests and/or maintenance record evaluations
- Completed accident and incident reports as well as customer comments/complaints
- Monthly billing reflecting a detailed accounting of cost broken down by FTE, the tasks being performed, and the required hours

**IV. The tangible work products and status reports will be delivered to the City pursuant to the following schedule:**

- A. Monthly Operating Reports, maintenance reports, driver manifests and/or maintenance record evaluations are due on or before the third business day of the following month;
- B. TransTrack data must be entered on or before the third business day of the following month;
- C. Completed accident and incident reports as well as customer comments/complaints within 12 hours after such written report is taken.

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

Function	Primary Responsibility	Support Role
Maintenance	City	Consultant
Transportation Operations	Consultant	City
Safety/Training	Consultant	City
Customer Service	City	Consultant (However, Consultant shall have primary responsibility for complaint resolution and related communication to the public.)

<b>Marketing</b>	Consultant	City
<b>HR/Benefits</b>	City	Consultant
<b>Labor Relations</b>	City	Consultant
<b>Accounting/Finance</b>	Consultant	City
<b>Routes/Schedules</b>	Consultant	City
<b>Planning and Grants</b>	Consultant	City

**VI. Consultant will utilize the following subcontractors to accomplish the Services:**

None

**VII. AMENDMENT**

The Scope of Services, including services, work products, and personnel, are subject to change by mutual Agreement. In the absence of mutual Agreement regarding the need to change any aspects of performance, Consultant shall comply with the Scope of Services as indicated above.

**EXHIBIT "B"**  
**COMPENSATION**

- I. The total compensation for the first year (April 1, 2008 to March 31, 2009) for the services rendered pursuant to this Agreement shall not exceed \$119,676 per year, as provided in Section 4 of this Agreement. Monthly payment of \$9,973 shall be made by City to Consultant according to the requirements of Section 4 of this Agreement.**
- II. The total compensation for the second year (April 1, 2009 to March 31, 2010) for the services rendered pursuant to this Agreement shall not exceed \$124,032. Monthly payment of \$10,336 shall be made by City to Consultant according to the requirements of Section 4 of this Agreement.**
- III. The total compensation for the third year (April 1, 2010 to March 31, 2011) for the services rendered pursuant to this Agreement shall not exceed \$128,532. Monthly payment of \$10,711 shall be made by City to Consultant according to the requirements of Section 4 of this Agreement.**
- IV. City agrees to reimburse Consultant for all reasonable travel and lodging expenses incurred by Consultant's Regional Manager and other staff while traveling to quarterly meetings with City. The travel and lodging expenses incurred by Consultant's Regional Manager shall not exceed \$1,500 per quarter. However, the Parties shall annually review the limit of \$1,500 beginning on the first anniversary of this Agreement and make mutually agreeable adjustments to such limit based on changes in the cost of traveling.**
- V. City agrees to pay a one-time relocation fee, not to exceed \$5,000, for Consultant's Project Manager. However, this relocation fee shall be due and payable by City on April 1, 2009 only if John Andoh is still the General Manager on that date. If John Andoh is not the General Manager on April 1, 2009, then City shall have no obligation to pay the one-time relocation fee.**

**EXHIBIT "C"**  
**CONSULTANT'S INSURANCE**

A. Insurance Requirements. Consistent with the provisions of Section 15(a) of the Agreement, Consultant shall provide and maintain the insurance described below in full force and effect throughout the term of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Consultant shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

2. Minimum Limits of Insurance. Consultant shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 for bodily injury, personal injury and property damage, combined single limit.

(2) Automobile Liability: \$1,000,000 for bodily injury and property damage, combined single limit.

(3) Excess Liability: Excess liability coverage in the amount of \$5,000,000 over the primary limits.

(4) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

(5) Employment Practices Liability Insurance: Employment practices liability insurance with coverage limits of \$1,000,000.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Policies. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either

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Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.

2. General Liability and Automobile Liability Coverages.

(1) City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; 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, or employees.

(2) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

C. Other Requirements. Consultant agrees to deposit with City, at or before the effective date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that Consultant furnish City with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Any deductibles or self-insured retentions must be declared to and approved by City.

2. The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement

**EXHIBIT "D"**  
**CITY'S INSURANCE**

A. Insurance Requirements. Consistent with the provisions of Section 15(b) of this Agreement City shall provide and maintain the insurance described below in full force and effect throughout the term of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. City shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons engaged in the operation of or providing services to the City's transit system.

(4)

2. Minimum Limits of Insurance. Consultant shall maintain limits of insurance no less than:

(1) General Liability: \$5,000,000 for bodily injury, personal injury and property damage, combined single limit.

(2) Automobile Liability: \$5,000,000 for bodily injury and property damage, combined single limit.

(3) Excess Liability: Excess liability coverage in the amount of \$5,000,000 over the primary limits.

(4) ~~Workers' Compensation and Employer's Liability:~~ Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of not less than \$5,000,000 per accident.

(5) Employment Practices Liability Insurance: Employment practices liability insurance with coverage limits of \$5,000,000.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Policies. Each insurance policy required by this Agreement shall be endorsed and state that coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to Consultant.

2. General Liability and Automobile Liability Coverages.

(1) Consultant, and its respective officers, agents employees and affiliates are to be covered as additional insureds as respects: liability arising out of the activities and operations of the City's transit system; products and completed operations of the City's transit system; premises owned, occupied or used by the City's transit system; or automobiles owned, leased, hired or borrowed by the City's transit system. The coverage shall contain no special limitations on the scope of protection afforded to Consultant, and its respective officers, agents, or employees.

(2) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Consultant, and its respective officers, agent, or employees.

3. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against Consultant, and its officers, employees and agents for losses arising from work performed by City or the operation of the City's transit system.

C. Other Requirements. City agrees to deposit with Consultant, at or before the effective date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Consultant reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Any deductibles or self-insured retentions must be declared to and approved by Consultant.

2. The procuring of such required policy or policies of insurance shall not be construed to limit City's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

3. The cost of all insurance and any and all deductibles under such policies shall be a Transit System Expense of the City.

**CITY COUNCIL AGENDA  
REPORTS OF OFFICERS**

**Date:** March 25, 2008

**TO:** City Council

**FROM:** Bonnie Johnson, Finance Director

**SUBJECT:** Discussion and possible action regarding amending the scope of services for the professional services contract with Godbe Research to incorporate the public education and pre-electoral planning elements related to a possible revenue generating ballot measure

**RECOMMENDATION:**

1. "The City Council provide direction to staff on whether or not to proceed to Phase II of the ballot measure process."
2. If the Council desires to move into Phase II of the ballot measure process the following motions are recommended:
  - "The City Council of the City of Banning adopt Resolution 2008-29 amending the scope of services for the professional services contract with Godbe Research to incorporate the public education and pre-electoral planning elements of the project (Phase II) and approve an additional appropriation in the amount of \$47,500 to fund the contract."
  - "The City Council of the City of Banning hereby directs staff to work with the City's ballot measure consultants regarding public education and pre-electoral planning for the following ballot measure(s) (ideally Council would pick one): increase in Transient Occupancy Tax rate (TOT), increase in sales tax one-quarter or one-half cent, or implementation of a warehouse tax."

**JUSTIFICATION:** On November 27, 2007 the Council approved Phase I, the research and polling phase, of the above referenced contract. That phase is now complete. The results were presented at the March 5<sup>th</sup> Council meeting.

**BACKGROUND & ANALYSIS:** As reported to Council in its July 10, 2007 workshop, for the past three years, the City's General Fund expenditures would have exceeded the General Fund revenues if there had not been one-time revenue sources and/or one-time salary savings from vacant positions to offset this. One-time revenue has included such sources as supplemental property taxes, certain development related fees, grants and cancellation of reserves such as the PERS reserves and equipment reserve. Although the City has managed to maintain, and in some instances increase, service levels by utilizing these one-time moneys, the overall trend should not be ignored.

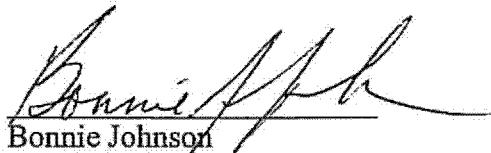
In response to the trend, the City Council directed staff to begin exploring possible revenue generating ballot measures and bring forward a recommendation for a consultant to aid the City with its research, planning and public education. On November 27, 2007 the Council approved the team of Godbe

Research and Tramutola to conduct polling and research (Phase 1). That work has been completed. A detailed presentation was made at the March 5<sup>th</sup> Council meeting.


If the Council should elect to go forward with Phase II of the project, staff will also need direction on which possible revenue measure(s) the Council would like to pursue. Exhibit "A" to this report shows estimated revenue generation from each of the three ballot measure types.

**FISCAL IMPACT:** If approved, an additional appropriation from General Fund reserves in the amount of \$47,500 will be necessary to fund Phase II of the professional services agreement with the team of Godbe Research/Tramutola for ballot measure consulting services. The current General Fund reserve is estimated at \$5,995,102.

**RECOMMENDED BY:**

  
Bonnie Johnson  
Finance Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**City of Banning  
Revenue Generating Options  
Estimated Potential Revenue**

**Estimated  
Annual  
ADDITIONAL  
Revenue**

**Transaction Tax**

Assumptions:

- |   |    |           |
|---|----|-----------|
| 1) increase sales tax equal to 1/4 cent | \$ | 635,000   |
| 2) Increase sales tax equal to 1/2 cent | \$ | 1,270,000 |

**Transient Occupancy Tax**

Assumptions:

- |  |    |         |
|--|----|---------|
| 1) Raise tax from 6% to 12%                          | \$ | 520,000 |
| 2) Current annual budget is \$195,000                |    |         |
| 3) with new/proposed activity will rise to \$520,000 |    |         |

**Warehouse/Mini-Storage Tax**

Assumptions:

- |   |   |
|---|---|
| 1) Tax based on .05 or .10 per sq. ft.                | \$18,620 to \$37,340 (existing)           |
| 2) Existing sq. ft. approx. = 372,350 sq. ft.         |   |
| 3) Proposed new sq. ft. approx. = 4.4 million sq. ft. |   |
| 4) existing and new taxed equally                     |   |
| 4) assumes building of all new that is proposed       | \$238,620 to \$477,240 (all new approved) |

**RESOLUTION NO. 2008-29**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT WITH GODBE RESEARCH TO INCORPORATE THE PUBLIC EDUCATION AND PRE-ELECTORAL ELEMENTS OF THE PROJECT (PHASE II) AND APPROVE AN ADDITIONAL APPROPRIATION IN THE AMOUNT OF \$47,500 TO FUND THE CONTRACT**

**WHEREAS**, the City currently has a structural deficit in its General Fund; and

**WHEREAS**, the City's General Fund pays for many of the vital City services that our citizens enjoy and rely upon; and

**WHEREAS**, the City is exploring cost saving measures and well as revenue enhancement measures; and

**WHEREAS**, the City is considering a future revenue ballot measure and desires the expertise of a consultant to conduct initial research, planning and public education;

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

1. Amend the professional services contract with Godbe Research and Tramutola in an amount not to exceed \$47,500 for Phase II services related to public education and pre-electoral planning related to a possible future ballot measure.
2. Authorize the Finance Director to make the necessary budget adjustments and appropriation to account no. 001-1200-412.33-11 in the amount of \$47,500.
3. Authorize the Mayor to execute the amended agreement with Godbe Research and Tramutola.

**PASSED, APPROVED AND ADOPTED** this 25th day of March, 2008.

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Brenda Salas, Mayor  
City of Banning

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APPROVED AS TO FORM AND  
LEGAL CONTENT:

Burke, Williams & Sorenson, LLP  
City Attorney

ATTEST:

Marie A. Calderon, City Clerk  
City of Banning

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-29 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 25th day of March, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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