

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

September 11, 2012
5:00 p.m.

Banning Civic Center
Council Chambers

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

Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Invocation
- Pledge of Allegiance
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Robinson

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONSENCE

PUBLIC COMMENTS – On Items Not on the Agenda

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

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

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

IV. CONSENT ITEMS

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

Motion: That the City Council approve Consent Item 1 through 8

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

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

1.	Accept Grant of Easement from Lennar Homes of California, Inc., APN 537-110-006 for Sunset Avenue Grade Separation Project.....	1
2.	Resolution No. 2012-72, “Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-012-2012 (D), ‘Taxiway ‘A’ Relocation – Phase 1B Relocation of the Fueling Facility”.....	8
3.	Resolution No. 2012-73, “Approving an Amendment to the Professional Services Agreement with C&S Engineers, Inc. for Design Services at the Banning Municipal Airport.....	18
4.	Resolution No. 2012-71, “Accepting Community Development Block Grant Program Funds for Fiscal Year 2012-2013”.....	29
5.	City Council Resolution No. 2012-69, Approving the Phase II Renewable Development Agreement between SCPPA and the City of Banning.....	64
6.	Resolution No. 2012-70 Approving the Local and System Resource Adequacy Capacity Purchase Agreement with Shell Energy North America for Calendar Year 2013.....	180
7.	Notice of Completion for “Project 2012-02EL Photovoltaic Power System Engineering Services”.....	188
8.	Resolution No. 2012-65, Approving the Banning Electric Utility Power Content Label.....	192

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

VI. PUBLIC HEARING/REPORTS OF OFFICERS

(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)

1.	Amendment to Municipal Code Chapter 8.44 related to Noise Exemptions Staff Report.....	195
	Recommendation: That the City Council adopt Ordinance No. 1454 amending the Municipal Code Chapter 8.44 to provide noise exemptions for projects or activities that are designed to protect the long-term health, safety, and welfare of the community.	
2.	Amendment to Municipal Code Chapter 8.48 regarding Reasonable Time Frame for Notice of Violation of the Municipal Code and Zoning Code and Minor Code Clean-up Staff Report.....	207
	Recommendation: That the City Council adopt Ordinance No. 1455 amending the Municipal Code Chapter 8.48 regarding reasonable time frame for providing a notice of violations of the Municipal and Zoning Codes to the owners of property in the City of Banning and also minor clean-up to Chapter 8.48.	

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

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

VIII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

- policy on proclamations

IX. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 8 a.m. to 5 p.m.

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

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

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

CITY COUNCIL AGENDA

CONSENT ITEM

TO: City Council
FROM: Kahono Oei, City Engineer
SUBJECT: Accept Grant of Easement from Lennar Homes of California, Inc., APN 537-110-006 for Sunset Avenue Grade Separation Project

RECOMMENDATION: Accept the Grant of Easement from Lennar Homes of California, Inc., Assessor's Parcel Number 537-110-006, for Sunset Avenue Grade Separation, and direct the City Clerk to accept and record said easement. The parcel is described in the attached Exhibit "A" and "B".

JUSTIFICATION: It is essential that the City accept the easement, as described and shown on the attached Exhibit "A" and Exhibit "B", respectively, in order for the city to be able to construct the Sunset Avenue Grade Separation Project.

BACKGROUND: The City, with the assistance of the Riverside County Transportation Department, has completed the design of Sunset Avenue Grade Separation Project. In order to be able to complete the project, the City needs the easement from Lennar Homes of California and the developer has agreed to dedicate said easement to the City as shown attached herewith as Exhibit "A" and "B".

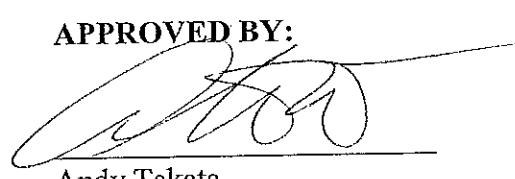
FISCAL DATA: Riverside County Transportation Department has negotiated the cost of the easement and it is being included as part of the Sunset Avenue Grade Separation Project.

RECOMMENDED BY:

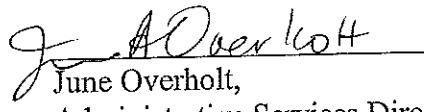


Duane Burk,
Director of Public Works

APPROVED BY:

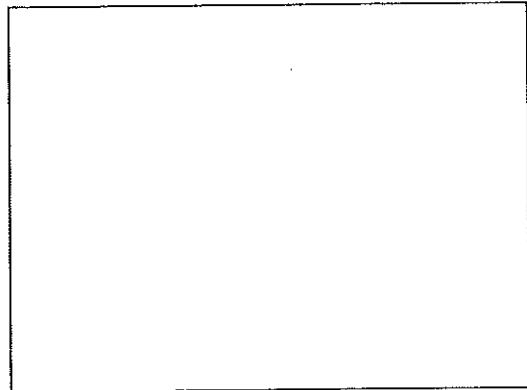


Andy Takata,
City Manager


June Overholt,
Administrative Services Director/
Assistant City Manager

When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Grant of Easement, as attached herein as Exhibit "A" and Exhibit "B" to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2012

CITY OF BANNING, A Municipal Corporation

By _____
City Clerk

Recorded at request of and return to:

City of Banning
City Clerk
99 E. Ramsey Street
Banning, CA 92220

FREE RECORDING
This instrument is for the benefit of
the City of Banning, and is
entitled to be recorded without fee.
(Govt. Code 6103)

CO:ra/040412/310TR/14.798

(Space above this line for Recorder's use)

PROJECT: Sunset Avenue Grade
Separation
PARCEL: 0529-001A
APN: 537-110-006 (portion)

EASEMENT DEED

FOR GOOD AND VALUABLE CONSIDERATION, receipt and adequacy of which are
hereby acknowledged,

**Lennar Homes of California, Inc., a California Corporation, as to a twenty five
percent (25%) undivided interest, and MSD Sunset Crossroads, LLC, a Delaware
limited liability company, as to a seventy five percent (75%) undivided interest**

Grant(s) to the City of Banning, a Municipal Corporation, an easement for public road and
utility purposes, including drainage purposes, over, upon, across and within the real
property in the City of Banning, County of Riverside, State of California, as more
particularly described as:

See Exhibits "A" and "B" attached hereto
and made a part hereof

PROJECT: Sunset Avenue Grade Separation

PARCEL: 0529-001A

APN: 537-110-006 (portion)

Dated: _____

GRANTOR:

Lennar Homes of California, Inc., a California Corporation, as to a twenty five percent (25%) undivided interest

By: Greg McGuff
Name: Greg McGuff
Its: Vice President

MSD Sunset Crossroads, LLC, a Delaware limited liability company, as to a seventy five percent (75%) undivided interest

By: Janice Boyle
Name: Janice Boyle
Its: Notary Public

STATE OF CALIFORNIA

COUNTY OF Riverside

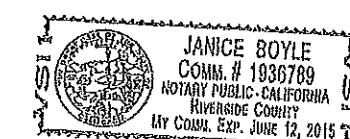
)
)ss
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On MAY 29, 2012, before me, JANICE BOYLE, a Notary Public in and for said County and State, personally appeared Greg McGuff, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within 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 Janice Boyle



[SEAL]

STATE OF CALIFORNIA

COUNTY OF Los Angeles

)
ss
)

On 16 June 2012, before me, Nancy Jane Saunders, a Notary Public in and for said County and State, personally appeared Alan Epstein, 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]

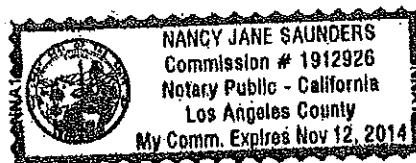


EXHIBIT "A"
SUNSET AVENUE (GRADE SEPARATION)
LEGAL DESCRIPTION
0529-001A

BEING A PORTION OF PARCEL 1 OF PARCEL MAP NUMBER 25541 ON FILE IN BOOK 166, PAGES 27 THROUGH 35, INCLUSIVE, OF PARCEL MAPS, RECORDS OF THE RECORDER OF RIVERSIDE COUNTY, CALIFORNIA IN THE CITY OF BANNING, CALIFORNIA WITHIN THE SOUTHEAST ONE-QUARTER OF SECTION 7, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID PARCEL 1, BEING THE POINT OF INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF SUNSET AVENUE (VARIABLE HALF-WIDTH) AS DESCRIBED BY GRANT DEED RECORDED AUGUST 3, 1982 AS INSTRUMENT NUMBER 132985, OFFICIAL RECORDS OF SAID RECORDER AND THE SOUTHERLY LINE OF THE EXISTING SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY (200.00 FOOT WIDTH) PER ACT OF CONGRESS RECORDED MARCH 3, 1871, SHOWN AS PARCEL 4 ON STATE BOARD OF EQUALIZATION MAP NUMBER 872-33-10, ON FILE IN SAID OFFICE OF THE COUNTY SURVEYOR;

THENCE S 01°49'01" E ALONG THE EASTERLY LINE OF SAID PARCEL 1 AND SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 289.53 FEET;

THENCE LEAVING SAID WESTERLY LINE OF PARCEL 1 N 04°17'11" W, A DISTANCE OF 192.20 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2,050.78 FEET;

THENCE NORtherly along said tangent curve through a central angle of 02°46'43", an arc distance of 99.45 feet to a point of intersection with said southerly line of the existing southern pacific railroad right-of-way, said point being the beginning of a non-tangent curve, concave northerly, having a radius of 5,829.03 feet and an initial radial bearing of S 08°53'29" W;

THENCE EASTERLY ALONG SAID SOUTHERLY LINE AND SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 00°06'06", AN ARC DISTANCE OF 10.34 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,742 SQUARE FEET, OR 0.040 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.000106481 TO OBTAIN GROUND DISTANCE.

REFERENCE IS HEREBY MADE TO RIVERSIDE COUNTY MAP NUMBER 956-1, ON FILE IN THE OFFICE OF THE COUNTY SURVEYOR OF RIVERSIDE COUNTY, CALIFORNIA.

SEE ATTACHED EXHIBIT "B"

APPROVED BY: Timothy F. Ray

DATE: 1/19/2012

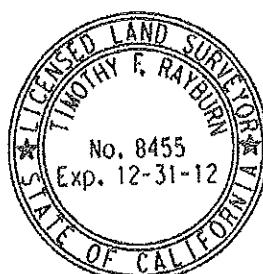
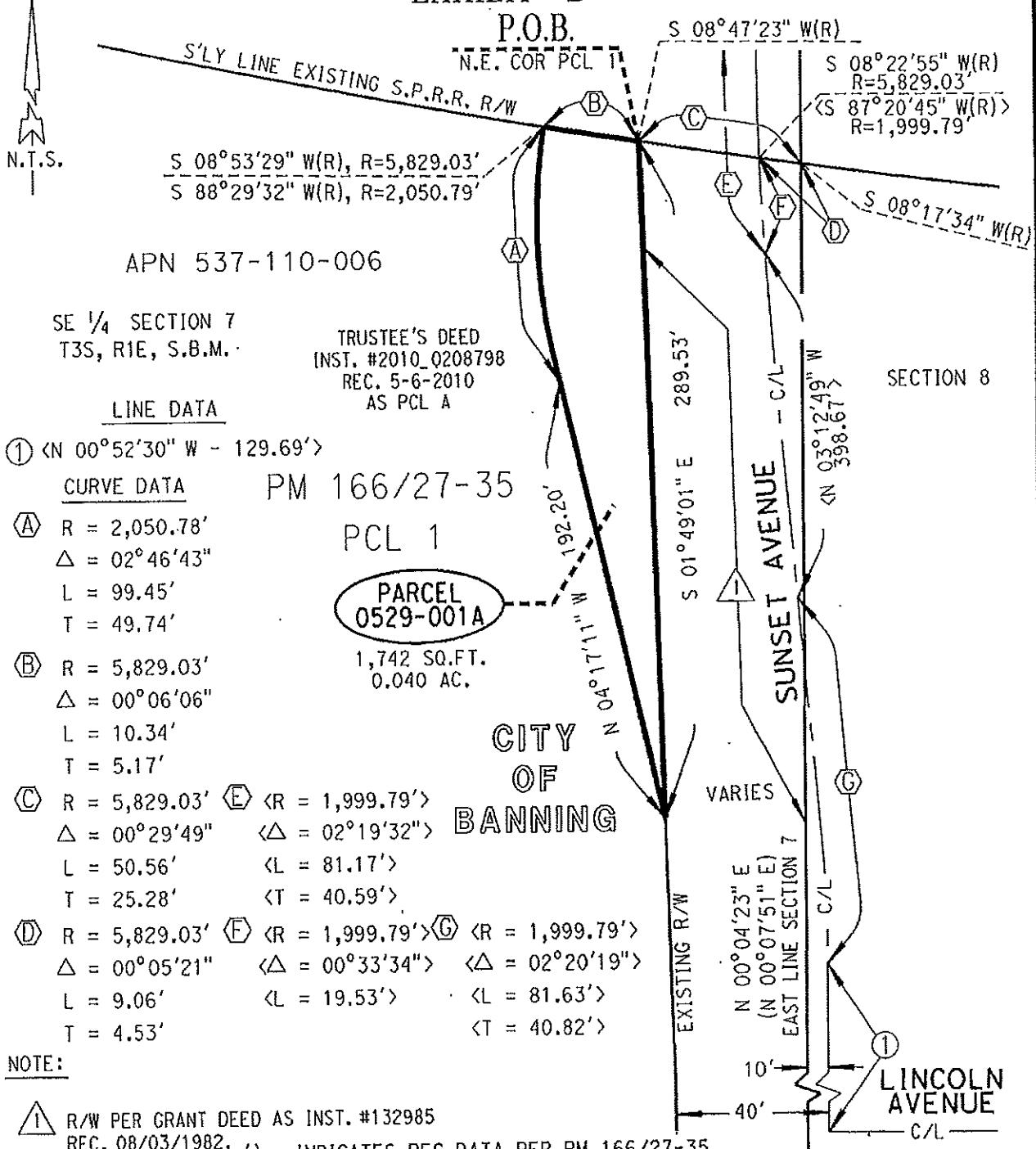


EXHIBIT "B"

P.O.B.

N.E. COR PCL 1



ALL DISTANCES SHOWN ARE GRID DISTANCES. GROUND DISTANCES MAY BE OBTAINED BY MULTIPLYING THE GRID DIST. BY A COMBINATION FACTOR OF 1.000106481.	PAR. NO.: 0529-001A
COUNTY OF RIVERSIDE TRANSPORTATION DEPT., SURVEY DIV.	PREPARED BY: BCIII
PROJECT: SUNSET AVENUE (GRADE SEPARATION)	SCALE: N.T.S.
THIS PLAT IS AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE PRECEDING DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DESCRIPTION.	DATE: JANUARY, 2012
	W.O. NO.: CO-0259
	SHEET 1 OF 1

APPROVED BY: *Timothy Ray* DATE: 1/19/2012

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CITY COUNCIL AGENDA

Date: September 11, 2012

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2012-72, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-012-2012 (D), 'Taxiway 'A' Relocation - Phase 1B Relocation of the Fueling Facility'"

RECOMMENDATION:

- I. Adopt Resolution No. 2012-72, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-012-2012 (D), 'Taxiway 'A' Relocation – Phase 1B Relocation of the Fueling Facility'".
- II. Authorize the City Manager to execute the Grant Agreement Offer and subsequent Grant Agreement with the Federal Aviation Administration.
- III. Authorize the Administrative Services Director to make the necessary budget adjustments to record the grant revenue into the Airport Fund.

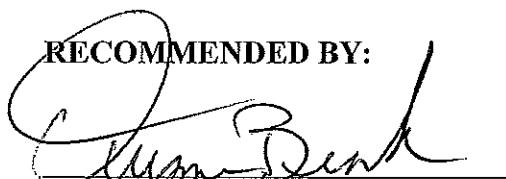
JUSTIFICATION: City Council's authorization is essential in order to obtain and utilize Federal funds for AIP Project No. 3-06-0018-012-2012(D), "Taxiway 'A' Relocation – Phase 1B Relocation of the Fueling Facility" at the Banning Municipal Airport..

BACKGROUND: On September 13, 2011, the City Council adopted Resolution No. 2011-78, "Approving the AIP Grant Agreement Offer from the FAA for AIP Project No. 3-06-0018-11-2011(D), 'Taxiway 'A' Relocation' for the design of the Taxiway "A" Relocation project at the Banning Municipal Airport. Currently, Taxiway "A" is 200 feet from the centerline of Runway 8/26. Given the ARC B-II designation of Runway 8/26, FAA regulations require that Taxiway "A" be a minimum of 240 feet away from the runway centerline. The scope of work for this project includes the relocation of approximately 4,211 feet of the existing 40-foot wide asphalt concrete Taxiway "A". The project will also include new taxiway lighting, signage and striping to meet FAA marking and lighting standards and will include upgrades to the existing electrical vault to accommodate the new taxiway lighting and signage.

During the design process it was determined that by relocating the taxiway to the south from its current location would result in the placement of the existing fueling station within the Taxiway Object Free Area ("TOFA"). This becomes a non-compliance issue with FAA standards as well as a possible safety issue. Staff met with FAA who agreed to grant the City additional grant funds to design the relocation of the fueling facility. The grant agreement offer, as shown in Exhibit "A", is for an amount equal to ninety percent (90%) of the design costs up to \$93,600.00

FISCAL DATA: As part of the Grant Agreement, FAA will reimburse the City ninety percent (90%) of the design costs up to \$93,600.00. The City is required to fund the remaining design costs and other miscellaneous expenses. The remaining costs will be funded using the Airport Fund which has an estimated balance of \$213,653.00. The estimated total cost of the design project will be \$104,000.00. Assuming the full amount of the grant is reimbursed, the remaining cost to be funded by the City of Banning is for an amount of \$10,400.00. Staff will soon submit a matching grant application to the Department of Transportation which could reduce the City's FAA grant match by \$5,200.00.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-72

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING THE AIRPORT IMPROVEMENT PROGRAM GRANT
AGREEMENT OFFER WITH THE FEDERAL AVIATION ADMINISTRATION FOR
AIP PROJECT NO. 3-06-0018-012-2012(D), TAXIWAY "A" RELOCATION - PHASE 1B
RELOCATION OF THE FUELING FACILITY**

WHEREAS, the Banning Municipal Airport Master Plan Update was submitted to the County of Riverside Airport Land Use Commission (ALUC) in June of 2007 and found to be consistent with the 2004 Banning Airport Land Use Compatibility Plan and therefore approved; and

WHEREAS, the Airport Master Plan took inventory of current conditions of the airport's infrastructure and recommended alternatives for airside and landside facility improvements at the airport which consequently developed the Airport Improvement Program (AIP) which included the Taxiway "A" Relocation project in order to meet current Federal Aviation Administration (FAA) standards; and

WHEREAS, in June of 2012, the Public Works Department, Engineering Division, submitted a grant request to the FAA to design the Taxiway "A" Relocation - Phase 1B Relocation of the Fuel Facility project; and

WHEREAS, FAA staff evaluated the proposed project and offered and agreed to pay ninety percent (90%) of the allowable costs up to \$93,600.00 for design of the Taxiway "A" Relocation - Phase 1B Relocation of the Fueling Facility project.

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

- Section 1.** City Council adopts Resolution No. 2012-72, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-12-2012(D), 'Taxiway 'A' Relocation - Phase 1B Relocation of the Fuel Facility.'"
- Section 2.** The City Manager is authorized to execute the Grant Agreement Offer and upcoming Grant Agreement with the Federal Aviation Administration
- Section 3.** The Administrative Services Director is authorized to make the necessary budget adjustments to record the grant revenue into the Airport Fund.

PASSED, APPROVED, AND ADOPTED this 11th day of September, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-72, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of September, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning

EXHIBIT “A”
GRANT AGREEMENT OFFER



GRANT AGREEMENT

U. S. Department of Transportation
Federal Aviation Administration
AUG 22 2012

Date of Offer: **Recipient:** City of Banning (Herein called "Sponsor")
Project Number: 03-06-0018-012-2012
DUNS Number: 099169823
Airport: Banning Airport

OFFER

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States' share, ninety percent (90%) of the allowable costs incurred in accomplishing the project consisting of the following:

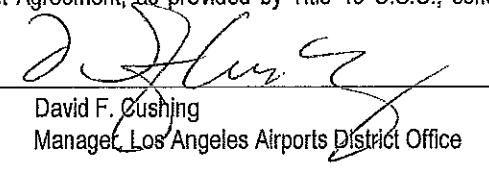
"Relocate Taxiway, phase IB (design only) for the relocation of the existing fuel storage tank"

as more particularly described in the Project Application dated 06/07/2012

The maximum obligation of the United States payable under this Offer shall be \$93,600 for airport development, \$0 for noise program implementation, \$0 for land, and \$0 for planning.

This offer is made in accordance with and for the purpose of carrying out the provisions of Title 49, United States Code, herein called Title 49 U.S.C. Acceptance and execution of this offer shall comprise a Grant Agreement, as provided by Title 49 U.S.C., constituting the contractual obligations and rights of the United States and the Sponsor.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION



David F. Cushing
Manager, Los Angeles Airports District Office

SPECIAL CONDITIONS

See Attachment A

ACCEPTANCE

The Sponsor agrees to accomplish the project in compliance with the terms and conditions contained herein, in the Project Application, and in the "Terms and Conditions of Accepting Airport Improvement Program Grants" signed on 08/10/2011

Option #1

Signature

Date

On this _____ day of _____, 2012, before me appeared (name) _____ to me personally known, who, being duly sworn, did execute the foregoing affidavit and did state that he or she was properly authorized by (name of sponsor) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public (Seal/Stamp)

Commission Expires

Option #2

I declare under penalty of perjury that the foregoing is true and correct.*

Signature

Date

*Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both

Name of Sponsor

Signature of Sponsor's Designated Official Representative

(SEAL)

Attest: _____

Name of Sponsor's Designated Official Representative

Title: _____

Title of Sponsor's Designated Official Representative

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify: That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of California. Further, I have examined the foregoing Grant Agreement, and the actions taken by said Sponsor relating thereto, and find that the acceptance thereof by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of California and Title 49 U.S.C. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Executed this _____ day of _____, 2012

Signature of Sponsor's Attorney

ATTACHMENT A: SPECIAL CONDITIONS

1. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **September 14, 2012**, or such subsequent date as may be prescribed in writing by the FAA.
2. **GRANT ASSURANCES** The attached Airport Sponsor Grant Assurances, dated 4/2012, replace the ones included in the "Terms and Conditions of Accepting Airport Improvement Program Grants" signed on 08/10/2011.
3. **FAA Advisory Circulars:** The attached updated listing of Current FAA Advisory Circulars required for AIP projects, dated 1/25/2012, replace the ones included in the "Terms and Conditions of Accepting Airport Improvement Program Grants" signed on 08/10/2011
4. **CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS:**

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System

(DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"). A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

CITY COUNCIL AGENDA

DATE: September 11, 2012

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2012-73, "Approving an Amendment to the Professional Services Agreement with C&S Engineers, Inc. for Design Services at the Banning Municipal Airport"

RECOMMENDATION:

- I. Adopt Resolution No. 2012-73, "Approving an Amendment to the Professional Services Agreement with C&S Engineers, Inc. for Design Services at the Banning Municipal Airport.
- II. Authorize the Administrative Services Director to make necessary adjustments and appropriations in an amount of \$88,824.00 from the Airport Fund to Account No. 600-5100-435.33-11 to fund the amendment to the Professional Services Agreement with C&S Engineers, Inc.
- III. Authorize the City Manager to execute the amendment to the Professional Services Agreement with C&S Engineers, Inc. of San Diego, California.

JUSTIFICATION: The approval of the amendment is necessary in order to design the Taxiway "A" Relocation – Phase 1B Relocation of the Fueling Facility" project.

BACKGROUND: On September 13, 2011, City Council adopted Resolution No. 2011-78, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-11-2011(D), 'Taxiway 'A' Relocation'" as well as Resolution No. 2011-79, "Awarding a Professional Services Agreement to C&S Engineers, Inc. for Design Services at the Banning Municipal Airport". As part of the Grant Agreement adopted under Resolution No. 2011-78, the FAA will reimburse the City ninety-five percent (95%) of the design costs up to \$193,922.00. The professional services contract awarded under Resolution No. 2011-79 is for an amount not to exceed \$200,128.00.

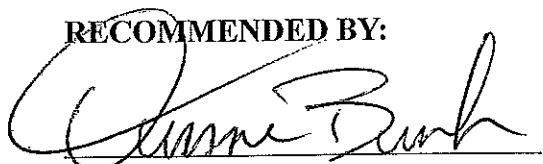
The scope of work under the existing contract is to design the relocation of approximately 4,211 feet of the existing 40-foot wide asphalt concrete Taxiway "A" including lighting, signage and striping. During the design process it was determined that by relocating the taxiway to the south from its current location would result in the placement of the existing fueling station within the Taxiway Object Free Area ("TOFA"). This becomes a non-compliance issue with FAA standards as well as a possible safety issue. Staff met with FAA who agreed to grant the City additional

grant funds to design the relocation of the fueling facility. The grant agreement offer is for an amount equal to ninety percent (90%) of the design costs up to \$93,600.00.

FISCAL DATA: The total contract with C & S Engineers, Inc. for Professional Services related to Taxiway "A" Relocation project at the airport currently amounts to \$200,128.00. The amendment for the additional services is for an amount equal to \$88,824.00 as shown in Exhibit "A", which would bring the total contract amount to \$288,952.00. Staff respectfully requests an appropriation in the amount of \$88,824.00 from the Airport Fund to Account No. 600-5100-435.33-11 in order to fund the Amendment to the Professional Services Agreement.

Staff has also prepared Resolution No. 2012-72, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-012-2012 (D), 'Taxiway 'A' Relocation – Phase 1B Relocation of the Fueling Facility'". As part of the grant agreement, FAA will reimburse the City 90% of the design costs up to \$93,600.00.

RECOMMENDED BY:



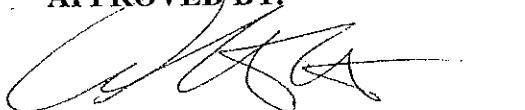
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-73

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
WITH C&S ENGINEERS, INC. FOR DESIGN SERVICES AT THE BANNING
MUNICIPAL AIRPORT**

WHEREAS, on September 13, 2011, City Council adopted Resolution No. 2011-78, “Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-11-2011(D), ‘Taxiway ‘A’ Relocation’” as well as Resolution No. 2011-79, “Awarding a Professional Services Agreement to C&S Engineers, Inc. for Design Services at the Banning Municipal Airport”; and

WHEREAS, the scope of work under the proposed contract with C&S Engineers, Inc. is to design the relocation of approximately 4,211 feet of the existing 40-foot wide asphalt concrete Taxiway “A” including lighting, signage and striping; and

WHEREAS, during the design process it was determined that by relocating the taxiway to the south from its current location would result in the placement of the existing fueling station within the Taxiway Object Free Area (“TOFA”) which is a non-compliance issue with FAA standards as well as a possible safety issue; and

WHEREAS, staff met with FAA who agreed to grant the City additional grant funds to design the relocation of the fueling facility in an amount equal to ninety percent (90%) of the design costs up to \$93,600.00; and

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

Section 1 City Council adopts Resolution No. 2012-73 approving an amendment to the Professional Services Agreement with C&S Engineers, Inc. of San Diego, California in an amount “Not to Exceed” \$88,824.00.

Section 2 The Administrative Services Director is authorized to make necessary budget adjustments and appropriations from the Airport Fund to Account No. 600-5100-435.33-11 in an amount of \$88,824.00.

Section 3 The City Manager is authorized to execute the amendment to the Professional Services Agreement with C&S Engineers, Inc. of San Diego, California. This authorization will be rescinded if the amendment is not executed by the parties within sixty (60) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 11th day of September, 2012.

Don Robinson, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

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

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. 2012-73, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of September, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT "A"
AMENDMENT NO. 1



**AMENDMENT NO. 1
to
WORK ORDER NO. 1**

C&S Companies
2020 Camino del Rio, North
Suite 1000
San Diego, CA 92108
p: (619) 296-9373
f: (619) 296-5683
www.cscos.com

TO: Duane Burk, Director of Public Works
City of Banning

RE: City of Banning Taxiway 'A' Relocation

FILE: D55.005.004

1. AUTHORIZATION REQUEST:

In conformance to your instructions, and in accordance with the Agreement between the City of Banning (SPONSOR) and C&S Engineers, Inc. (CONSULTANT) for providing professional services, we enclose two (2) originals of our request for authorization to furnish professional services in connection with the Banning Municipal Airport.

2. DESCRIPTION OF SERVICES:

See attached Schedule 'A' Scope of Work and Schedule 'B' Fee attached hereto.

3. SPONSOR'S RESPONSIBILITIES:

SPONSOR shall provide a written response (either authorizing or denying) within two business days of a request by CONSULTANT to provide services.

4. PERIOD OF SERVICES:

This work order shall be in effect for one year from the date of execution or when the fee total is expended, whichever comes first.

5. PAYMENTS:

Payments shall be made on a Lump Sum basis in accordance with the Agreement. The Lump Sum Fee for this work order is **\$88,824.00**.

6. GENERAL CONSIDERATIONS:

The CONSULTANT designates Cory Hazlewood as the person who will be responsible for coordinating the services rendered by the CONSULTANT for the Project.

Your signature, in the space provided below, will signify approval of the terms and conditions of this request which, together with the basic Agreement and Attachments identified below will constitute Amendment No. 1 to Work Order No. 1.

Please return this executed Work Order, which shall constitute your authorization to proceed, to our office together with the executed attachments.

Very truly yours,

SPONSOR:

CITY OF BANNING

By: _____
Duane Burk

Title: Director of Public Works

Dated: _____

CONSULTANT:

C&S ENGINEERS, INC.

By: Cory Hazlewood
Cory Hazlewood

Title: Department Manager

Dated: 9.4.12

SCHEDULE A
AMENDMENT NO. 1 TASK ORDER NO. 1
SCOPE OF SERVICES

Project Title: Aviation Fuel Facility Replacement

Airport Name: Banning Municipal Airport

Services Provided: Design

Project Description:

The CONSULTANT shall provide required Environmental Planning and Engineering Design Services for the design of the Aviation Fuel Facility Replacement project (the "Project").

This project generally includes the following elements:

- Incorporate plans, specifications and estimate of the new fuel facility into the Taxiway 'A' Relocation Project as an add alternate bid item to the contract documents to have one set of contract documents.
- ALP Update (pen and ink change)
- Prepare air permit application.
- Prepare SPCC
- Supplemental Topographic Survey
- Removal and disposal of an existing 10,000-gallon underground storage tank (UST) system and the dispensing station, and restoration of surfaces.
- Construction of a 10,000-gallon, 100 low lead aviation gasoline (100 LL Avgas) aboveground storage tank (AST) system. The storage tank system will consist of a shop fabricated, pre-engineered tank with an attached pump and filter house that contains the mechanical and electrical systems necessary to meet the functional and performance requirements. The storage tank system will be designed with appropriate fire protection, environmental protection, and fuel quality elements as required by code or as desired.
- Site work will include concrete foundation, protective bollards, grading and drainage, restoration of surfaces, site lighting, and related electrical.
- The storage tank system will be configured to allow for self-service fueling of aircraft via over-wing fueling system with a single credit card reader.
- Provide engineering design for CALTRANS safety projects

Services to be provided by the CONSULTANT shall include environmental planning and optional items as applicable and as required to accomplish the following items ("Basic Services"):

ALP UPDATE

The ALP must be updated to reflect the Proposed Project prior to environmental approval. This can be completed by a simple pen and ink change to the existing ALP. The ALP must then be signed by the FAA Los Angeles – Airport District Office (LA-ADO) office manager. The LA-ADO will copy the California Department of Transportation (CALTRANS) on any pen and ink change approval letters and provide a copy of the updated drawing. C&S will perform this task for the City of Banning at no additional cost.

PREPARE AIR PERMIT APPLICATION

Prior to installation of the tanks, the proper permits to construct and operate Fuel Storage & Dispensing Equipment must be obtained from the South Coast Air Quality Management District (SCAQMD). The following forms will be completed to comply with SCAQMD requirements; Form 400-E-11 Fuel Dispensing and Storage Equipment, Form 400-A Application Form for Permit or Plan Approval, and Form 400-CEQA California Environmental Quality Act (CEQA) Applicability. The applications will include but are not limited to the following data, plans, and specifications:

1. Equipment Location Drawing
2. Description of Equipment
3. Description of Processes
4. Operating Schedule
5. Process Weight or Throughput
6. Fuels Used
7. Flow Diagram
8. Drawings of Equipment

The following scope of services will be performed to prepare to meet SCAQMD requirements for the aboveground storage tank:

1. Complete Permit Application Forms (Form 400-E-11, Form 400-A, and Form CEQA)
2. Prepare necessary data, specifications, and drawings. C&S will develop the drawings, information, design calculations, as required in the SCAQMD District Permit Application Instructions. Manufacturer catalog cuts may also be included to assist in regulatory agency review.

SPCC PLAN

Prior to start-up of the proposed aviation fuel facility, we will prepare a Spill Prevention, Control, and Countermeasure (SPCC) Plan as required by 40 CFR Part 112. The Plan will follow the sequence of the rule, and address applicable requirements. It is assumed that our services will not include an extension request with the regional EPA office nor will it include an oil spill contingency plan.

SUPPLEMENTAL TOPOGRAPHICAL SURVEY

Perform supplemental topographic survey around the limits of the proposed fueling facility area to acquire the additional topographic survey of and utility data for, the Project site, including related office computations and drafting.

SCHEMATIC DESIGN PHASE

The Schematic Design Phase is intended to identify and evaluate alternatives to provide cost-effective and practical solutions for the work items identified. The CONSULTANT will evaluate alternatives through contacts with local authorities, review of the pre-application, field investigations, and a practical design approach. The Project's design will take advantage of local knowledge and experience and will utilize expertise from recent construction projects in an effort to design a cost-effective Project. The specific services to be provided or furnished for this Phase of the Project are the following:

1. Schedule and conduct a pre-design meeting with the SPONSOR, the FAA, and CALTRANS to review the scope of services and become familiar with the Project requirements and operational

concerns during the Project's construction.

2. Acquire and review record documents (such as plans, specifications, reports, and studies) to become familiar with data that is available for the Project.
3. Perform a preliminary Project site inspection to further familiarize the design team with Project areas.
4. Perform an investigation of the existing electrical system capacities and an inventory and evaluation of the existing electrical system.
5. Prepare a CATEX for the project and process to approval with the FAA.
6. Prepare preliminary plans identifying required topographic field surveys, subsurface soils investigations, and other field investigative programs. Develop a schedule of completion of required surveys and investigations to minimize interference with airport and tenant operations. Coordinate schedule with SPONSOR and supervise programs at the Project site as necessary.
7. Acquire the necessary topographic survey of and utility data for, the Project site, including related office computations and drafting.
8. Develop schematic designs, including preliminary pavement horizontal geometric layouts, tank layout and prepare preliminary opinion of probable construction costs for each major element of the Project.
9. Schedule and conduct a meeting with the SPONSOR to review the schematic design.

PRELIMINARY DESIGN

The services to be performed during this Phase consist generally of services required to furnish the SPONSOR with a set of Preliminary Plans and Specifications.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Conduct site inspections to verify topographic survey and other Project-related existing physical features and facilities.
2. Develop tank and fueling station layout.
3. Develop preliminary grading and drainage design.
4. Develop preliminary electrical designs.
5. Develop preliminary designs of structural Project elements, such as tank foundation.
6. Prepare and incorporate preliminary Contract Drawings (approximately 50% complete) providing sufficient detail for review of design.
7. Prepare and incorporate preliminary General Specifications and prepare written Technical Specifications for all construction materials and installations.
8. Update opinion of probable construction cost to reflect the outcomes of preliminary Project design.
9. Prepare and incorporate written design report documenting items such as design concepts, assumptions, and alternative designs.
10. Develop a draft construction phasing and operations plan that endeavors to limit interference by the Project's construction with airport and tenant operations.

11. Submit sufficient copies of preliminary design documents to the SPONSOR and FAA for review and comment.
12. Schedule and conduct a preliminary design review meeting to discuss and resolve SPONSOR and FAA comments.

FINAL DESIGN PHASE

The services included under this Phase shall generally consist of services required to furnish the SPONSOR with a complete set of Contract Documents for the Project, including Final Plans, Specifications and opinion of probable construction costs. Services to be performed or furnished during this Phase may include revising the preliminary submittal information to comply with SPONSOR and FAA comments and then completion of the final design. Plans and Specifications, suitable for public bidding, will be completed; final design will be coordinated with the SPONSOR and FAA and a complete set of bid documents will be furnished to the SPONSOR and FAA. A final opinion of probable construction cost will also be prepared and submitted. A final Construction Phasing and Operations Plan will be included as part of the specifications.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Finalize tank and fueling station layout
2. Finalize grading and drainage design.
3. Finalize structure designs.
4. Finalize electrical designs.
5. Prepare final Contract Drawings.
6. Finalize General Specifications and prepare written Technical Specifications for all construction materials and installations.
7. Prepare final opinion of probable construction costs based upon the actual bid items and quantity takeoffs.
8. Finalize design report to be consistent with the final design.
9. Finalize construction phasing and operations plan and include in Specifications.
10. Submit final documents to the SPONSOR, the FAA, and the CALTRANS for final review and comment.

Schedule and conduct draft final review meeting (by conference call) with the SPONSOR and FAA to discuss and resolve final comments.

CALTRANS SAFTEY PROJECTS

The services included under this Phase shall generally consist of services required to furnish the SPONSOR with engineering design and construction inspection to comply with the items as stated in the letter the City of Banning received from Caltrans Division of Aeronautics with respect to their State Permit Compliance Inspection Letter dated August 17, 2011, of Banning Municipal Airport. We will address the issues as described in this letter and list action items pertaining to each issue.

END OF SCHEDULE



ARCHITECTURAL/ENGINEERING COST SUMMARY SCHEDULE "B" PLANNING & DESIGN

PROJECT NAME: UST Fuel Facility Relocation
PROJ DESCRIPTION Environmental Planning & Design for relocation of existing UST
CLIENT: City of Banning
CLIENT MANAGER: Duane Burle

DATE: 04-Apr-12
A/E: C & S ENGINEERS, INC.
PROJECT NO: D55.001.005
C&S CONTACT: Cory Hazlewood
PROJECT MANAGER: Arnie White

I. DIRECT SALARY, OVERHEAD & PROFIT COSTS:

TITLE	AVERAGE RATE OF PAY				COST
	(\$/HR)	@	HOURS		
A. DEPARTMENT MANAGER	\$223.80	X	14	=	\$3,130
B. MANAGING ENGINEER	\$213.20	X	25	=	\$5,330
C. PRINCIPAL ENGINEER	\$171.60	X	28	=	\$4,805
D. PROJECT ENGINEER	\$130.00	X	59	=	\$7,670
E. ENGINEER	\$124.80	X	145	=	\$18,096
F. STAFF ENGINEER	\$109.20	X	40	=	\$4,368
G. SENIOR DESIGNER	\$109.20	X	180	=	\$19,656
H. CADD OPERATOR	\$78.00	X	16	=	\$1,248
I. MANAGER AIRPORT PLANNING	\$176.80	X	3	=	\$530
J. STAFF PLANNER	\$88.40	X	120	=	\$10,608
K. RESIDENT ENGINEER	\$166.00	X	45	=	\$7,020
TOTAL DIRECT SALARY, OVERHEAD & PROFIT COST:					\$82,461

II. ESTIMATE OF DIRECT EXPENSES:

A. TRAVEL, BY AUTO:	3 TRIPS @	220 MILES/TRIP @	\$0.550	=	\$363.00
B. MISCELLANEOUS:				=	\$3,000.00

TOTAL ESTIMATE OF DIRECT EXPENSES: \$3,363

III. SERVICES BY OTHERS:

A. SUPPLEMENTAL TOPOGRAPHIC SURVEY	\$	3,000
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IV. TOTALS:

TOTAL PLANNING & ENGINEERING DESIGN SERVICES: \$88,824

C&S COMPANIES ARCHITECTURAL/ENGINEERING WORK SUMMARY

UST Fuel Facility Relocation
Planning & Design
UST Fuel Facility Relocation
Duane Burie

04-Apr-12 Michael Hotaling
Cory Hazelwood
Arnie White
B55,001,005

28

CITY COUNCIL AGENDA

Date: September 11, 2012
TO: City Council
FROM: Kahono Oei, City Engineer

SUBJECT: Resolution No. 2012-71, "Accepting Community Development Block Grant Program Funds for Fiscal Year 2012-2013"

RECOMMENDATION: Adopt Resolution No. 2012-71, "Accepting Community Development Block Grant Program Funds for Fiscal Year 2012-2013".

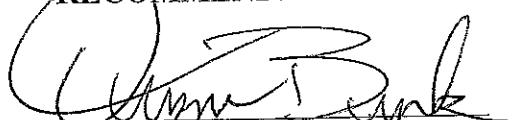
JUSTIFICATION: This Supplemental Agreement is essential in order for the City to obtain and utilize funds for Community Development Block Grant projects.

BACKGROUND: On an annual basis, the City of Banning has participated in the federally funded Community Development Block Grant (CDBG) program. On December 13, 2011 the City Council adopted Resolution No. 2011-96 approving the projects as shown in Exhibit "A" for funding by the CDBG program, Fiscal Year 2012-2013. The City submitted these projects and requested funding in the amount of \$141,000.00 to the Riverside County Economic Development Agency (EDA) and was approved in an amount of \$140,390.00.

In order to utilize these funds for Fiscal Year 2012-2013, the City is required to execute a Supplemental Agreement. The Supplemental Agreement is attached herein as Exhibit "B". A copy of the Supplemental Agreement will also be available at the City Clerk's Office for review by the public.

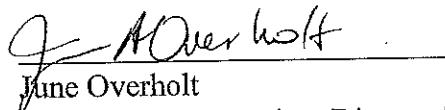
FISCAL DATA: These projects are funded through Community Development Block Grant (CDBG) program funds, Fiscal Year 2012-2013, and the City anticipates receiving \$140,390.00.

RECOMMENDED BY:

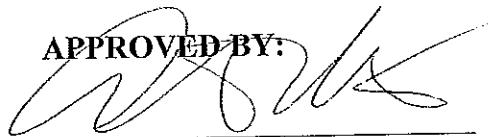


Duane Burk
Director of Public Works

REVIEWED BY:


June Overholt
Administrative Services Director/
Assistant City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-71

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING THE PROJECTS FOR THE FISCAL YEAR 2012-2013
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

WHEREAS, the City of Banning has been submitting applications for projects/activities under the Community Development Block Grant (CDBG) program to the Riverside County Economic Development Agency annually; and

WHEREAS, on December 13, 2011, the City Council adopted Resolution 2011-96 approving the projects shown on Exhibit "A" and authorized staff to submit said projects to the Riverside County Economic Development Agency (EDA);

WHEREAS, the projects/activities submitted herein meet the CDBG program guidelines and/or requirements; and

WHEREAS, it is essential that the projects/activities be approved by the City Council through resolution in order for the City and its citizens to utilize the federally funded CDBG grant funds.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. Resolution No. 2012-71 is adopted and the Supplemental Agreement is hereby approved; and

SECTION 2. Authorize the Mayor of the City of Banning to sign said Supplemental Agreement attached herewith as Exhibit "B";

SECTION 3. This authorization is rescinded if the agreement is not signed within 30 days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 11th day of September, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-71, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of September, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

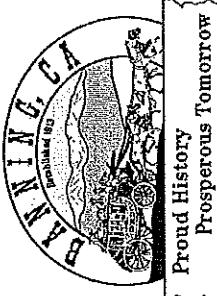


Exhibit "A"

CDBG Fiscal Year 2012-13

EXHIBIT "B"

SUPPLEMENTAL AGREEMENTS FOR FISCAL YEAR 2012-2013

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5 **SUPPLEMENTAL AGREEMENT FOR THE USE OF**
6 **2012-2013 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**7
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14 The COUNTY OF RIVERSIDE of the State of California, herein called, "COUNTY,"
15 and the CITY OF BANNING, herein called "CITY," mutually agree as follows:16
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28 1. **GENERAL.** COUNTY and CITY have executed a Cooperation Agreement, dated July 2011, whereby CITY elected to participate with COUNTY, which has qualified as an "Urban County" for purposes of receiving Community Development Block Grant (CDBG) funds, and to assist and undertake essential community development and housing assistance activities pursuant to the Housing and Community Development Act of 1974, Title 1, as amended, Public Law 93-383 hereinafter referred to as "Act". Said Cooperation Agreement, dated July 2011, is incorporated herein by reference and made a part of this Agreement as if each and every provision was set forth herein.19
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28 2. **PURPOSE.** CITY promises and agrees to undertake and assist with the community development activities, within its jurisdiction, by utilizing the sum of **\$140,390**, CDBG Entitlement Funds, as specifically identified in Exhibits A, B, and C are attached hereto and by this reference are incorporated herein, for the projects:

19 20 21 22 23 24 25 26 27 28 A.	5.BN.26-12	Repllier Park Bowl Improvement Project	\$120,735
B.	0.102-12	Special Needs Program	\$9,827
C.	0.103-12	Boys and Girls Club Teen Town	\$9,828

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28 3. **TERM OF AGREEMENT.** The term of this Agreement for the projects shall be for a period of one (1) year from July 1, 2012 to June 30, 2013, and proceed consistent with the completion schedule set forth in Exhibits A, B, and C. In the event that the projects are not substantially completed by the time set forth in the completion schedule due to unforeseen or uncontrollable causes, the COUNTY may consider extending the schedule for the completion of the project. Times of performance for other activities may also be extended in writing by

1 COUNTY. If substantial progress toward completion in conformance with the completion
2 schedule, as determined by COUNTY, of the projects are not made during the term of the
3 Supplemental Agreement, COUNTY may suspend or terminate this agreement by the
4 procedures set forth in the Section titled "Termination", of this agreement and the entitlement
5 funds associated with the projects may be reprogrammed by COUNTY after appropriate notice
6 is given.

7 4. DISPOSITION OF FUNDS.

8 A. COUNTY's Board of Supervisors shall determine the final disposition and
9 distribution of all funds received by COUNTY under the Act consistent with the provisions of
10 Paragraphs 2 and 3 of this Agreement. COUNTY, through its Economic Development Agency,
11 shall: (1) Make payment of the grant funds to CITY as designated in Exhibits A, B, and C; and
12 (2) It is the CITY's responsibility to monitor all project activities of Exhibits A, B, and C to
13 ensure compliance with applicable federal regulations and the terms of this Agreement.

14 B. CITY shall comply with timely drawdown of CDBG funds by
15 expeditiously implementing and completing County-approved, CDBG-funded projects. CITY
16 acknowledges that CITY's drawdown performance directly impacts the COUNTY's overall
17 program drawdown rate. If the CITY's unobligated CDBG fund balance, as of January 15, 2013,
18 exceeds two-times (200%) the CITY's 2012-2013 CDBG allocation, the COUNTY may take the
19 necessary administrative actions to reduce the CITY's CDBG fund balance. Necessary actions
20 include reprogramming the excess CDBG fund balance to other eligible activities as selected by
21 COUNTY. COUNTY may authorize CITY in writing, prior to January 15, 2013, to exceed the
22 CDBG fund balance requirement.

23 C. CITY shall comply with timely drawdown of funds by submitting monthly
24 requests for reimbursement or other County-approved reimbursement schedule. All
25 disbursements of grant funds will be on a reimbursement basis and made within thirty (30) days
26 after the CITY has submitted its letter identifying payments and documentation supporting
27 expenditures.

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D. All authorized obligations incurred in the performance of the Agreement for projects eligible under the following regulations must be reported to COUNTY no later than by June 15, 2013:

1. Public Services [24 CFR 570.201 (e)]
2. Acquisition [24 CFR 570.201 (a)]
3. Clearance Activities [24 CFR 570.201 (d)]
4. Interim Assistance [24 CFR 570.201 (f)]
5. Code Enforcement [24 CFR 570.202 (c)]

All other eligible activities under this Agreement must be implemented, completed, and obligations reported by the CITY no later than the completion schedules set forth in the Exhibits to this Agreement.

The COUNTY will directly manage and monitor projects identified in Exhibits B and C. These projects have been determined to be of Countywide benefit, receiving grant funding from multiple sources; therefore, these projects will be managed and monitored by the COUNTY.

5. COOPERATION WITH HOUSING ACTIVITIES. CITY shall cooperate with COUNTY in undertaking essential community development and housing assistance activities, specifically urban renewal and public assistance housing, and shall assist COUNTY in carrying out its Strategic Plan of the Consolidated Plan and other requirements of the Community Development Block Grant Program.

6. LEAD AGENCY FOR COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Pursuant to Section 15051(d) of Title 14 of the California Administrative Code, CITY is designated as the lead agency for the projects that are the subject matter of this Agreement.

7. HOLD HARMLESS AND INDEMNIFICATION. In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of the Code, the Parties hereto, pursuant to the authorization contained in

1 Section 895.4 and 895.6 of the Code, agree that each Party shall be liable for any damages
2 including, but not limited to, claims, demands, losses, liabilities, costs and expenses including
3 reasonable attorneys' fees, resulting from the negligent or wrongful acts or omissions of their
4 employees or agents in the performance of this Agreement, and each Party shall indemnify,
5 defend and hold harmless the other Parties from such claims, demands, damages, losses or
6 liabilities for their negligence

7 8. INSURANCE. Without limiting or diminishing the CITY'S obligation to
8 indemnify or hold the COUNTY harmless, CITY shall procure and maintain or cause to be
9 maintained, at its sole cost and expense, the following insurance coverage's during the term of
10 this Agreement.

11 A. Workers' Compensation:

12 If the CITY has employees as defined by the State of California, the CITY shall maintain
13 statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State
14 of California. Policy shall include Employers' Liability (Coverage B) including Occupational
15 Disease with limits not less than \$1,000,000 per person per accident. The policy shall be
16 endorsed to waive subrogation in favor of The County of Riverside, and, if applicable, to provide
17 a Borrowed Servant/Alternate Employer Endorsement.

18 B. Commercial General Liability:

19 Commercial General Liability insurance coverage, including but not limited to, premises
20 liability, contractual liability, products and completed operations liability, personal and
21 advertising injury, and cross liability coverage, covering claims which may arise from or out of
22 CITY 'S performance of its obligations hereunder. Policy shall name the County of Riverside, its
23 Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board
24 of Supervisors, employees, elected or appointed officials, agents or representatives as Additional
25 Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined
26 single limit. If such insurance contains a general aggregate limit, it shall apply separately to this
27 single limit.

1 agreement or be no less than two (2) times the occurrence limit.

2 C. Vehicle Liability:

3 If vehicles or mobile equipment are used in the performance of the obligations under this
4 Agreement, then CITY shall maintain liability insurance for all owned, non-owned or hired
5 vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If
6 such insurance contains a general aggregate limit, it shall apply separately to this agreement or
7 be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its
8 Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board
9 of Supervisors, employees, elected or appointed officials, agents or representatives as Additional
10 Insureds.

11 D. General Insurance Provisions - All lines:

12 1) Any insurance carrier providing insurance coverage hereunder
13 shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII
14 (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the
15 County's Risk Manager waives a requirement for a particular insurer such waiver is only valid
16 for that specific insurer and only for one policy term.

17 2) The CITY'S insurance carrier(s) must declare its insurance self-
18 insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such
19 retentions shall have the prior written consent of the County Risk Manager before the
20 commencement of operations under this Agreement. Upon notification of self insured retention
21 unacceptable to the COUNTY, and at the election of the Country's Risk Manager, CITY 'S
22 carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement
23 with the COUNTY, or 2) procure a bond which guarantees payment of losses and related
24 investigations, claims administration, and defense costs and expenses.

25 3) CITY shall cause CITY'S insurance carrier(s) to furnish the
26 County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and
27 certified original copies of Endorsements effecting coverage as required herein, and 2) if
28

1 requested to do so orally or in writing by the County Risk Manager, provide original Certified
2 copies of policies including all Endorsements and all attachments thereto, showing such
3 insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall
4 contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given
5 to the County of Riverside prior to any material modification, cancellation, expiration or
6 reduction in coverage of such insurance. In the event of a material modification, cancellation,
7 expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County
8 of Riverside receives, prior to such effective date, another properly executed original Certificate
9 of Insurance and original copies of endorsements or certified original policies, including all
10 endorsements and attachments thereto evidencing coverage's set forth herein and the insurance
11 required herein is in full force and effect. *CITY shall not commence operations until the
12 COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of
13 endorsements and if requested, certified original policies of insurance including all
14 endorsements and any and all other attachments as required in this Section.* An individual
15 authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for
16 each policy and the Certificate of Insurance.

17 4) It is understood and agreed to by the parties hereto that the CITY'S
18 insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or
19 deductibles and/or self-insured retention's or self-insured programs shall not be construed as
20 contributory.

21 5) If, during the term of this Agreement or any extension thereof,
22 there is a material change in the scope of services; or, there is a material change in the equipment
23 to be used in the performance of the scope of work which will add additional exposures (such as
24 the use of aircraft, watercraft, cranes, etc.); or, the term of this Agreement, including any
25 extensions thereof, exceeds five (5) years the COUNTY reserves the right to adjust the types of
26 insurance required under this Agreement and the monetary limits of liability for the insurance
27 coverage's currently required herein, if; in the County Risk Manager's reasonable judgment, the
28

1 amount or type of insurance carried by the CITY has become inadequate.

2 6) CITY shall pass down the insurance obligations contained herein
3 to all tiers of subcontractors working under this Agreement.

4 7) The insurance requirements contained in this Agreement may be
5 met with a program(s) of self-insurance acceptable to the COUNTY.

6 8) CITY agrees to notify COUNTY of any claim by a third party or
7 any incident or event that may give rise to a claim arising from the performance of this
8 Agreement.

9. RECORDS AND INSPECTIONS.

10 A. CITY shall establish and maintain records in accordance with 24 CFR Part
11 570, Part 85, OMB Circular A-87, A-133 and 24 CFR 91.105, as applicable, and as they relate to
12 the acceptance and use of federal funds under this Agreement.

13 B. CITY shall obtain an external audit in accordance with the U.S.
14 Department of Housing and Urban Development single audit regulations (24 CFR Part 44.6).
15 Audits shall usually be performed annually but not less frequently than every two years.
16 Nonprofit institutions and government agencies that expend less than \$500,000 a year in
17 Federal awards are exempt from Federal audit requirements, but records must be available for
18 review by appropriate officials of the Federal grantor agency or subgranting entity. The audit
19 report shall be submitted to the COUNTY within 180 days after the end of the COUNTY'S
20 fiscal year.

21 C. CITY shall maintain a separate account for CDBG Entitlement funds
22 received as set forth in Exhibits (A, B, and C).

23 D. CITY shall, during the normal business hours, make available to
24 COUNTY, the U.S. Department of Housing and Urban Development (HUD), or other authorized
25 representative, for the examination and copying, all of its records and other materials with
26 respect to matters covered by this Agreement.

27 E. CITY shall not retain any program income as defined in Section 570.500

28

1 of Title 24 of the Federal Code of Regulations. Said program income shall be used only for the
2 activities that are the subject of this Agreement. Further, all provisions of this Agreement shall
3 apply to such activities.

4 F. The CITY shall ensure that at least fifty-one percent (51%) of the persons
5 benefiting from all CDBG-funded activities or projects designated as serving limited clientele
6 [570.208(a)(2)(i)] are of low and moderate-income and meet the program income guidelines
7 attached as Exhibits (A, B, and C). The CITY and City's Sub-recipients must provide the
8 required income certification and direct benefit documentation.

9 10. COMPLIANCE WITH LAWS. CITY shall comply with all applicable federal,
10 state, and local laws, regulations, and ordinances and any amendments thereto and the federal
11 regulations and guidelines now or hereafter enacted pursuant to the Act. More particularly, CITY
12 is to comply with those regulations found in Part 85 and Part 570 of Title 24 of the Code of
13 Federal Regulations. CITY is to comply with OMB Circular A-87, or any subsequent
14 replacement. CITY is to abide by the provisions of the Community Development Block Grant
15 Manual, prepared by COUNTY and cited in the above-mentioned Cooperation Agreement.
16 CITY will comply with Section 3 of the Housing & Urban Development Act of 1968, as
17 amended, attached hereto as Exhibit "S". CITY will comply with the provisions of 24 CFR Part
18 570.200 (j), attached as Exhibit "R," pertaining to inherently religious activities.

19 11. INDEPENDENT CONTRACTOR. CITY and its agents, servants, and employees
20 shall act at all times in an independent capacity during the term of this Agreement, and shall not
21 act as, shall not be, nor shall they in any manner be construed to be agents, officers, or
22 employees of the COUNTY.

23 12. TERMINATION.

24 A. CITY. CITY may not terminate this Agreement except upon express
25 written consent of COUNTY.

26 B. COUNTY. Notwithstanding the provisions of Paragraph 12a, COUNTY
27 may suspend or terminate this Agreement upon a thirty (30) day written notice to CITY of action
28

being taken and the reason for such action:

(1) In the event CITY fails to perform the covenants herein contained at such times and in such manner as provided in this Agreement; and

(2) In the event there is a conflict with any federal, state or local law, ordinance, regulation or rule rendering any of the provisions of this Agreement invalid or untenable; or

(3) In the event the funding from the Department of Housing and Urban Development referred to in Paragraphs 1 and 2 above is terminated or otherwise becomes unavailable.

C. Upon suspension of this Agreement, CITY agrees to return any unencumbered funds which it has been provided by COUNTY. In accepting said funds, COUNTY does not waive any claim or cause of action it may have against CITY for breach of this Agreement.

D. Reversion of Assets

1. Upon expiration of this Agreement, the CITY shall transfer to the COUNTY any CDBG funds on hand at the time of expiration of the Agreement as well as any accounts receivable held by CITY which are attributable to the use of CDBG funds awarded pursuant to this Agreement.

2. Any real property under the CITY'S control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the SPONSOR in the form of a loan) in excess of \$25,000 is either:

(i) Used to meet one of the National Objectives in Sec. 570.208 until five years after expiration of this agreement, or for such longer period of time as determined to be appropriate by the COUNTY; or

(ii) Not used in accordance with Section (i) above, in which event the SPONSOR shall pay to the COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the

1 acquisition of, or improvement to, the property.

2 13. NONDISCRIMINATION. CITY shall abide by Sections 570.601 and 570.602 of
3 Title 24 of the Federal Code of Regulations which requires that no person in the United States
4 shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be
5 denied the benefits of, or be subjected to discrimination under any program or activity funded in
6 whole or in part with Community Development funds.

7 14. PROHIBITION AGAINST CONFLICTS OF INTEREST

8 A. CITY and its assigns, employees, agents, consultants, officers and elected
9 and appointed officials shall become familiar with and shall comply with the CDBG regulations
10 prohibiting conflicts of interest contained in 24 CFR 570.611, attached hereto as Exhibit "CI"
11 and by this reference incorporated herein.

12 B. CITY and its assigns, employees, agents, consultants, officers, and elected
13 and appointed officials shall become familiar with and shall comply with Section A-11 of the
14 County's CDBG Policy manual, attached hereto as Exhibit "CI" and by this reference
15 incorporated herein.

16 C. CITY understands and agrees that no waiver of exception can be granted
17 to the prohibition against conflict of interest except upon written approval of HUD pursuant to
18 24 CFR 570.611 (d). Any request by CITY for an exception shall first be reviewed by COUNTY
19 to determine whether such request is appropriate for submission to HUD. In determining whether
20 such request is appropriate for submission to HUD, COUNTY will consider the factors listed in
21 24 CFR 570.611 (e).

22 D. Prior to any funding under this Agreement, CITY shall provide COUNTY
23 with a list of all employees, agents, consultants, officers and elected and appointed officials who
24 are in a position to participate in a decision making process, exercise any functions or
25 responsibilities, or gain inside information with respect to the CDBG activities funded under this
26 Agreement. CITY shall also promptly disclose to COUNTY any potential conflict, including
27 even the appearance of conflict that may arise with respect to the CDBG activities funded under
28

1 this Agreement.

2 E. Any violation of this section shall be deemed a material breach of this
3 Agreement, and the Agreement shall be immediately terminated by the COUNTY.

4 15. PROJECT ELIGIBILITY. As to CITY or its claimants, COUNTY shall bear no
5 liability for any later determination by the United States Government, the Department of
6 Housing and Urban Development or any other person or entity that CITY is or is not eligible
7 under 24 CFR Part 570 to receive CDBG funds.

8 16. USE OF PROPERTY. Whenever federal CDBG funds or program income are
9 used, in whole or in part, for the purchase of equipment or personal property, the property shall
10 not be transferred from its originally funded use, by CITY or sub-recipient, for a period of five
11 (5) years from the close-out date of the grant from which CDBG assistance was provided. The
12 CITY shall maintain a current inventory for COUNTY monitoring and review.

13 17. EMPLOYMENT OPPORTUNITIES TO BE CAUSED BY PROJECT. CITY
14 agrees to notify and to require any lessee or assignee to notify Riverside County Workforce
15 Development Center of any and all job openings that are caused by this project.

16 18. PUBLICITY. Any publicity generated by CITY for the project funded pursuant to
17 this Agreement, during the term of this Agreement, will make reference to the Contribution of
18 the County of Riverside, the Economic Development Agency, and the Community Development
19 Block Grant Program in making the project possible.

20 19. PROGRAM MONITORING AND EVALUATION. CITY and its sub-recipients
21 shall be monitored and evaluated in terms of its effectiveness and timely compliance with the
22 provisions of this Agreement and the effective and efficient achievement of the Program
23 Objectives. Quarterly reports shall be due on the last day of the month immediately following the
24 end of the quarter being reported. The quarterly written reports shall include, but shall not be
25 limited to, the following data elements:

26 A. Title of program, listing of components, description of
27 activities/operations.

1 B. The projected goals, indicated numerically, and also the goals achieved
2 (for each report period). In addition, identify by percentage and description, the progress
3 achieved towards meeting the specified goals and identify any problems encountered in meeting
4 goals.

5 C. If the CDBG-funded Activity meets a National Objective under 24 CFR
6 570.208 (a)(2)(i), CITY will report the following:

7 1) Total number of direct beneficiaries (clientele served) with
8 household incomes at:

- Above 80% MHI
- Between 50% and 80% MHI (Low-Income)
- Between 30% and 50% MHI (Very Low-Income)
- Less than 30% MHI (Extremely Low-Income)

13 2) Total number and percent (%) of the clientele served that have
14 household incomes at or below 80% MHI

15 3) Racial ethnicity of clientele

16 4) Number of Female-Headed Households

17 D. CITY and its sub-recipients shall report beneficiary statistics monthly to
18 EDA on the pre-approved *Direct Benefit Form* and *Self-Certification Form* (certifying income,
19 family size, and racial ethnicity) as required by HUD. Updated forms are to be provided to CITY
20 by EDA should HUD implement changes during the term of this agreement. CITY and sub-
21 recipients will collect and provide all necessary data required by HUD pertaining to the Specific
22 Outcome Indicators as identified in the CPD Outcome Performance Measurement System.

23 20. SOURCE OF FUNDING. CITY acknowledges that the source of funding
24 pursuant to this Agreement is Community Development Block Grant (CFDA 14.218).

25 21. ENTIRE AGREEMENT. It is expressly agreed that this Agreement together with
26 the cooperation Agreement between the parties, embodies the entire agreement of the parties in
27 relation to the subject matter thereof, and that no other Agreement or understanding, verbal or
28

otherwise, relative to this subject matter, exists between the parties at the time of execution.

22. MINISTERIAL ACTS. The Assistant County Executive Officer/EDA or designee(s) are authorized to take such ministerial actions as may be necessary or appropriate to implement the terms, provisions, and conditions of this Agreement as it may be amended from time to time by COUNTY.

23. PRIOR AUTHORIZATION. CITY shall obtain COUNTY's written approval from the Economic Development Agency prior to implementing the following "high risk" activities funded with CDBG assistance:

- A. Construction of public facilities (project plans and specifications);
- B. Acquisition of real property;
- C. Historic Preservation;
- D. Relocation; and
- E. Economic Development

23. MODIFICATION OF AGREEMENT. This Agreement may be modified or amended only by a writing signed by the duly authorized and empowered representative of COUNTY and CITY respectively.

SIGNATURES ON NEXT PAGE

1
2 IN WITNESS WHEREOF, the COUNTY and the CITY have executed this Agreement as
3 of the date listed below.

4
5 DATED: _____

6
7 COUNTY OF RIVERSIDE

8
9 By: _____
10 Suzanne Holland
11 Assistant Director of EDA

12
13 CITY OF BANNING

14
15 By: _____
16 Mayor

17
18 SH:JT:mmv

**SUPPLEMENTAL AGREEMENT
SCOPE OF WORK
(NON-PUBLIC SERVICE)**

I. GENERAL INFORMATION

CITY NAME: City of Banning

ADDRESS: 99 E. Ramsey Street
Banning, CA 92220

PROGRAM CONTACTS: Kahono Oei, City Engineer

PHONE: (951) 922-3105 FAX: (951) 922-3141

E-MAIL: citybanning@hotmail.com

PROJECT NAME: Repllier Park Bowl Improvement Project

PROJECT LOCATION: Repllier Park Bowl, 201 W. George St., Banning, CA 92220

LEVEL OF ENVIRONMENTAL CLEARANCE: Categorical Exclusion

CDBG ELIGIBILITY CODE: 570.201 (c)

PROJECT FUNDING SUMMARY: \$120,735

Project to be administered by County (EDA) on behalf of City: YES NO

II. SCOPE OF SERVICE

A. Activities

City will be responsible for administering a **2012-2013** Community Development Block Grant for the **Repllier Park Bowl Improvement Project** in a manner satisfactory to the County of Riverside and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Activity #1 *The City of Banning will use CDBG funds leveraged with existing funds for the design and construction of improvements to the Repllier Park Bowl. Renovations include the stage area, landscaping, and restrooms. CDBG funds will be used for construction.*

B. National Objective

All activities funded with CDBG funds must comply with one or more of the CDBG program's National Objective Criteria as required under 24 CFR 570.200(a)(2). City certifies that the activity(ies) carried out under this Agreement will meet the following National Objective:

National Objective Criteria: 570.208 (a)(1)(i)

CFR Reference: Low Mod Area

C. Levels of Accomplishment – Goals and Performance Measures

The City agrees to implement and complete the following activity(ies):

Activity #1 *Design and construct improvements to the Repllier Park Bowl*

CPD OUTCOME PERFORMANCE MEASUREMENT

Objectives (select one): Creating Suitable Living Environments
 Providing Decent Affordable Housing
 Creating Economic Opportunities

Outcome (select one): Availability/Accessibility
 Affordability
 Sustainability (promoting livable or viable communities)

D. City Capacity

By executing this Supplemental Agreement, the City certifies that it has the appropriate number of trained and knowledgeable staff, adequate facilities, proper equipment, required licensing and permitting, and sufficient amount of financial resources necessary to implement and carry out the activities funded with CDBG funds.

City will immediately notify County of any significant changes in organizational management, assigned staff, change in facilities, loss or change in matching funds, or any other event that could potentially impact the City or subrecipient's performance under this Agreement. Any changes in the above items are subject to the prior approval of the County.

E. Performance Monitoring

The County of Riverside will monitor the performance of the City and its subrecipients against goals and performance standards as stated above. Substandard performance as determined by the

County will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the City within a reasonable period of time after being notified by the County, contract suspension or termination procedures will be initiated.

F. Program Budget

It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed **\$120,735** Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in this Section and in accordance with performance. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

The County may require a more detailed budget breakdown than the one contained herein, and the City shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the County. Any amendments to the budget must be approved in writing by both the County and City.

<u>Line Item</u>	
Design/Engineering Costs	<input checked="" type="checkbox"/>
Project Administration Costs	<input type="checkbox"/>
Construction Costs	<input checked="" type="checkbox"/>
Acquisition Costs	<input type="checkbox"/>
Relocation Costs	<input type="checkbox"/>
Capital Equipment Costs	<input type="checkbox"/>
Code Enforcement	<input type="checkbox"/>
Clearance	<input type="checkbox"/>
Interim Assistance	<input type="checkbox"/>
Other:	<input type="checkbox"/>
Total:	\$120,735

G. Total Amount of Non- CDBG Leveraging

TYPE	SOURCE	AMOUNT	SOURCE	AMOUNT	SOURCE	AMOUNT	TOTAL
FEDERAL	CDBG Prior Year	\$279,137					\$279,137
STATE/LOCAL							
PRIVATE							
OTHER							

TOTAL: \$279,317

III. ADMINISTRATIVE REQUIREMENTS

A. Accounting Standards

The City agrees to comply with 24 CFR 84 or 85 as applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

The City shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," A-21, "Cost Principles for Educational Institutions," or OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

C. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- i. Records providing a full description of each activity undertaken;
- ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- iii. Records required to determine the eligibility of activities;
- iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- vi. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
- vii. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Records Retention

The City shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the County's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The City shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County monitors or their designees for review upon request.

4. Disclosure

The City understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the County's or City's responsibilities with respect to services provided under this contract, is prohibited by applicable federal and State law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The City's obligation to the County shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the County), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the City has control over CDBG funds, including program income.

6. Audits & Inspections

All City records with respect to any matters covered by this Agreement shall be made available to the County, HUD, and the Controller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the City within 30 days after receipt by the City. Failure of the City to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The City hereby agrees to have an annual agency audit conducted in accordance with current County policy concerning subrecipient audits and OMB Circular A-133.

IV. PROJECT IMPLEMENTATION AND SCHEDULE

Unless pre-approved by County, City will perform and complete the activities described in Section II in conformance with the schedule of tasks and milestones listed below:

<u>Tasks / Milestone</u>	<u>Start Date</u>	<u>Completion Date</u>
Attend Mandatory Cooperating City Training	August 2012	August 2012
Implement Project Activities	Upon Notification from EDA	
Execute Supplemental Agreement & Notice to Incur Cost	August 2012	September 2012
<u>Tasks / Milestone</u>	<u>Start Date</u>	<u>Completion Date</u>
Submit Quarterly Performance Reports to County		October 15, 2012
		January 15, 2013
		April 15, 2013
		July 31, 2013
County Monitoring of City Program/Performance	To be determined by Program Manager	
Specific Project Activities	Construction of Repllier Park facility	
City Submits Reimbursement Requests		
Monthly Submittal <input type="checkbox"/>		
Other Schedule <input checked="" type="checkbox"/>		
CDBG-funded Project Complete	TBD	
City Submits Monthly Direct Benefit Reports	N/A - LMA	

V. SPECIAL CONDITIONS /PERFORMANCE REQUIREMENTS

City must follow proper procurement and construction policies and procedures of the City and Riverside County, EDA as deemed by HUD. No construction will shall commence using CDBG funding without prior Notice to Proceed. Pre-Construction meeting required.

City is required to contact the County Program Manager for review prior to submission of RFP, construction activity or cost without prior written approval. County must be contacted 10 days in advance for attendance of Pre-Construction meeting. Original Certified payrolls to be submitted on a weekly basis to County.

**SUPPLEMENTAL AGREEMENT
SCOPE OF WORK
(PUBLIC SERVICE)**

I. GENERAL INFORMATION

CITY NAME: San Gorgonio Child Care Consortium

ADDRESS: 671 N. Florida St., Suite A

Banning, CA 92220

CITY PROGRAM CONTACTS: Linda Phillips, Executive Director

SUBRECIPIENT NAME: San Gorgonio Child Care Consortium

ADDRESS: 671 N. Florida St., Suite A, Banning, CA 92220

PROGRAM CONTACT: Linda Phillips, Executive Director

PHONE: (951) 849-2930 FAX : (951) 849-2262

E-MAIL: _____

PROJECT NAME: Special Needs Program

PROJECT LOCATION: 671 N. Florida St., Suite A, Banning, CA 92220

LEVEL OF ENVIRONMENTAL CLEARANCE: **EXEMPT [24 CFR 58.34 (a)(4)]**

CDBG ELIGIBILITY CODE: **24 CFR 570.201 (e) Public Services**

PROJECT FUNDING SUMMARY: **5th District \$5,000 Banning \$9,827**

Project to be administered by County (EDA) on behalf of CITY: YES NO

II. SCOPE OF SERVICE

A. Activities

City will be responsible for administering a **2012-2013** Community Development Block Grant for the **Special Needs Program** in a manner satisfactory to the County of Riverside and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Activity #1 *The San Gorgonio Child Care Consortium (SGCC) program provides services from trained staff to enhance the social/emotional well-being of Special Needs Children. CDBG funds will be used for program related supplies and staff benefits/salaries (direct cost).*

**SUPPLEMENTAL AGREEMENT
SCOPE OF WORK
(PUBLIC SERVICE)**

I. GENERAL INFORMATION

CITY NAME: Boys & Girls Clubs of the San Gorgonio Pass

ADDRESS: P.O. Box 655

Beaumont, CA 92223

CITY PROGRAM CONTACTS: Rhonda Guaderrama, Executive DirectorProgram Manager

SUBRECIPIENT NAME: Boys & Girls Clubs of the San Gorgonio Pass

ADDRESS: P.O. Box 655, Beaumont, CA 92223

PROGRAM CONTACT: Rhonda Guaderrama, Executive DirectorProgram Manager

PHONE: (951) 922-3259 FAX : (951) 922-2141

E-MAIL:

PROJECT NAME: Boys and Girls Club Teen Town

PROJECT LOCATION: 1101 E. George Street, Banning, CA 92220

LEVEL OF ENVIRONMENTAL CLEARANCE: EXEMPT [24 CFR 58.34 (a)(4)]

CDBG ELIGIBILITY CODE: 24 CFR 570.201 (e) Public Services

PROJECT FUNDING SUMMARY: 5th District \$5,319 Banning \$9,828

Project to be administered by County (EDA) on behalf of CITY: YES NO

II. SCOPE OF SERVICE

A. Activities

City will be responsible for administering a 2012-2013 Community Development Block Grant for the Boys and Girls Club Teen Town in a manner satisfactory to the County of Riverside and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Activity #1 *The Boys and Girls Club provides an after school Teen Town program that includes Skills Mastery And Resistance Training (SMART) for low-income youth in the community. Activities include character building, substance abuse prevention, health and nutrition program, and other related activities. CDBG funds will be used for staff salaries (direct cost) and consumable supplies.*

EXHIBIT CI

Prohibition Against Conflicts of Interest

Page 1 of 4

§ 570.611 Conflict of interest.

(a) Applicability.

(1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A 110, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570-203, § 570.204 or § 570.455).

(b) Conflicts prohibited. Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a CDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or, business ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such interest or benefit during, or at any time after, such person's tenure.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients which are receiving funds under this part.

(d) Exceptions: threshold requirements. Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

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Prohibition Against Conflicts of Interest
Page 2 of 4

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

EXHIBIT CI

Prohibition Against Conflicts of Interest Page 3 of 4

Community Development Block Grant Policy Manual I.D. # A-11 (pg. 1 of 2)

TOPIC: CONFLICT OF INTEREST CODED
RIVERSIDE COUNTY
ECONOMIC DEVELOPMENT AGENCY

DATE: October 1989

This Conflict of Interest Code is written to comply with Federal Regulations (24 CFR Part 85). These Regulations, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" require that grantees and sub-grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

1) No employee, officer or agent of the grantee shall participate in the selection, in the award or in the administration of a contract supported by Federal Funds if a conflict of interest, real or apparent, would be involved.

2) Such a conflict will arise when:

- i) The employee, officer or agent;
- ii) Any member of the immediate family;
- iii) His/Her partners, or;
- iv) An organization which employs, or is about to employ any of the above has a financial or other interest in the firm's selection for award.

3) The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to sub-agreements except as noted in Section 4.

4) A grantee's or sub-grantee's officers, employees or agents will be presumed to have a financial interest in a business if their financial interest exceeds the following:

- i) Any business entity in which the official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.
- ii) Any real property in which the official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

EXHIBIT CI

Prohibition Against Conflicts of Interest

Page 4 of 4

Community Development Block Grant
Policy Manual
I.D. # A-11
(pg. 2 of 2)

TOPIC: CONFLICT OF INTEREST CODE
RIVERSIDE COUNTY
ECONOMIC DEVELOPMENT AGENCY

DATE: October 1989

- iii) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the official within 12 months prior to the time when the decision is made.
- iv) Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
- v) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the official within 12 months prior to the time when the decision is made.

5) For purposes of Section 4, indirect investment or interest means any investment or interest owned by the spouse or dependent child of an official, by an agent on behalf of an official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or more.

EXHIBIT "S"

Page 1 of 2

Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

Sec. 135.38 Section 3 clause.

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 Clause):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

EXHIBIT "S"

Page 2 of 2

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

G. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

H. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

EXHIBIT "R"

Constitutional Prohibition

In accordance with First Amendment Church/State Principles, as a general rule, CDBG/ESG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of CDBG/ESG funds.

(1) CDBG/ESG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (j)(2) of this section with respect to rehabilitation and under paragraph (j)(4) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with CDBG/ESG funds at no more than fair market value for a non-religious use.

(2) CDBG/ESG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

(i) The building (or portion thereof) that is to be improved with the CDBG/ESG assistance has been leased to an existing or newly-established wholly secular entity (which may be an entity established by the religious entity);

(ii) The CDBG/ESG assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

(vi) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(vii) The lessee must remit the amount received from the lessor under subparagraph (2)(vi) of this section to the recipient or subrecipient from which the CDBG/ESG funds were derived.

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (j)(3) of this section.

(3) As a general rule, CDBG/ESG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the CDBG/ESG funds are derived that, in connection with the provision of such services:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.

(ii) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(iv) The portion of a facility used to provide the public services shall contain no religious symbols or decorations, other than those permanently affixed to or part of the structure.

(4) Where the public services provided under paragraph (j)(3) of this section are carried out on property owned by the primarily religious entity, CDBG/ESG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the CDBG/ESG expenditure for the public services.

CITY COUNCIL AGENDA

DATE: September 11, 2012

TO: Honorable Mayor and City Council

FROM: Fred Mason, Electric Utility Director

SUBJECT: City Council Resolution No. 2012-69, Approving the Phase II Renewable Development Agreement between SCPPA and the City of Banning

RECOMMENDATION: Adopt City Council Resolution No. 2012-69, approving the Phase II Renewable Development Agreement between the Southern California Public Power Authority (SCPPA) and the City of Banning, attached herewith as Exhibit "A".

JUSTIFICATION: California Senate Bill X 12 (SB X 12) mandates that all publicly owned utilities meet 33 percent of their retail electricity load through renewable energy resources by 2020, and collaborating with SCPPA provides a more economical means to meet that requirement.

BACKGROUND: A number of years ago SCPPA and several SCPPA members including the City of Anaheim, the City of Azusa, the City of Banning, the City of Burbank, the City of Colton, the City of Glendale, the Imperial Irrigation District, the Los Angeles Department of Water and Power and the City of Pasadena entered into a development project for the purpose of undertaking the investigation, planning and development of certain renewable electric energy projects. These efforts culminated in the creation of several joint action agency projects through SCPPA including: the Linden Wind Energy Project, the MWD Small Hydroelectric Project, the Milford Wind Corridor Phase I Project, the Milford Wind Corridor Phase II Project, the Pebble Springs Wind Project, the Ormat Geothermal Project (which Banning is a participant in), the Southwest Wyoming Wind Project, the Tieton Hydropower Project, the Ameresco Landfill Gas to Energy Project, the Windy Point/Windy Flats Project, and others. Through their joint participation in these previous renewable energy related projects the participating SCPPA members have enjoyed significant benefits in efficiency and costs through a number of different joint action agency structures for the acquisition of renewable energy. These projects which have been developed through SCPPA have greatly assisted a number of SCPPA members to satisfy ongoing Renewable Portfolio Standards (RPS) requirements.

Since the time of the development of these projects the California Legislature and the California Energy Commission have subjected publicly owned utilities to the imposition of a substantial number of new environmental laws, rules, regulations and policies and revised resource requirements which have increasingly required the transition from conventional generation assets to renewable forms of energy generation. One of the most significant recent legislative enactments mandating this transition to renewable energy was the passage in 2011 of California SB X 12.

SB X 12 now mandates that Banning, and other publicly owned utilities, supply thirty three percent of their respective loads from renewable energy sources by the year 2020. SB X 12 also imposes a number of intermediate renewable energy mandates prior to 2020. This new requirement has created a necessary shift away from the acquisition of conventional generation and the requirement to supply a greater proportion of our load from renewable energy resources. In the past SCPPA has assisted Banning in the development of secure long-term arrangements for the acquisition of renewable energy resources. These SCPPA related efforts have been undertaken through a number of different methods including: Energy purchase agreements from renewable facilities; tax exempt financed prepayments for energy; and the total acquisition of renewable electric generating facilities including their associated lines, substations, interconnections, leases, licenses, contract rights, permits and other assets and infrastructure. However it is now necessary to carry forth renewed efforts to acquire further renewable energy resources in order to achieve the renewable energy goals set by SB X 12.

PURPOSE: The Phase II Renewable Development Agreement has been developed between SCPPA and Banning to carry forth renewable energy resource acquisition efforts between the current time and 2020 and to assist Banning in reaching its 2020 renewable energy goals.

The approval of the Phase II Renewable Development Agreement between SCPPA and Banning will allow Banning to participate with other members of SCPPA in the planning, investigation, diligence efforts and the potential development of new renewable resource options. The expenditure authority sought hereunder shall not exceed \$100,000, which staff has estimated should cover the costs of carrying out these efforts over the next several years.

Through the earlier development agreement with SCPPA, Banning and a number of other SCPPA members carried forth their earlier renewable energy goals and investigated, developed and in some cases provided for the eventual financing and acquisition of a number of renewable energy projects to assist these SCPPA members to reach their Renewable Portfolio Standards.

The earlier SCPPA agreement served its purpose at the time, but the agreement provides for automatic termination with relatively rigid joint expenditure requirements, and therefore it may soon reach its funding limitations and automatically expire. In addition, the current SCPPA agreement has a number of limitations and does not provide for certain project types which facilitate renewable energy delivery, such as those addressing energy storage. The Phase II Renewable Development Agreement will afford SCPPA, Banning and other SCPPA members an avenue by which to continue to study, examine, investigate, explore and further develop a wide variety of methods to facilitate the acquisition of energy and capacity from renewable resources as well as the potential interties, interconnections, substations, energy storage facilities and transmission resources to deliver this renewable energy.

Through the renewable energy acquisition processes afforded through the Phase II Renewable Development Agreement, Banning and SCPPA intend to enlist those resources necessary to continue the process of investigation, planning, design and development of renewable energy projects.

PHASE II RENEWABLE DEVELOPMENT AGREEMENT: For a substantial time Banning has participated in SPPA's renewable resource RFP process. As renewable energy resources are proposed through this RFP process certain potential projects stand out and require further investigation. At such a point it may become necessary to engage outside experts to carry out studies and reports and perform due diligence responsibilities before determining to actively pursue the eventual full and final development of the project. The proposed Phase II Development Agreement between SPPA and Banning, as well as those between SPPA and the other interested utilities, will provide the mechanism for SPPA to hire expert professional services as needed to review the necessary aspects of each project and its associated power transmission, and to provide information appropriate to assist Banning in determining whether or not to participate in the eventual development of the project.

It is anticipated that as time goes on, more extensive and substantial due diligence, review, and expert advice will be required to evaluate the many ownership arrangements, power purchase agreements and prepayment structures in the various projects which have been proposed through SPPA's RFP processes. The types of services anticipated could include but are not limited to the following activities:

- Verification of historical wind patterns in connection with decisions associated with the acquisition of potential wind farm renewable energy resources.
- Verification of underground thermal fluid characteristics with respect to the potential acquisition of potential geothermal renewable energy resources.
- Verification of diurnal solar patterns and solar energy exposures in connection with the investigations and decisions associated with the acquisition of output or the eventual purchase of potential solar energy facilities.
- Investigation and confirmation of the technical, regulatory, and legal feasibility of proposed new renewable resources and renewable generation technologies.
- Investigation of new energy storage technologies
- Legal assistance in handling complex transactions associated with the acquisition of renewable energy resources or the purchase and operation of renewable energy facilities.
- Bond counsel and federal tax exemption expert legal advice with respect to various financing structures and financing options for the acquisition of renewable energy or the purchase and operation of renewable energy facilities.
- Due diligence investigations and analysis of the costs of developing, acquiring and/or operating specified renewable projects.

- Due diligence investigations and evaluations of the credit of proposed renewable energy project developers and providers.

The SCPPA Phase II Development Agreement will allocate any costs associated with the review and due diligence on potential renewable projects based on each participant's pro-rata interest in each project. The individual contracts for technical or professional services will be undertaken through SCPPA, and SCPPA will bill those members participating based on the agreed allocations to each member participant. No costs will be allocated to a SCPPA member unless that member has expressed interest in and desire to participate in the specific project being considered. For example, if a member desires to purchase 5MW of a renewable project with a total capacity of 100MW, the member would pay 5% of the costs associated with the review, due diligence, and contract negotiation relating to that project. If a member should decide to not participate in a project, at any point during the review and due diligence process, the member would only pay for costs committed to date. Banning would have control over the projects in which it participates and would have the right to not participate in any project or discontinue participation at any point during the development phase.

The Phase II Renewable Development Agreement provides for the sharing of costs and also provides for control over Banning's prospective projects through the appointment a Project Representative and Contract Administrator who is responsible for the administration of the Phase II Renewable Development Agreement. In addition there are provisions for a Coordinating Committee in the Agreement to provide for the effective cooperation and interchange of information among all participants in connection with administrative, technical and other matters that may arise from time to time associated with the development work which is being carried out under the Agreement. The final authority and responsibility for any development work being done under the Phase II Renewable Development Agreement is reposed in the SCPPA Board of Directors. The Board of Directors is made up of the Utility Directors of SCPPA's participating members, and Banning's Electric Utility Director regularly sits on this board and oversees this and other SCPPA projects.

In addition to providing a vehicle for the development of conventional renewable generation projects, such as wind, geothermal, biomass, landfill or solar generation, the Phase II Development Agreement can also accommodate the development of transmission projects necessary to move and deliver renewable energy for the benefit of those entities which may elect to participate in and develop such a project. The Agreement can also be employed when the participants so desire, for the development of energy storage projects or for the investigation of the latest energy storage technologies.

Since the total costs for due diligence, review, and contract negotiation are not known at this time, the development agreement establishes an expenditure cap for the development of these projects of \$100,000. It is anticipated that the actual costs could turn out to be less, depending on the number of projects Banning chooses to participate in. If any amount above the expenditure cap level is required, an addendum to the development agreement would be prepared and this addendum would be brought to the Banning City Council for approval. The project manager for the Phase II Renewable Development Project is currently designated to be the Los Angeles

Department of Water and Power, which shall be responsible for coordination and the development of the agendas and subject matter for renewable project meetings and for coordination of the necessary actions and responsibilities to carry out the SCPPA project participants' goals in connection with the development of specified renewable resource projects.

Staff recommends the Banning City Council approve the Phase II Renewable Development Agreement between SCPPA and the City of Banning, attached herewith as Exhibit "A".

FISCAL DATA: The maximum expenditures under this Agreement will not exceed \$100,000, and will be incurred from 2013 through 2020 as Banning evaluates and participates in additional renewable energy projects through the SCPPA organization. Funds to cover these expenditures are available in account no. 670-7010-473.27-50.

RECOMMENDED BY:



Fred Mason
Electric Utility Director

APPROVED BY:



Andrew J. Takata
City Manager

REVIEWED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

RESOLUTION NO 2012-69

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING
THE PHASE II RENEWABLE DEVELOPMENT AGREEMENT BETWEEN SCPPA AND
THE CITY OF BANNING**

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

WHEREAS, California Senate Bill X 12 (SB X 12) mandates that all publicly owned utilities must meet 33 percent of their retail electricity load with renewable energy by 2020; and

WHEREAS, the City of Banning is a member of the Southern California Public Power Authority (SCPPA); and

WHEREAS, the City wishes to enter into a Phase II Renewable Development Agreement with SCPPA, attached herewith as Exhibit "A", to share the costs of investigating, planning, designing and developing renewable energy projects; and

WHEREAS, Banning's share of these costs will not exceed \$100,000 over the period of 2013 through 2020; and

WHEREAS, funds to cover these expenditures are available in account no. 673-7010-473.27-50;

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

SECTION 1: Adopt Resolution 2012-69 approving the Phase II Renewable Development Agreement between SCPPA and the City of Banning, and authorize the City Manager or his designee to execute and administer said Agreement.

PASSED, APPROVED, AND ADOPTED this 11th day of September 2012.

Don Robinson, Mayor
City of Banning

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

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

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-69 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of September, 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit “A”

PHASE II RENEWABLE DEVELOPMENT AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

**THE CITY OF ANAHEIM; THE CITY OF AZUSA;
THE CITY OF BANNING; THE CITY OF BURBANK;
THE CITY OF CERRITOS; THE CITY OF COLTON;
THE CITY OF GLENDALE; THE IMPERIAL IRRIGATION DISTRICT;
THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE
DEPARTMENT OF WATER AND POWER; THE CITY OF PASADENA;
THE CITY OF RIVERSIDE; THE CITY OF VERNON
(AS APPPLICABLE)**

DATED FOR CONVENIENCE AS OF JULY 18, 2012

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EXHIBIT A – Schedule of Renewable Energy Development Project Elements [Exhibit A may be revised from time to time to reflect modifications of Renewable Development Project Elements as reflected therein, or pursuant to Sections 4, 6, 8, 9,10, 11, 14, 17 and 19 of this Agreement]

PHASE II RENEWABLE DEVELOPMENT AGREEMENT

1. PARTIES, PHASE II RENEWABLE DEVELOPMENT AGREEMENTS TO BE SEPARATELY AND INDIVIDUALLY EFFECTIVE.

1.1 This Phase II Renewable Development Agreement (this "Agreement"), which is dated for convenience as of July 1, 2012 is made and entered into 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 Anaheim ("ANAHEIM"), the City of Azusa ("AZUSA"), the City of Banning ("BANNING"), the City of Burbank ("BURBANK"), the City of Cerritos (CERRITOS), the City of Colton ("COLTON"), the City of Glendale ("GLENDALE"), the Imperial Irrigation District ("IID"), the City of Los Angeles acting by and through the Department of Water and Power ("LADWP"), the City of Pasadena ("PASADENA"), the City of Riverside ("RIVERSIDE"), and the City of Vernon ("VERNON"), as applicable, (each, individually, a "Party", and collectively, the "Parties"). ANAHEIM, AZUSA, BANNING, BURBANK, CERRITOS, COLTON, GLENDALE, IID, LADWP, PASADENA, RIVERSIDE, and VERNON are also, each as a signatory to this agreement and as may be applicable, each referred to individually as the "Participant" and collectively as "Participants." In addition ANAHEIM, AZUSA, BANNING, BURBANK, CERRITOS, COLTON, GLENDALE, IID, LADWP, PASADENA, RIVERSIDE, and VERNON to the extent they participate in any renewable resource

development activities associated with any Project Element may be referred to, depending on the context, individually as a "Project Element Participant" or collectively as "Project Element Participants." Additional Parties or Participants may be added as provided in Section 9.3.2 or, if applicable, as may be provided by way of Section 19 herein.

- 1.2 This Agreement shall become independently effective between SCPPA and any separate or discrete Party specified in Section 1.1 (irrespective of the approval or lack of approval of this Agreement by any other Participant) upon the approval of this Agreement by the Board of Directors and the other contracting Party's approving authority.

2. RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.

- 2.1 The Recitals set forth herein and the facts, which follow, are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections," "Annexes," "Appendices," "Schedules" and "Exhibits" shall be to Sections, Annexes, Appendices, Schedules

and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose nor given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:

- 2.2 SCPPA was created pursuant to provisions contained in the joint exercise of powers act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act"), by its members, which are municipalities and an irrigation district that supply electricity in the State of California, for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of projects for the generation, storage or transmission of electric energy, including renewable generation technologies in accordance with the Act.

2.3 SCPPA's members created SCPPA as a separate and independent public entity pursuant to the Act and pursuant to the Joint Powers Agreement between SCPPA and its members dated as of November 1, 1980 as amended.

2.4 Pursuant to the terms of the Act, and the Joint Powers Agreement constituting SCPPA's formative instrument, SCPPA has the power to plan, develop, finance, own, acquire, design, construct, operate, maintain and repair electric generation or transmission projects or to cause such projects to be planned, developed, financed, designed, constructed, operated, maintained and repaired, and to provide by agreement with a public agency of the State of California to perform such activities.

2.5 Pursuant to the terms of the Act and the SCPPA Joint Powers Agreement, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, manage, operate and administer projects involving generation and transmission of electric energy, including renewable energy projects, and involving systems, methodologies and programs for the acquisition, supply procurement and delivery of services related to the studying, planning, contracting for, administering, financing, developing, acquiring, constructing, reconstructing, improving, enlarging, bettering, managing, operating, maintaining or decommissioning any such projects, and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, constructed, improved, managed, operated, maintained, and administered and to provide by agreement for the performance and carrying out of any such activities

2.6 All of the members of SCPPA are California public entities which provide electric energy to their citizens through their municipally owned electric systems. In many SCPPA projects the administration of such projects is carried forth through various mechanisms provided in the Act or SCPPA's Joint Powers Agreement or by way of a variety of arrangements between SCPPA and its members.

2.7 In recent years SCPPA members have experienced the imposition of a substantial number of new laws, rules and regulations addressing energy procurement and the development of energy resources which have effectively required the Participants to shift generation assets to increasingly rely on renewable generation and other systems and methods to conserve generation resources and to reduce emissions from existing generating systems and the members of SCPPA have utilized SCPPA for many of the projects and programs which have been developed to achieve these goals, and desire to continue to so utilize SCPPA.

2.8 Certain of the proposed Participants which are contemplated to participate in this Phase II Renewable Development Agreement are publicly owned utilities which are members of SCPPA and have utilized SCPPA in the past to develop and finance projects. Over the course of the past several years, members of SCPPA have developed numerous renewable energy projects through SCPPA and in carrying forth these projects have utilized both their own staff and the staff of other SCPPA members to develop, implement, and where applicable to administer such projects.

2.9 Through an earlier agreement for the development of renewable resources SCPPA and certain Participants have carried forth certain renewable energy goals to investigate, plan, design, develop and provide for the eventual financing, contracting for, procurement, acquisition, deployment and operation of a number of Renewable Electric Energy Resource Projects by which to meet certain SCPPA members' Renewable Portfolio Standard. Through the renewable energy Acquisition process described in this Agreement the Parties intend to provide the resources necessary to continue this process to investigate, plan, design, develop and provide for the eventual financing, contracting for, procurement, acquisition, deployment and operation of the Renewable Electric Energy Resources which Participant desires to be acquired, developed, financed, implemented or deployed through SCPPA. The Parties desire to carry forth such work as may be necessary to bring such Acquisitions to fruition to assist the Participant in meeting its Renewable Portfolio Standard.

2.10 To further the aims of the proposed SCPPA Renewable Electric Energy Resource Project, on January 19, 2006 the SCPPA Board of Directors approved Resolution 2006-2 which declared its intention to reimburse certain renewable resource expenditures from the proceeds of future financings, as required by United States Department of Treasury Regulations section 1.150-2.

2.11 Thereafter on April 20, 2006 the SCPPA Board of Directors by way of Resolution 2006-13 created the SCPPA Renewable Electric Energy Resource Project and declared this project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement.

2.12 By way of Resolution 2006-13 the SCPPA Board of Directors also authorized the execution of the Renewable Electric Energy Resource Project Development Agreement for the SCPPA Renewable Electric Energy Resource Project among SCPPA and each of SCPPA's members and entities participating in the Study Project created thereby. This earlier agreement approved pursuant to Resolution 2006-13 is referred to herein as the "Phase I Agreement".

2.13 Under the Phase I Agreement, SCPPA and the SCPPA members and entities participating in the Phase I Agreement have carried out the development measures necessary to acquire, purchase, procure, construct or otherwise contract for, as the case may be, a substantial number of Renewable Electric Energy Resources for the benefit of the participating entities under that agreement.

2.14 Participant has a continuing need for Renewable Electric Energy Resources which may be currently be in development phase by SCPPA pursuant to the Phase I Agreement as well as by other means and which are contemplated to be developed in the future pursuant to this Agreement. Participant desires to participate in the continuing development and Acquisition of Renewable Electric Energy Resources by way of this Phase II Agreement. Given these needs and to draw upon and utilize their combined resources, SCPPA and Participant have determined that it is desirable to enter into this Agreement to provide a vehicle by which to achieve the continuing renewable goals of Participant and SCPPA through this Phase II Agreement.

2.15 By way of this Phase II Agreement the Parties desire to provide a mechanism for the continuation of and the eventual further consummation of the work begun under the Phase I Agreement and to provide for the investigation, examination, study, exploration, Acquisition and development of renewable electric energy resources entailing both renewable generation resources, transmission resources and other facilities and arrangements for the storage, exchange or management of renewable energy, for the purpose of facilitating the delivery of renewable energy to assist the Participant in meeting the significant and growing needs of its Renewable Portfolio Standard or renewable energy requirements. Participant has either participated previously in the Phase I Project or has worked with SCPPA in the past and, because of the significant continuing and growing need for renewable resources described herein, SCPPA and Participant desire to carry forth this Project.

2.16 The Parties contemplate that certain Project Elements with respect to certain Participants may be financed through SCPPA, and that differing Acquisitions may take the form of either power purchase agreement structures, prepayments for renewable energy, outright facility or renewable asset purchases, or option arrangements incorporating any of these structures.

2.17 It is the intention of SCPPA and Participant that SCPPA shall undertake on Participant's behalf to facilitate or provide those administrative, operational and other resources and requirements as shall be necessary or advisable to develop, operate and carry forth the Participant's interests and objectives in the

aforementioned Renewable Electric Energy Resources in a manner consonant with the objectives of this Agreement.

- 2.18 It is also contemplated through this Agreement that SCPPA and Participant may continue, where desired or appropriate, to carry forth those measures to further the renewable objectives of the Phase I and the Phase II Coordinating Committees (together the Consolidated Coordinating Committee) and the objectives of the SCPPA members represented on these committees having pressing renewable resource needs, to obtain a seamless cooperative working relationship culminating in the successful achievement of meaningful renewable energy Acquisitions for those Parties participating in this Project, in Phase I or in other renewable energy resource projects.
- 2.19 To further the goals of the Project SCPPA and Participant desire to carry forth this Phase II with the preparatory steps for the development and Acquisition of a number of renewable resources for the benefit of Participant and, if applicable, for the eventual financing, procurement, acquisition, engineering, construction, deployment, operation and maintenance of proposed renewable energy projects.
- 2.20 The Parties desire, by way of this Phase II Project, to continue to study, examine, investigate, explore and further develop the potential acquisition of energy and capacity from Renewable Electric Energy Resources and the potential pathways, interties, interconnections, substations, energy storage equipment and facilities, other facilities and equipment and transmission resources to deliver such energy,

to ensure that each Participant meets its respective renewable energy resource goals.

- 2.21 To further the Participant's renewable energy objectives the Parties desire, by way of this Phase II Agreement, to proceed forward with and carry out this Phase II Project to further the achievement of the Participant's RPS goals pursuant to the terms and conditions set forth herein.
- 2.22 In order to enable SCPPA to carry forth the goals and purposes of the Phase II Project as set forth herein, it is necessary for SCPPA to have a binding agreement with Participant to pay Participant's share of SCPPA's costs associated with the Project, Project Element(s) and Participant's share of those payments required to be made in accordance with provisions of any applicable Project Agreements. SCPPA shall further provide for the investigation, implementation, administration, operation and maintenance of the Project for the purpose of securing and paying for the rights, services, entitlements and deliverables contemplated hereby, through the application of the payments required to be made by the Participant to SCPPA in accordance with the provisions of this Agreement.
- 2.23 Participant shall pay from its electric revenue fund, including any and all legally available electric system reserves, all amounts payable to SCPPA under this Agreement, including but not limited to its proportionate share of Renewable Development Costs, Pre-operation costs and all other costs incurred pursuant to this Agreement, and such payments shall constitute an operating expense of Participant's electric utility.

2.24 As one of matters contemplated under this Agreement SCPPA and Participants have identified certain releases, exculpations, liability protections, and related matters which are more fully set forth in Section 5 and 14 of this Agreement, the cost of which shall be paid by the Participants, pursuant to the provisions of this Agreement, including Section 10.2 herein. It is the intention of the Parties that, to the extent SCPPA incurs any costs in connection with providing the Participants such releases, exculpations, liability protections or related matters under Section 14, such costs shall constitute Renewable Development Work Costs which shall be passed through to the applicable Participant or Participants pursuant to the terms of this Agreement. Therefore it is the intention of the Parties that all such releases, exculpations, liability protections and related matters provided by SCPPA will be ultimately and entirely paid for by the Participants through the inclusion in SCPPA's costs to be billed by SCPPA to the Participants as part of the Renewable Development Work Costs in conformance with the billing and payment methodology established by this Agreement, and the Participant agrees to pay its Renewable Development Cost Share of such costs.

2.25 Through this Agreement the Parties intend to, among other things: (i) pursue certain Renewable Development Work (as defined herein) to carry forth the Project and Project Elements, including the preparation of regulatory applications, carrying out potential site reviews, the undertaking of those measures necessary to exercise due diligence in the examination of leasing arrangements, obtain planning studies, surveys, permits, licenses, easements, entitlements, approvals, cost estimates and construction, project delivery and deployment schedules; (ii)

prepare contracts, instruments and documents to carry forth the renewable energy Acquisitions described herein, (iii) take such other actions as are necessary or desirable for securing of any regulatory approvals and meeting environmental requirements to undertake the renewable energy Acquisitions described herein; (iv) determine the feasibility and estimated cost of the Project and the described renewable energy Acquisitions; (v) secure all property rights and entitlements; (vi) permit the acquisition of equipment, goods, materials, parts, facility assets or other items (or the acquisition of an option to purchase any of same in the future) to facilitate the timely or cost-effective deployment of the proposed renewable energy projects; (vii) cause to be provided advisory and consulting services related to the Project, including engineering, environmental, regulatory, legal, financial, accounting and related services, through contracts or otherwise; and (viii) provide a mechanism to facilitate the payment from each Participant, in accordance with each participant's proportionate share, to SCPPA of SCPPA's costs for the Renewable Development Work and Pre-Operation Costs and all other costs in carrying out and in furtherance of this Project in the manner provided herein

3. **AGREEMENT.** In consideration of the mutual covenants herein, the Parties agree as follows:
4. **DEFINITIONS.** In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and in the exhibits attached hereto and initially capitalized, shall have the meanings specified:

4.1 Acquisition. The procurement of energy, capacity and/or renewable energy attributes associated with any Renewable Electric Energy Resource(s) including facilities for interconnection with, or transmission or delivery of, any Renewable Electric Generation Resource, and any Renewable Electric Energy Transmission Resource. Acquisition also includes procurement, construction, obtainment or creation of new transmission paths or facilities, or upgrading of existing transmissions paths (whether physical, virtual or otherwise) or facilities to accommodate transmission of energy from Renewable Electric Energy Generation Resources. In addition Acquisition includes the procurement of energy storage facilities, devices, and arrangements, energy exchange management and peak load shifting technologies. An Acquisition may be carried forth by way of an asset purchase, an exchange, a joint ownership or participation arrangement, a power purchase agreement, a purchase and sale arrangement, a transmission purchase or service arrangement, an environmental attribute procurement arrangement, a prepayment arrangement, construction, upgrading or any other action, contract, device or other means deemed appropriate to achieve Participant's renewable resource goals.

4.2 Act. The "Act" has the meaning set forth in Section 2.1.

4.3 Additional Party. A public agency which is added to or made a Participant under this Agreement, as may be applicable, either pursuant to Section 9.3.2 of this Agreement or, if applicable, pursuant to Section 19 of this Agreement.

4.4 Agreement. This Agreement, as more specifically set forth in Section 1 hereof, as it may be amended from time to time.

4.5 Board of Directors. The Board of Directors of the Southern California Public Power Authority.

4.6 Consolidated Coordinating Committee. The combination of the Phase II Coordinating Committee and any Coordinating Committee existing pursuant to the Phase I Agreement.

4.7 Contribution. The principles of contribution set forth in Section 14.5 hereof.

4.8 Entitlement Share. The percentage entitlement of each Participant in a Project Element as set forth in Exhibit A herein, as the same may be amended or supplemented from time to time.

4.9 Estimated Monthly Renewable Development Work Costs. For any particular month, the estimated amount that the Project Manager determines will be required to be paid to cover the Renewable Development Work Costs during such month, including adjustments for differences between previously estimated and recorded Renewable Development Work Costs.

4.10 Executive Director. The Executive Director of the Southern California Public Power Authority.

4.11 Financing Work. All activities associated with the proposed financing of a Project Element or Project Elements on behalf of a financing Participant or

financing Participants, including preparation and drafting of instruments and agreements necessary to the financing, and including tax considerations and all other necessary or desirable work to enable Participants identified on Exhibit A to obtain financing for their respective percentage share in the ensuing project associated with any Project Element. Financing Work may include, where applicable, work to establish any financial structure, contractual arrangement, or other device which might be useful to any Participant or Project Element Participant to take advantage of, or indirectly obtain a benefit from, any tax advantage, tax credit or other tax or financial incentive which might otherwise not be directly available to a governmental entity.

- 4.12 Joint Powers Agreement. The "Southern California Public Power Authority Joint Powers Agreement" dated as of November 1, 1980, as amended and modified, entered into pursuant to the provisions of the Act, between SCPPA and its members and any successor agreement.
- 4.13 LADWP. The City of Los Angeles acting by and through the Department of Water and Power, which has also been a participating SCPPA member in, and the Project Manager for, Phase I.
- 4.14 Participation Agreements. The agreement or agreements, as determined by the Coordinating Committee or the Board of Directors as applicable, that provide for the participation of any members of SCPPA, potentially in association with other entities, in the potential acquisition, purchase, procurement, financing,

deployment, management, operation or maintenance of any project or any Project Element.

- 4.15 Party. This term shall have the meaning ascribed thereto in Section 1 hereof.
- 4.16 Power Sales Agreement. The agreement or agreements which will provide for SCPPA's ownership, interest, rights or entitlements or other form of participation in a proposed SCPPA generation project and the respective rights and obligations of the parties with respect to such project. As determined by the Board of Directors and the participants in the proposed project, the Power Sales Agreements may provide, among other things, for the procurement, acquisition, financing, construction, operation, maintenance or decommissioning of the project.
- 4.17 Power Sales Agreement/Transmission Services Agreement Work. All activities associated with the preparation of Power Sales Agreements or Transmission Services Agreements, or of agreements carrying forth similar purposes, as the case may be, between SCPPA and a Project Element Participant relating to any Project Element.
- 4.18 Phase I. The project on behalf of all SCPPA members participating therein created by way of the Renewable Electric Energy Resource Project Development Agreement entered into between SCPPA and various SCPPA members and entities pursuant to SCPPA Resolution 2006-13.

4.19 Phase I Agreement. The Renewable Electric Energy Resource Project Development Agreement(s) entered into between SCPPA and certain members of SCPPA and publicly owned utilities, pursuant to SCPPA Resolution No. 2006-13.

4.20 Phase I Coordinating Committee. The Coordinating Committee established pursuant to Phase I.

4.21 Phase II. The cumulative project or projects and Project Element and Project Elements created through the approval of Phase II Renewable Development Agreement(s) between SCPPA and Participant, and SCPPA and other SCPPA members or participating entities.

4.22 Phase II Agreement. This Phase II Renewable Development Agreement.

4.23 Phase II Coordinating Committee. The Coordinating Committee as may be established pursuant to Section 8 herein.

4.24 Phase II Project. The total aggregate of all proposed cumulative Acquisitions associated with any and all Project Element(s) and all of the rights and obligations associated therewith, including all related agreements and arrangements, all appurtenant equipment thereto as may be applicable, the applicable portion of any common facilities and related facilities for interconnection or transmission of the output of any Project Element(s) and all necessary or related facilities to carry forth the deployment and placement into operation of any Project Element(s). Exhibit A contains the proposed Acquisitions or Project Elements and the Entitlement Share of energy or capacity contemplated to be acquired by each

SCPPA member participating in Phase I or Phase II as of the date of this Agreement. Exhibit A may be amended by the Coordinating Committee or as otherwise provided in this Agreement to reflect revisions in participation, revisions in generation or transmission entitlements, percentages or capacity, the addition or withdrawal of new or different proposed Project Element Participants, the addition of new Project Elements and the deletion of then existing Project Elements. Each such amendment, revision, modification or addition to Exhibit A shall be supplied to each Participant requesting the same. The Coordinating Committee or the Board of Directors, as provided herein or as may be applicable, shall have the authority to modify the project description contained herein to accommodate or adapt to new circumstances or changed conditions. For the purpose of this Agreement the terms "Project" and "Phase II Project" shall be synonymous.

4.25 Pre-Operation Costs. Those costs or expenses relating to the acquisition of equipment, goods or other resources necessary to the development of a Project Element or otherwise acquired in anticipation of financing, procurement, construction, implementation or deployment of the initial phases of an Acquisition (including the acquisition of an option or options for procurement or to purchase any of same in the future) for the benefit of the Project Element that the Board of Directors or the Coordinating Committee, as appropriate, has determined will facilitate the timely or cost-effective acquisition, implementation, deployment, construction or placement into operation of the Project Element.

4.26 Project. For purposes of this Agreement "Project" shall have the meaning set forth in the definition of Phase II Project.

4.27 Project Representative and Contract Administrator. The person appointed by Participant pursuant to Section 24 of this Agreement to act as a liaison between Participant and SCPPA with respect to the performance of this Agreement and to represent Participant in all aspects and elements of the administration of this Agreement.

4.28 Project Agreements. This Agreement, the Participation Agreements, the Power Sales Agreements, the Transmission Services Agreements, the joint ownership agreements, any asset purchase agreement or purchase and sale agreement in connection with the acquisition, purchase or procurement of any renewable resource or associated facility forming part of a project or any Project Element, any power purchase agreement associated with a project or any Project Element, any agreement addressing the scheduling or tagging of any energy associated with a project or any Project Element, any agreement addressing entitlement to or transfer of renewable attributes or addressing any renewable certifications, designations, characterizations or nominations relating to any energy associated with a project or any Project Element, any agreement relating to the dispatching, interconnection, transmission or delivery of energy associated with any project or Project Element from the point or points of generation to the point or points of delivery as determined by the Coordinating Committee, any agreement relating to storage of energy or equipment, facility maintenance or operation of any project

or Project Element, and any other agreement or agreements designated as a Project Agreement by the Coordinating Committee.

4.29 Project Element. Any Renewable Electric Energy Resource or any of the various SCPPA wind, geothermal, biomass, landfill, solar or other subprojects which form a discrete component within the Project as set forth by way of example in Exhibit A, or which may qualify as a renewable project under Participant's renewable portfolio standard, or as may hereafter be approved for Acquisition with respect to a Participant by action of the Participant's Project Representative and Contract Administrator or otherwise by approval of the Coordinating Committee or Board of Directors or as otherwise provided herein. A Project Element may also entail procurement, construction, obtainment or creation of new transmission paths, facilities and equipment or upgrading of existing transmissions paths, facilities and equipment (whether physical, virtual or otherwise) any interconnections or interconnection arrangements, or any means of transmission congestion remediation which may accommodate the transmission of energy from Renewable Electric Energy Generation Resources. Project Elements may be added to or deleted from this Agreement with respect to a Participant by action of the Participant's Project Representative and Contract Administrator or otherwise with the approval of the Coordinating Committee or the Board of Directors.

4.30 Project Element Determination. "Project Element Determination" means any matter involving a question pertinent to the studying, investigating, planning, financing, engaging, developing, acquiring, constructing, reconstructing,

operating, mitigating, maintaining, administering, managing, improving, enlarging, or bettering of a Project Element.

- 4.31 **Project Element Participant**: An entity sharing in the cost in the manner set forth herein, and participating in a specific Project Element development pursuant to this Agreement or the Phase I Agreement. Project Element Participants and their respective corresponding Project Elements are set forth in Exhibit A herein, which exhibit may be amended or supplemented from time to time to reflect changes in participation, changes in participants or changes in participant shares with respect to any Project Element or changes in Entitlement Share with respect to any participant and/or with respect to any Project Element.
- 4.32 **Project Manager**. The entity appointed or designated as such pursuant to the provisions in Section 5 hereof.
- 4.33 **Project Matter**. The term, "Project Matter" shall mean a matter for decision by the Board of Directors involving a question pertinent to the studying, planning, financing, developing, acquiring, constructing, reconstructing, improving, enlarging, bettering, operating or maintaining of a Project as to which there shall be one or more Project Contracts as defined in the Joint Powers Agreement.
- 4.34 **Prudent Utility Practice**. Any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or approved by the governing body that establishes the standards or recommendations of the particular area of science or

industry practice prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition, taking into account the anticipated design and operational characteristics of the Project and the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, methods or acts to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers' warranties and requirements of governmental agencies of competent jurisdiction and shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.

4.35 Renewable Development Work. All activities necessary or desirable to (i) determine the scope and extent of any Project Element and determine and develop those documents, instruments, agreements or arrangements necessary or desirable to achieve the agreed upon structure of any Project Element, (ii) determine the particular renewable resources and related facilities to be acquired and the structure of the Acquisitions, (iii) determine the nature of the participation structure, (iv) perform legal work, investigative and due diligence work, site studies, meteorological, geological, heliographical, diurnal, geophysical, engineering or environmental studies or work, or any other reviewing, regulatory,

permitting, licensing or entitlement work as may be required for any Project Element, (v) draft and negotiate all contracts necessary or appropriate or as may otherwise be required to carry forth any Project Element, (vi) perform Power Sales Agreement/Transmission Services Agreement Work, (vii) perform any transmission, interconnection or congestion studies as may be required by any Project Element, (viii) estimate the cost to and of all Project Elements for any proposed Acquisition, purchase or procurement, as appropriate, of associated renewable resources and related facilities, (ix) estimate the cost to the Project and all Project Elements of any transmission or interconnection proposals associated with any Project Element, (x) estimate the cost of any new or upgraded transmission paths or any other transmission congestion remediation measures associated with the Project or any Project Element, (xi) perform any Financing Work, (xii) estimate the proposed schedule for the overall Project and for all Project Elements and the anticipated schedules for any proposed Acquisition, purchase or procurement, as appropriate, of associated renewable resources and related facilities, (xiii) estimate the proposed schedule for any Acquisition involving any transmission related resource and the proposed schedule for any new or upgraded transmission path or other transmission congestion remediation measure associated with the Project or any Project Element, (xiv) obtain the appropriate permits, entitlements, licenses and approvals, (xv) take all necessary or desirable actions relating any other appropriate pre-acquisition measures associated with the Project or any Project Element, (xvi) identify potential corridors, interconnections, transmission paths and points of delivery for energy

and capacity associated with any Project Element and address issues relating to providing transmission, interconnection services, scheduling, dispatching and delivery to Participants, and (xvi) perform any other service or activity related to the Project or any Project Element as determined by the Coordinating Committee which is consistent with this Agreement and any budget approved by the Coordinating Committee.

- 4.36 Renewable Development Work Costs. All costs and expenses necessary or desirable to carry forth or complete Renewable Development Work and all costs as further described in Section 6.3 hereof.
- 4.37 Renewable Development Work Cost Share. With respect to any Participant, its percentage share of Renewable Development Work Costs as set forth on Exhibit A hereto, as such shares may be adjusted pursuant to Sections 4, 6, 8, 10, 11, 14, 17 and 19 herein. The fraction of all costs of all Project Elements created by posing the cumulative total of Participant's costs in all Project Elements in which Participant is a Project Element Participant as the numerator of such fraction with the cumulative total of all costs of all Participants in all Project Elements representing the denominator of such a fraction is the proportionate share which a Participant has in the Project.
- 4.38 Renewable Electric Energy Generation Resource. A source of energy which meets the definition of an "eligible renewable energy resource" under California law or which satisfies the requirements necessary to be included in a Participant's

Renewable Portfolio Standard or which otherwise satisfies a Participant's renewable energy goals.

- 4.39 **Renewable Electric Energy Resource.** A Renewable Electric Energy Generation Resource, a Renewable Electric Energy Transmission Resource or a Renewable Electric Energy Storage Resource.
- 4.40 **Renewable Electric Energy Resource Project.** Renewable Electric Energy Resource Project is described in Sections 2.10, 2.11 and 2.12 herein.
- 4.41 **Renewable Electric Energy Storage Resource.** A storage resource that can be utilized to store Renewable Electric Energy or other energy resources for utilization at a later period in time.
- 4.42 **Renewable Electric Energy Transmission Resource.** A resource which can be utilized to transmit electric energy or to facilitate or direct the transmission or movement of electric energy from a Renewable Electric Energy Generation Resource or other energy resource, and includes, without limitation, interconnections, transmission lines, interties, substations, switchyards, switching stations and other resources used in directing and moving electric energy.
- 4.43 **Renewable Portfolio Standard.** The formal pronouncement issued by or on behalf of a Participant, or which may otherwise be applicable to a Participant, describing its renewable energy goals or requirements as the same may be modified or amended from time to time. A Participant's Renewable Portfolio Standard may

also be referred to from time to time as its renewable portfolios standard or as its RPS.

4.44 Required Concurrence. The affirmative vote of more than one half, numerically, of the Participants participating in the Project Element to which the vote pertains, who, in addition, represent greater than sixty percent (60%) of the Entitlement Shares in the Project Element to which the vote pertains.

4.45 Transmission Services Agreement. The agreement or agreements which will provide for SCPPA's ownership, interest, rights or entitlement or other form of participation in the proposed SCPPA transmission project and the respective rights and obligations of the Parties with respect to such project. As determined by the Board of Directors and the participants in the proposed project, the Transmission Services Agreement may provide, among other things, for the financing, construction, operation, maintenance or decommissioning of the project or Project Element.

5. PROJECT MANAGER.

5.1 Appointment. SCPPA or its designee shall act as Project Manager under this Agreement. Unless LADWP declines to be Project Manager or fails to take action to determine whether it desires or elects to be Project Manager, or unless SCPPA and the LADWP shall agree otherwise, SCPPA may appoint, designate and authorize LADWP to be the Project Manager to carry out, as agent for and on behalf of SCPPA and SCPPA members participating in Phase I and Phase II, and as principal on its own behalf, the Renewable Development Work in accordance

with this Agreement. Should LADWP act as Project Manager under this Agreement, unless SCPPA and LADWP shall agree otherwise, LADWP shall continue as Project Manager for Phase I and Phase II so long as SCPPA members continue to participate in Phase I or Phase II and so long as Phase I and Phase II or either of them continue as an active SCPPA Project. Notwithstanding the forgoing, in the event LADWP becomes the Project Manager either SCPPA or LADWP may terminate LADWP's services as Project Manager upon two (2) years written notice.

- 5.2 Term. Unless SCPPA and the Project Manager shall mutually agree otherwise, or unless otherwise provided in this Agreement, the Project Manager shall serve in the capacity of Project Manager as provided herein, during the term of and pursuant to this Agreement for so long as this Agreement is in effect.
- 5.3 Authority of the Project Manager. Subject to the express limitations of this Agreement, the Project Manager is authorized, in its discretion, in the performance of Renewable Development Work, to incur costs, liabilities and obligations and to perform and arrange for the performance of Renewable Development Work. The Project Manager may perform Renewable Development Work through its own employees, other SCPPA members, consultants, contractors or otherwise. To assist the Project Manager in its responsibilities, at the Project Manager's request, SCPPA and Participant will endeavor to furnish such further information as may be reasonably available from other members touching upon or relating to tasks or responsibilities as may confront the Project Manager, which the Project Manager may reasonably find useful in performing

Renewable Development Work and/or to meet the requirements of regulatory agencies having jurisdiction over the Project, any Project Element or any part thereof. In the execution of Renewable Development Work, the Project Manager is authorized to exercise those SCPPA powers as may be reasonably necessary to carry forth such work as are vested in SCPPA pursuant to the Act and its Joint Powers Agreement as agent for SCPPA to carry forth the objectives set forth herein.

5.4 Duties and Responsibilities of the Project Manager. The Parties hereto acknowledge that a principal purpose of this Agreement is to continue Renewable Development Work which may have been commenced pursuant to the Phase I Agreement so that this work can be brought to consummation and also to continue to investigate such additional potential Project Elements as may materially assist the Participants in meeting their required RPS goals. The Participants and the Project Manager desire to fully cooperate in these efforts to obtain a seamless cooperative working relationship eventuating in the successful accomplishment of meaningful Acquisitions for all Participants and culminating in the fulfillment of those RPS goals as may be accomplished through this Agreement. Subject to the provisions of Section 10 hereof, the duties and responsibilities of the Project Manager in performing Renewable Development Work or in incurring Pre-Operation Costs, as applicable, under this Agreement shall include but not be limited to:

5.4.1 Obtaining appropriate leases, permits, licenses, entitlements, clearances, rights, certifications and approvals, including such state, county, city or

other local approvals as may be necessary or appropriate to the Project and any Project Element and, prior to obtaining same, identifying all major governmental, regulatory, permitting or contractual conditions proposed to be imposed with respect to such leases, permits, licenses, entitlements, clearances, rights, certifications and approvals, which conditions shall be agreed upon by the Coordinating Committee.

- 5.4.2 Identifying and reporting on renewable resource options and identifying vendors and contractor supply options or other alternatives with respect to any Project Element.
- 5.4.3 Identifying any environmental, pollution or contaminant costs and any mitigation measures (i) that will be required by, or which may be expected to be applicable to, any Project Element and/or (ii) that the Project Manager recommends, if any, should be incurred as part of Pre-Operation Costs.
- 5.4.4 Developing a Project plan including, among other things a breakdown with respect to each Project Element of Project cost estimates and developing schedules and arrangements for delivery of the Project output of each Project Element.
- 5.4.5 Promptly informing and consulting with the Coordinating Committee and, when appropriate, the Board of Directors, regarding significant factors or events which may affect, or have affected, Renewable Development

Work, Renewable Development Work Costs, Pre-Operation Costs, any schedules relating to any Project Elements.

- 5.4.6 Submitting, to the Coordinating Committee at mutually agreed times a status report to reflect the progress of Renewable Development Work and the incurrence of Pre-Operation Costs and any necessary or desirable revisions to the schedule.
- 5.4.7 Recommending to the Coordinating Committee for its review and approval, the plans, cost estimates and schedules for Acquisition of each renewable resource or of renewable resources and related facilities to be acquired as part of any Project Element, and recommending to the Coordinating Committee for its review and approval the plans, cost estimates and schedules for development, construction or otherwise for the implementation of any Project Element.
- 5.4.8 Preparing and submitting to SPPA for its review and approval budget revisions for Renewable Development Work Costs and any proposals or revisions for the proposed incurrence of Pre-Operation Costs.
- 5.4.9 Notifying and invoicing, or causing to be notified and invoiced, each Participant at least thirty (30) days prior to the beginning of a given month, of its share of Estimated Monthly Renewable Development Work Costs, or Renewable Development Work Costs which may be due, as applicable, during said month and adjusting, or causing to be adjusted, the amount of money invoiced each month for Renewable Development Work

Costs to reflect variations between the prior recorded costs for Renewable Development Work and amounts received from Participants for Renewable Development Work. Notwithstanding the foregoing, with respect to the first invoice for Estimated Monthly Renewable Development Work Costs (which invoice may also include the balance of the month or months following the effective date of this Agreement), such invoice shall be sent immediately following the effective date of this Agreement and shall be payable by the Participants within twenty days or by the twenty fifth day of the month, whichever shall be later, after receipt of such invoice. Notwithstanding the forgoing, however, the Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.

- 5.4.10 Expending, or causing to be expended, the funds provided for Renewable Development Work Costs and Pre-Operation Costs in accordance with this Agreement.
- 5.4.11 Arranging and negotiating contracts for furnishing, purchasing, procuring, acquiring and obtaining from any source it may select (including any Party), engineering, architectural, construction, legal, environmental, regulatory, financial, accounting and other services necessary or desirable for the performance and completion of Renewable Development Work

and the performance or completion of work relating to Pre-Operation Costs.

- 5.4.12 Arranging and negotiating contracts for the financing of any costs associated with any Project Element as directed by the Coordinating Committee.
- 5.4.13 Administering, performing and enforcing contracts entered into for Renewable Development Work and entered into relating to Pre-Operation Costs and furnishing conformed copies of such contracts as requested by any representative on the Coordinating Committee.
- 5.4.14 Complying with any and all laws and regulations applicable to the performance of Renewable Development Work and to the incurrence of Pre-Operation Costs.
- 5.4.15 Keeping and maintaining, or causing to be kept and maintained, records of moneys received and expended, obligations incurred, credits accrued, and maintaining or causing to be maintained for auditing by SCPPA or any auditor selected pursuant to Section 6.6 or Section 6.7 hereof, those accounting records used by the Project Manager or SCPPA, as applicable, pertaining to financial and statistical data for Renewable Development Work and for the incurrence of Pre-Operation Costs.
- 5.4.16 Preparing and submitting, or causing to be prepared and submitted, to the Board of Directors each calendar quarter after the date of this Agreement

a cost report which shall be developed from the records kept and maintained pursuant to Section 5.4.15 hereof and which shall include both the accumulated total disbursements for each work activity category from the beginning of Renewable Development Work, including a comparison to the most recently approved Renewable Development Work budget, Pre-Operation Costs incurred and a reconciliation of payments to date for Renewable Development Work Costs and Pre-Operation Costs to the total disbursements to date for Renewable Development Work Costs and Pre-Operation Costs, respectively.

- 5.4.17 Enforcing all claims against contractors, subcontractors, suppliers, consultants and others arising out of Renewable Development Work or relating to Pre-Operation Costs.
- 5.4.18 At the request of SCPPA, providing reasonably available assistance and furnishing information that it has relating to Renewable Development Work or to Pre-Operation Costs.
- 5.4.19 Preparing a final completion report for SCPPA upon termination of this Agreement or completion of an applicable Project Element, which shall include studies performed, summaries of executed Project contracts, and a final cost report for Renewable Development Work and Pre-Operation Costs.
- 5.4.20 Not permitting any unsatisfied liens arising out of Renewable Development Work or the incurrence of Pre-Operation Costs to remain in

effect other than liens for taxes or assessments not yet delinquent, liens for workers' compensation awards and liens for labor and material not yet perfected, provided that the Project Manager shall not be required to pay or discharge any such lien as long as the Project Manager is contesting such lien in good faith.

- 5.4.21 Assisting in the negotiations for and preparing all Project Agreements.
- 5.4.22 Providing for the orderly administration of meetings of the Coordinating Committee and maintaining the agenda, records and minutes thereof.
- 5.4.23 Determining the advisability of incurring Pre-Operation Costs and recommending to the Board of Directors the incurrence of Pre-Operation Costs.
- 5.4.24 Upon termination of this Agreement pursuant to Section 22.2.2 hereof or upon a determination by the Coordinating Committee not to proceed with construction of a Project Element (a) selling, at such time as directed by the Coordinating Committee and to such party or parties as approved by the Coordinating Committee, any and all equipment, goods or other assets relating to the Project Element (including options to purchase any of same) the costs of which were Renewable Development Costs or Pre-Operation Costs and (b) promptly distributing the proceeds thereof (less any costs which may be owing by a Project Element Participant with respect thereto and any costs incurred in connection with the sale thereof) to each respective Project Element Participant in proportion to the

proportionate contributed share of the Pre-Operation Costs and Renewable Development Work Costs of the Project Element by the Project Element Participants.

- 5.4.25 Procuring and maintaining in force, insurance coverage for Renewable Development Work in such form and amounts as the Project Manager, the Coordinating Committee, or, as applicable, the Board of Directors may deem to be necessary or desirable.
- 5.4.26 Conducting all other activities deemed necessary or desirable to complete Renewable Development Work and to complete work relating to the incurrence of Pre-Operation Costs and performing such other functions and duties as may be assigned to it by the SCPPA, but in any event in a manner consistent with this Agreement.

5.5 No Warranty for Project Manager Services. If a Participant serves as Project Manager, all services provided by said Project Manager are provided on an "as is" basis, and Project Manager disclaims all warranties, express or implied, statutory or otherwise, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

5.6 Indemnification of Project Manager. If a Participant serves as Project Manager, in its capacity as Project Manager under this Agreement, Project Manager shall be entitled to indemnification by SCPPA as set forth herein. SCPPA shall indemnify and hold harmless Project Manager, its board, officers, employees, and the employees of the governmental entity of which the Project Manager is a part,

past, present or future (collectively, "Project Manager Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Project Manager, SCPPA or third persons) (collectively, "Losses") arising by reason of any actions, inactions, errors or omissions incident to the performance of this Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, nonappealable order) on the part of Project Manager Indemnitees. At Project Manager's option, SCPPA shall defend Project Manager Indemnitees from and against any and all Losses. If SCPPA, with Project Manager's consent, defends any Project Manager Indemnitee, Project Manager and Project Manager's City Attorney's Office (or other appropriate Project Manager counsel or authority, as appropriate) shall approve the selection of counsel, and Project Manager shall further approve any settlement or disposition, such approval not to be unreasonably withheld. For the avoidance of doubt, nothing in this Section 5.6 or in any other provision of this Agreement shall affect the Project Manager's obligation in its capacity as a Project Participant or Project Element Participant including Project Elements in which it serves as the Project Manager to make any and all payments in accordance with the first two sentences

in Section 10.2 of this Agreement and Section 2.24 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement.

6. RENEWABLE DEVELOPMENT WORK BUDGET; SCHEDULE; COSTS; AND AUDITS.

6.1 Initial Budget, Subsequent Budgets, Not to Exceed Costs. The Coordinating Committee or the Project Representative and Contract Administrator, may, as it shall deem appropriate, approve such initial budgets and subsequent budgets as may be necessary to track costs associated with any Project Element. The budget may be structured in a way which sets forth separate specific budgets or budget categories for each Project Element for which the Project Representative and Contract Administrator desires to proceed forward or incur any costs. The budget or budgets so implemented shall be developed with the participation of SCPPA, the Participant and the other applicable Participants in the Renewable Development Project to address Renewable Development Work Costs and Pre-Operation Costs. Modification of such budgets or any subsequently revised budget shall be subject to review and approval by the Coordinating Committee, the Project Representative and Contract Administrator, or the Board of Directors, as may be applicable. Costs under this Agreement shall not exceed one hundred thousand dollars (\$100,000.00) without a further amendment of this agreement between SCPPA and the Participant which is signatory to this Agreement. For avoidance of doubt, however, for purposes of this Section 6.1 costs which are subsumed or otherwise covered under, or returned to a Project Element Participant by way of, a Power Sales Agreement, a Transmission Services

Agreement or a Participation Agreement relating to or associated with a Project Element shall be considered costs under that Power Sales Agreement, Transmission Services Agreement or Participation Agreement, respectively, and shall not be considered a cost under the associated Project Element through this Agreement. In the absence of a budget or other billing mechanism relating to a Project Element, the Project Element Participants in such a Project Element may be billed for the Renewable Development Work Costs or Pre-Operation Costs pertaining to such a Project Element at such times as such costs are incurred pursuant to the same monthly project billing methodology which SCPPA employs and under which SCPPA members are billed with respect to other SCPPA projects and programs.

6.2 Initial Schedule. The Parties shall develop an initial schedule for Renewable Development Work and the incurrence of Pre-Operation Costs. Such schedule shall specify the overall schedule agreed to by the Parties with any specific Project Element and its associated Renewable Development Work and the work associated with the incurrence of Pre-Operation Costs indicated therein. Modification of such schedule or any subsequently revised schedule shall be subject to review and approval by the Coordinating Committee.

6.3 Renewable Development Work Costs. Renewable Development Work Costs shall include:

6.3.1 All costs of services, transportation, studies, and engineering, architectural, construction, legal, environmental, regulatory, financial,

accounting and other services necessary or desirable for the performance and completion of Renewable Development Work and the performance and completion of work relating to Pre-Operation Costs, performed by the Project Manager in its capacity as Project Manager or by any other person or entity, in connection with this Agreement and approved by the Project Manager (including, but not limited to, costs for Renewable Development Work incurred but not paid prior to the effective date of this Agreement).

- 6.3.2 Payroll and other expenses of Project Manager's employees while performing work in connection with this Agreement, including applicable overhead costs and labor loading charges, including but not limited to time off allowances, payroll taxes, workers' compensation insurance, retirement and death benefits and other employee benefits. Labor loading shall be in conformance with the Project Manager's in-house rates as adjusted from time to time.
- 6.3.3 Applicable costs of materials, supplies, services and apparatus used in connection with this Agreement.
- 6.3.4 All costs incurred with respect to Pre-Operation Costs that are incurred prior to the execution, if applicable, of any separate agreement pursuant to which Pre-Operation Costs would otherwise be paid.

- 6.3.5 Federal, state, and local taxes, payments in lieu of taxes, and permit, entitlement, license, certification, and approval-related fees of any character arising out of the performance of this Agreement.
- 6.3.6 All costs for Renewable Development Work insurance in such form and amounts as determined by the Project Manager or the Board of Directors.
- 6.3.7 All costs of the Project Manager, including payments made out of the self-insurance fund, if any, of the Project Manager, and to the extent not initially provided for by insurance, of discharging or paying any liability and loss, damage and expense, including costs and expenses for attorneys' fees, and other costs of defending, settling or otherwise administering claims, liabilities or losses arising out of workers' compensation or employers' liability claims or by reason of property damage or injuries to or death of any person or persons or by reason of claims of any and every character resulting from, arising out of or connected with the performance of the Renewable Development Work, whether wholly or partially by the negligence of the Project Manager or its respective employees or agents, including without limitation and by way of example, any indemnity provided to Project Manager in Section 5.6.
- 6.3.8 The Project Manager's administrative and general expenses to cover services in the performance of Renewable Development Work and

administrative and general expenses incurred by the Project Manager in connection with services regarding the incurrence or proposed incurrence of Pre-Operation Costs.

- 6.3.9 The costs arising out of the issuance of and administration of any request for proposal process undertaken for the purpose of identifying potential renewable energy projects or otherwise initiating Renewable Development Work for any proposed renewable energy project.
- 6.3.10 The cost of pursuing any legal action or defending against any action associated with or arising out of any Renewable Development Work, including but not limited to all costs incurred by SCPPA in connection with or in carrying out the provisions of Section 14.1.
- 6.3.11 All costs relating to the preparation and drafting of Power Sales Agreements, Transmission Services Agreements or Participation Agreements on behalf of Project Element Participants identified in Exhibit A hereto, whether performed by the Project Manager in its capacity as Project Manager or by SCPPA or any other person or entity, in connection with this Project or any Project Element.
- 6.3.12 The cost of any audit carried out under or pursuant to the terms of this Agreement.
- 6.3.13 All out-of-pocket expenses relating to Renewable Development Work.

6.4 Renewable Development Work Cost Share. Unless otherwise provided by way of this Agreement Participant shall pay its Renewable Development Work Cost Share of all its costs of Renewable Development Work, Financing Work and Pre-Operation Costs in accordance with this Agreement.

6.5 Costs or Expenses Incurred for Sole Benefit of Purchaser. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Participant, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Participant, in which event only Participant (and no other participating entity in the Renewable Development Project) shall be responsible for the payment thereof under this Agreement.

6.6 Final Audit of Renewable Development Work Costs and Pre-Operation Costs. Should the Project Manager and SCPPA deem it appropriate or advisable the Parties may cause to be conducted a final audit of all Renewable Development Work Costs and Pre-Operation Costs, including Renewable Development Work Costs incurred prior to the effective date of this Agreement, upon determination that the Renewable Development Work (or substantially all of the Renewable Development Work) is complete or upon termination of this Agreement. Within thirty (30) days following completion of the final audit, a report of total audited costs expended under this Agreement may be submitted by the Project Manager to the Board of Directors.

6.7 Interim Audit of Renewable Development Work Costs and Pre-Operation Costs.

Should the Board of Directors deem it advisable it may cause to be conducted one or more interim audits of all Renewable Development Work Costs and Pre-Operation Costs expended to the date of the interim audit, including Renewable Development Work Costs and Pre-Operation Costs incurred prior to the effective date of this Agreement.

7. PAYMENT OF RENEWABLE DEVELOPMENT WORK COSTS AND PRE-OPERATION COSTS.

7.1 Payment of Costs. Except as may be otherwise provided herein, or by way of a separate resolution of the Board of Directors, by the twenty fifth (25th) day of the month or within twenty (20) days after receipt of an invoice for Renewable Development Work Costs furnished pursuant to the provisions of this Agreement, whichever is later, Participant shall pay to SCPPA its Estimated Monthly Renewable Development Work Costs and its Renewable Development Work Costs, as the same may be applicable and which may be due. All such amounts so paid may be expended by the Project Manager for Renewable Development Work in accordance with the terms of this Agreement. Within twenty (20) days after receipt of an invoice for Pre-Operation Costs furnished pursuant to this Agreement, Participant shall pay to SCPPA the amount of Pre-Operation Costs so invoiced. All such amounts so paid may be expended by the Project Manager for Pre-Operation costs in accordance with the terms of this Agreement. Should a Participant elect to pay any cost of its proportionate share of any Project Element

by way of payment through the Phase I Agreement, then such cost shall not be billed or payable under this Agreement.

7.2 Payment of Invoices. Participant shall make payment of invoices which are billed for the costs, expenses, liabilities and obligations of the Project including Renewable Development Work Costs and Pre-Operation Costs, to SCPPA, at the following address:

Southern California Public Power Authority
1160 Nicole Court
Glendora, California 91740

SCPPA shall deposit all such payments made to it in a separate account. All payments from such account shall be made by SCPPA upon the direction of the Project Manager (or its agent) or as otherwise authorized by the Executive Director or the Board of Directors.

7.3 Disputed Invoices. If any portion of an invoice is disputed, the total invoice, including the disputed amount, shall be paid to SCPPA when due and under protest. If the disputed amount is found by SCPPA to be validly disputed and proven to be incorrectly invoiced such incorrectly invoiced amount shall be promptly refunded to the Participant. Payments not made under protest shall be deemed to be correct, except to the extent audits may reveal overpayments or underpayments by Participant.

7.4 Adjustments to Billings. Adjustments to billings resulting from an audit described in Section 8.3 hereof shall be made within thirty (30) days of resolution.

7.5 Incurrence of Pre-Operation Costs. The Project Manager is authorized to incur Pre-Operation Costs in support of a specific Project Element in a manner and to the extent authorized by a determination of the Coordinating Committee which is reflected in its minutes or by a Resolution of the Board of Directors. Pre-Operation Costs shall be separately accounted for but shall be billed as part of the Renewable Development Work Costs.

7.6 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.

8. COORDINATING COMMITTEE.

8.1 Formation. There may be established under this Agreement, in the discretion of each Participant's Project Representative and Contract Administrator, a Coordinating Committee to provide management direction for the Project Manager and to secure the effective cooperation and interchange of information among the Parties in connection with the incurrence of Pre-Operation Costs and in connection with various administrative, technical and other matters that may arise from time to time associated with the Renewable Development Work and Financing Work.

8.1.1 In the event a Coordinating Committee is established, each Participant and SCPPA shall appoint a representative to the Coordinating Committee and shall designate such representative within a reasonable

time (or within thirty days (30) days of any assignment pursuant to Section 19 of this Agreement) by giving notice to the other Parties of such designation. Each voting Party may, by giving notice to the other Parties, designate an alternate to act as its representative on the Coordinating Committee in the absence of the regular member or to act on specified occasions with respect to specified matters; such notice to be effective, however, only if given at least one day prior to the first meeting of the Coordinating Committee at which such alternate shall attend. The Chairperson of the Coordinating Committee shall be the representative of the Project Manager. Such Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson may call a meeting of the Coordinating Committee at the request of any representative on the Coordinating Committee. The Chairperson shall promptly call a meeting of the Coordinating Committee at the request of representatives on the Coordinating Committee, or their designated alternates, who are entitled in the aggregate, to votes totaling the number of votes required to take action on the matter before the Coordinating Committee. Notwithstanding anything to the contrary in this Agreement, the representative of SCPPA on the Coordinating Committee shall not be entitled to vote on any matter.

8.1.2 Each member of the Coordinating Committee shall only be entitled to vote with respect to those Project Elements in which the member is a

Project Element Participant. Votes on matters which affect the Project as a whole or which are otherwise within the jurisdiction of the Board of Directors shall be voted on by the Board of Directors in accordance with the provisions of Section 9 of this Agreement. Each Project Element Participant shall have a weighted vote in proportion to its Entitlement Share in the particular Project Element to which the vote is addressed. Should a Coordinating Committee decision address the Project as a whole as opposed to a Project Element or Project Elements each Participant represented on the Coordinating Committee shall be entitled to a weighted vote equal to the proportion which the Entitlement Shares belonging to that Participant in all Project Elements bears to the sum of all Participant Entitlement Shares in all Project Elements. In addition to any other voting requirements imposed by this Agreement all actions or decisions by the Coordinating Committee with respect to Renewable Development Work concerning the Project or any Project Element shall be by agreement of at least the Required Concurrence of the applicable Participants or Project Element Participants entitled to vote on the matter based on the Renewable Development Work Cost shares as set forth in Exhibit A. Any vote of the Coordinating Committee may be taken in an assembled meeting or by telephone, facsimile transmission, telegraph, telex, letter or by any combination thereof, to the extent permitted by law, provided that if taken by telephone, a written record shall thereafter be made as soon as

amendment or addition to Exhibit A shall be supplied to Participant upon request.

8.5.2 Except for those amendments which may be effectuated as specifically otherwise provided under this Agreement, this Agreement may only be amended as provided in Section 20.6. Except as otherwise provided herein, neither the Coordinating Committee nor any of its appointed committees shall have the authority to amend this Agreement.

8.6 Written Records to be Kept. Actions by the Coordinating Committee as required by this Agreement shall be set forth in its minutes, except when made by telephone pursuant to Section 8.1.2 and 8.1.3, as applicable, here, whereupon a written record thereof shall be made thereafter as soon as possible as provided in Section 8.1.2 and 8.1.3, as applicable, herein or as provided by law.

8.7 Costs Incurred by Representatives of Participants. Unless otherwise provided by resolution of the Coordinating Committee or the Board of Directors, any expenses incurred by the Project Representative and Contract Administrator, or incurred by any representative of any Participant serving on the Coordinating Committee or any other committee in connection with his or her duties on the Coordinating Committee or any other committee shall be paid by the Participant and shall not be included as Renewable Development Work Costs or Pre-Operation Costs.

9. ROLE OF PARTICIPANT, SCPPA AND THE BOARD OF DIRECTORS.

9.1 Project Matter Voting Methodology. The performance contemplated under this Agreement and rights and obligations of SCPPA under this Agreement shall be subject to the ultimate and supervening control of the Board of Directors. Actions by the SCPPA Board of Directors with respect to a Project Element in which the Participant is a Project Element Participant shall only be carried forth with Participant's participation. Voting on Project Element Determinations with respect to a Project Element which is proposed to become a SCPPA project shall be conducted in accordance with the voting procedures set forth in the Joint Powers Agreement. Participant will participate in the SCPPA Board of Directors meetings with respect to any Project Element in which it is a Project Element Participant and Participant will cooperate with SCPPA and the Board of Directors to provide for effective interchange of information relating to such Project Element to provide coordination on a prompt and orderly basis to SCPPA, in connection with the various financial, administrative and technical matters which may arise from time to time in connection with administration of Renewable Development Work and Pre-Operation Costs affecting the Project Element. All actions with respect to any Project Element or the Project as a whole taken by the SCPPA Board of Directors shall be carried out in conformance with SCPPA's Joint Powers Agreement, dated as of November 1, 1980, as amended.

9.2 Participant's Project Representative and Contract Administrator. In accordance with the provisions of Section 24 herein, Participant may designate an individual to act as the Project Representative and Contract Administrator who shall be responsible for the ongoing exchange of information, coordination and

cooperation with SCPPA and such elections with respect to Project Elements under this Agreement as may be necessary to carry out the Participants renewable energy goals with respect to the Project. Participant may designate alternate representatives by similar notice to act as alternates in place of or on behalf of its regular Project Representative and Contract Administrator, in the absence of the regular representative or to act on specified occasions with respect to specified matters. Participant shall promptly give notice to SCPPA of any change in the designation of its representative or alternate representative.

9.3 Duties and Responsibilities of the Board of Directors. The actions carried forth pursuant to this Agreement and the agreements associated with any Project Element as well as the rights and obligations of SCPPA in relation to the Participants under this Agreement or any agreement associated with any Project Element and under other agreements and arrangements pertaining to ongoing Phase I Project matters and Phase II Project matters, shall be subject to the ultimate control at all times of the Board of Directors. The Board of Directors shall have the following duties and responsibilities, among others:

9.3.1 The Board of Directors may, by resolution, authorize or prescribe alternative billing, payment, costing and cost reconciliation mechanisms as an alternative to the billing mechanisms otherwise provided in this agreement, to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project or with respect to any Project Element.

- 9.3.2 To the extent provided by law, the Board of Directors may, by resolution, act upon and approve the participation of additional public agencies as participants in the Phase II Project (which additional public agencies, as applicable, may become Additional Parties under the terms and conditions of an agreement which mirrors this agreement) and shall have authority to approve any agreement with such an agency to carry forth such participation.
- 9.3.3 Where appropriate, the Board of Directors may provide overview or recommendations with respect to the progress of Renewable Development Work.
- 9.3.4 When necessary or appropriate the Board of Directors may provide liaison between SCPPA and the Project Manager and, where desirable or appropriate, between the Participant and other SCPPA members with respect to Renewable Development Work.
- 9.3.5 The Board of Directors shall exercise general supervision over any committee(s) created pursuant to Section 9.5 hereof, if any such committee(s) are so established
- 9.3.6 The Board of Directors shall review, discuss and attempt to resolve any problems, disputes or issues among members relating to any Project Element or relating to the Project in general.

- 9.3.7 The Board of Directors shall review and act upon all recommendations of the Project Manager made to the Board of Directors to incur Pre-Operation Costs.
- 9.3.8 The Board of Directors may make recommendations to the Project Manager with respect to Renewable Development Work.
- 9.3.9 The Board of Directors may review written statistical and administrative reports and information and other similar reports and records furnished to the Board of Directors by the Project Manager.
- 9.3.10 The Board of Directors may review and act upon revisions recommended by the Project Manager with respect to the description of the Project or any Project Element, which revisions shall be in accordance with Prudent Utility Practice.
- 9.3.11 The Board of Directors may review and act upon other recommendations of the Project Manager
- 9.3.12 The Board of Directors, where appropriate, may create or issue such budgets or budgetary or cost payment mechanisms as may be appropriate or desirable to pay and account for all costs of Renewable Development Work.
- 9.3.13 The Board of Directors may review and act upon any and all contracts or contract amendments which relate to Renewable Development Work or the incurrence of Pre-Operation Costs.

9.3.14 The Board of Directors may review and act upon all proposed amendments to this Agreement and, if any such amendment or amendments are approved, provide if requested, for the forwarding of same to the Participant which is signatory hereto.

9.3.15 The Board of Directors may review and act upon any litigation or potential litigation, including the settlement thereof, relating to Renewable Development Work or Pre-Operation Costs or otherwise arising out of or associated with any Project Element.

9.3.16 The Board of Directors may take such action as may be necessary to make preparations and arrangements for the financing of any Project Element which is being posed to be developed into a proposed SCPPA project and for SCPPA's interest therein.

9.3.17 The Board of Directors may review and act upon the contracts requested by, arranged for or otherwise negotiated by the Project Manager pursuant to Section 5 hereof.

9.3.18 The Board of Directors is reposed with the complete power and authority to act upon any matter which is capable of being acted upon by the Coordinating Committee or which is specified as being within the authority of the Coordinating Committee pursuant to the provisions of this Agreement, including those matters enumerated in Section 8 of this Agreement.

9.3.19 The Board of Directors may perform such other functions and duties as may be appropriate for the Board of Directors to efficiently carry forth the objectives of this Agreement.

9.4 Audits. The Board of Directors may arrange for audits of the books and cost records of the Project Manager and any cost reimbursable consultant or contractor, relating to the performance of Renewable Development Work or the incurrence of Pre-Operation Costs.

9.5 Establishment of Other Committees. The Board of Directors may establish other committees, including, but not limited to, auditing, legal, financial, engineering, operating, insurance, environmental and public information committees. The authority, membership, rules and duties of any such committee, if established, shall be as prescribed by the Board of Directors, and each such committee shall be subject to the provisions of this Agreement and shall be responsible to the Board of Directors.

9.6 Delegation. To secure the timely administration of this Agreement by SCPPA and to promote the necessary actions, approvals and coordination in connection with various administrative, technical and other matters which may arise from time to time in connection with the development, construction, management, operation, administration and maintenance of the Project, in appropriate cases the authority, powers, duties and responsibilities of the Board of Directors under this Section 9, may be delegated to the Executive Director.

10. OBLIGATIONS OF THE PARTIES.

10.1 Furnishing Studies to SCPPA. Upon completion of the Renewable Development Work, the Project Manager shall furnish to SCPPA copies of reports and studies which may have been developed during the planning and development stage related to the Renewable Development Work in addition to those described in Section 5.4.19 hereof.

10.2 Participant's Payment Obligations Unconditional; No Release of Project Manager from Its Obligations; Action by Parties Against Third Parties or Under this Agreement. The obligation of the Participant pursuant to this Agreement to make payments under this Agreement is absolute and unconditional, irrespective of any rights of setoff or counterclaim Participant might otherwise have against SCPPA. Participant shall be responsible for such payments to SCPPA for any costs incurred by SCPPA for the benefit of Participant with respect to the Project or for the benefit of Participant as a Project Element Participant in any Project Element. This provision shall not be construed to release either SCPPA or Participant from the performance of either SCPPA's or the Participant's obligations or undertakings contained in this Agreement or to release the Project Manager from any of its obligations or undertakings, or, except to the extent provided in this Section, prevent or restrict any Participant at its own costs and expense, from prosecuting or defending any action or proceeding against or by third parties or taking any other action to secure or protect its rights under this Agreement; provided, however, that any costs incurred by SCPPA in prosecuting or defending any such action or proceeding or taking any other action to secure or protect its

rights under this Agreement shall be Renewable Development Work Costs which shall be paid as incurred by SCPPA, in accordance with this Agreement.

10.3 Parties to Furnish Information. In addition to its obligation to provide information to the Project Manager as provided in Section 5.3 hereof, SCPPA and Participant each agree to cooperate fully in connection with any regulatory authority, as required, in connection with obtaining leases, permits, licenses, entitlements, rights, certifications and approvals, including such city, county or other local approvals as may be necessary or appropriate to the Project pursuant to Section 5.4.1 hereof. Such cooperation may include, but shall not be limited to, the furnishing of necessary financial, operational and other information of either Party as related to the Project. Nothing in this section shall preclude SCPPA or Participant from contesting the validity or applicability of any such conditions, permits, approvals, or regulatory or governmental authorizations in good faith by appropriate proceedings.

11. WITHDRAWAL FROM THE PROJECT.

11.1 Withdrawal from the Project. Notwithstanding the expiration date otherwise prescribed for this Agreement, Participant may unilaterally terminate this Agreement at any time during the Term upon 180 days written notice to SCPPA. Upon such unilateral termination by Participant, SCPPA shall transfer or assign to Participant, and Participant shall assume all SCPPA's rights, responsibilities, obligations and liabilities associated with the Project including all rights and obligations of SCPPA under such Project Agreements as may be applicable but

only to the extent such Project Agreements permit such an assignment. Notwithstanding the unilateral withdrawal right under this Section 11.1, if any of SCPPA's obligations associated with the Project, pursuant to any Project Agreement or any other applicable agreement for development of the project or for the effectuation of any such withdrawal or assignments, survive said transfer from SCPPA to Participant, then any such obligations shall continue to remain the obligation of Participant and shall survive under this Agreement. Any outstanding payment obligations of Participant due to Renewable Development Work Costs incurred prior to the date of withdrawal and any outstanding Pre-Operation Costs incurred by the Project Manager or otherwise on behalf of the withdrawing Participant prior to the date of withdrawal shall continue until satisfied, and Participant shall be entitled to access to and, upon request, receive copies of documents relating to Renewable Development Work and the incurrence of Pre-Operation Costs pertaining thereto.

11.2 No Reimbursement of Costs upon Withdrawal, Exception. Should Participant withdraw from a Project Element pursuant to Section 11.1 herein, it shall not be entitled to reimbursement of Renewable Development Work Costs incurred by SCPPA except as to those costs for which SCPPA is able to obtain reimbursement.

12. PARTICIPANT'S ELECTION TO PROCEED WITH RESPECT TO A PROJECT ELEMENT.

12.1 Action of the Parties at or near the Conclusion of Renewable Development Work.

Based upon the results of Renewable Development Work and a determination by any respective Project Representative and Contract Administrator, or the Coordinating Committee or the Board of Directors that Renewable Development Work (or substantially all Renewable Development Work) with respect to a Project Element is for practical purposes, complete and that the Project Element is fully subscribed and should proceed, or that the Project Element should proceed even though some Renewable Development Work may remain, the Project Element Participants shall review as soon as possible and, as applicable, act upon (i) a description of the proposed project, (ii) the proposed schedules and various cost estimates associated with the final implementation of the proposed project and (iii) the instruments and agreements which should be approved by the approving authorities of each of the Project Element Participants, including but not limited to Power Sales Agreements, Participation Agreements, Transmission Services Agreements or other or additional similar agreements or instruments by which to implement the proposed project.

12.2 Exercise of Election to Proceed with the Project. After satisfying the matters addressed in Section 12.1 Participant and SCPPA shall, at a time governed by their respective approval processes and the extent of the governmental business before their respective approving authorities, elect whether each Party wishes to proceed with the proposed project. Such election may be provided to SCPPA by way of the approval of the agreements for implementation of the proposed project by the Project Element Participants' respective governing bodies. Provided,

however, that the proposed project shall not be finally approved or proceed unless and until the appropriate SCPPA subscription in the proposed project is obtained by way of final approval by the respective Project Element Participants' governing bodies.

13. EXECUTION OF PROJECT AGREEMENTS. As soon as practicable after the Parties have elected pursuant to Section 12 to proceed with the Project, the Project Manager shall assist SCPPA in the preparation and approval of any remaining Project Agreements which may be appropriate for the Project and (ii) such other matters as shall be necessary or desirable to complete said Project Agreements including, without limitation, a detailed description of the Project as then proposed. The Parties hereby agree that they will use their best efforts to obtain all such authorizations and approvals as promptly as possible.

14. LIABILITY

14.1 No Liability of SCPPA, Participants, or the Project Manager, their Directors, Officers, Employees, Etc.; SCPPA and its Directors, Officers, Employees and Project Manager and its Directors, Officers, Employees Not Individually Liable. Subject to the conditions set forth herein and except for the duty of each Participant to pay its costs under this Agreement as set forth in the last sentence of this Section 14.1, the Parties to this Agreement agree that neither SCPPA, Participants or the Project Manager (in its capacity as Project Manager separate and apart from its capacity as a Participant) nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively the "Released Parties") shall be liable for any claims, demands,

liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of any of the Participants, SCPPA or third persons) suffered by any Released Party as a result of the performance or non-performance by any of the Released Parties under this Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, nonappealable order). Each Party releases the Released Parties from any claim or liability that the Party may have cause to assert as a result of any actions or inactions or performance or non-performance by the Released Parties under this Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). No such performance or non-performance by the Released Parties shall relieve either SCPPA, Participants or the Project Manager of their respective obligations under this Agreement, including either Party's obligation to make payments required under this Agreement. The provisions of this Section 14.1 shall not be construed so as to otherwise relieve the Project Manager from any obligation under this Agreement or other applicable agreements. It is also hereby recognized and agreed that no member of the Board of Directors, the Project Manager or SCPPA

or the Participants, nor their officers, employees, board members, agents, attorneys or advisors, shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement. The provisions of this Section 14.1 with respect to the Project Manager shall only apply to the Project Manager in its capacity as Project Manager, and shall not extend to or affect any payment obligations incurred in its capacity as a Participant. Therefore, notwithstanding any provision of this Agreement which might arguably be construed to the contrary, nothing in this Section 14 shall affect a Participant's obligation to pay its appropriate Renewable Development Work Cost Share or its proportionate share of Pre-Operation costs which are imposed upon it in its capacity as a Participant or Project Element Participant under its Phase II Renewable Development Agreement, irrespective of whether or not the Participant or Project Element Participant is also serving in the capacity of Project Manager. For the avoidance of doubt, nothing in this Section 14.1 or in any other provision of this Agreement shall affect Participant's obligation to make any and all payments in accordance with the first two sentences in Section 10.2 of this Agreement and Section 2.24 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement.

- 14.2 Limitation on Liability. It is hereby recognized and agreed that SCPPA's directors, officers and employees shall not be individually liable with respect to any loss or damage not covered by insurance and resulting from Renewable Development Work, matters relating to Pre-Operation Costs or the performance or nonperformance of any obligation under this Agreement. The obligations of

SCPPA under this Agreement shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a pecuniary liability of SCPPA or a charge against its general credit.

14.3 Extent of Exculpation; Enforcement of Rights in Equity. The exculpation provision set forth in Section 14.1 and 14.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of the other Party, and each Party shall at all times retain the right to recover, through appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other direct monetary damages owed by either a Participant, SCPPA or the Project Manager as the case may be, including, without limitation, any costs payable to SCPPA and any costs payable to the Project Manager in its capacity as Project Manager in accordance with the terms of this Agreement.

14.4 Allocation of Costs to Discharge Liability. The costs and expenses of discharging liability of either of SCPPA or Participant, or the respective past, present or future directors, officers, employees, board members, agents, attorneys or advisors of each, to a third party, resulting from Renewable Development Work, the incurrence of Pre-Operation Costs or the performance or nonperformance of any obligation under this Agreement with respect to any Project Element, and for which payment is not made by insurance provided through SCPPA, shall be

allocated to the Project Element Participants in accordance with the Entitlement Share of each such Project Element Participant in such Project Element.

14.5 Application of California Law of Contribution. In conformance with the philosophy of the Southern California Public Power Authority upon this subject as embodied in Section 7 of the Joint Powers Agreement, the following principles shall apply with respect to the law of contribution between the respective Project Element Participants in a Project Element under this Agreement.

14.5.1 Notwithstanding any provision of this Agreement to the contrary, in the event any Project Element Participant is held liable upon any judgment for damages (whether direct, indirect or consequential) caused by a negligent or wrongful act or omission occurring with respect to a Project Element in which it is participating, and to the extent reasonable expenses (including without limitation, attorney's fees) are incurred by the Project Element Participant with respect to the relevant action or suit (such expenses and judgment for damages collectively to be termed "Judgment Damages") and further provided that such Project Element Participant pays in excess of its Liability Share of such Judgment Damages, such Project Element Participant shall be entitled to contribution from each other Project Element Participant in such Project Element and such Project Element Participant may require each other Project Element Participant to pay any amount in excess of such Project Element Participant's Liability Share of such judgment which such Project Element Participant has paid, but in no event shall any

such other Project Element Participant be so required to pay in excess of such other Project Element Participant's Liability Share of such Judgment Damages.

14.5.2 With respect to any Judgment Damages or portion thereof referenced in Section 14.5.1 the term "Liability Share" shall mean, with respect to any Member, the amount of such portion multiplied by a fraction equal to (i) such Project Element Participant's then existing entitlement or right, if any, to participate in such Project Element, divided by (ii) the aggregate amount of all Project Element Participants' entitlements or rights to participate in such Project Element.

14.6 No Relief of Insured Obligations. The provisions of this Section 14 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of a valid and collectible insurance policy.

15. DEFAULT.

15.1 Notice of Default. If either Party to this Agreement is of the opinion that the other Party is in default under this Agreement, the Party having that opinion may give written notice to the other Party of the alleged default. At its next regularly scheduled meeting the Board of Directors shall attempt to informally resolve the matter. If no such informal resolution can be achieved by the Board of Directors the Board of Directors shall determine the existence and nature of the alleged default after opportunity by each Party to provide a full presentation of all facts

and issues in dispute, by a vote taken by the Board of Directors, excluding the vote of Participant. If it is determined by such vote (as adjusted to eliminate the voting percentage of Participant) that a default exists, the Board of Directors shall request that the defaulting Party immediately cure the default.

- 15.2 Obligation to Cure Default. Subject to Section 15.3 hereof, a Party determined to be in default by the Board of Directors pursuant to Section 15.1 shall take all steps necessary to cure such default as promptly and completely as possible.
- 15.3 Initial Dispute Resolution of Alleged Default. In the event that a Party shall dispute the existence or nature of a default determined by the Board of Directors pursuant to Section 15.1 hereof, such Party shall pay the disputed payment or perform the disputed obligation but may do so under protest. Any such protest shall be promptly filed in writing with the Secretary of the Board of Directors and shall specify the ground on which the protest is based. Upon the filing of such a protest the Parties agree that the Parties shall first employ the non-binding mediation process which is set forth in this Section 15.3 before initiating any other legal action.
 - 15.3.1 Unless the time requirement is otherwise extended by the mutual assent of the Parties, as soon as practicable after the filing of the protest of a Party pursuant to Section 15.3 but not later than thirty (30) days after the determination by the SCPPA Board of Directors pursuant to Section 15.1 herein, the Parties shall select a retired judge or other disinterested person with previous mediation experience to serve as mediator.

Unless this requirement is waived by the mutual agreement of the Parties, the mediator, in his or her personal capacity, shall not be a ratepayer of the Participant. Unless otherwise waived by mutual agreement of the Parties, either Party may require disclosure by the mediator of those matters, as shall be specified by the requesting Party, which are set forth in Standard 7 of the "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (Division VI of Appendix to California Rules of Court) or such successor ethical standard for neutral arbitrators in contractual arbitration promulgated by the California Judicial Council or its successor body, requiring neutral arbitrators in contractual arbitrations to disclose certain interests they may have in relation to the matter to the Parties.

15.3.2 If the Parties are unable to agree upon a mediator, the Parties shall obtain a list of proposed mediators from the Judicial Arbitration and Mediation Service (JAMS) or successor organization. Unless waived by the Parties the proposed mediators shall satisfy the conditions regarding rate payer status and disclosure set forth in Section 15.3.1. Once the list is provided, the Parties shall each have ten (10) days in which to strike names objected to, number the remaining names in order of preference, and return the list to the JAMS. If a Party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of

mutual preference, the JAMS shall invite the acceptance of a mediator to serve. If the Parties fail to agree on any of the persons named, or if acceptable mediators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Parties shall repeat the procedure set forth in this Section 15.3.2 unless the Parties shall agree to another process for selection of a mediator.

- 15.3.3 The mediation shall be commenced within sixty (60) days of the final determination by the SCPPA Board of Directors, referenced in Section 15.1, that it is unable to resolve the dispute and shall be concluded within thirty (30) days from the commencement of the mediation unless the time requirements are extended upon agreement of the Parties.
- 15.3.4 Failure of Resolution through Mediation. If the non binding mediation set forth herein fails to resolve the dispute and if the dispute still cannot, even with the hindsight of the mediation, be resolved by the by the SCPPA Board of Directors, either Party may take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation in dispute.

16. **ARBITRATION.** Nothing herein shall prevent the Parties from resolving any dispute under this Agreement by submission of the dispute to such form of arbitration as the

Parties may agree upon, provided however, that the Parties shall first exhaust the mediation process set forth in Section 15 hereof.

17. RELATIONSHIP OF PARTIES

17.1 Individual Responsibility. The covenants, obligations and liabilities of this Agreement shall not be construed to create an association, joint venture, trust, partnership or other legal entity or to impose a trust or partnership covenant, obligation of liability on or with regard to the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this Agreement; provided, however, that any liability incurred by SCPPA and/or the Project Manager, under this Agreement shall be treated as Renewable Development Work Costs which shall be paid or reimbursed by Participant.

17.2 Methodologies for Cost Sharing. The Parties mutually acknowledge that other SCPPA members, in addition to Participant, have expressed interest in planning and developing certain Project Elements which may form a portion of this Phase II project. Whenever feasible and practicable, and to the extent the costs of such Renewable Development Work relating to such other SCPPA members can be shared by Participant and such other participating SCPPA members, SCPPA shall endeavor to implement a mutually agreeable and equitable methodology to share such costs among the participating members. Participant agrees to pay its share of all such costs.

18. BINDING OBLIGATIONS. All of the obligations set forth in this Agreement shall bind the Parties and their successors and assigns.

19. ASSIGNMENT.

19.1 Limited Assignment Right. A Participant may assign or convey all or part of its rights, interests and obligations with respect to a Project Element under this Agreement to a third party (non Participant), provided that (i) the Coordinating Committee approves of such assignment, which such approval may be withheld for any reason or no reason at all at the sole discretion of the Coordinating Committee and (ii) the Coordinating Committee may, as a condition to approving the assignment, require that the remaining Participants which may be signatory to a Phase I Agreement or Phase II Agreement, may have the right of first refusal on such terms and under such time constraints as the Coordinating Committee may specify.

19.2 Assignment Procedures. Prior to any third party assignment, the assigning Participant by United States Postal Service certified mail shall offer in writing to each of the remaining Participants its Renewable Development Work Cost Share, Pre-Operation Cost share or its share of the Project Element upon the same or better terms and conditions provided to the third party. Upon receipt of such written offer each remaining Participant shall have 30 days in which to exercise its right of first refusal. Exercise of such right shall be in writing and communicated to the assigning Participant by United States Postal Service Certified Mail. If more than the total amount of the assigning Participant's Renewable Development Work Cost Share, Pre-Operation Cost share or its share of the Project Element is requested to be assigned to the remaining Participants, the assigning Participant's Renewable Development Work Cost Share, Pre-

Operation Cost share or its share of the Project Element shall be allocated pro rata (based upon the amounts requested) to the remaining Participants, and such allocation shall be deemed effective upon compliance with Section 19.2 and 19.3 hereof.

19.3 Effectiveness of Assignment. Any assignment shall not become effective until (i) the assignee assumes the assignor's rights, interests and obligations under this Agreement for the rights, interests and obligations so assigned and pays any amount (or the applicable portion thereof) then due and owing by the assignor under this Agreement (unless the assignor has agreed pursuant to the applicable assignment agreement to pay all such amounts then due and owing by the assignor) and (ii) the assignee executes and delivers to the Project Manager a signature page to this Agreement in substantially the form attached hereto or otherwise enters into an agreement mutually agreeable to assignor, assignee and the non-assigning Participants as a substitute agreement to this Agreement. Upon any such assignment and execution of this Agreement or applicable substitute agreement, the assignee shall become a party to such agreement and a Participant in the Project as of the effective date of the assignment. Immediately following such assignment and execution of this Agreement or applicable substitute agreement, the Project Manager promptly shall distribute to each Party (i) a copy of the signature page signed by the assignee, (ii) a revised cover page and page 1 of this Agreement or the applicable substitute agreement that includes the name of the assignee, (iii) a revised Exhibit A hereto, if applicable and (iv) the address,

contact and notice information pertaining to the assignee for purposes of Section 23.1 hereof.

20. GENERAL PROVISIONS.

- 20.1 Waiver Not to Affect Subsequent Defaults. A waiver at any time by any Party of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any other or subsequent default or matter.
- 20.2 Execution in Counterparts. This Agreement may be executed in counterparts, and each signatory Party shall deliver its executed counterparts to the Project Manager. All such counterparts, collectively, shall constitute but one and the same agreement.
- 20.3 No Rights in Third Parties or Duties Created. Except as provided in this Agreement, the Parties do not create any rights in or grant remedies to any third party as a beneficiary of this Agreement or create for the benefit of any third party any duty or standard of care by any covenant, obligation or undertaking established herein.
- 20.4 Headings Not Binding. The headings and captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

20.5 Severability. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable in any respect, such determination shall not affect any other provision hereof, which shall remain in full force and effect.

20.6 Amendments. Except as otherwise provided in this Agreement, including but not limited to Section 8.5 and 9.3 hereof, this Agreement may be amended only by a written amendment signed by the Parties.

20.7 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to Renewable Development Work, Pre-Operation Costs and the Project.

21. GOVERNING LAW AND VENUE. This Agreement shall be interpreted, governed by and construed under the laws of the State of California, as if executed and to be performed wholly within the State of California. The Parties each submit to the jurisdiction of the Courts of Los Angeles County and unless the Parties shall agree otherwise, venue with respect to any dispute resolution or litigation arising out of this Agreement shall be in Los Angeles County.

22. EFFECTIVE DATE AND TERMINATION.

22.1 Effective Date. This Agreement shall become effective when duly executed and delivered by Participant and SCPPA.

22.2 Termination.

- 22.2.1 Unless terminated earlier pursuant to Section 22.2.2 hereof, with the mutual concurrence of the Parties, the provisions of this Agreement with respect to a Project Element may be deemed terminated upon the execution of a Power Sales Agreement, Transmission Services Agreement or Participation Agreement with respect to such a Project Element, except that any payment obligation hereunder (whether or not a billing statement has been received by the date of termination) and any right to receive reimbursement or otherwise, if any should exist, shall survive until satisfied.
- 22.2.2 This Agreement may be terminated at any time by agreement of the Parties hereto. Upon such agreement or upon termination of this Agreement, (i) the Project Manager shall terminate all Renewable Development Work respecting Participant in an orderly manner, (ii) Participant shall fulfill all obligations hereunder to pay for the costs incurred for Renewable Development Work, including any Pre-Operation Costs that have been incurred, and (iii) any payment obligation hereunder (whether or not a billing statement has been received by the date of termination) and any right to receive reimbursement or otherwise, if any should exist, shall survive until satisfied.
- 22.2.3 Upon termination of this Agreement, the Project Manager shall retain in a reasonably accessible location all original reports, data and other documentation relating to Renewable Development Work and the

incurrence of Pre-Operation Costs for a period of three (3) years from the date this Agreement is terminated.

22.2.4 Upon termination of this Agreement, and for a period of three (3) years thereafter, each Party shall have full access to the Project files and records retained by the Project Manager and upon reasonable notification to the Project Manager may, at the requesting Party's sole expense, reproduce any or all of such Project files and records to the extent permitted by law.

23. NOTICES.

23.1 Addresses for Notices. Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

With respect to the City of Anaheim:

City of Anaheim
Attention: Public Utilities
General Manager
201 South Anaheim Boulevard, 11th Floor
Anaheim, California 92805

With respect to the City of Azusa:

City of Azusa
Director of Utilities
City of Azusa Light and Water
P.O Box 9500 (729 N. Azusa Ave.)

Azusa, California 91702-9500

With respect to the City of Banning:

City of Banning
Electric Utility Department
Attention: Fred Mason, Director
176 E. Lincoln Street
Banning, CA 92220

With respect to the City of Burbank:

City of Burbank
Burbank Water and Power
Attention: Ronald E. Davis, General Manager
P.O. Box 631
Burbank, California 91503-0631

With respect to the City of Cerritos:

City of Cerritos
Attention: Art Gallucci, City Manager
Alternate: Vince Brar
18125 Bloomfield Ave.
Cerritos, CA 90703

With respect to the City of Colton:

City of Colton
Electric Utility Director
650 N. La Cadena Drive
Colton, California 92324

With respect to the City of Glendale:

City of Glendale
Glendale Water and Power
Attention: General Manager
141 N. Glendale Avenue, 4th Level
Glendale, California 91206-4496

**With respect to the City of Los Angeles Acting by
and through the Department of Water and Power:**

General Manager
Los Angeles Department of Water and Power
111 North Hill Street, 15th Floor
Los Angeles, California 90012

With respect to the City of Pasadena:

City of Pasadena
Attention General Manager - Water and Power Department
150 S. Los Robles Avenue, Suite 200
Pasadena, California 91101

With respect to the Imperial Irrigation District:

Imperial Irrigation District
Manager, Energy Department
P. O. Box 937 (333 East Barioni Blvd.)
Imperial, California 92251-0937

With respect to the City of Riverside:

City of Riverside
Riverside Public Utilities Dept.
Attention: David H. Wright, General Manager
3901 Orange Street
Riverside, California 92522

With respect to the City of Vernon:

Abraham Alemu
City of Vernon
Resource Planning & Development Manager
4305 Santa Fe Avenue
Vernon, CA 90058

With respect to SCPPA:

Southern California Public Power Authority
Executive Director
SCPPA Office Building
1160 Nicole Court
Glendora, California 91740

23.2 Designation of Different Addresses and Persons. Any Party may, at any time, by written notice to the other Parties, designate different persons or different addresses for giving of notices hereunder.

24. DESIGNATION OF THE PARTICIPANT'S PROJECT REPRESENTATIVE AND CONTRACT ADMINISTRATOR. Participant's Project Representative and Contract Administrator for this Agreement having the complete capacity and plenary authority to administer this Agreement on behalf of Participant shall be the individual so designated by the person authorized to receive notices pursuant to Section 23.

25. AGREEMENT TO BE EFFECTIVE AS BETWEEN SCPPA AND PARTICIPANT UPON APPROVAL BY PARTICIPANT'S APPROVING AUTHORITY.

This Agreement shall become effective between SCPPA and the Participant which is signatory to this Agreement, upon approval by the signatory Participant's approving authority, irrespective of whether or not approved by any of the other Participants.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, each signatory hereto represents that he or she has been properly authorized to execute and deliver this Agreement as of the date first above written, on behalf of the Party for which he or she signs.

Date: _____, 2012

CITY OF ANAHEIM

(Seal)

Attest:

By _____

Title _____

Date: _____, 2012

CITY OF AZUSA

(Seal)

Attest:

By _____

Title _____

Date: _____, 2012

CITY OF BANNING

(Seal)

Attest:

By _____

Title _____

Date: _____, 2012

CITY OF BURBANK

(Seal)

Attest:

By _____

Title _____

Date: _____, 2012

CITY OF CERRITOS

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012

CITY OF COLTON

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012

CITY OF GLENDALE

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012

IMPERIAL IRRIGATION DISTRICT

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012

CITY OF LOS ANGELES acting by and
through its DEPARTMENT OF WATER AND
POWER

(Seal)

By _____

Attest:

Title _____

And

Secretary _____

Date: _____, 2012

CITY OF PASADENA

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012

CITY OF RIVERSIDE

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012

CITY OF VERNON

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012

CITY OF VERNON

Field Code Changed

(Seal)

By _____

Attest:

Title _____

Date: _____, 2012
(Seal)

SOUTHERN CALIFORNIA
PUBLIC POWER AUTHORITY

Attest:

By _____
RONALD E. DAVIS
Title: President

By _____
BILL D. CARNAHAN
Title: Assistant Secretary

EXHIBIT "A"

EXHIBIT A - PROJECT ELEMENT NO. 1
PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE
PROJECT ELEMENT NO. 1

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A - PROJECT ELEMENT NO. 2

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE
PROJECT ELEMENT NO. 2**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR ..

EXHIBIT A – PROJECT ELEMENT NO. 3

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE
PROJECT ELEMENT NO. 3**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 4

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE
PROJECT ELEMENT NO. 4**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 5

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE
PROJECT ELEMENT NO. 5**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR

EXHIBIT A – PROJECT ELEMENT NO. 6

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 6**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR ..

EXHIBIT A – PROJECT ELEMENT NO. 7

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 7**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 8

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 8**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR..

EXHIBIT A – PROJECT ELEMENT NO. 9

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 9**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 10

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 10**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 11

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 11**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 12

PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 12

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 13

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 13**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HERIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 14

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 14**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 15

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 15**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A – PROJECT ELEMENT NO. 16

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 16**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

EXHIBIT A - PROJECT ELEMENT NO. 17

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 17**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR ..

EXHIBIT A – PROJECT ELEMENT NO. 18

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 18**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

* EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR..

EXHIBIT A – PROJECT ELEMENT NO. 19

**PRODUCTION CAPACITY, ENTITLEMENT SHARES AND RENEWABLE DEVELOPMENT
WORK COST SHARES IN RENEWABLE PROJECT ELEMENT NO. 19**

Participants	Proposed Production Capacity	Entitlement Share	Renewable Development Work Cost Share
	MW*	Percentage*	Percentage*
City of Anaheim	0	0	0
City of Azusa	0	0	0
City of Banning	0	0	0
City of Burbank	0	0	0
City of Cerritos	0	0	0
City of Colton	0	0	0
City of Glendale	0	0	0
Imperial Irrigation District	0	0	0
City of Los Angeles	0	0	0
City of Pasadena	0	0	0
City of Riverside	0	0	0
City of Vernon	0	0	0
Total	Tbd	100%	100%

EXHIBITS MAY BE AMENDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN TO REFLECT REVISED PARTICIPATION, AND REVISED PRODUCTION CAPACITY, ENTITLEMENT SHARES, PERCENTAGES AND COST SHARES. NEW PROJECT ELEMENTS MAY BE ADDED BY THE COORDINATING COMMITTEE OR AS OTHERWISE PROVIDED HEREIN BY ADDING NEW EXHIBITS WITHIN EXHIBITS A HEREIN, AS APPLICABLE. PRODUCTION CAPACITY AND PERCENTAGES ARE SUBJECT TO ADJUSTMENT AS PROVIDED IN THIS AGREEMENT, INCLUDING SECTIONS 4, 6, 8, 9, 10, 11, 14 AND 19 HEREOF. THIS TABLE MAY BE REVISED, MODIFIED OR REPLACED BY A TABLE OR TABLES WHICH CONDENSE THE FORGOING INFORMATION AND WHICH MAY BE REFERENCED IN, APPENDED TO OR MADE A PART OF THE MINUTES OF THE COORDINATING COMMITTEE OR THE BOARD OF DIRECTORS OR OTHERWISE MAINTAINED BY THE EXECUTIVE DIRECTOR.

CITY COUNCIL AGENDA

Date: September 11, 2012
TO: Honorable Mayor and City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Resolution No. 2012-70 Approving the Local and System Resource Adequacy Capacity Purchase Agreement with Shell Energy North America for Calendar Year 2013

RECOMMENDATION: The City Council approve the local and system resource adequacy capacity purchase with Shell Energy North America ("Shell") for calendar year 2013, attached herewith as Exhibit "A".

JUSTIFICATION: It is a requirement of all California Independent System Operator ("CAISO") participants to have a minimum of fifteen percent (15%) capacity reserves. Additionally, the CAISO requires that a specified amount of each participant's total capacity be from local generating resources, as defined by the CAISO. Banning is a Participating Transmission Owner ("PTO") with the CAISO.

BACKGROUND: After the California energy crisis the CAISO has been developing market modifications to ensure that all Load Serving Entities ("LSE") have acquired sufficient electricity / capacity to serve their peak demand. The CAISO has determined that each LSE must maintain capacity reserves of at least 15% above its projected peak demand, and has implemented policy changes to that affect. Additionally, the CAISO requires that a specified amount of each participant's total capacity be from local generating resources, as defined by the CAISO.

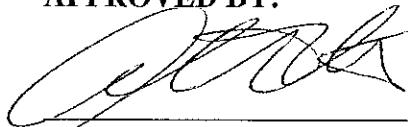
Banning has negotiated a capacity reserve deal with Shell that fulfills both the CAISO RA and LAR requirements for calendar year 2013. Staff recommends the approval of this agreement by the City Council.

FISCAL DATA: The cost of this transaction is \$3.25/kilowatt month, for a total cost of \$390,000 over the twelve month contract period. Funds have been allocated in the FY 2012-13 Budget to cover the cost of this expense.

RECOMMENDED BY:


Fred Mason
Electric Utility Director

APPROVED BY:


Andrew J. Takata
City Manager

RESOLUTION NO. 2012-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE LOCAL AND SYSTEM RESOURCE ADEQUACY CAPACITY PURCHASE AGREEMENT WITH SHELL ENERGY NORTH AMERICA FOR CALENDAR YEAR 2013

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

WHEREAS, the City is a Participating Transmission Owner (“PTO”) with the California Independent System Operator (“CAISO”); and

WHEREAS, the CAISO has implemented Resource Adequacy (“RA”) requirements of 115% requiring a minimum of 15% reserves for all Load Serving Entities (“LSE”); and

WHEREAS, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO; and

WHEREAS, the City has negotiated an agreement with Shell Energy North America to supply energy capacity to meet the CAISO Local Area Reliability (“LAR”) and RA requirements, attached herewith as Exhibit “A”;

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

SECTION 1. Adopt Resolution No. 2012-70 approving the energy capacity agreement between the City of Banning and Shell Energy North America, and authorize the City Manager or his designee to execute and administer said agreement.

SECTION 2. Authorize the Mayor to execute Resolution No. 2012-70. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, ADOPTED AND APPROVED this 11th day of September 2012.

Don Robinson, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

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

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-70 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 11th day of September 2012 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit “A”



Shell Energy North America (US), L.P.
909 Fannin, Plaza Level 1
Houston, TX 77010
713.767.5400

August 30, 2012

Deal No. 519051

City of Banning
176 East Lincoln Street
Banning, CA 92220
Attn: Fred Mason
Electric Utility Director
Phone#: 951.922.3265
Fax #: 951.849.1550

CONFIRMATION AGREEMENT
(Standard Capacity Product Confirmation)

This Confirmation Agreement ("Confirmation") is entered into as of August 30, 2012 ("Effective Date") and shall provide the terms and conditions representing the negotiated transaction ("Transaction") between Shell Energy North America (US), L.P. ("Shell") City of Banning ("Banning"), either one a "Party" or together the "Parties", in which the Seller agrees to sell to Buyer the product described below ("Capacity"). The definitions and provisions contained in the tariffs and/or protocols of the California Independent System Operator ("CAISO") as amended from time to time ("Tariff") shall apply to this Confirmation and are incorporated by reference.

<i>Master Agreement:</i>	Western System Power Pool Agreement dated July 12, 2012 as amended from time to time (the "WSPP Agreement"). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the WSPP Agreement.
<i>Buyer:</i>	Banning
<i>Seller:</i>	Shell
<i>Product:</i>	A resource-adequacy product, also known as "Capacity", defined as the qualified and deliverable capacity from the Specific Resource(s) identified below which, up to the Contract Quantity, can be counted toward meeting Buyer's local resource-adequacy requirements ("LAR") as described in Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064 and 06-07-031 of the California Public Utilities Commission ("CPUC") in effect as of the Effective Date of this Confirmation. LAR means local area reliability, which is any program of localized resource adequacy requirements established by the CPUC pursuant to CPUC decisions. This Confirmation does not confer to Buyer any right to delivery of the Contract Quantity of energy associated with the Capacity except that Buyer may include such Contract Quantity in Buyer's resource-adequacy demonstrations as Capacity during the Delivery Period. Specifically, unless otherwise agreed as between the Parties in writing, Buyer shall have no rights under this Confirmation to purchase energy and/or ancillary services in the Contract Quantity from the Specific Resource.
<i>Specific Resource:</i>	Century Generating Plant, CENTRY_6_PLIX4; provided, however, that if capacity from such unit(s) will not be counted toward meeting resource adequacy requirements in a given month during the Delivery Period due to a scheduled outage, Seller shall designate a substitute resource that is capable of providing such capacity no later than ten (10) Business Days before Buyer's month-ahead showing for such month is due to the CPUC.
<i>Delivery Period:</i>	January 1, 2013, through and including, December 31, 2013
<i>Contract Price:</i>	\$3.25 per kW-Month
<i>Existing CAISO Zone</i>	SP15

<i>LAR Region (if any, as of Confirmation Effective date)</i>	LA Basin
<i>Contract Quantity:</i>	10MW
<i>Seller's Additional Covenants & Warranties:</i>	<p>Seller makes the following additional covenants, warranties and representations:</p> <ul style="list-style-type: none"> a. Seller is duly licensed and certificated by all applicable jurisdictional regulatory agencies and bodies, and as such holds the necessary authorities, to participate in the CAISO markets. b. Seller meets the credit requirements necessary to participate in the CAISO market. c. The Contract Quantity is owned or controlled by Seller for each Specific Resource specified above. d. The Specific Resource has been registered with and/or certified by the CAISO as qualifying capacity to the Delivery Location(s); <i>provided</i>, that if the Specific Resource(s) is (are) not so registered and/or certified, Seller will take all reasonable steps to assure that the Specific Resource(s) is (are) registered and/or certified prior to the commencement of the Delivery Period in the amount no less than the Contract Quantity of Capacity sold under this Confirmation. e. The amount of the Capacity sold under this Confirmation is unencumbered by any other sale, any assignment, or any rights conferred to any party other than the Buyer. f. Unless the Specific Resource is out of service due to a forced outage as defined in the definition of Unit Firm in the Confirmation, or is out for planned maintenance as approved by the CAISO, or conditions constituting force majeure arise, Seller will: <ul style="list-style-type: none"> i. Make the Contract Quantity available, to the extent required by the CAISO to the CAISO consistent with the terms of the CAISO tariff for every hour of the Delivery Period, <i>provided</i>, that prior to the implementation of the CAISO's Market Redesign and Technology Update proposal, if the CAISO denies Seller's request for a waiver of any commitment of the unit for the next operating day, Seller shall commit the Specific Resource for each hour of the next operating day and self-schedule or submit bids in an amount no less than the Contract Quantity into the CAISO's markets as required by the CAISO during that next operating day; and, ii. Dispatch the Specific Resource in an amount not less than the Contract Quantity of megawatts in the CAISO's market for energy and / or ancillary services pursuant to any schedules and instructions of the CAISO issued in accordance with the terms of the CAISO tariff. iii. Comply with the Must Offer Obligations as specified in the CAISO tariff as amended from time to time during the term of this Confirmation. g. Seller shall not commit any portion of the Contract Quantity, including but not limited to the sale or scheduling of firm energy to any party outside the CAISO control area, until all obligations to Buyer and/or CAISO under the contract and/or the CAISO tariff have been met or are extinguished. <p>Seller will maintain or cause to have maintained the Specific Resource using "Good Utility Practice" as defined in the CAISO tariff.</p>

<i>Buyer's Additional Covenants & Warranties</i>	Buyer makes the following additional covenants, warranties and representations: (a) Buyer holds the necessary authorities to participate in the CAISO markets; and (b) Buyer meets the credit requirements necessary to participate in the CAISO markets.										
<i>Meeting Resource-Adequacy Requirements:</i>	Seller will make all commercially reasonable efforts to ensure the Product meets the resource-adequacy requirements of the CAISO; <i>provided</i> , that such commercially reasonable actions shall not include any obligation that the Seller, or Seller's supplier, undertake capital improvements, facility enhancements, or the construction of new facilities unless otherwise agreed in writing. The Parties agree that under the CAISO Tariff RA Standard Capacity Product terms, any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.										
<i>Mutual Cooperation to Preserve the Benefits of the Bargain</i>	Where necessary to modify this Confirmation to conform its terms and conditions to changes in circumstances or regulations affecting the benefits of the bargain struck by the Parties, the Parties agree to negotiate in good faith to modify this Confirmation so as to address such circumstances or regulations while preserving the benefits of the bargain struck by the Parties.										
<i>Indemnity against Penalties:</i>	Seller agrees to indemnify Buyer for any monetary penalties assessed by the CAISO against the Buyer for Buyer's failure to meet the requirements of the CAISO related to the Buyer's obligation to submit an approved resource-adequacy demonstration to the extent any such penalties were the direct result of Seller not fulfilling any of its obligations under this Confirmation; <i>provided</i> , where Buyer is in breach of this Confirmation, Seller's obligations to perform under this Confirmation and/or to indemnify the Buyer for any monetary penalties are waived.										
<i>Notices:</i>	All written notices under this Confirmation shall be deemed properly sent if delivered in person or sent by fax, or by registered or certified mail, postage prepaid to the persons specified below: <u>For notices other than Confirmations:</u> <table border="1"><tr><td>To Banning: City of Banning</td><td>To Shell: Shell Energy North America (US), L.P.</td></tr><tr><td>176 East Lincoln Street</td><td>4445 EastGate Mall, Ste. 100</td></tr><tr><td>Banning, CA 92220</td><td>San Diego, California 92121</td></tr><tr><td>Attn: Fred Mason</td><td>Attn: Steve Weisenberg, Commercial Advisor</td></tr><tr><td>Phone: 951-922-3265; Fax: 951-849-1550</td><td>Phone: 858-526-2170; Fax: 858-320-2621</td></tr></table>	To Banning: City of Banning	To Shell: Shell Energy North America (US), L.P.	176 East Lincoln Street	4445 EastGate Mall, Ste. 100	Banning, CA 92220	San Diego, California 92121	Attn: Fred Mason	Attn: Steve Weisenberg, Commercial Advisor	Phone: 951-922-3265; Fax: 951-849-1550	Phone: 858-526-2170; Fax: 858-320-2621
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Phone: 951-922-3265; Fax: 951-849-1550	Phone: 858-526-2170; Fax: 858-320-2621										
	For Confirmations: To Banning: Phone: 951-922-3265 To Shell: Phone: 858-526-2102 Payments: All payments shall be made by electronic wire transfer as follows: To Banning: Union Bank of California To Shell: Citibank ABA Routing No. 122000496 ABA No. 021000089 Account No. 24200939001 Account No. 30603873 Attn: Attn:										
<i>Choice of Law:</i>	THIS CONFIRMATION SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.										
<i>Assignment:</i>	Shell shall have the right to assign this Confirmation to an affiliate of equal or greater creditworthiness.										
<i>Buyers Resale:</i>	Buyer may re-sell all or a portion of the Product delivered to Buyer hereunder. In case of re-sell by Buyer of the Product to a third party, Seller shall cooperate with Buyer at no later than fifteen (15) Business Days before the relevant deadline for any applicable RAR Showing, that the third party Buyer is re-selling the Product to will be credited with the RA Capacity hereunder for the Delivery Period in Seller's Supply Plan.										

<i>Mobile-Sierra Provision:</i>	Absent the agreement of all Parties to the proposed change, the standard of review for changes to any portion of this Confirmation or any transaction entered into hereunder proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting <i>sua sponte</i> shall be the "public interest" standard of review set forth in <i>United Gas Pipeline Line Co. v. Mobile Gas Service Corp.</i> , 350 U.S. 332 (1956) and <i>Federal Power Commission v. Sierra Pacific Power Co.</i> , 350 U.S. 348 (1956) ("Mobile-Sierra" doctrine).
<i>No Challenge; Defense of Agreement:</i>	Neither Party will exercise any of its respective rights under Section 205 or Section 206 of the Federal Power Acts to challenge or seek to modify any of the rates or other terms and conditions of this Confirmation or any transactions entered into hereunder.

A fax copy of either Party's signature will be considered an original for all purposes under this Confirmation, and each Party will provide its original signature upon request. Except to the extent otherwise explicitly provided in this Confirmation, no amendment to this Confirmation will be valid or given any effect unless signed by both Parties.

This Confirmation and the terms of the WSPP Agreement that are not inconsistent with this Confirmation, set forth the terms of the transaction which the Parties have entered into and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any contrary provision in the WSPP Agreement, any conflict between this Confirmation and the WSPP Agreement shall be resolved in favor of this Confirmation. This Confirmation supersedes all prior agreements and understandings (whether written or oral) regarding the subject matter of this Confirmation, and may not be contradicted by any prior or contemporaneous oral or written agreement unless explicitly authorized herein.

Notwithstanding anything contained in the WSPP Agreement to the contrary, this Confirmation shall only be effective when executed by both Parties.

IN WITNESS WHEREOF, the Parties have signed this Confirmation to be effective as of the Effective Date.

City of Banning

Shell Energy North America (US), L.P.

By: _____
 Name: _____
 Title: _____
 Date: _____

By: 
 Name: Pat Butler
 Title: Contracts Manager
 Date: August 30, 2012

CITY COUNCIL AGENDA

Date: September 11, 2012
TO: Honorable Mayor and City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Notice of Completion for "Project 2012-02EL Photovoltaic Power System Engineering Services"

RECOMMENDATION: The City Council accept the Project 2012-02EL "Photovoltaic Power System Engineering Services" as complete and direct the City Clerk to record the Notice of Completion.

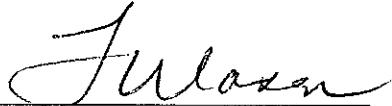
JUSTIFICATION: The contractor has completed the work as per the plans and specifications.

BACKGROUND: The City Council awarded the construction contract for said project to Metro RF Services, Inc. of Ontario, at its regular meeting held on May 8, 2012.

The scope of work for the project included the development, procurement, installation and implementation of all phases of a photovoltaic generating system on the carports of the City of Banning's Police Department building.

FISCAL DATA: The final contract price for the entire project was \$167,795.00.

RECOMMENDED BY:


Fred Mason
Electric Utility Director

APPROVED BY:


Andrew J. Takata
City Manager

1 WHEN RECORDED MAIL TO:

2
3 City Clerk's Office
4 City of Banning
5 City Hall, 99 E. Ramsey Street
6 Banning, California 92220

7
8 FREE RECORDING:

9 Exempt Pursuant to
10 Government Code §6103

11
12
13
14 NOTICE OF COMPLETION

15 PROJECT NO. 2012-02EL PHOTOVOLTAIC POWER SYSTEM
16 ENGINEERING SERVICES

17
18
19 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,
20 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of
21 the State of California, and is hereby accepted by the City of Banning pursuant to
22 authority conferred by the City Council this September 11, 2012, and the grantees
23 consent to recordation thereof by its duly authorized agent.

24
25 (1) That the OWNER, the City of Banning, and Metro RF Services, Inc.,
26 entered into a written Agreement dated May 10, 2012, for the Photovoltaic Power System
27 Engineering Services. The scope of work for the project included to develop, procure,
28 install and implement all phases of a photovoltaic generating system on the carports of
29 the City of Banning's Police Department building.

30
31 (2) That the Work of Improvement was substantially completed on August 8,
32 2012, and the Nature of Interest is in fee simple owner.

33

(3) That the City of Banning, a municipal corporation, whose address is Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is the owner of said Work of Improvement.

(4) That the said Work of Improvement was performed at the Police Department Office Building, 125 E. Ramsey St., in the City of Banning.

(5) That the original contractor for said improvement was Metro RF Services, Inc., State Contractor's License No. 895236.

(6) That the corporate surety on the performance and payment bonds is SureTec Insurance Company.

Dated: September 11, 2012

CITY OF BANNING
A Municipal Corporation

By _____
Fred Mason
Director of Electric Utility

APPROVED AS TO FORM:

David Aleshire, Aleshire & Wynder, LLP
City Attorney

1 STATE OF CALIFORNIA)

2) ss

3 COUNTY OF RIVERSIDE)

4

5

6 MARIE A. CALDERON, being duly sworn, deposes and says:

7

8 That I am the City Clerk of the City of Banning, which City caused the work to be
9 performed on the real property hereinabove described, and that I am authorized to verify
10 this Notice of Completion on behalf of said City; that I have read the foregoing Notice
11 and knows the contents thereof, and that the facts stated therein are true based upon
12 information available to the City of Banning, and that I make this verification on behalf
13 of said City of Banning I declare under penalty of perjury that the foregoing is true and
14 correct.

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Marie A. Calderon
City Clerk of the City of Banning

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Executed on _____, 2012 at Banning, California.

CITY COUNCIL AGENDA

Date: September 11, 2012

To: Honorable Mayor and City Council

From: Fred Mason, Electric Utility Director

Subject: Resolution No. 2012-65, Approving the Banning Electric Utility Power Content Label

RECOMMENDATION: Adopt Resolution No. 2012-65, approving the Banning Electric Utility ("Utility") Power Content Label, attached herewith as Exhibit "A".

JUSTIFICATION: California State Assembly Bill 162 (AB 162) requires that all load serving electric utilities develop and provide to its customers on an annual basis a Power Content Label ("Label").

BACKGROUND: On October 11, 2009 the Governor signed AB 162, which amended the Power Content Label reporting requirements originally set forth in Senate Bill 1305. The amendments changed the reporting requirements from quarterly to annual, and require that utilities report actual power content information instead of projected.

The information must be provided to the utility's customers through either printed or electronic means, including posting it on the City's website. The Utility will provide it in both formats by including a hardcopy of the Label in the October utility statements, and also posting an electronic copy of the Label on the City's website.

The California Energy Commission (CEC), which has oversight authority for this requirement, has stated that the governing body of each locally owned public utility must approve the annual Power Content Label for the utility(s) under its jurisdiction. Therefore, Staff is requesting that the City Council approve Resolution 2012-65, accepting the Utility's Power Content Label, attached herewith as Exhibit "A".

FISCAL DATA: There are no fiscal impacts.

RECOMMENDED BY:



Fred Mason
Electric Utility Director

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE BANNING ELECTRIC UTILITY POWER CONTENT LABEL

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

WHEREAS, California State Senate Bill 1305 and Assembly Bill 162 have certain reporting requirements pertaining to electric utility Power Content Labels; and

WHEREAS, the Banning Electric Utility is subject to these reporting requirements; and

WHEREAS, the California Energy Commission which has oversight authority for this requirement, has stated that the governing body of each locally owned public utility must approve the annual Power Content Label for the utility(s) under its jurisdiction;

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

SECTION 1. Adopt Resolution No. 2012-65, approving the Banning Electric Utility's Power Content Label.

SECTION 2. Authorize the Electric Utility Director, or his designee, to disseminate the information included on the Power Content Label to the Utility's customers in compliance with the requirements of Senate Bill 1305 and Assembly Bill 162.

PASSED, ADOPTED AND APPROVED this 11th day of September 2012.

Don Robinson, Mayor

ATTEST:

Marie A. Calderon, City Clerk

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

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



Exhibit "A"

City of Banning Electric Department

October 2012

The State of California passed legislation in the form of Assembly Bill 162, which requires load serving electric utilities to provide customers with a copy of the Power Content Label on an annual basis. Below is the current Label for the Banning Electric Utility, which represents its actual Power Mix for 2011. The CA Power Mix shows the breakdown for the State overall, and is shown for comparison. Please contact the Banning Electric Utility at (951) 922-3260 if you have any questions regarding this information.

POWER CONTENT LABEL		
ENERGY RESOURCES	BANNING POWER MIX (2011 Actual)	2011 CA POWER MIX**
Eligible Renewable	19%	14%
-- Biomass & waste	0%	2%
-- Geothermal	19%	5%
-- Small hydroelectric	0%	2%
-- Solar	0%	0%
-- Wind	0%	5%
Coal	55%	8%
Large Hydroelectric	1%	13%
Natural Gas	0%	37%
Nuclear	14%	16%
Other	0%	0%
Unspecified sources of power*	11%	12%
TOTAL	100%	100%

* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.

** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about this electricity product, contact the City of Banning. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/sb1305.

**CITY COUNCIL
PUBLIC HEARING**

DATE: September 11, 2012

TO: City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Amendment to Municipal Code Chapter 8.44 related to Noise Exemptions

RECOMMENDATIONS: That the City Council adopt Ordinance No. 1454 amending the Municipal Code Chapter 8.44 to provide noise exemptions for projects or activities that are designed to protect the long-term health, safety, and welfare of the community.

BACKGROUND: Municipal Code Chapter 8.44 provides noise regulations within the City of Banning. Currently, short-term noise impacts that are generated by public works construction or construction activities that are undertaken by a governmental agency are not exempt from the Municipal Code. The purpose of the Code Amendment is to provide for exemptions for the following activities that are short-term in nature.

- Capital Improvement Projects of a governmental agency.
- Maintenance and repair of public properties.
- Public Safety Personnel in the course of executing their official duties, including but not limited to, sworn peace officers, emergency personnel, and public utility personnel. This exemption includes, without limitation, sound emanating from all equipment used by such personnel whether stationary or mobile.

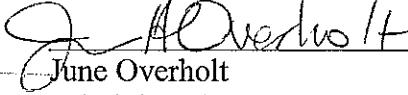
PUBLIC HEARING NOTICE: The public hearing notice regarding this Municipal Code Amendment was published in Record Gazette on August 31, 2012. As of the writing of this staff report, City staff has not received any comments from the public.

FISCAL DATA: There is no additional cost related to the Code Amendment as this Code Amendment is part of the work program that is already included in the current budget.

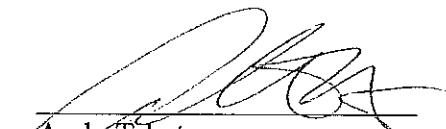
RECOMMENDED BY:


Zai Abu Bakar
Community Development Director

REVIEWED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

Attachment:

Ordinance No. 1454
Exhibit "A" Municipal Code Chapter 8.44 - Noise

ORDINANCE NO. 1454

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AMENDING CHAPTER 8.44 OF THE BANNING MUNICIPAL CODE RELATIVE TO NOISE EXEMPTION

WHEREAS, Chapter 8.48 of the Banning Municipal Code provides for noise regulations within the City of Banning; and

WHEREAS, the City desires to amend Chapter 8.48 of the Banning Municipal Code to address noise related items that are exempt from regulations for the protection of public health, safety, and welfare of the community; and

WHEREAS, on August 31, 2012, the City published a public hearing notice regarding this amendment to the Municipal Code in the *Record Gazette* newspaper in compliance with state law; and

WHEREAS, on September 11, 2012, the City Council held a public hearing notice at which time interested persons had an opportunity to testify in support of, or opposition to proposed amendment to the Municipal Code; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered for this amendment to the Municipal Code as presented at the public hearing held on September 11, 2012;

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

SECTION 1: FINDINGS.

The proposed amendment to the Municipal Code is to implement the noise element of the General Plan to promote health, safety, and welfare of the community.

Findings of Fact: That the amendment to Chapter 8.44 of Banning Municipal Code is to establish an exemption for short-term projects that are undertaken by a governmental agency or by public safety personnel during the course of their official duties that enhance public health, safety, and welfare of the community which are consistent with the goals, policies, of the General Plan. These projects include:

- A. Capital Improvement Projects of a governmental agency.
- B. Maintenance and repair of public properties.
- C. Public Safety Personnel in the course of executing their official duties, including but not limited to, sworn peace officers, emergency personnel, and public utility personnel. This exemption includes, without limitation, sound emanating from all equipment used by such personnel, whether stationary or mobile.

SECTION 2: AMENDMENT IN RE PUBLIC SAFTEY-RELATED NOISE.

Section 8.44.085 Noise is hereby added to the Municipal Code Exempted to state as follows:

“8.44.085 – Noise from Public/Governmental Services Exempt.

“Sound emanating from the following sources is exempt from the provisions of this Chapter:

- A. Capital Improvement Projects of a governmental agency.
- B. Maintenance and repair of public properties by a governmental agency.
- C. Public safety personnel in the course of executing their official duties, including but not limited to, sworn peace officers, emergency personnel, and public utility personnel. This exemption includes, without limitation, sound emanating from all equipment used by such personnel, whether stationary or mobile, so long as such sound is reasonably related to, and necessary for, the undertaking of official public safety duties.

SECTION 3: AMENDMENT IN RE EXEMPTIONS

Section 8.44.090 of the Municipal Code is hereby amended by adding the following language immediately prior to the first sentence of subparagraph E.3 of Section 8.44.090: “Unless exempted by this Chapter...”

SECTION 4: ADDITIONAL DEFINITIONS

Section 8.44.030 of the Municipal Code is hereby amended to include the following definitions (to be included with the Section in alphabetic order):

“Capital Improvement” shall mean major construction, acquisition or maintenance/repair projects. Typical examples of major construction would include new street improvement, park development and public building. Acquisitions include land. Major maintenance/repairs may include street resurfacing and modifications to public buildings.

“Governmental Agency” shall mean The United States (federal government), the State of California, Riverside County, the City of Banning, the School District and any special district within Riverside County or any combination of these agencies.

“Public Property” shall mean property that is owned by any governmental agency as indicated in this Section or held by the public, including, but not limited to parks, streets, sidewalks, and alleys.

SECTION 5: SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6: EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days after its 2nd reading in accordance with California law.

SECTION 7: REMAINING FORCE AND EFFECT.

Except as specifically amended herein, all other provisions of Chapter 8.44 shall remain in full force and effect.

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

Don Robinson, Mayor
City of Banning

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

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

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1454 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____ day of _____, 2012, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Exhibit “A”
Municipal Code Chapter 8.44 – Noise

Chapter 8.44**NOISE****Sections:**

- 8.44.010 Purpose.**
- 8.44.020 Findings.**
- 8.44.030 Definitions.**
- 8.44.040 Noise level measurement criteria.**
- 8.44.050 Base ambient noise level.**
- 8.44.060 Exterior noise level measurement.**
- 8.44.070 Maximum residential noise levels.**
- 8.44.080 Maximum nonresidential noise levels.**
- 8.44.090 Noises prohibited—Unnecessary noise standard.**
- 8.44.100 Application between zones.**
- 8.44.110 Manner of enforcement.**
- 8.44.120 Violation a misdemeanor.**
- 8.44.130 Additional remedy—Injunction.**
- 8.44.140 Fees.**

8.44.010 Purpose.

The purpose of this chapter is to establish criteria and standards for the regulation of noise levels within the city and to implement the noise provisions contained in the city's General Plan. (Code 1965, § 11D-01.)

8.44.020 Findings.

It is hereby found and declared that:

A. The making, creation or maintenance of excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city; and

B. The necessity for the provisions and prohibitions hereinafter contained and enacted is hereby declared as a matter of legislative determination and public policy. It is further declared that the provisions and prohibitions hereinafter contained and enacted

are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city. (Code 1965, § 11D-02.)

8.44.030 Definitions.

“Ambient noise” shall mean the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding any intrusive noise.

“Commercial purpose” shall mean the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, goods or services and/or for the purpose of advertising or attracting the attention of the public to or soliciting patronage for any performance, entertainment, exhibition or event, or for the purpose of demonstrating any such sound equipment.

“Cumulative time period” shall mean a period of time composed of individual time segments which may be continuous or interrupted.

“Decibel (dB)” shall mean a measurement unit of sound pressure level which denotes the ratio between two quantities which are proportional to power; the number of decibels corresponding to the ratio of two amounts of power is ten times the logarithm to the base ten of this ratio.

“Impact noise” shall mean the sound produced by the impact or collision of one moving object or mass with a second object or mass that is stationary or moving.

“Intrusive noise” shall mean a sound which intrudes over and above the existing ambient noise level at a given location.

“Motor-driven vehicle” shall include, but not be limited to, any automobile, truck, van, bus, motorcycle, minibike, go-cart or other self-propelled vehicle, on or off road, and aircraft.

“Noise” shall mean any sound that is loud or disturbing or that interferes with one's ability to hear some other sound.

“Noise level” shall mean the “A” weighted sound pressure level in decibels audible to humans obtained by using a sound level meter. The unit of noise level measurement shall be designated as dB(A).

"Person" shall mean a person, firm, association, copartnership, joint venture, corporation or any entity, public or private in nature.

"Simple tone noise" shall mean a noise characterized by a predominant frequency or frequencies so that other frequencies cannot be readily distinguished.

"Sound pressure level of a sound, in decibels" shall mean twenty times the logarithm to the base ten of the ratio of the pressure of this sound to the reference pressure, which reference pressure shall be explicitly stated.

As used in Section 8.44.090(H), "person of normal hearing sensitivity" means a person who has a hearing threshold level of between zero decibels and twenty-five decibels HL averaged over frequencies 500, 1000, and 2000 Hertz. (Code 1965, § 11D-03.)

8.44.040 Noise level measurement criteria.

A. Any noise level measurement, made pursuant to the provisions of this chapter, shall be determined by using a sound level meter that meets the minimum requirements of the American National Standard Institute for sound level meters, or by using an instrument with associated recording and analyzing equipment that will provide equivalent data.

B. The factors which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

1. The sound level of the objectionable noise;
2. The sound level of the ambient noise;
3. The proximity of the noise to residential sleeping facilities;
4. The nature and zoning of the area within which the noise emanates;
5. The number of persons affected by the noise source;
6. The time of day or night the noise occurs;
7. The duration of the noise and its tonal, informational or musical content;
8. Whether the noise is produced by a commercial or noncommercial activity;

C. The above factors shall be considered in addition to the noise levels set forth in this section in

determining a violation. However, noises do not necessarily need to exceed those noise level limits to be considered unnecessary or unusual so as to cause discomfort or annoyance to persons in the area. (Code 1965, § 11D-04.)

8.44.050 Base ambient noise level.

All ambient noise measurements shall commence at the base ambient noise levels in decibels within the respective times and zones as follows:

Decibels	Time	Zone Use
45 dB(A)	10:00 p.m. — 7:00 a.m.	Residential
55 dB(A)	7:00 a.m. — 10:00 p.m.	Residential
75 dB(A)	Anytime	Industrial and commercial

Actual decibel measurements exceeding the levels set forth hereinabove at the times and within the zones corresponding thereto shall be employed as the "base ambient noise level" referred to in this chapter. Otherwise, no ambient noise shall be deemed to be less than the above specified levels. (Code 1965, § 11D-05.)

8.44.060 Exterior noise level measurement.

Except as otherwise specifically provided herein, all reference to "exterior noise" or "exterior noise levels" as used in this chapter shall be as measured at any point relative to the closest point of the source of the noise at the property line of the complaining party. Measurements will not be made during extraordinary times, such as during the movement of a nearby train or airplane. (Code 1965, § 11D-06.)

8.44.070 Maximum residential noise levels.

No noise level shall exceed the following for the duration periods specified:

Noise Level Exceeded	Maximum Duration Period
5 dB(A) above BANL	15 minutes any hour

Noise Level Exceeded	Maximum Duration Period
10 dB(A) above BANL	5 minutes any hour
15 dB(A) above BANL	1 minute any hour
20 dB(A) above BANL	Not permitted

(Code 1965, § 11D-07.)

8.44.080 Maximum nonresidential noise levels.

Any provision contained herein to the contrary notwithstanding, no exterior noise level shall exceed the base ambient noise levels (BANL) for nonresidential land uses set forth in any development agreement applicable to such development or as otherwise specifically set forth in any development standard which is by its terms enforceable by the city against the noise maker. (Code 1965, § 11D-08.)

8.44.090 Noises prohibited—Unnecessary noise standard.

Any other provision of this chapter notwithstanding, the following acts are expressly prohibited as a violation of this chapter. Such acts are hereby expressly declared to be loud, unusual and unnecessary noises in violation of this chapter, namely:

A. Horns, signaling devices, etc. The sounding of any horn or signaling device on any automobile, motorcycle, streetcar or other vehicle on any street or public place of the city, except as a danger warning. Back-up beepers may be sounded consistent with the maximum duration periods set forth in Section 8.44.080 of this chapter. The creation by means of any such signaling device of any unreasonably loud or harsh sound and, the sounding of any such device for an unnecessary and unreasonable period of time. For the purposes of establishing an unnecessary and unreasonable period of time with respect to automobile anti-theft alarm devices, such alarm shall not sound in excess of fifteen minutes.

B. Radios, televisions and stereos, etc. It shall be unlawful for any person, without special permit or as may otherwise be provided in this ordinance code, to play, use, operate or permit to be played, used or

operated, any radio, television set, musical instrument, phonograph, stereophonic equipment, jukebox or other machine or device, for producing, reproducing or amplifying sound at such sound levels as to cause the sound level to exceed forty dB(A) as measured within the residence of any complaining person.

C. Loudspeakers, amplifiers for advertising. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets in such manner as to exceed the maximum exterior noise level permitted under this chapter.

D. Animals, fowl, etc. It is unlawful for any person to keep or allow to be kept, or suffer or permit any animal to remain upon the premises under the control of such a person, when such animal habitually barks, whines or makes loud and unusual noises in such a manner as to disturb the peace and quiet of the neighbors surrounding or in the vicinity of such premises, or whose barking or howling or other sound or cry interferes with any person of ordinary sensitiveness in the reasonable and comfortable enjoyment of life and property. This provision shall not apply to farm animals within any zone where such farm animals are permitted by this ordinance code.

E. Construction, landscape maintenance or repair.

I. It shall be unlawful for any person to engage in or permit the generation of noise related to landscape maintenance, construction including erection, excavation, demolition, alteration or repair of any structure or improvement, at such sound levels, as measured at the property line of the nearest adjacent occupied property, as to be in excess of the sound levels permitted under this chapter, at other times than between the hours of 7:00 A.M. and 6:00 P.M. The person engaged in such activity is hereby permitted to exceed sound levels otherwise set forth in this chapter for the duration of the activity during the above described hours for purposes of construction. However, nothing contained herein shall permit any person to cause sound levels to at any time exceed fifty-five dB(A) for intervals of more than fifteen

minutes per hour as measured in the interior of the nearest occupied residence or school.

2. Construction related noise as defined in subsection (E)(1) immediately above, may take place outside the time period set forth in subsection (E)(1) and above the relative sound levels in case of urgent necessity in the interest of public health and safety, and then only with the prior permission of the building inspector. Such permit may be granted for a period not to exceed three days or until the emergency ends, whichever is less. The permit may be renewed for periods of three days while the emergency continues.

3. If the building official should determine that the public health and safety will not be impaired by the construction related noise, the building inspector may issue a permit for construction within the hours of 6:00 P.M. and 7:00 A.M., upon application being made at the time the permit for the work is awarded or during the progress of the work. The building official may place such conditions on the issuance of the permit as to him or her shall seem appropriate to maintain the public health and safety.

F. Machinery, equipment, fans and air conditioning. It shall be unlawful for any person to operate, cause to operate or permit the operation of any machinery, equipment, device, pump, fan, compressor, air conditioning apparatus or similar mechanical device, including the use of any steam shovel, pneumatic hammer, derrick, steam or electric hoist, blower or power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, or other appliance, in any manner so as to create any noise which would cause the noise level at the property line of the property upon which the equipment or machinery is operated to exceed the base ambient noise level by five dB(A).

G. Motor driven vehicles. It shall be unlawful for any person to operate any motor driven vehicle within the city that, due to the nature of the operation of the vehicle, or due to the operating condition of the vehicle, or due to any modification made to the vehicle, in such manner as to exceed noise levels set forth in Section 8.44.050 hereof.

1. Exhaust. It shall be unlawful for any person to discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor driven vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

H. Notwithstanding any other provisions of this chapter and in addition thereto, it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal hearing sensitivity residing in the area. The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:

1. The level of noise;
2. Whether the nature of the noise is usual or unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level and intensity of the background noise, if any;
5. The proximity of the noise to residential sleeping facilities;
6. The nature of the zoning of the area within which the noise emanates;
7. The density of the inhabitation of the area within which the noise emanates;
8. The time of the day and night the noise occurs;
9. Whether the noise is recurrent, intermittent, or constant;
10. The duration of the noise; and
11. Whether the noise is produced by a commercial or noncommercial activity.

I. No person shall use or operate a radio, tape player, tape recorder, record player, television or similar device in a vehicle on a street, which is audible to a person of normal hearing sensitivity, more than twenty-five feet from said vehicle. (Code 1965, § 11D-09.)

8.44.100 Application between zones.

In applying the regulations set forth in this chapter, each source of noise shall be subject only to such regulation as shall apply to the zone, including any designated truck route, within which it is located. A use lying adjacent to a zone with a more restrictive noise requirement hereunder shall not be required to conform to that more restrictive requirement. For purposes of this subsection, "zone" shall be as utilized in Title 17 of the Banning Ordinance Code. (Code 1965, § 11D-10.)

8.44.110 Manner of enforcement.

A. Upon the occurrence of an alleged violation of this chapter or any provision contained herein, the alleged violator shall be issued a written notice to appear before the abatement hearing officer described in Chapter 8.48 of this Code. Such notice may be issued by any person authorized to issue a notice for violation of any provision of this Code.

B. The notice shall set forth the section alleged to have been violated, the manner of the violation and the date and time of such violation. The notice shall otherwise be in the form and served in the manner and within the time set forth in Chapter 8.48 of this Code. The alleged violator shall be given notice and the opportunity to appear at the hearing and there show cause why the alleged violation should not be found to constitute a nuisance.

C. The abatement hearing officer shall hear the matter and shall make a determination of the existence of a nuisance as for any matter heard pursuant to Chapter 8.48. The alleged violator shall thereafter be given notice of the determination of the abatement hearing officer in the manner provided by this chapter.

D. An appeal from a determination of the abatement hearing officer shall be taken in the manner provided in Chapter 8.48 of this Code.

E. The police department shall have the power and duty to enforce the following noise control provisions of this Code: Section 8.44.090(H) and Section 8.44.090(I) of this Code. Any person found to be in violation of Section 8.44.090(H) and Section 8.44.090(I), shall be deemed guilty of a misdemeanor

and, upon conviction thereof, shall be fined in an amount not exceeding one thousand dollars, or be imprisoned in the county jail for a period of not exceeding six months, or by both fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Code 1965, § 11D-11.)

8.44.120 Violation a misdemeanor.

Any person violating any determination of the nuisance abatement board issued under this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding one thousand dollars, or be imprisoned in the city or county jail for a period not exceeding six months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Code 1965, § 11D-12.)

8.44.130 Additional remedy—Injunction.

As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision hereof and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. (Code 1965, § 11D-13.)

8.44.140 Fees.

A fee shall be set as determined by resolution of the city council. (Code 1965, § 11D-14.)

**CITY COUNCIL
PUBLIC HEARING**

DATE: September 11, 2012

TO: City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: **Amendment to Municipal Code Chapter 8.48 regarding Reasonable Time Frame for Notice of Violations of the Municipal Code and Zoning Code and Minor Code Clean-up**

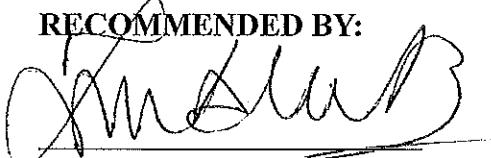
RECOMMENDATIONS: That the City Council adopt Ordinance No. 1455 amending the Municipal Code Chapter 8.48 regarding reasonable time frame for providing a notice of violations of the Municipal and Zoning Codes to the owners of property in the City of Banning and also minor clean-up to Chapter 8.48.

BACKGROUND: On June 26, 2012, the City Council adopted a policy providing a reasonable time frame as it relates to notice of violations of the Municipal and Zoning Codes to property owners in the City of Banning. The purpose of the attached Ordinance is to codify the policy into the City's Municipal Code for ease of implementation. Additionally, it is necessary to amend Chapter 8.48 for minor clean-up purposes to make the code more clear.

PUBLIC HEARING NOTICE: The public hearing notice regarding this Municipal Code Amendment was published in Record Gazette on August 31, 2012. As of the writing of this staff report, City staff has not received any comments from the public.

FISCAL DATA: The cost of providing a notice is recovered through invoicing for the services performed, issuance of the administrative citation subsequent to failure to remedy the violations of the Municipal Code and Zoning Code, or through recordation of a lien on property.

RECOMMENDED BY:



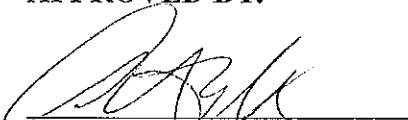
Zai Abu Bakar
Community Development Director

REVIEWED BY:



June Overholt
Deputy City Manager/
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

Attachment: Ordinance No. 1455
Exhibit "A" Municipal Code Chapter 8.48 - Nuisances

ORDINANCE NO. 1455

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA AMENDING CHAPTER 8.48 (NUISANCES) OF THE BANNING
MUNICIPAL CODE REGARDING A TIME FRAME FOR PROVIDING REASONABLE
NOTICE FOR VIOLATIONS OF MUNICIPAL AND ZONING CODES**

WHEREAS, Chapter 8.48 of the Banning Municipal Code provides regulations regarding properties that are in violation of the Municipal and Zoning Code and abatement of properties in the City of Banning that are designated as public nuisances; and

WHEREAS, the City desires to amend Chapter 8.48 of the Banning Municipal Code to address the time frame for reasonable notice to abate the public nuisance to protect public health, safety, and welfare of the community and also to do minor clean-up within the Chapter; and

WHEREAS, on August 31, 2012, the City published a public hearing notice regarding this amendment to the Municipal Code in the *Record Gazette* newspaper in compliance with state law; and

WHEREAS, on September 11, 2012, the City Council held a public hearing notice at which time interested persons had an opportunity to testify in support of, or opposition to proposed amendment to the Municipal Code; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered for this amendment to the Municipal Code as presented at the public hearing held on September 11, 2012.

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

SECTION 1: FINDINGS.

The proposed amendment to the Municipal Code is to implement a reasonable time frame for providing adequate notice to protect health, safety, and welfare of the community.

Findings of Fact: That the amendment to Chapter 8.48 of Banning Municipal Code is to provide a timeline for reasonable notice to abate nuisances on properties that are maintained contrary to the Municipal and Zoning Codes to protect public health, safety, and welfare of the community consistent with the goals and policies of the General Plan. The 10-day minimum notice to comply and abate the public nuisance is a reasonable time frame for providing a notice. Additionally, minor code clean-up to Chapter 8.48 is necessary for the ease of implementation.

SECTION 2: MUNICIPAL CODE AMENDMENT.

Add a New Section 8.48.385 Service of Notice – Time Frame for Reasonable Notice as follows:

“Notice of Violation/Notice to Abate shall be provided with a minimum of 10-calendar day notice to the person(s) responsible for the violations of the Municipal Code and Zoning Code. Service of Notice to Persons to be Served and Manner of Service shall be provided consistent with Sections 8.48.390 and 8.48.400, respectively.”

Amend Section 8.48.330 Cultivation or Manufacture of Drug as follows:

“Section 8.48.330 Cultivation, Manufacture, or Sales of Drugs.

Any real or personal property utilized in the manufacture, cultivation, sales, or storage of any drug which is illegal under any State or Federal law, including marijuana, is declared a nuisance.”

All existing Sections in Chapter 8.48 shall remain intact.

SECTION 4: SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5: EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days after its second reading in accordance with California law.

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

Don Robinson, Mayor
City of Banning

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

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

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1455 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____ day of _____, 2012, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Exhibit “A”
Municipal Code Chapter 8.48 – Nuisances

Chapter 8.48	8.48.340	Abandoned, wrecked, dismantled, or inoperative vehicles.
NUISANCES*		
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* Prior ordinance history: Ord. No. 969.

Article I.

Nuisance

8.48.010 Definitions.

For purposes of this chapter, words and phrases designated herein shall have the following meanings:

“Building official” means the building official of the city, and, for all provisions of this chapter except Section 8.48.480, his authorized agents, assistants, deputies or representatives.

“Chief” means the chief of the fire department of the city, and, for all provisions of this chapter except Section 8.48.480, his or her authorized agents, assistants, deputies or representatives.

“City” means the City of Banning, California.

“City council” means the city council of the city.

“City manager” means the city manager of the city, and, for all provisions of this chapter except Section 8.48.480, his or her authorized agents, assistants, deputies or representatives.

“Code enforcement manager” means the code enforcement manager of the city, and, for all provisions of this chapter except Section 8.48.480, his or her authorized agents, assistants, deputies or representatives.

“Health officer” means the official of the city or the county of Riverside responsible for the enforce-

ment of laws, ordinances, rules and regulations of the state, county and city relating to the public health, sanitation, food handling and environmental health including his or her authorized agents, assistants, deputies or representatives.

“Hearing officer” means the abatement hearing officer created by this chapter.

“Official” means any officer or official authorized to take action with respect to the abatement of a nuisance on behalf of the city, including the building official, chief, city manager, health officer, code enforcement manager and their designees.

“Public nuisance” means an act or condition, as specifically set forth herein or otherwise, which poses a danger to the health, welfare or safety of the community or neighborhood, or is indecent or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in a customary manner of any public park, street, stream or highway. A “public nuisance” affects at the same time the entire community or neighborhood or any considerable number of persons although the extent of the annoyance or damage inflicted upon individuals may be unequal. (Code 1965, § 11C-1.)

8.48.020 Violations deemed public nuisances.

A. The provisions of this section are applicable to all property throughout the city, wherein any conditions, uses or activities hereinafter specified are found to exist. This section shall not be applicable to any condition which would constitute a violation of this chapter but which is duly authorized under the Municipal Code or any applicable state or federal law.

B. The list of activities, uses of property and conditions of property declared to be a public nuisance pursuant to this section is not intended to be exclusive. The city council expressly reserves to itself the right to declare other and additional activities, uses of property, and conditions of property to be nuisances subject to abatement pursuant to this title or by any other means authorized by law.

C. Every owner, tenant, occupant, agent, person having charge or possession of any premises or property, lessee or holder of any possessory interest of real property within the city is required to maintain such property as not to violate the provisions of this section. The owner of the property shall remain liable for violations hereof, regardless of any contract or agreement with any third party regarding such property or the occupation of the property by any third party. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by the former owner, is liable therefor in the same manner as the one who first created it. (Code 1965, § 11C-2.)

8.48.030 Penalty.

The owner, lessee, occupant, tenant or other person having charge or control over any premises, property, land or structure constituting a public nuisance as defined in this Code, shall be guilty of a misdemeanor, conviction of which shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. However, the city attorney or city prosecutor is authorized to file or charge any such violation as either a misdemeanor or infraction or reduce any charge filed as a misdemeanor to an infraction. Every day of such violation shall constitute a separate offense. (Ord. No. 1381, § 11.)

8.48.040 Refuse and waste defined.

“Refuse and waste matter” is defined for the purpose of this chapter as unused or discarded matter or material, and which consists of such matter and material as rubbish, refuse, debris, and matter of any kind, including but not limited to rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of metal, ferrous or nonferrous, furniture or parts thereof, trimmings from plants or trees, cans, bottles and barrels. Refuse and waste matter as defined, which by reason of its location and character is unsightly, or poses a threat of fire or vermin infestation and interferes with

the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood or community, or which would materially hamper or interfere with the prevention or suppression of fire upon the premises is declared a public nuisance. (Code 1965, § 11C-3.)

8.48.050 Fire hazard.

All weeds, grasses, trees, rubbish, or any material growing upon private property within the city which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which when dry, will in reasonable probability constitute a fire hazard are declared a public nuisance. (Code 1965, § 11C-4.)

8.48.060 Unsanitary animals.

Any animals, fowl, or birds which, with concurrence of the city's animal control officer are kept or permitted to be kept in foul, offensive, obnoxious, filthy or unsightly conditions on any premises are declared a public nuisance. (Code 1965, § 11C-5.)

8.48.070 Sewage on ground.

It is declared a nuisance to permit any part of the contents of any privy vault, cesspool, septic tank, water closet, urinal, pipe, sewer line, or any sewage, slop water or any other filthy water, matter or substance, to flow or discharge upon the ground or upon the surface of any lot or premises, or in any public street or other public place. (Code 1965, § 11C-6.)

8.48.080 Building code violations.

All buildings, structures, or appendages, both permanent and temporary, maintained in violation of the uniform building codes adopted by the city, or subject to any of the following conditions are declared a public nuisance:

A. Buildings or structures, or parts thereof, not completed within a reasonable time as per the determination of the city's building official and for which the permit for such construction has expired;

B. Unoccupied buildings which are open to or unsecured from intrusion by persons, animals or the

elements or which are boarded up by a method or by use of materials not approved by the city. Such methods and materials shall be as set forth in the policies of the code enforcement department;

C. Fences or walls in a hazardous condition, or which are in disrepair, or which hinder free access to public sidewalks;

D. Broken windows constituting hazardous conditions or inviting trespassers;

E. Any violation listed in the State Housing Law at Section 17920.3 of the California Health and Safety Code, or any amendment thereto. (Code 1965, § 11C-7.)

8.48.090 Zoning ordinance violations.

Any buildings, sign or other structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of the city's zoning ordinance, as amended, and any use of land, building, or premises established, conducted or operated or maintained contrary to the provisions of the city's zoning ordinance, as amended, is declared a public nuisance. (Code 1965, § 11C-8.)

8.48.100 Parking or placement on private property for purpose of sale.

A. Parking, setting down, or placing of any item(s), upon or within the limits of a parcel of land, that is vacant or upon which are present only vacant structure(s), by any person other than the owner of such parcel, under such circumstances as to present an offer of the item(s) for sale, when the offer of sale of the item(s) is to open to observation by persons who are within the public right-of-way, and when such offer of sale is contrary to the provisions of this Code including the city's Zoning Code, is declared a nuisance.

B. The owner or person in possession and control of such item(s) constituting a nuisance under this section who fails to comply with any written or other order to abate any such public nuisance shall, on the first such violation be guilty of an infraction and shall be subject to a fine not to exceed one hundred dollars; a fine not to exceed two hundred dollars shall be imposed upon conviction for a second violation of

the same offense within one year shall constitute a misdemeanor punishable by a fine not to exceed one thousand dollars, six months in jail or both such fine and imprisonment. Every day of such violation shall constitute a separate offense.

C. For purposes of this section, "item" shall include, but is not limited to, any automobile, automotive part or accessory, trailer, any and all food items, decorative plant, toy, furniture, equipment, houseware, textile, clothing, jewelry, firewood, or art. (Code 1965, § 11C-8.1.)

8.48.110 Graffiti.

Graffiti which is visible from adjacent properties or from a public street or right-of-way is declared a public nuisance. (Code 1965, § 11C-9.)

8.48.120 Polluted water.

"Polluted water" is defined for the purpose of this chapter as water contained in a swimming pool, pond or other body of water, which contains any of the following: organic matter conducive to bacterial growth including algae, remains of insects, remains of deceased animals, reptiles, rubbish, refuse and waste matter, debris, papers, or any other foreign matter or material which, because of its nature or location, constitutes an unhealthy, unsafe or unsightly condition. Any swimming pool, pond or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted as defined, is declared a public nuisance. (Code 1965, § 11C-10.)

8.48.130 Stagnant water.

Any premises maintained so as to cause the accumulation of stagnant or still water, or any other condition which harbors and breeds mosquitoes or any other poisonous or objectionable insect is declared a public nuisance. (Code 1965, § 11C-11.)

8.48.140 Insects—Vernin.

Any building, vacant lot, premises, vehicle, or place maintained in such a manner as to permit the breeding or harboring therein or thereon of flies, bedbugs, cockroaches, black widow spiders, lice, fleas or any other vermin is declared a public nuisance. (Code 1965, § 11C-12.)

8.48.150 Noisy animals.

Any animal or fowl kept, maintained or permitted to remain on any lot or parcel of land which by any sound or cry disturbs the peace and comfort of any neighborhood, or interferes with one or more persons in the reasonable and comfortable enjoyment of life and property is declared a public nuisance. (Code 1965, § 11C-13.)

8.48.160 Tree trimming.

Accumulations of limbs, branches, prunings, trimmings, stumps and parts of domestic or cultivated fruit trees, cut, removed, fallen or severed from such trees are declared a public nuisance. (Code 1965, § 11C-14.)

8.48.170 Infested trees.

Any fruit tree or ornamental tree or shrub infested with red, yellow, or black scale, mistletoe, mealy bug or other insect pests or diseases detrimental to agricultural crops, as determined by the Riverside agricultural commissioner, is declared a public nuisance. (Code 1965, § 11C-15.)

8.48.180 Privies.

Any privy vault maintained in violation of this Code is declared a public nuisance. (Code 1965, § 11C-16.)

8.48.190 Signs.

Every sign or advertising structure subject to any of the following conditions is declared a public nuisance:

A. The sign or advertising structure was unlawfully erected on public or private property, or declared to be hazardous or unsafe by the building official;

B. The sign or advertising structure advertises or is related to events which have already taken place;

C. The sign was legally erected, but its use has ceased, or the structure upon which the display is placed has been abandoned by its owner, not maintained, or not used to identify or advertise an ongoing business for a period of ninety days or more;

D. Signs legally erected which later become nonconforming as a result of the adoption of an ordinance on which the amortization period provided by the ordinance or other law has expired, and for which conformance has not been accomplished. (Code 1965, § 11C-17.)

8.48.200 Obstruction to water.

Any structure, fence, conduit, wall, tree, masonry, pipe, lumber, or other material which obstructs or constitutes a hazard to the free flow of water through a stream, drainage channel, or watercourse is declared a public nuisance. (Code 1965, § 11C-18.)

8.48.210 Property maintenance.

It is unlawful and it is declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises or property within the city to maintain such property in such a manner that any of the following conditions are found to exist thereon:

A. The failure to secure and maintain against public access all doorways, windows, and other openings into vacant or abandoned buildings or structures;

B. Buildings or structures which are partially destroyed, damaged, abandoned, or permitted to remain in a state of partial construction for more than six months after the issuance of a building permit, or any extension thereof;

C. Building exterior, roofs, landscaping, grounds, walls, retaining and crib walls, fences, driveways, parking lots, sidewalks, or walkways which are maintained in such condition as to become defective, unsightly, cracked or no longer viable;

D. Painted buildings and walls, retaining walls, fences or structures that require repainting, or build-

ings, walls, fences, or structures upon which the condition of the paint has become deteriorated as to permit decay, excessive checking, cracking, peeling, chalking, dry rot, warping, or termite infestation;

E. Any building or structure, wall, fence, pavement, or walkway upon which any graffiti, including paint, ink, chalk, dye, or other similar marking substances, is allowed to remain for more than twenty-four hours;

F. Broken windows;

G. The accumulation of dirt, litter, feces, or debris in doorways, adjoining sidewalks, walkways, courtyards, patios, parking lots, landscaped or other areas;

H. Except where construction is occurring under a valid permit, lumber, junk, trash, garbage, salvage materials, rubbish, hazardous waste, refuse, rubble, broken asphalt or concrete, containers, broken or neglected machinery, furniture, appliances, sinks, fixtures or equipment, scrap metals, machinery parts, or other such material stored or deposited on property such that they are visible from a public street, alley, or neighboring property;

I. Temporary service bins or construction debris storage bins stored in excess of fifteen days on a public street or any front or side yard setback area without the express approval of the community development director;

J. Refuse or trash placed as to be visible from neighboring properties or streets, except for those times scheduled for collection, in accordance with this Code;

K. Any property with accumulations of grease, oil, or other hazardous material on paved or unpaved surfaces, driveways, buildings, walls, or fences, or from which any such material flows or seeps on to any public street or other public or private property, or which is likely to seep or migrate into the underground water table;

L. Any front yard, parkway, or landscaped setback area which lacks turf, other planted material, decorative rock, bark, or planted ground cover or covering as to cause excessive dust or allow the accumulation of debris;

M. Any condition of vegetation overgrowth which encroaches into, over, or upon any public right-of-way, including but not limited to streets, alleys, or sidewalks, as to constitute either a danger to the public safety or property or any impediment to public travel;

N. Overgrown, dead, decayed, or hazardous vegetation which:

1. May harbor rats, vermin, or other disease carriers;

2. Is maintained as to cause an obstruction to the vision of motorists or a hazardous condition to pedestrians or vehicle traffic;

3. Constitutes a fire hazard to any building, improvement, crop, or other property;

4. Constitutes an unsightly appearance, or

5. Creates a danger or attractive nuisance to the public;

O. Land, which the topography or configuration of which, in any man-made state, whether as a result of grading operations, excavations, fill, or other alteration, interferes with the established drainage pattern over the property or from adjoining or other properties which does or may result in erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious to public health, safety and welfare or to neighboring properties;

P. Any other condition declared by any state, county, or city statute, Code, or regulation to be a public nuisance;

Q. Any building, use or structure wherein one or more persons engage, or have engaged, in two or more acts which are prohibited pursuant to the laws of the State of California, the provisions of this Code or any other penal ordinance of this city, including but not limited to the following acts:

1. Unlawful possession or use of controlled substances;

2. Prostitution;

3. Gambling; or

4. Solicitation for any unlawful conduct.

(Code 1965, § 11C-19.)

8.48.220 Smoke and soot.

Any excessive smoke, soot or cinders permitted to be emitted from any engine, firebox, stove, furnace, chimney or smokestack in a manner so as to annoy any resident of the neighborhood and which in the opinion of the city's fire marshal constitutes a fire hazard, or to operate any engine or machinery using fuel oil, emitting offensive odors, or smoke or soot which extends to dwelling houses in the neighborhood to such an extent as to render their occupancy materially uncomfortable, or to interfere with the use and comfortable enjoyment of property is declared a public nuisance. (Code 1965, § 11C-20.)

8.48.230 Internal combustion engines.

Any stationary internal combustion engine used, run, or otherwise operated within three hundred feet of any private residence, roominghouse or lodging-house without first obtaining the consent of all persons residing within such distance is declared a public nuisance; provided, that such consent shall be unnecessary if the exhaust and noise therefrom is muffled so as to prevent the emission of any excessive soot, smoke or noise. This section shall not apply to the use of generators during public emergencies. (Code 1965, § 11C-21.)

8.48.240 Salvage materials.

Any lumber, junk, trash, debris, refuse, matter, waste matter or other salvage materials, visible from a public right-of-way or adjoining property is declared a public nuisance. (Code 1965, § 11C-22.)

8.48.250 Attractive nuisances.

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the city to maintain on any such premises or property any condition that constitutes an attractive nuisance, including but not limited to abandoned, broken, or neglected equipment and machinery, pools, ponds, excavations, abandoned wells, shafts, basements, or other holes, abandoned refrigerators or other appliances, abandoned motor vehicles, any unsound structure, or accumulated lumber, trash, garbage, debris,

or vegetation which may reasonably attract children to such abandoned or neglected conditions. (Code 1965, § 11C-23.)

8.48.260 Household fixtures.

Abandoned or discarded furniture, appliances, play equipment or other household fixtures or other equipment, stored so as to be visible from public right-of-way or from adjoining property is declared a public nuisance. (Code 1965, § 11C-24.)

8.48.270 Clotheslines.

Clotheslines in front or side yard areas of corner lots or clothes hung to dry on walls, fences, trees, bushes or carport areas where such is viewable from the public right-of-way are declared a public nuisance. (Code 1965, § 11C-25.)

8.48.280 Materials stored on roofs.

Materials or items of any type stored on roofs and visible from the public right-of-way are declared a public nuisance. (Code 1965, § 11C-26.)

8.48.290 Discarded materials.

Garbage or trash cans, containers or plastic bags stored in front or side yards, visible from the public right-of-way, or which cause offensive odors are declared a public nuisance. (Code 1965, § 11C-27.)

8.48.300 Overgrown plants.

Any dead, decayed, diseased or hazardous trees, hedges, weeds, shrubs and overgrown vegetation, cultivated or uncultivated, which are likely to harbor rats or vermin, which constitutes an unsightly appearance, which are detrimental to neighboring properties or property values, or which are grown over the public right-of-way and impair vehicular or pedestrian traffic are declared a public nuisance. (Code 1965, § 11C-28.)

8.48.310 Lack of water and electricity to occupied residential unit.

Any structure occupied as a residence to which a regular and lawful flow of water, or to which a lawful flow of electricity has not been provided for seventy-

two hours is declared a public nuisance. (Code 1965, § 11C-28.1.)

8.48.320 Operation of private water well.

In order to safeguard the quantity and quality of the water supply, it is declared that any private water well, whether for injection, extraction or observation, established in the city after date of this chapter is a nuisance unless otherwise agreed by the city and the owner of the well prior to commencement of the drilling of such well. This section shall supersede any inconsistent provisions of Chapter 32A of the Banning Ordinance Code. (Code 1965, § 11C-28.2.)

8.48.330 Cultivation or manufacture of drugs.

Any real or personal property utilized in the manufacture, cultivation or storage of any drug which is illegal under any law of the state, including marijuana, is declared a nuisance. (Code 1965, § 11C-28.3.)

8.48.340 Abandoned, wrecked, dismantled, or inoperative vehicles.

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the city to permit, accumulate or store on such premises or property (not including highways) any abandoned, wrecked, dismantled, or inoperative vehicle, except as expressly provided in the Municipal Code or any applicable state or federal law. (Code 1965, § 11C-28.4.)

**Article II.
Inspection**

8.48.350 Right of entry.

Except as set forth at Section 8.48.520 of this chapter:

A. When it is necessary to make inspections to enforce the provisions of this Code, or when the building official, chief, health officer or city manager has reasonable cause to believe that there exists in a building or upon a premises a condition which is con-

trary to or in violation of this Code and which is a public nuisance as defined by this Code, the building official, chief, health officer or city manager may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Code. If such building or premises be occupied, or it is reasonably apparent that the building or premises are occupied, credentials shall be presented to the occupant and entry requested. If it reasonably appears that such building or premises are abandoned, the building official, chief, health officer or city manager shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry.

B. If entry is refused, the building official, chief, health officer or city manager shall obtain an administrative warrant from the court to secure entry. (Code 1965, § 11C-29.)

8.48.360 Immediate hazard.

A. Any condition which poses an immediate hazard to public health or safety shall be determined and declared by the city manager, police chief, fire chief or building official to be an immediate hazard. In such event, the city manager, police chief, fire chief, health officer or building official may take immediate action to abate the hazard, without notice to the owner of the premises involved, or any other interested person, and without the necessity of a hearing thereon by the hearing officer or the city council prior to such action. However, such immediate action shall be limited to such action as the city manager, police chief, fire chief, health officer or building official deems reasonably necessary in his or her discretion to eliminate the immediate hazard or to protect persons and property from immediate injury or damage. Any further action to abate a nuisance which does not pose an immediate hazard to public health and safety shall be taken only in accordance with the procedures set forth in this chapter.

B. Following such immediate abatement, notice shall be given and an opportunity for appeal shall be given as for any other abatement action hereunder. (Code 1965, § 11C-29.1.)

8.48.370 Report of findings.

The building official, chief, health officer, or city manager, acting either in concert or independently, may examine, or cause to be examined, every building, structure, yard or other premises reported to the official or to or by a city department head or his or her designee as dangerous or damaged or which may constitute a public nuisance, and upon examination shall prepare a report of findings setting forth the condition of the premises, and, if necessary, their recommendation for abatement thereof. The report shall remain available for review and inspection by the legal or equitable owners of the property to which it relates. (Code 1965, § 11C-30.)

8.48.380 Notice to abate public nuisance—**Notice of pendency.**

A. If the building official, chief, health officer or city manager finds that any premises, constitutes a nuisance and determines that city abatement thereof is necessary to protect the public health, safety, or welfare, the city manager shall cause to be prepared a notice to abate public nuisance stating in detail the conditions which render the premises a public nuisance. The city manager's authority is designated to the other officials as needed. The notice shall set forth the street address, assessor's parcel number or other appropriate method of determining the location of the nuisance. Such notice shall be in substantially the following form:

NOTICE TO ABATE PUBLIC NUISANCE

To all persons having any interest in the premises having assessor's parcel number _____ and known and described as _____ in the City of Banning:

Your attention is hereby called to the provisions of Sections 5.52.010 through 5.52.030 and 8.48.010 through 8.48.650 of the Code of the City of Banning, California, on file in the office of the City Clerk in City Hall located at 99 E. Ramsey Street, Banning, California.

Pursuant to the provisions of said Sections, you are hereby notified that certain unsafe, dangerous, hazardous or obnoxious conditions have been declared a public nuisance by the Building Official, Fire Chief, Health Officer or City Manager. A report of findings is attached hereto.

Said nuisance must be abated by the removal or repair of said unsafe, dangerous, hazardous or obnoxious conditions as follows:

Such actions of abatement must be completed within thirty days from the date of this notice to avoid further abatement proceedings against the owner, lessee, or occupant of the abovementioned property or structure. The owner, lessee, or occupant shall notify the Code Enforcement Manager when such abatement is complete.

Right To Hearing

YOU HAVE THE RIGHT TO A HEARING REGARDING THE REQUIREMENTS OF THIS NOTICE BY FILING A WRITTEN REQUEST FOR HEARING WITH THE CITY CLERK IN ACCORDANCE WITH SECTION 8.48.430 OF THE CITY CODE WITHIN 10 DAYS AFTER THE DATE OF SERVING, MAILING, PUBLISHING OR POSTING OF THIS NOTICE TO ABATE PUBLIC NUISANCE, WHICHEVER IS LATER.

Date: _____

City of Banning

B. The city manager shall also cause to be filed a notice of pendency of administrative action in the

records of the county recorder respecting the property. Such notice shall be in a form as acceptable to the county recorder. (Code 1965, § 11C-31.)

8.48.390 Service of notice—Persons to be served.

Copies of such notice shall be served upon each of the following:

A. The person, or persons, if any, occupying or in real or apparent charge and control of the premises involved; and

B. The owner of the premises as shown on the most recent equalized assessment roll or supplemental roll; and

C. Any other person or persons known by the code enforcement manager to have an ownership or leasehold interest in the premises. (Code 1965, § 11C-32.)

8.48.400 Service of notice—Manner of service.

The notice shall be served as follows:

A. The person, or persons, if any, at least eighteen years of age and occupying or in real or apparent charge and control of the premises involved shall be personally served if reasonably possible. If personal service cannot with reasonable diligence be accomplished, then the notice shall be mailed, certified, return receipt requested, to such persons at the address of the premises.

B. The owner of the premises as shown on the most recent equalized assessment roll or supplemental roll and any other person or persons actually known by the code enforcement manager to have ownership or leasehold interest in the premises shall be personally served if reasonably possible. If personal service cannot with reasonable diligence be accomplished, then the notice shall be mailed, certified, return receipt requested, to such persons at their last known address.

C. If no address is reasonably attainable, then the notice shall be mailed to such persons at the address of the premises involved and the notice shall be published in a daily newspaper circulated within the city and one certified copy of the notice shall also be

conspicuously posted on the premises at least ten days before the end of the time period fixed for abatement by the notice. (Code 1965, § 11C-33.)

8.48.410 Service of notice—Proof.

Proof of service of the notice and/or publishing and posting thereof shall be documented at the time of service by a declaration under penalty of perjury executed by the person effecting service, declaring the time and manner in which such notice was given and/or published and posted. He or she shall file such declaration in the code enforcement manager's office and therewith any proof of mailing, publishing, or posting. (Code 1965, § 11C-34.)

Article III.

Abatement—Hearing on Abatement

8.48.420 Voluntary abatement by property owner.

Any person may abate the nuisance by rehabilitation, repair, removal, or demolition at any time within the abatement period provided in the notice to the property owner. Once advised of such abatement, the city shall inspect the premises to verify that the condition has been abated. This section does not grant right of entry and control of premises to any person not otherwise having such right. (Code 1965, § 11C-35.)

8.48.430 Request for hearing before nuisance abatement hearing officer.

Within ten days of the service, mailing, publishing, or posting of the notice to abate public nuisance, whichever is later, the owner, lessee, or occupant in control of the premises described in the notice to abate may request a hearing before the nuisance abatement hearing officer regarding the requirements of the notice to abate. Such request shall be made in writing, shall state the objections of the person filing the request, shall state the interest in the property of the person filing the request, the name and address of all persons and businesses known to such applicant to have an interest in the real property and shall be filed

with the city clerk. The matter shall be assigned to the nuisance abatement hearing officer and set for hearing. The person filing the request shall be entitled to one continuance of up to fourteen additional days. The person filing the request, and all others having interest in the premises, shall be notified of the time and place of the hearing before the nuisance abatement hearing officer by a notice of hearing to abate public nuisance as set forth below. (Code 1965, § 11C-36.)

8.48.440 Nuisance abatement hearing officer.

Any and all requests pursuant to Section 8.48.430 shall be heard by the nuisance abatement hearing officer who shall be the city manager or his designee. The decision of the nuisance abatement hearing officer shall be final unless an appeal to the city planning commission is filed pursuant to Section 8.48.540. (Code 1965, § 11C-37.)

8.48.450 Notice of hearing to abate public nuisance.

If a request for hearing is filed pursuant to section 8.48.430, a notice of hearing to abate public nuisance shall be prepared in substantially the following form:

**NOTICE OF HEARING TO ABATE
PUBLIC NUISANCE**

To all persons having any interest in the premises having assessor's parcel number _____ and known and described as _____ in the City of Banning:

Notice is hereby given that you may appear before the Nuisance Abatement Hearing Officer at the hearing being held on the _____ day of _____, 20_____, at City Hall located at 99 E. Ramsey Street, Banning, California, at _____ A.M./P.M., or as soon thereafter as the matter may be heard, on the appeal of _____

from a finding by the City of Banning that certain unsafe, dangerous, hazardous or obnoxious conditions exist on said premises, should be declared a public nuisance and said nuisance should be abated by removal or repair of said unsafe, dangerous, hazardous or obnoxious conditions.

Upon the Nuisance Abatement Hearing Officer's finding that the same constitutes a public nuisance, the nuisance shall be abated by the City of Banning, in which case the cost of such removal or repair and abatement shall be assessed upon the premises on which said conditions exist, and such costs will constitute a lien upon such premises unless and until paid in full and shall alternatively be placed on the equalized assessment roll as a special assessment against the property.

The conditions upon said premises which are alleged to cause them to be a public nuisance are as follows:

Date: _____

Code Enforcement Manager
City of Banning

(Code 1965, § 11C-38.)

8.48.460 Hearing on abatement—Content of testimony.

The nuisance abatement hearing officer shall, at the scheduled time as specified in the notice of hearing to abate public nuisance, proceed to hear and consider any relevant testimony or evidence offered by the building official, chief, health officer, other

officials or employees of the city or other qualified witnesses, as well as the owner, a responsible person in charge and control of the premises, his representatives, a mortgagee or beneficiary under any trust deed, lessee, any other person having any estate or interest in such premises, and any other competent person who may be present and desire to testify, respecting:

- A. The condition of the affected premises;
- B. The estimated cost of abating the alleged nuisance by repair or removal; and
- C. Any other pertinent matters.

The nuisance abatement hearing officer may continue the hearing from time to time as he shall deem advisable. (Code 1965, § 11C-39.)

8.48.470 Hearing on abatement—Procedure.

The hearing shall be conducted informally, and the technical rules of evidence shall not apply, except that irrelevant and unduly repetitious evidence shall be excluded. During the course of the hearing, the hearing officer may visit and inspect any premises involved in the proceeding and may receive oral testimony of any sworn or unsworn witness. (Code 1965, § 11C-40.)

8.48.480 Hearing on abatement—Decision.

Upon conclusion of the hearing, the nuisance abatement hearing officer shall consider the evidence presented and shall, make written findings of fact, based upon the evidence, to support his or her decision and shall make his or her determination and conclusion with respect to the alleged public nuisance. The ruling shall be made by the nuisance abatement hearing officer within thirty days of the close of such hearing, and copies thereof shall be served upon all interested parties in the same manner as set forth in Sections 8.48.390 through 8.48.410. Failure of the owner or other persons having interest in the affected premises to appear at or be represented at the hearing shall in no way affect the validity thereof. The ruling shall contain a notice that appeal to the city planning commission, if desired, must be sought by filing a notice of appeal with the city

clerk within fifteen days from the date of the decision in accordance with this chapter. (Code 1965, § 11C-41.)

8.48.490 Order to abate public nuisance.

If, from evidence received at the hearing, the nuisance abatement hearing officer determines that the premises or any portions thereof are unsafe or dangerous and a public nuisance, then he shall, by written ruling, order the nuisance abated. The order to abate public nuisance shall set forth the following:

- A. A statement of the particulars which render the premises obnoxious or unsafe and a public nuisance;
- B. A statement of the things required to be done to abate the nuisance;
- C. The time within which the work required to abate must be commenced;
- D. A reasonable time within which the required abatement shall be completed;
- E. That the occupant, lessee, or other person in possession or charge, or any mortgagee, beneficiary under any deed of trust, or other person having interest or estate in such premises, may at his own risk, abate the nuisance;
- F. That appeal to the city planning commission, if desired, must be sought by filing a notice of appeal with the city clerk within fifteen days from the date of the decision in accordance with Section 8.48.540. (Code 1965, § 11C-42.)

8.48.500 Conditional use permits.

Any commercial use which is permitted, grandfathered, or not otherwise currently required to have a conditional use permit to conduct its current operations as of the effective date hereof, may be made subject to the requirements to obtain a conditional use permit for its continued operation by the nuisance abatement hearing officer upon finding by that hearing officer that such use has been conducted in a manner which is detrimental to the health, safety, or welfare of the community. Such findings are not required to be limited to violations of any specific provisions of this Code. By way of this example, commercial uses include but are not limited to: motels,

mini-marts, rentals of facilities in multifamily dwellings. The requirements for a conditional use permit may be imposed only after written notice to the owner of the subject parcel and a public hearing before the hearing officer in the manner set forth in this chapter for notice and hearing. (Code 1965, § 11C-42.1.)

8.48.510 Order to abate—Service.

The city manager shall cause copies of the order to abate to be posted upon the premises involved and served in the manner and upon the persons prescribed in Sections 8.48.390 through 8.48.410. (Code 1965, § 11C-43.)

8.48.520 Abatement by property owner.

The property owner, lessee, occupant, or person having charge or control of the property, may, at his own expense, abate the nuisance as prescribed by the order to abate prior to expiration of the abatement period set forth in the order. If the nuisance has been inspected by the representative of the city and has been abated in accordance with the order, proceedings shall be terminated. (Code 1965, § 11C-44.)

8.48.530 Abatement by the city.

Whenever no appeal has been taken for a notice to abate public nuisance or such notice or an order to abate public nuisance upon a premises, or any portion thereof, has not been complied with within the time set, the city manager shall have the power, in addition to any other remedy provided for in this chapter, to:

- A. Cause the premises to be vacated until such time as the nuisance has been abated;
- B. Cause the nuisance upon the premises, or any portion thereof, to be abated and the premises restored to a safe condition. Immediately upon completion of such abatement, the city manager shall cause a notice of such completion to be recorded in the office of the county recorder, Riverside County, state of California. Nothing herein shall prevent the city from contracting with an independent contractor to perform such work as may be necessary to abate the nuisance. (Code 1965, § 11C-45.)

8.48.540 Appeal.

A. Whenever any person is aggrieved by any final order of the hearing officer issued pursuant to this chapter, such person may appeal to the planning commission the issuance of said order by filing a written notice of appeal therefrom no later than fifteen days from the date of decision. A written notice of appeal shall be filed with the city clerk and shall state the objections of the person filing the notice and shall state the interest in the property of the person filing the notice.

B. The city clerk shall set the matter for hearing at the next regular city planning commission meeting at least twenty-one days after the date of the mailing of the notice of hearing on the appeal. The person filing the appeal shall be entitled to one continuance of up to fourteen additional days. The city clerk shall give notice of the time and place of the hearing before the planning commission to all interested parties in the same manner as set forth in Sections 8.48.390 through 8.48.410. The hearing shall be conducted de novo. The planning commission may assign an ad hoc committee to take evidence in the matter. The decision of any such ad hoc committee shall be final.

C. The hearing before the planning commission, or its assigned ad hoc committee shall be conducted in a manner consistent with the provisions of Sections 8.48.460 and 8.48.470. After the hearing, the planning commission may, by written resolution, affirm, reverse or modify, in whole or in part, any final decision or order of the hearing officer which is appealed from. The written resolution shall be issued within thirty days of the close of the hearing. Failure of the owner or other persons having interest in the affected premises to appear at or be represented at the hearing shall in no way affect the validity thereof.

D. The city clerk shall serve the written resolution representing the decision of the planning commission on the appeal on all interested parties in the same manner as set forth in Sections 8.48.390 through 8.48.410. (Code 1965, § 11C-46.)

Article IV.
Cost Recovery

8.48.550 Nuisances—General.

In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provision of this Code shall be deemed a public nuisance and may be summarily abated as such by the city, and each day such condition continues shall constitute a new and separate offense. (Code 1965, § 11C-47.)

8.48.560 Nuisance abatement.

A. The abatement of any public nuisance by the city as prescribed in this Code shall be at the sole expense of the persons creating, causing, committing or maintaining such nuisance. The cost of abatement of any public nuisance and related administrative costs shall include, but not be limited to: inspection costs; investigation costs; attorneys' fees and costs; and costs to repair and eliminate all substandard conditions. All such fees and costs shall be a personal obligation against any person held responsible for creating, causing, committing or maintaining a public nuisance.

B. The prevailing party in any action, administrative proceeding or special procedure to abate a public nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual actions or proceedings wherein the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

C. The city may collect the cost of abatement of any nuisance and related administrative costs, including but not limited to, inspection costs, investigation costs, attorneys' fees and costs, and costs to repair and eliminate all substandard conditions by either: (i) obtaining a court order stating that this reimbursement requirement is a personal obligation of any person held responsible for creating, causing, committing or maintaining a public nuisance, recoverable by

the city in the same manner as any civil judgment; (ii) recording a nuisance abatement lien pursuant to this Code against the parcel of land on which the nuisance is maintained; or (iii) imposing a special assessment pursuant to this Code against the parcel of land on which the nuisance is maintained. (Code 1965, § 11C-48.)

8.48.570 Nuisance abatement lien.

A. Prior to the recordation of the lien against the parcel of land on which the nuisance is maintained, the owner of record of the parcel of land shall receive notice. The notice of the recordation of the lien against the parcel of land on which the nuisance is maintained shall be served on the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll, or the supplemental roll, whichever is more current. Such notice shall be served in the same manner as a summons in a civil action in accordance with Sections 415.10 et seq., of the Code of Civil Procedure. The date upon which service is made shall be entered on or affixed to the face of the copy of the notice at the time of service. However, service of such notice without such date shall be valid and effective.

B. A nuisance abatement lien shall be recorded in the Riverside County recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.

C. A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

D. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection B of this section shall be recorded by the city. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

E. A nuisance abatement lien may be foreclosed by the city as a money judgment. The city may recover

from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien or as a condition of removing the lien upon payment. (Code 1965, § 11C-49.)

8.48.580 Special assessment.

A. As an alternative to the recordation of a nuisance abatement lien, the city may make the cost of abatement a special assessment against the parcel of land on which the nuisance is maintained.

B. Notice shall be given by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. Notice pursuant to this section shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice pursuant to this section.

C. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for with ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attached thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

D. The city shall duly execute a report detailing the amount of the special assessment and shall send same to the tax division of the county auditor-

controller's office, whereupon it shall be the duty of the auditor-controller to add the amounts of the respective assessments to the next regular tax bills levied against the respective lots and parcels of land for municipal purposes; and, thereafter, the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

E. City may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent, subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code.

F. Notices or instruments relating to the abatement proceeding or special assessment shall be entitled to recordation. (Code 1965, § 11C-49.1.)

8.48.590 Graffiti abatement—General provisions.

A. The abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material as prescribed in this Code shall be at the sole expense of the person, minor or other person creating, causing or committing the nuisance.

B. If the person creating, causing or committing the nuisance is a minor, the parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor. The city shall make the expense of abatement of any nuisance, resulting from the defacement by a minor of the property of another by graffiti or any other inscribed material, a lien against the property of a parent or guardian having custody and control of the minor and/or a personal obligation against the parent or guardian having custody and control of the minor.

C. The prevailing party in any action, administrative proceeding or special procedure to abate a nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual ac-

tions or proceedings wherein the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party to exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

D. The city may collect the cost of abatement of any nuisance, resulting from the defacement of the property of another by graffiti or any other inscribed material, and related administrative costs by either: (1) obtaining a court order stating that this reimbursement requirement is a personal obligation of the minor or other person or parent or guardian having custody and control over the minor who committed the defacement, recoverable by the city in the same manner as any civil judgment; (2) recording a nuisance abatement lien against a parcel of land owned by the minor or other person or parent or guardian having custody and control over the minor who committed the defacement; or (3) making the cost of abatement of a nuisance resulting from the defacement of the property of another, a special assessment against a parcel of land owned by the minor or other person or parent or guardian having custody and control over the minor who committed the defacement.

E. Alternatively, the property owner of the property maintaining the graffiti nuisance may be liable for the expense of abatement. In such case, the expense of abatement of the graffiti nuisance may be a lien against the property on which it is maintained and a personal obligation against the property owner.

F. If the property owner maintaining the graffiti nuisance is liable for the expense of abatement, the property owner may request the city for a release from any lien and/or personal obligation for such expense upon showing proof that another person has been convicted of causing the graffiti nuisance on the property. For the purposes of this section, diversion of the offending violator to a community service program or a plea bargain to a lesser offense shall constitute a conviction.

G. The city manager or his designee shall keep an accounting of the cost, including incidental expenses, of abatement of such nuisance for each separate lot, or parcel of land where the work has been done and shall render an itemized report in writing to the city council showing the cost of abatement, including salvage value, if applicable, for each separate lot or parcel of land; provided, that before the report is submitted to the city council for approval, a copy of the same shall be posted for at least five days upon the premises or property upon which such building(s) or structure(s) were situated, together with a notice of the time when the report shall be submitted to the city council for confirmation; a copy of the report and notice shall be served upon minor or other person or parent or guardian having custody and control over the minor who committed the defacement, and the owner of the property, in accordance with Section 415.10 et seq. of the Code of Civil Procedure, at least five days prior to submitting the same to the council; proof of the posting and service shall be made by affidavit and filed with the city clerk of the city. The term "incidental expenses" includes, but is not limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work, and the costs of printing and mailings required under this chapter.

H. At the time and place fixed for receiving and considering the report, the city council shall hear and pass upon the report of the city manager or his designee, together with any objections or protests, which must be in writing, raised by any of the persons liable to be assessed for the cost of abating such nuisance. Thereupon the city council may make such revision, correction or modification to the report as it may deem just, after which, by resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed; provided, that the hearing or consideration may be continued from time to time. The decision of the city council on all protests and objections which may be made shall be final and conclusive. (Code 1965, § 11C-49.2; Ord. No. 1436, § 2, 3-8-11)

8.48.600 Graffiti—Nuisance abatement lien.

A. Prior to the recordation of a graffiti nuisance abatement lien, notice shall be given to the person or parent or guardian having custody and control over the minor who committed the defacement by graffiti or any other inscribed material, and/or the owner of the abated property on which the graffiti was maintained as shown on the last equalized assessment roll or supplemental roll, whichever is more current. Such notice shall be served in the same manner as a summons in a civil action in accordance with Sections 415.10 et seq., of the Code of Civil Procedure. The date upon which service is made shall be entered on or affixed to the face of the copy of the notice at the time of service. However, service of such notice without such date shall be valid and effective.

B. A graffiti nuisance abatement lien shall be recorded in the Riverside County recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.

C. A graffiti nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

D. If the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection B of this section shall be recorded by the city. A graffiti nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

E. A graffiti nuisance abatement lien may be satisfied through foreclosure in an action brought by the city. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien or as a condition of releasing the lien upon payment.

(Code 1965, § 11C-49.3; Ord. No. 1436, § 2, 3-8-11)

8.48.610 Graffiti—Special assessment.

A. As an alternative to the recordation of a graffiti nuisance abatement lien, the city may make the cost of the abatement of any nuisance resulting from the defacement by a minor or other person of property of another by graffiti or other inscribed material, and related administrative costs, a special assessment against a parcel of land owned by the minor or other person or by the parent or guardian having custody and control of the minor, or the owner of the abated property on which the graffiti was maintained.

B. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attached thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

C. Notices or instruments relating to the abatement proceeding or special assessment may be recorded.

D. Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding a minor or other person or parent or guardian having custody and control of a minor responsible for a condition that may be abated as a nuisance pursuant to subsection A of this section, the court may order such minor or other person or parent or guardian having custody and control of such minor to pay treble the costs of the abatement.

(Code 1965, § 11C-49.4; Ord. No. 1436, § 2, 3-8-11)

8.48.620 General penalty.

A. In addition to any other remedy provided by law, the city may recover any fee, cost or charge, including any attorneys' fees incurred in the enforcement of any provision of the Zoning Code, the Housing Code, Building Code, Electrical Code, Plumbing Code, Mechanical Code or the Uniform Code for the Abatement of Dangerous Buildings as provided in this Code. The amount of any such fee, cost, or charge, including any attorneys' fees shall not exceed the actual cost incurred performing the inspections and enforcement activity, including but not limited to, permit fees, fines, late charges and interest.

B. Subsection A of this section, shall not apply to any enforcement, abatement, correction or inspection activity regarding a violation of any provision of sections of the Zoning Code, the Housing Code, Building Code, Electrical Code, Plumbing Code, Mechanical Code or the Uniform Code for the Abatement of Dangerous Buildings as provided in this Code in which the violation was evident on the plans that received the building permit.

C. Subsection A of this section shall not apply to owner-occupied residential dwelling units. (Code 1965, § 11C-49.5.)

Article V. General Provisions

8.48.630 Unlawful interference.

It is unlawful and a misdemeanor for any person to obstruct, impede or interfere with any officer, agent or employee of the city or with any person who owns or holds any estate or interest in any premises or structure, or any portion thereof, upon which there is a nuisance which has been ordered to be abated, or with any person to whom such premises have been lawfully sold pursuant to the provisions of this chapter, when any such officer, agent, employee, purchaser or person is engaged in abating a nuisance or immediate hazard thereon, or in performing any necessary act preliminary to or incidental to such work, or authorized or directed pursuant thereto. (Code 1965, § 11C-50.)

8.48.640 Nonliability of city.

The provisions of this chapter shall not be construed to hold the city or any official, officer, employee or agent thereof responsible for any damages to persons or property by reason of the inspections authorized herein, by reason of the determination that a nuisance or immediate hazard exists on any premises in accordance with the provisions herein, or by reason of any of the procedures or processes related to the actual abatement thereof. (Code 1965, § 11C-51.)

8.48.650 Annual review of abated residential rental units.

If a residential rental unit has been found during a hearing before the nuisance abatement hearing officer to be in violation of any provision of this chapter and, if occupancy of such residential unit is allowed to continue, the nuisance abatement hearing officer shall require the following:

A. That upon seventy-two hours' prior written notice delivered to the owner, or manager, or tenant-in-possession of the residential unit, the city building inspectors shall thereafter be permitted to enter and examine such premises for any violation of this Code.

B. Such inspections shall occur at least twice during the first year following the date of the hearing before the hearing officer and at least once in the subsequent year.

C. The cost of such inspection shall be assessed against the owner as a personal expense. Said cost shall be as set by resolution of the city council.

For the purpose of this section, residential units shall include, but not be limited to apartment buildings, duplexes, auto courts, motels, single-family homes, or any portion thereof, and any premises for which compensation is received by one party from another in consideration of being allowed to reside in such premises. (Code 1965, § 11C-54.)