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**City of Santee
Regular Meeting Agenda**

**Santee City Council
CDC Successor Agency
Santee Public Financing Authority**

**Council Chamber – Building 2
10601 Magnolia Avenue
Santee, CA 92071**

**April 24, 2013
7:00 PM**

ROLL CALL: Mayor Randy Voepel
Vice Mayor John Minto
Council Members Jack Dale, Rob McNelis and John Ryan

LEGISLATIVE INVOCATION \ PLEDGE OF ALLEGIANCE:

PROCLAMATION: [Designating April 27, 2013 as Arbor Day 2013 and Recognizing the City of Santee as a Tree City USA for 2012](#)

PROCLAMATION: [Bike to Work Month – May 2013](#)

ITEMS TO BE ADDED, DELETED OR RE-ORDERED ON AGENDA:

1. CONSENT CALENDAR:

Consent Calendar items are considered routine and will be approved by one motion, with no separate discussion prior to voting. Council Members, staff or public may request specific items be removed from the Consent Calendar for separate discussion or action. Speaker slips for this category must be presented to the City Clerk before the meeting is called to order. Speakers are limited to 3 minutes.

- (A) Approval of reading by title only and waiver of reading in full of Ordinances on agenda.**
- (B) Approval of Meeting Minutes:**
 - [Santee City Council 4-10-13 Regular Meeting](#)
 - [CDC Successor Agency 4-10-13 Regular Meeting](#)
 - [Public Financing Authority 4-10-13 Regular Meeting](#)
- (C) Approval of Payment of Demands as presented.**

- (D) Second Reading and adoption of an Ordinance of the City of Santee, California, setting aside prior approval for executing a Development Agreement by and among the City Of Santee, Fanita Ranch L.P. and Barratt American Incorporated.
- (E) Approval of the expenditure of \$59,229.11 for March 2013 Legal Services and related costs.
- (F) Authorization for the City Manager to execute an agreement with San Diego County Water Authority for the use of Proposition 84 Funds to conduct a pilot study for the installation of infiltration strips in concrete flood control channels.
- (G) Adoption of a Resolution accepting the Citywide Pavement Repair and Rehabilitation Program 2011 Project (CIP 2011-01) as complete and authorize the recording of a Notice of Completion.
- (H) Award and authorization for the City Manager to execute a professional services agreement to URS in an amount not to exceed \$15,786 for the Town Center Community Park Landscape Irrigation well study and authorization to transfer \$30,000 of Park-in-Lieu funds from General Park Improvements to the Town Center Community Park Landscape Irrigation Well project.

2. PUBLIC HEARINGS: None

3. ORDINANCES (First Reading):

- (A) An Ordinance amending Sections 9.68.030 and 9.60.040 of the Santee Municipal Code regulating the consumption of alcohol in Town Center Community Park and defining aggressive soliciting.

Recommendation:

Introduce and conduct first reading of the Ordinance.

4. CITY COUNCIL ITEMS AND REPORTS:

5. CONTINUED BUSINESS: None

6. NEW BUSINESS:

(A) Location agreement between the City of Santee and HD Supply Facilities Maintenance, Ltd.

Recommendation:

Adopt the Resolution approving the location agreement between the City of Santee and HD Supply Facilities Maintenance, Ltd.

(B) Resolution approving associate membership by the City of Santee in the California Enterprise Development Authority (CEDA) and authorizing and directing the execution of an associate membership agreement; Resolution authorizing the City of Santee to join the FIGTREE PACE Program; authorizing the California Enterprise Development Authority to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City of Santee; and authorizing related actions.

Recommendation:

1. Adopt Resolution approving Associate Membership in the California Enterprise Development Authority (CEDA) and authorizing and directing the execution of an Associate Membership Agreement with CEDA; and
2. Adopt Resolution authorizing the City of Santee to join the FIGTREE PACE program, authorizing CEDA to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City of Santee, and authorizing related actions.

7. COMMUNICATION FROM THE PUBLIC:

Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the Agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.

8. CITY MANAGER REPORTS:

9. CDC SUCCESSOR AGENCY:

(Note: Minutes appear as Item 1B)

10. SANTEE PUBLIC FINANCING AUTHORITY:

(Note: Minutes appear as Item 1B)

11. CITY ATTORNEY REPORTS:**12. CLOSED SESSION:****(A) CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

(Government Code section 54956.8)

PROPERTIES:

The following addresses on Prospect Avenue in Santee, CA: 9860, 9808, 9822, 9840, 9830, 10017, 10023, 10131-10151, 10273, 10273, 10109, 10205, 10049, 10051, 10027-10039, 9915, 9851, 9825, 9833, 9959, 9835, 9855, 9805, 10375, 10527, 10517, 10445, 10555-10559, 10540, 10510, 10580, 10612, 10622, 10618, 10638, 10806, 10658, 10611, 10625, 10631, 10659, 10723, 10809, 10723, 10735, 10250, 10054, 10112, 10320, 10370, 10380, 10352. The following addresses in Santee, CA: 8539 Hubbles Lane, 8565 Paseo Drive, 8540, 8539, 8537 Cora Mae Place, 8629 Tumbleweed Terrace, 8614, 8622 Siesta Road, 8516-8528 N Magnolia Avenue, 8605, 8602 Fiona Way. The following Assessor's Parcel Numbers, which have no assigned street address, in Santee, CA: 384-180-20-00, 384-190-34-00, 384-190-72-00, 384-240-16-00, 384-250-06-00, 384-250-18-00, 384-251-09-00, 384-410-29-00, 384-410-77-00

AGENCY NEGOTIATORS: Bruce Beach, Best Best & Krieger LLP, and Chip Willett, Dokken Engineering

NEGOTIATING PARTIES: Lawrence A. Hayden and Tina M. Hayden, San Diego Metropolitan Transit District Board, Rodney and Tonya Crossman, Roe Family, Edwards Trust, Robert Bates, HSP Partners, Mary Jude Ltd Partnership, Ronald and Garalyn Snow, Carl and Deborah Freeman, Jonathan D. Urshan, Catarino and Mario Navarro, Bruce R. and Brenda F. Kleege, Bron Development Co., John and Lorna Nickols, Michael and Adele Barrack, Gloria Duff, Ida E. Cunradi, Fiz-Fast, Inc., Tom Hurner, Thomas and Carol Angus, Leann Lardy, Proj. Manager, County Airports Division, Orin and Janette Baertsch, Robert Schnieders, Frankie B. Clemens, Flohr Family Trust; Warczak Family Trust, Mark and Vivian Kroeger, Donna J. McDonnell, TW Cameron, LLC, Cameron Brothers Construction Co. LP, John and Shirley Cameron, Snyder Family Trust, Dennis J. Cushman and Shawna M. Faubel, Ray C. Cadena, James C. Walton, Jesse Cryns - JCMS Landscaping, 10806 Prospect Avenue, LLC, Robert and Kathryn McWay, et al., Robert and Cheryl Eschwege, Michael R. Fernandes, Sueannette Wood Maniscalco, DC Commercial, LLC, Schleuterman Family Trust, Eugene and Florence Warengo, Richard and Linda Hopper and Henry Tietz, Roy A. Woodward, Robert and Brenda Kleege, Charles L. Tatman, Michael and Charlotte Pratkano, Franco and Caterina Race, Regina Marahrens, Zack Cirks, Martin Ramirez, Guadalupe Villa, and any other person having an ownership interest in the properties listed above.

UNDER NEGOTIATION: Both price and terms

(B) CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Gov. Code section 54956.9)

Name of Case: Equity Lifestyle Properties, Inc. and MHC Financing Limited Partnership Two v. City of Santee, SDSC Case No. 37-2012-00065477.

(C) CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Gov. Code section 54956.9)

Name of Case: MHC Financing Limited Partnership Two v. City of Santee, USDC Case No. 12 CV 253 W-POR.

(D) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Government Code Section 54956.9(a)

Name of Case: Cameron's Mobile Estates, LLC v. City of Santee Case No. 37-2012-00069606-CU-WM-EC

13. ADJOURNMENT:



May	02	Santee Park & Recreation Committee	Bldg. 6 Conf. Rm.
May	08	City Council Meeting	Chamber
May	13	Community Oriented Policing Committee	Chamber Conf. Rm.
May	22	City Council Meeting	Chamber
June	06	Santee Park & Recreation Committee	Bldg. 6 Conf. Rm.
June	10	Community Oriented Policing Committee	Chamber Conf. Rm.
June	12	City Council Meeting	Chamber
June	20	Manufactured Home Fair Practices Commission	Chamber
June	26	City Council Meeting	Chamber

The Santee City Council welcomes you and encourages your continued interest and involvement in the City’s decision-making process.

For your convenience, a complete Agenda Packet is available for public review at City Hall and on the City’s website at www.ci.santee.ca.us.

The City of Santee complies with the Americans with Disabilities Act. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the American with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the City Clerk’s Office at (619) 258-4100, ext. 112 at least 48 hours before the meeting, if possible.

State of California } County of San Diego } ss. City of Santee }	<h3>AFFIDAVIT OF POSTING AGENDA</h3>
I, <u>Patsy Bell, CMC, City Clerk</u> of the City of Santee, hereby declare, under penalty of perjury, that a copy of this Agenda was posted in accordance with Resolution 61-2003 on <u>April 19, 2013</u> at <u>4:30 p.m.</u>	
_____ Signature	<u>4/19/13</u> Date

City of Santee
COUNCIL AGENDA STATEMENT

PROC

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE **PROCLAMATION: DESIGNATING ARBOR DAY 2013
AND RECOGNIZING THE CITY OF SANTEE AS A
TREE CITY USA FOR 2012**

DIRECTOR/DEPARTMENT Randy Voepel, Mayor

SUMMARY A National Arbor Day Foundation program, Tree City USA, recognizes U.S. towns and cities that develop comprehensive urban forestry programs.

Tree City USA began as a 1976 Bicentennial project co-sponsored by the National Association of State Foresters and the USDA-Forest Service. The National League of Cities and the U.S. conference of Mayors are now co-sponsors as well.

To become a Tree City USA, a community must meet four standards: establish a tree board or department, adopt a community tree care ordinance, develop a comprehensive community forestry program, and schedule an Arbor Day observance and proclamation.

Tree City USA designation recognizes the work of elected officials, staff and citizens who plant and care for the community forest.

The National Arbor Day Foundation has named the City of Santee a Tree City USA for 2012. It is the eleventh year Santee has received this national recognition.

A representative from the California Department of Forestry and Fire Protection will be making tonight's presentation recognizing Santee as a Tree City USA.

FINANCIAL STATEMENT N/A

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION

Present Proclamation and receive Tree City Flag & Plaque from the California Department of Forestry and Fire Protection.

ATTACHMENTS (Listed Below)

Proclamation

City of Santee, California

Proclamation

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, 2013 is the 141th anniversary of the holiday and Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, the City of Santee will plant 40 trees at Town Center Community Park on April 27, 2013, as part of the SanTree Fest celebration using community volunteer labor.

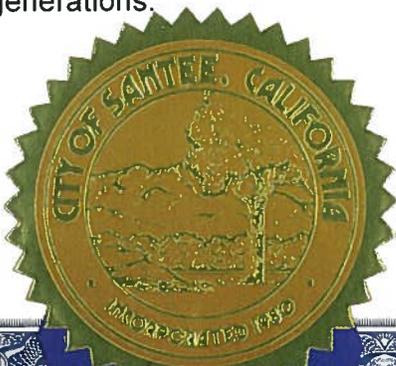
NOW, THEREFORE, I, Randy Voepel, Mayor of the City of Santee, on behalf of the City Council, do hereby proclaim April 27, 2013 as the 141th anniversary celebration of

ARBOR DAY

in the City of Santee, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, two thousand thirteen, and have caused the Official Seal of the City of Santee to be affixed.

Mayor Randy Voepel



City of Santee
COUNCIL AGENDA STATEMENT

PROC

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE PROCLAMATION: BIKE TO WORK MONTH – MAY 2013

DIRECTOR/DEPARTMENT Randy Voepel, Mayor

SUMMARY

The month of May is National Bike Month and May 17, 2013 is National Bike to Work Day. Bicycling to work or school is healthy, environmentally friendly, economical, and promotes a sustainable economy. The City of Santee is committed to promoting alternative modes of transportation through the implementation of the City's Bicycle Master Plan.

A proclamation has been prepared to designate the month of May 2013 as Bike to Work Month to coincide with National Bike to Work Day on May 17, 2013 in an effort to promote bicycle transportation in the City of Santee. The Director of Development Services will receive the proclamation.

ENVIRONMENTAL REVIEW N/A

FINANCIAL STATEMENT N/A

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION ✓ Present proclamation.

ATTACHMENTS (Listed Below)

Proclamation.

City of Santee, California

Proclamation

WHEREAS, the month of May is National Bike to Work Month, and May 17, 2013 is National Bike to Work Day; and

WHEREAS, biking is a proven emissions-free, healthy transportation alternative that reduces traffic congestion, improves mobility, and provides an alternative to driving alone; and

WHEREAS, promotion or other support of biking to work improves the region's economic prosperity and quality of life; and

WHEREAS, Santee area employers can improve mobility and reduce greenhouse gas emissions in the region by offering incentives to employees to encourage biking to work and other alternatives to the solo commute; and

WHEREAS, Santee commuters can reduce their weekly solo commute trips and the demands placed on the region's roadways by 20 percent by choosing a commute alternative like biking to work just once a week.

NOW, THEREFORE, I, Randy Voepel, Mayor of the City of Santee, on behalf of the City Council, do hereby proclaim the month of May, 2013 as

"BIKE TO WORK MONTH

and further proclaim May 17, 2013 as

"BIKE TO WORK DAY"

in the City of Santee and encourage commuters to explore their transportation options, pursue a healthy lifestyle, reduce greenhouse gas emissions, and seek support from their employer to bicycle to work during the month of May 2013.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of April, two thousand thirteen, and have caused the Official Seal of the City of Santee to be affixed.



Mayor Randy Voepel

City of Santee
COUNCIL AGENDA STATEMENT

1B

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE APPROVAL OF MEETING MINUTES: SANTEE CITY COUNCIL,
CDC SUCCESSOR AGENCY AND SANTEE PUBLIC FINANCING
AUTHORITY REGULAR MEETING OF APRIL 10, 2013

DIRECTOR/DEPARTMENT Patsy Bell, CMC, City Clerk *PB*

SUMMARY

Submitted for your consideration and approval are the minutes of the above meeting.

FINANCIAL STATEMENT

N/A

CITY ATTORNEY REVIEW

N/A Completed

RECOMMENDATION

Approve Minutes as presented.

ATTACHMENTS (Listed Below)

April 10, 2013 Minutes

Minutes

**Santee City Council
CDC Successor Agency
Santee Public Financing Authority**

Draft

**Council Chambers
10601 Magnolia Avenue
Santee, California**

April 10, 2013

This Regular Meeting of the Santee City Council, the CDC Successor Agency, and the Santee Public Financing Authority was called to order by Mayor/Chair Randy Voepel at 7:02 p.m.

Council Members present were: Mayor/Chair Randy Voepel; Vice Mayor/Vice Chair John W. Minto; and Council/Authority Members Jack E. Dale and Rob McNelis. Council/Authority Member John Ryan was absent.

Staff present were: City Manager/Authority Secretary Keith Till, City/Authority Attorney Shawn Hagerty, Deputy City Manager/Director of Development Services Pedro Orso-Delgado, Director of Community Services Bill Maertz, Finance Director/Treasurer Tim McDermott, Director of Fire and Life Safety Bob Leigh, Director of Human Resources Jodene Dunphy, Director of Planning Melanie Kush, Assistant to the City Manager Kathy Valverde, Senior Management Analyst Pamela White, Santee Sheriff's Captain Lisa Miller, City Clerk Patsy Bell, and Office Aide Amanda Ashwill.

(Note: Hereinafter the titles Mayor, Vice Mayor, Council Member, City Manager, and City Attorney shall be used to indicate Mayor/Chair, Vice Mayor/Vice Chair, Council/Authority Member, City Manager/Authority Secretary, and City/Authority Attorney)

LEGISLATIVE INVOCATION: Pastor Eric Maggio, Carlton Hills Southern Baptist Church

PLEDGE OF ALLEGIANCE: George Tockstein

ITEMS TO BE ADDED, DELETED OR RE-ORDERED ON AGENDA:

Mayor Voepel requested Item 6(A) be re-ordered to follow the Consent Calendar.

1. CONSENT CALENDAR:

- (A) Approval of reading by title only and waiver of reading in full of Ordinances on agenda.**

Draft

- (B) **Approval of Meeting Minutes:**
 - Santee City Council 3-27-13 Regular Meeting
 - CDC Successor Agency 3-27-13 Regular Meeting
 - Public Financing Authority 3-27-13 Regular Meeting
- (C) **Approval of Payment of Demands as presented.**
- (D) **Second Reading and adoption of an Ordinance amending the Zone District Base Map (R2013-1) to reclassify a portion of surplus state owned right-of-way on Via De Christina identified by right-of-way numbers 27492, 27493, 31332, 31333 and 31334 on County Assessor's page 383-44 to the Low-Medium Density Residential (R2) Zone District. (ORD 521)**
- (E) **Authorization for the purchase of one new 2013 Ford F-150 SuperCab XL pickup truck per State of California Contract #1-13-23-20D for an amount not to exceed \$25,112 and authorization for the City Manager to execute all necessary documents.**
- (F) **Adoption of a Resolution approving an Amended and Restated Joint Exercise of Powers Agreement for "Heartland Communications Facility Authority." (Reso 23-2013)**
- (G) **Adoption of a Resolution waiving a minor mathematical bid irregularity, awarding the construction contract for the Citywide CMP Lining and Rehabilitation Program (CIP 2013-20) to Southwest Pipeline and Trenchless Corporation in the amount of \$775,576, and authorizing the Director of Development Services to approve changes orders in an amount not to exceed \$75,557.60. (Reso 24-2013)**

ACTION: On motion of Council Member McNelis, seconded by Vice Mayor Minto, the Agenda and Consent Calendar were approved as amended with all voting aye, except Council Member Ryan who was absent.

The following item was re-ordered to follow the Consent Calendar:

6. NEW BUSINESS:

- (A) **Authorize execution of a second amendment to the lease agreement with the Padre Dam Municipal Water District for the Santee Teen Center.**

Mayor Voepel recognized Bill Pommering, Padre Dam Municipal Water District Chair and Jonathan Skinner, Director of Santee Lakes and thanked them for their support of the Teen Center Program. Director of Community Services Maertz presented a brief staff report.

Draft

PUBLIC SPEAKER:

In Support

- James Dreishbach-Towle, Santee Park and Recreation Committee, speaking in support of the lease agreement, also thanked Padre Dam and Santee Lakes for their partnership and support of the Teen Center program.

ACTION: On motion of Vice Mayor Minto, seconded by Council Member McNelis, the City Manager was authorized to execute the Second Amendment to the lease agreement with the Padre Dam Municipal Water District for the Santee Teen Center with all voting aye, except Council Member Ryan who was absent.

2. PUBLIC HEARINGS:

- (A) Public Hearing to adopt the Housing Element (2013-2021) in accordance with state law (General Plan Amendment GPA2013-1). (Reso 25-2013)

The Public Hearing opened at 7:09 p.m.

PUBLIC SPEAKERS: None

ACTION: On motion of Vice Mayor Minto, seconded by Council Member McNelis, the Public Hearing was closed at 7:10 p.m., the Negative Declaration (AEIS2013-1) was certified pursuant to CEQA, and the Resolution approving the Housing Element and authorizing the City Manager to submit the Housing Element to the State Department of Housing and Community Development for certification was adopted with all voting aye, except Council Member Ryan who was absent.

3. ORDINANCES (First Reading):

See Item 6B

4. CITY COUNCIL ITEMS AND REPORTS:

- (A) Extension of excused absences for Council Member.

Mayor Voepel explained that Council Member Ryan is scheduled to be back at the end of May.

Draft

ACTION: On motion of Council Member McNelis, seconded by Vice Mayor Minto, Council Member John Ryan was formally excused from attendance at Council meetings during April and May 2013 with all voting aye, except Council Member Ryan who was absent.

5. CONTINUED BUSINESS:

- (A) Report on factors impacting the FY 2013-14 and FY 2014-15 operating budget.**

City Manager Till introduced the item and discussed the proposed timeline for Council review and adoption of the two-year operating budget. Director of Finance McDermott presented a report utilizing a PowerPoint presentation showing background information and challenges the City has faced dating back to 2008. After discussion, the report was noted and filed.

6. NEW BUSINESS:

- (A) Item reordered to follow the Consent Calendar.**
- (B) A Resolution and Ordinance setting aside the certification of the Final Environmental Impact Report (FEIR) and the Revised Environmental Impact Report (REIR) for the Fanita Ranch Project, related approvals, and the Development Agreement by and among the City of Santee, Fanita Ranch L.P. and Barratt American Incorporated. (Reso 26-2013)**

City Attorney Hagerty presented the staff report.

PUBLIC SPEAKER:

In Opposition

- Paul Borden, HomeFed Fanita Rancho, LLC

ACTION: On motion of Council Member McNelis, seconded by Vice Mayor Minto, the Resolution setting aside the Resolutions related to the FEIR and REIR certification and project approvals was adopted and the Ordinance was approved for First Reading with all voting aye, except Council Member Ryan who was absent.

Draft

7. COMMUNICATION FROM THE PUBLIC:

- (A) Steven Bartholow, Santee Patch, announced a Patch hosted nature hike at Mission Trails on Saturday, April 13.

8. CITY MANAGER REPORTS: None

9. CDC SUCCESSOR AGENCY:
(Note: Minutes appear as Item 1B)

10. SANTEE PUBLIC FINANCING AUTHORITY:
(Note: Minutes appear as Item 1B)

11. CITY ATTORNEY REPORTS: None

12. CLOSED SESSION: None

13. ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:47 p.m.

Date Approved: _____

Patsy Bell, City Clerk and for
Authority Secretary Keith Till

City of Santee
COUNCIL AGENDA STATEMENT

1C

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE PAYMENT OF DEMANDS

DIRECTOR/DEPARTMENT Tim K. McDermott/Finance *TM*

SUMMARY

A listing of checks that have been disbursed since the last Council meeting is submitted herewith for approval by the City Council.

FINANCIAL STATEMENT *TM*

Adequate budgeted funds are available for the payment of demands per the attached listing.

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION *KJ*

Approval of the payment of demands as presented.

ATTACHMENTS (Listed Below)

- 1) Payment of Demands-Summary of Checks Issued
- 2) Disbursement Journal

Payment of Demands
Summary of Checks Issued

<u>Date</u>	<u>Description</u>	<u>Amount</u>
04/04/13	Payroll	\$ 279,155.51
04/04/13	Accounts Payable	692,596.15
04/04/13	Accounts Payable	8,246.88
04/08/13	Accounts Payable	79,227.47
04/09/13	Accounts Payable	153,426.80
04/10/13	Accounts Payable	<u>913.15</u>
	TOTAL	<u>\$ 1,213,565.96</u>

I hereby certify to the best of my knowledge and belief that the foregoing demands listing is correct, just, conforms to the approved budget, and funds are available to pay said demands.



Tim K. McDermott, Director of Finance

Bank code :	ubgen			Invoice	PO #	Description/Account	Amount
Voucher	Date	Vendor					
101852	4/4/2013	10985 ANDERSON & BRABANT INC		8789		PROSPECT AVENUE APPRAISALS	75,000.00
						Total :	75,000.00
101853	4/4/2013	10261 ASKINS, GARY		April-June2013		RETIREE HEALTH INSURANCE	546.00
						Total :	546.00
101854	4/4/2013	10412 AT&T		000004214007		TELEPHONE	1,433.85
						Total :	1,433.85
101855	4/4/2013	10262 AUSTIN, ROY		April-June2013		RETIREE HEALTH INSURANCE	629.40
						Total :	629.40
101856	4/4/2013	10062 BATHRICK, FRANK T		03212013		COMMISSION STIPEND	50.00
						Total :	50.00
101857	4/4/2013	10264 BELL, HARRY		April-June2013		RETIREE HEALTH INSURANCE	779.40
						Total :	779.40
101858	4/4/2013	10263 BERRY, RONALD		April-June2013		RETIREE HEALTH INSURANCE	546.00
						Total :	546.00
101859	4/4/2013	10020 BEST BEST & KRIEGER LLP		LEGAL SVC FEB 2013		LEGAL SERVICES FEB 2013	50,444.59
						Total :	50,444.59
101860	4/4/2013	10265 BINGHAM, JAMES		April-June2013		RETIREE HEALTH INSURANCE	546.00
						Total :	546.00
101861	4/4/2013	10021 BOUND TREE MEDICAL LLC		81023206	50050	EMS SUPPLIES	2,051.18
				81023207	50050	EMS SUPPLIES	931.88
				81023208	50050	EMS SUPPLIES	74.45
				81024489	50050	EMS SUPPLIES	52.92
						Total :	3,110.43
101862	4/4/2013	10008 BPI PLUMBING		S-14523	50132	PLUMBING SERVICES	180.00
				S-14619	50132	PUMBING REPAIRS	90.00
						Total :	270.00

Voucher List
CITY OF SANTEE

Bank code :	ubgen			Invoice	PO #	Description/Account	Amount
Voucher	Date	Vendor					
101863	4/4/2013	10098 BURNER, RONALD	0213	50042	FIELD COORDINATOR	Total :	2,083.34
101864	4/4/2013	10024 BUSINESS PRINTING COMPANY INC	104098		PRINTING	Total :	2,083.34
101865	4/4/2013	10542 C2 REPROGRAPHICS	533957		PRINTING	Total :	466.88
101866	4/4/2013	10266 CAMPBELL, KEN	April-June2013		RETIREE HEALTH INSURANCE	Total :	466.88
101867	4/4/2013	10031 CDW GOVERNMENT LLC	Z494966 Z744324	50286 50285	PRINTER REPAIR KIT REPLACE SPAM FILTER	Total :	147.85
101868	4/4/2013	10267 CINCOTTA, JOHN	April-June2013		RETIREE HEALTH INSURANCE	Total :	147.85
101869	4/4/2013	10032 CINTAS #64	694552547		SHOP TOWEL/UNIFORM RENTAL	Total :	546.00
101870	4/4/2013	10801 CLAIMS MANAGEMENT ASSOC INC	521170		CLAIM SERVICES RENDERED	Total :	546.00
101871	4/4/2013	10035 COMPETITIVE METALS INC	119119	50075	METAL TUBING	Total :	60.29
101872	4/4/2013	10845 CONTROLLED ENTRY SPECIALISTS	822222	50263	DOOR REPAIRS	Total :	60.29
101873	4/4/2013	10268 COOPER, JACKIE	April-June2013		RETIREE HEALTH INSURANCE	Total :	149.10
101874	4/4/2013	10333 COX COMMUNICATIONS	112256001		9130 CARLTON OAKS DR	Total :	149.10
101875	4/4/2013	10142 CSA SAN DIEGO COUNTY	132	50216	CDBG SUBRECIPIENT REIMB.	Total :	33.40

Voucher List
CITY OF SANTEE

Bank code :	ubgen			Invoice	PO #	Description/Account	Amount
Voucher	Date	Vendor					
101875	4/4/2013	10142	10142 CSA SAN DIEGO COUNTY	(Continued)			
101876	4/4/2013	10124	DEPENDABLE PLBMG HEATING & AIR	644355	50140	BACKFLOW TESTING	Total : 789.25
101877	4/4/2013	10045	DIAMOND ENVIRONMENTAL SVCS LP	33700142	50180	PORTABLE TOILET SERVICE	Total : 165.00
101878	4/4/2013	10250	EAST COUNTY CALIFORNIAN	03/07/13 03/07/13	50078	ADVERTISING ADVERTISING	Total : 118.00
101879	4/4/2013	10057	ESGIL CORPORATION	3/18/13-3/22/13		SHARE OF FEES	Total : 196.00
101880	4/4/2013	10988	ESPINOLA, TOBY	03272013		CASH ADVANCE - PROSPECTAVE	Total : 329.00
101881	4/4/2013	10251	FEDERAL EXPRESS	2-215-08135		SHIPPING CHARGES	Total : 525.00
101882	4/4/2013	10436	FLUORESCO LIGHTING & SIGNS	61981801 61982001	50262 50262	STREET LIGHT MAINTENANCE FY 12/13 STREET LIGHT MAINTENANP	Total : 6,694.50
101883	4/4/2013	10269	FORSETH, GARY	April-June2013		RETIREE HEALTH INSURANCE	Total : 6,694.50
101884	4/4/2013	10270	GARLAND, WILLIAM	April-June2013		RETIREE HEALTH INSURANCE	Total : 150.00
101885	4/4/2013	10065	GLOBAL POWER GROUP INC	28033 28070	50103 50103	ELECTRICAL REPAIRS ELECTRICAL REPAIRS	Total : 43.29
101886	4/4/2013	10540	HCFA	0000011447		HCFA CAL PERS SIDE FUND	Total : 43.29
							Total : 783.40
							Total : 622.20
							Total : 1,405.60
							Total : 546.00
							Total : 546.00
							Total : 546.00
							Total : 1,120.00
							Total : 245.00
							Total : 1,365.00
							Total : 37,882.00
							Total : 37,882.00

Voucher List
CITY OF SANTEE

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101887	4/4/2013	10256 HOME DEPOT CREDIT SERVICES	7153764 7153788	50055 50055	FILE CABINET LOCK REPAIR MATERIALS	15.08 2.69
				Total :		17.77
101888	4/4/2013	10271 HORAN, BERNICE	April-June2013		RETIREE HEALTH INSURANCE	273.00
				Total :		273.00
101889	4/4/2013	10198 HYDRO SCAPE PRODUCTS	7495676-00 7508779-00	50104 50104	IRRIGATION MATERIALS IRRIGATION MATERIALS	167.52 592.98
				Total :		760.50
101890	4/4/2013	10272 JENKINS, CARROLL	April-June2013		RETIREE HEALTH INSURANCE	2,310.54
				Total :		2,310.54
101891	4/4/2013	10852 KAPLAN, DANA BEN	April-June2013		RETIREE HEALTH INSURANCE	546.00
				Total :		546.00
101892	4/4/2013	10590 KOCH - ARMSTRONG GENERAL	90566 90566-R	50196	PAVEMENT REPAIR & MAINT. PAVEMENT REPAIR & MAINT.	33,510.52 -1,763.71
				Total :		31,746.81
101893	4/4/2013	10426 LAERDAL MEDICAL CORPORATION	2417462		CPR TRAINING MANUALS	165.19
				Total :		165.19
101894	4/4/2013	10273 LARIMER, LARRY	April-June2013		RETIREE HEALTH INSURANCE	546.00
				Total :		546.00
101895	4/4/2013	10981 LASTING IMPRESSIONS	17431		MISC RECEIPT FORMS	218.71
				Total :		218.71
101896	4/4/2013	10204 LIFE ASSIST INC	626598 626599		EMS SUPPLIES EMS SUPPLIES	54.72 54.72
				Total :		109.44
101897	4/4/2013	10207 LOCKHART TRAINING	678		INSTRUCTOR PAYMENT	227.50
				Total :		227.50
101898	4/4/2013	10274 LONG, ED	April-June2013		RETIREE HEALTH INSURANCE	546.00

Voucher List
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Bank code : ubgen									
Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount			
101898	4/4/2013	10274 LONG, ED	(Continued)				Total :		546.00
101899	4/4/2013	10275 MARSHALL, TERRY	April-June2013		RETIREE HEALTH INSURANCE	546.00	Total :		546.00
101900	4/4/2013	10982 MATSUSHITA, JUSTIN	03242013		PARAMEDIC RECERT	217.00	Total :		217.00
101901	4/4/2013	10154 MCDUGAL LOVE ECKIS BOEHMER &	83408		CLAIM SERVICES	6,203.20	Total :		6,203.20
101902	4/4/2013	10079 MEDICO PROFESSIONAL	1207178	50036	MEDICAL LINEN SERVICE	24.16	Total :		24.16
			1207179	50036	MEDICAL LINEN SERVICE	16.36	Total :		16.36
101903	4/4/2013	10082 MUELLER'S TRUCK & EQUIP SVC	11254		APPARATUS REPAIR	770.77	Total :		770.77
101904	4/4/2013	10322 NEB-CAL PRINTING	58058		PRINTING	787.32	Total :		787.32
101905	4/4/2013	10308 O'REILLY AUTO PARTS	2968-253739	50015	VEHICLE REPAIR PARTS	119.31	Total :		119.31
101906	4/4/2013	10987 PACIFIC BUILDING GROUP	MARCH 27, 2013		REFUNDABLE DEPOSIT	11,550.00	Total :		11,550.00
101907	4/4/2013	10276 PERKINS, MARVIN	April-June2013		RETIREE HEALTH INSURANCE	546.00	Total :		546.00
101908	4/4/2013	10241 PETTY CASH	020713		MILEAGE REIMBURSEMENT	34.97			
			021413		APWA MEETING	25.00			
			022613		DVD'S FOR BID PACKETS	14.03			
			031313		CITY ENGINEERS MEETING	23.00			
			102412		MILEAGE REIMBURSEMENT	8.76			
			11/28/12		MILEAGE REIMBURSEMENT	5.67			
			112012		MILEAGE REIMBURSEMENT	25.37			
			121212		MILEAGE REIMBURSEMENT	31.64			

Voucher List
CITY OF SANTEE

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101908	4/4/2013	10241 PETTY CASH	(Continued) 122012 22293829 289454320130226 290824020130318 357899520130304 D3/4		MILEAGE REIMBURSEMENT POWER STRIP PRINTING & DUPLICATING PRINTING & DUPLICATING DOCUMENT RECORDING CITY ENGINEERS MEETING	19.43 30.16 16.00 40.00 31.00 15.00 320.03
101909	4/4/2013	10277 PFOHL JR, ROBERT	April-June2013		RETIREE HEALTH INSURANCE	546.00 546.00
101910	4/4/2013	10089 PMC	37165	24209	WAL-MART EXPANSION EIR	975.00 975.00
101911	4/4/2013	10770 PREHOSPITAL EMS GROSSMONT	030713		PARAMEDIC ACLS RECERTS	720.00 720.00
101912	4/4/2013	10221 QUALITY CODE PUBLISHING LLC	2013-83	50098	SUPPLEMENT SERVICE	735.74 735.74
101913	4/4/2013	10278 RAMSEY, LAWRENCE AND JOAN	April-June2013		RETIREE HEALTH INSURANCE	546.00 546.00
101914	4/4/2013	10791 RECON ENVIRONMENTAL INC	46508	50267	SPECIAL REPORTS/CHEYENNE	8,874.00 8,874.00
101915	4/4/2013	10983 ROBERTS, LARRY	03142013		PARAMEDIC RECERT	217.00 217.00
101916	4/4/2013	10279 RUSHING, SCOTT	April-June2013		RETIREE HEALTH INSURANCE	546.00 546.00
101917	4/4/2013	10407 SAN DIEGO GAS & ELECTRIC	MARCH 20, 2013		GROUP BILL	56,120.00 56,120.00
101918	4/4/2013	10768 SANTEE SCHOOL DISTRICT	6798 6800	50236	WATER COSTS WATER COSTS	844.51 423.94

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101918	4/4/2013	10768 SANTEE SCHOOL DISTRICT	(Continued)			
101919	4/4/2013	10280 SHULTZ, JEFF	April-June2013		RETIREE HEALTH INSURANCE	546.00
					Total :	1,268.45
101920	4/4/2013	10281 SLIMKO, PHILIP	April-June2013		RETIREE HEALTH INSURANCE	546.00
					Total :	546.00
101921	4/4/2013	10282 SNELSON, MARY	April-June2013		RETIREE HEALTH INSURANCE	546.00
					Total :	546.00
101922	4/4/2013	10213 SOUTH BAY FOUNDRY INC	0131267-IN	50088	STORM DRAIN COVERS	345.60
			0131327-IN	50088	STORM DRAIN COVERS	172.80
					Total :	518.40
101923	4/4/2013	10217 STAPLES ADVANTAGE	3194551642	50039	OFFICE SUPPLIES	307.20
			3194551643	50039	OFFICE SUPPLIES	124.36
					Total :	431.56
101924	4/4/2013	10217 STAPLES ADVANTAGE	3194551641	50256	OFFICE SUPPLIES	154.89
			3194601808	50256	OFFICE SUPPLIES	9.57
					Total :	164.46
101925	4/4/2013	10116 STAT PHARMACEUTICALS INC	407537-02	50071	PHARMACEUTICALS	93.81
			409880-00	50071	PHARMACEUTICALS	113.34
			409881-00	50071	PHARMACEUTICALS	154.01
			409881-01	50071	PHARMACEUTICALS	104.75
			409915-00	50071	PHARMACEUTICALS	31.08
			409949-00	50071	PHARMACEUTICALS	27.06
					Total :	524.05
101926	4/4/2013	10119 STEVEN SMITH LANDSCAPE INC	25238	50129	LANDSCAPE EXTRA WORK	1,000.00
			25247	50129	LANDSCAPE MAINTENANCE	33,116.00
					Total :	34,116.00
101927	4/4/2013	10998 SUNSET ROOFING COMPANY	03/28/13		REFUNDABLE DEPOSITS	100.00
			MARCH 28, 2103		REFUNDABLE DEPOSIT	100.00

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101927	4/4/2013	10998 SUNSET ROOFING COMPANY	(Continued)			
101928	4/4/2013	10283 SUTIL, FRANCIS	April-June2013		RETIREE HEALTH INSURANCE	Total : 200.00
101929	4/4/2013	10158 THE SOCO GROUP INC	132521	50061	DELIVERED FUEL	546.00
			133554	50061	DELIVERED FUEL	546.00
			780394	50249	FLEET CARD FUELING	
			781373	50249	FLEET CARD FUELING	
					Total :	1,122.53
101930	4/4/2013	10284 TOCKSTEIN, GEORGE	April-June2013		RETIREE HEALTH INSURANCE	Total : 546.00
101931	4/4/2013	10134 USA MOBILITY WIRELESS INC	W6215044C	50187	PAGER SERVICE	12.47
101932	4/4/2013	10986 VAN BUREN, SHARLENE	2002860.001		REFUND REC FEES	Total : 12.47
101933	4/4/2013	10715 VERONICA TAM & ASSOCIATES INC	1518	50225	HOUSING ELEMENT PREP	170.00
101934	4/4/2013	10607 WATERS, MAURICE E.	April-June2013		RETIREE HEALTH INSURANCE	Total : 170.00
101935	4/4/2013	10647 WEBBER, DAVID	April-June2013		RETIREE HEALTH INSURANCE	Total : 546.00
101936	4/4/2013	10148 WESTAIR GASES & EQUIPMENT INC	306229	50092	WELDING SUPPLIES	54.76
101937	4/4/2013	10331 WHITE CAP	10000137035		SUPPLIES	55.80
			10000137036		SUPPLIES	87.17
					Total :	142.97
101938	4/4/2013	10285 WHITED, DAVID	April-June2013		RETIREE HEALTH INSURANCE	Total : 546.00

Voucher List
CITY OF SANTEE

Bank code :	ubgen			Invoice	PO #	Description/Account	Amount
Voucher	Date	Vendor					
101938	4/4/2013	10285	10285 WHITED, DAVID	(Continued)			
101939	4/4/2013	10286	WILLIAMS, RICK	April-June2013		RETIREE HEALTH INSURANCE	Total : 546.00
101940	4/4/2013	10137	WILLIAMS, RUSTY	03212013		COMMISSION STIPEND	Total : 50.00
101941	4/4/2013	10797	WILSON, LEE	03212013		COMMISSION STIPEND	Total : 50.00
101942	4/4/2013	10232	XEROX CORPORATION	066980341	50130	COPY CHARGES	25.56
				066980342	50030	FIRE ADMIN COPIER LEASE	214.10
							Total : 239.66
101943	4/4/2013	10208	ANTHEM BLUE CROSS	000361998B		EMPLOYEE ASSISTANCE PROGRAI	Total : 255.30
101944	4/4/2013	10350	ASSURANT EMPLOYEE BENEFITS	April 2013		DENTAL INSURANCE	Total : 7,719.63
101945	4/4/2013	10334	CHLIC	1505051		HEALTH INSURANCE	Total : 144,913.75
101946	4/4/2013	10508	LIFE INSURANCE COMPANY OF	March 2013		LIFE/LTD/AD&D INSURANCE	Total : 2,502.45
101947	4/4/2013	10779	NATIONAL BENEFIT SERVICES LLC	PPE 03/27/13		FLEXIBLE SPENDING ACCOUNT	Total : 1,626.12
101948	4/4/2013	10353	PERS	03 13 4		PERS RETIREMENT PAYMENT	Total : 123,662.61
101949	4/4/2013	10785	RELIANCE STANDARD LIFE	April 2013		VOLUNTARY LIFE INSURANCE	Total : 1,674.79
101950	4/4/2013	10424	SANTEE FIREFIGHTERS	PPE 03/27/13		SFFA DUES/PEC/DENTAL	Total : 5,131.20
							Total : 5,131.20

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101951	4/4/2013	10776 STATE OF CALIFORNIA	PPE 03/27/13		WITHHOLDING ORDER	652.45
101952	4/4/2013	10001 US BANK	PPE 03/27/13		PARS Retirement: Payment	574.88
101953	4/4/2013	10959 VANTAGE TRANSFER AGENT/457	ICMA PPE 03/27/13		ICMA	29,477.76
101954	4/4/2013	10782 VANTAGEPOINT TRNSFR AGT/801801	PPE 03/27/13		Retiree Health Savings Account: Payr	3,878.31
						Total :
						Bank total :
						692,596.15

103 Vouchers for bank code : ubgen

103 Vouchers in this report

Total vouchers :

692,596.15

Prepared by: *Caroly Jackson*
Date: 4/04/13

Approved by: *Donna Belmont*
Date: 4-4-13

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
347	4/4/2013	10482 TRISTAR RISK MANAGEMENT	91317		WORKER'S COMP MAR 2013	8,246.88
1 Vouchers for bank code : ubgen						Total :
1 Vouchers in this report						Bank total :
						Total vouchers :
						8,246.88

Prepared by: Garney Jackson
Date: 4/9/13

Approved by: [Signature]
Date: 4-9-13

Voucher List
CITY OF SANTEE

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101955	4/9/2013	10010 ALLIANT INSURANCE SVCS INC	01/01/13 - 03/31/13		SPECIAL EVENTS INSURANCE	1,296.00
					Total :	1,296.00
101956	4/9/2013	10021 BOUND TREE MEDICAL LLC	81029493 81029494 81030761 81033365	50050 50050 50050 50050	EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES	249.52 803.60 123.13 158.00
					Total :	1,334.25
101957	4/9/2013	10693 BOYS & GIRLS CLUB OF EAST	04022013	50226	CDBG SUBRECIPIENT REIMB	1,875.00
					Total :	1,875.00
101958	4/9/2013	10023 BUILDERS FENCE COMPANY INC	1433643 1433854	50109 50109	FENCING MATERIALS FENCING SUPPLIES	62.66 9.90
					Total :	72.56
101959	4/9/2013	10668 CALIFORNIA BUILDING STANDARDS	APRIL 8, 2013		SB1473 JAN-MARCH 13	328.50
101960	4/9/2013	11016 CARMONA, HUMBURTO	APRIL 5, 2103		REFUNDABLE DEPOSIT	328.50
					Total :	1,000.00
101961	4/9/2013	10031 CDW GOVERNMENT LLC	BB52486 Z996877	50293 50293 50293	CAD PLOTTER CAD PLOTTER	70.20 6,001.56
					Total :	6,071.76
101962	4/9/2013	10032 CINTAS #64	694554984		SHOP TOWEL/JUNIFORM RENTAL	60.29
					Total :	60.29
101963	4/9/2013	10050 CITY OF EL CAJON	0000011741		HFTA FEES- 4TH QUARTER	8,119.00
					Total :	8,119.00
101964	4/9/2013	10035 COMPETITIVE METALS INC	122552	50075	SHEARING	16.20
					Total :	16.20
101965	4/9/2013	10845 CONTROLLED ENTRY SPECIALISTS	822221	50263	DOOR REPAIRS	216.00

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101965	4/9/2013	10845 CONTROLLED ENTRY SPECIALISTS	(Continued) 822255 822256	50263 50263	MAN-DOOR REPAIRS MAN-DOOR REPAIRS	125.00 125.00 466.00
101966	4/9/2013	10038 COSTCO WHOLESALE #403	040305009719	50034	COFFEE AND WATER	325.19 325.19
101967	4/9/2013	10333 COX COMMUNICATIONS	038997401		10601 N MAGNOLIA	88.24 88.24
101968	4/9/2013	10608 CRISIS HOUSE	03152013	50215	CDBG SUBRECIPIENT REIMB.	351.11 351.11
101969	4/9/2013	10042 DALEY & HEFT LLP	42450		CLAIM SERVICES RENDERED	547.93 547.93
101970	4/9/2013	10433 DEPARTMENT OF CONSERVATION	APRIL 8, 2013		SMIP JAN-MARCH 13	798.09 798.09
101971	4/9/2013	10045 DIAMOND ENVIRONMENTAL SVCS LP	0FEB2013 0GE16944 0JAN013 0MAR2013	50180 50180 50180 50180	PORTABLE TOILET SERVICE SPRING EGGSTRAVAGANZA PORTABLE TOILET SERVICE PORTABLE TOILET SERVICE	35.00 138.60 35.00 35.00 243.60
101972	4/9/2013	11018 DIV OF STATE ARCHITECT	SB 1186 Qtr 1		BL SB 1186 QTR 1 2013	765.90 765.90
101973	4/9/2013	10057 ESGIL CORPORATION	03/29/13 2133312		SHARE OF FEES FIRE PLAN REVIEW-FEB 2013	20,991.16 855.00 21,846.16
101974	4/9/2013	10490 HARRIS & ASSOCIATES INC	20511	50122	DESIGN: BUENA VISTA	25,640.00 25,640.00
101975	4/9/2013	10540 HCFA	0000011707 0000011722		HCFA MEMBER ASSESSMENT HCFA 2ND QTR COMM CHRGS	37,164.00 3,014.34

Voucher List
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Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
101975	4/9/2013	10540 HCFA	(Continued)			
101976	4/9/2013	10198 HYDRO SCAPE PRODUCTS	7513890-00	50104	IRRIGATION MATERIALS	40.81
101977	4/9/2013	10077 JOHN DEERE LANDSCAPES INC	63957392	50105	IRRIGATION MATERIALS	40.81
101978	4/9/2013	10120 KEARNY PEARSON FORD	674772	50069	EQUIPMENT REPAIR PART	34.62
101979	4/9/2013	10545 KIRK'S RADIATOR & AUTO AC INC	24445	50288	VEHICLE REPAIR	54.26
101980	4/9/2013	10151 KONICA MINOLTA BUSINESS	223995639	50192	COPIER MAINT. & USAGE	54.26
101981	4/9/2013	10997 LAKESIDE FIRE PREVENTION	3122013			2,088.53
101982	4/9/2013	10079 MEDICO PROFESSIONAL	1210745			2,088.53
101983	4/9/2013	10218 OFFICE DEPOT BUSINESS SOLUTION	1559904604			122.40
101984	4/9/2013	10092 PHOENIX GROUP INFO SYSTEMS	012013031			122.40
			102012031	50036	MEDICAL LINEN SERVICE	1,973.54
			122012031	50036	MEDICAL LINEN SERVICE	1,973.54
101985	4/9/2013	10161 PRIZM JANITORIAL SERVICES, INC	6976	50084	MATERIALS & SUPPLIES	24.16
101986	4/9/2013	10435 PSOMAS	87247			13.42
			87328			37.58
						20.14
						20.14
						139.59
						139.86
						52.92
						332.37
						80.00
						80.00
						1,071.70
						6,346.38

Voucher List
CITY OF SANTEE

Bank code :	ubgen														
Voucher	Date	Vendor	Invoice	PO #	Description/Account	Total :	Amount								
101986	4/9/2013	10435 PSOMAS	(Continued)				7,418.08								
101987	4/9/2013	10570 SAN DIEGO COUNTY TRAINING	04082013		TRAINING REG FEES	Total :	1,000.00								
101988	4/9/2013	10217 STAPLES ADVANTAGE	3194968674	50039	OFFICE SUPPLIES	Total :	1,000.00								
101989	4/9/2013	10217 STAPLES ADVANTAGE	3194968672 3194968673	50178 50114	OFFICE SUPPLIES OFFICE SUPPLIES	Total :	187.63								
101990	4/9/2013	10116 STAT PHARMACEUTICALS INC	410016-00 410017-00 410026-00 410027-00	50071 50071 50071 50071	PHARMACEUTICALS PHARMACEUTICALS PHARMACEUTICALS PHARMACEUTICALS	Total :	80.06								
101991	4/9/2013	10572 SUNBELT RENTALS	38345953-001	50213	EQUIPMENT RENTAL	Total :	174.16								
101992	4/9/2013	10121 SUPERIOR READY MIX LP	554736 555083 555252	50108 50108 50108	ASPHALT ASPHALT ASPHALT	Total :	254.22								
101993	4/9/2013	10126 THE LIGHTHOUSE INC	0849711	50023	BACKUP ALARM	Total :	130.27								
101994	4/9/2013	10479 TIRE CENTERS LLC	8720137304	50125	VEHICLE TIRES	Total :	209.77								
101995	4/9/2013	10431 TOWN & COUNTRY PRINTERS	50909	50248	CITY LETTERHEAD	Total :	44.49								
101996	4/9/2013	10257 TYLER TECHNOLOGIES INC	045-83546	24171	INTEGRATED FIN MGMT SUPRT	Total :	44.49								
						Total :	429.02								
						Total :	535.68								
						Total :	535.68								
						Total :	271.08								
						Total :	149.90								
						Total :	149.90								
						Total :	570.88								
						Total :	64.58								
						Total :	64.58								
						Total :	2,366.85								
						Total :	2,366.85								
						Total :	424.68								
						Total :	424.68								
						Total :	15,769.92								
						Total :	15,769.92								

Voucher List
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Bank code :	ubgen			Invoice	PO #	Description/Account	Amount
Voucher	Date	Vendor					
101997	4/9/2013	10475 VERIZON WIRELESS		1174217803 9701379361		CELL PHONE SERVICE CELL PHONE SVC 02/11-03/10/13	81.92 909.66 991.58
						Total :	
101998	4/9/2013	10715 VERONICA TAM & ASSOCIATES INC		1477	50225	HOUSING ELEMENT PREP	4,126.00 4,126.00
101999	4/9/2013	10211 VISION INTERNET PROVIDERS INC		24310	50091	WEB HOSTING	200.00 200.00
102000	4/9/2013	10148 WESTAIR GASES & EQUIPMENT INC		319755	50092	V159 SUPPLIES	128.91 128.91
102001	4/9/2013	10331 WHITE CAP		10000137034		MATERIALS & SUPPLIES	55.80 55.80
102002	4/9/2013	10138 WITTBRODT, CINDYA		003		INSTRUCTOR PAYMENT	232.20 232.20
102003	4/9/2013	10318 ZOLL MEDICAL CORPORATION		1982713-A	50073	AUTOPULSE BATTERIES	2,041.62 2,041.62
102004	4/9/2013	10318 ZOLL MEDICAL CORPORATION		1982713-B 1990823	50301 50073	AUTOPULSE BATTERIES EMS SUPPLIES	266.88 153.90 420.78
						Bank total :	153,426.80
						Total vouchers :	153,426.80

50 Vouchers for bank code : ubgen

50 Vouchers in this report

Prepared by: *Valmney Jackson*
Date: 4/9/13

Approved by: *Donna G. Alderton*
Date: 4-9-13

City of Santee
COUNCIL AGENDA STATEMENT

1D

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY OF SANTEE, CALIFORNIA, SETTING ASIDE PRIOR APPROVAL FOR EXECUTING A DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF SANTEE, FANITA RANCH L.P. AND BARRATT AMERICAN INCORPORATED

DIRECTOR/DEPARTMENT Patsy Bell, CMC, City Clerk *PB*

SUMMARY

The introduction and first reading of the above-entitled Ordinance was approved at a Regular Council Meeting on April 10, 2013.

The Ordinance is now presented for second reading by title only, and adoption.

Vote at First Reading: AYES: DALE, MINTO, MCNELIS, VOEPEL
 NOES: NONE
 ABSENT: RYAN

FINANCIAL STATEMENT None

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION

Adopt Ordinance

ATTACHMENTS (Listed Below)

Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTEE,
CALIFORNIA SETTING ASIDE PRIOR APPROVAL FOR EXECUTING
A DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF SANTEE,
FANITA RANCH L.P. AND BARRATT AMERICAN INCORPORATED**

WHEREAS, the Fanita Ranch Project (“Project”) covers approximately 2,600 acres of undeveloped land in the northern portion of the City of Santee and includes 1,380 single-family dwelling units along with fifteen live-work units, parks, approximately 1,400 acres of open space preserve, and supporting commercial and mixed-use facilities; and

WHEREAS, on December 5, 2007, the City Council of the City of Santee held a public hearing on the Project, certified the Final Environmental Impact Report (“Final EIR”) and approved the Project and all related approvals; and

WHEREAS, on January 4, 2008, Preserve Wild Santee, Center for Biological Diversity, and Endangered Habitats League filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Fanita 1”) challenging the Final EIR (*Preserve Wild Santee, et al. v. City of Santee, et al.*, San Diego Superior Court Case No. 37-2008-75168); and

WHEREAS, on November 6, 2008, the trial court entered an order in favor of the City in Fanita 1, with the exception of fire safety impacts, and issued a limited writ on February 5, 2009, and a judgment on April 20, 2009, requiring the City to provide additional support regarding the fire safety impacts; and

WHEREAS, on May 28, 2009, Preserve Wild Santee, Center for Biological Diversity, and Endangered Habitats League filed an appeal regarding the trial court’s decision in Fanita 1 (*Preserve Wild Santee, et al. v. City of Santee, et al.*, Fourth Appellate District, Division One, Case No. D055215); and

WHEREAS, the City prepared a Revised Environmental Impact Report on the Fanita Project Pursuant to Limited Writ of Mandate Issued by San Diego Superior Court on January 30, 2009 Regarding Public Safety – Fire Safety (“Revised EIR”), which it certified on July 22, 2009, and filed the Revised EIR with the trial court through a return to the trial court’s writ on August 4, 2009; and

WHEREAS, on August 27, 2009, Preserve Wild Santee, Center for Biological Diversity, and Endangered Habitats League filed a second Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Fanita 2”) challenging the Revised EIR (*Preserve Wild Santee, et al. v. City of Santee, et al.*, San Diego Superior Court Case No. 37-2009-97042); and

WHEREAS, on February 29, 2012, the trial court issued a decision in Fanita 2 requiring further support for the Revised EIR’s fire safety impacts; and

WHEREAS, pursuant to an amended peremptory writ filed on August 21, 2012, in Fanita 2, the trial court required that the City also set aside its resolutions and ordinance certifying the Final EIR and Revised EIR and providing certain other Project approvals; and

ORDINANCE NO. _____

WHEREAS, on October 19, 2012, the court of appeal issued its decision in the Fanita 1 appeal, finding that additional support related to biological and water supply impacts was also needed; and

WHEREAS, Public Resources Code section 21168.9 provides legal authority for the City to perform the acts required by the Court in its peremptory writ of mandate; and

WHEREAS, in consideration of the courts' decisions and the actions required therein, the City Council believes it is in the public's interest to set aside its ordinance related to the Development Agreement for the Project.

The City Council of the City of Santee, California, does ordain as follows:

Section 1. The above recitals and findings are incorporated herein and are true and correct.

Section 2. The City Council hereby sets aside Ordinance No. 474, "An Ordinance of the City Council of the City of Santee, California, Approving and Authorizing Execution of a Development Agreement By and Among the City of Santee, Fanita Ranch, L.P. and Barratt American Incorporated," adopted on December 12, 2007. The Development Agreement shall therefore have no force or effect.

INTRODUCED AND FIRST READ at a Regular Meeting of the City Council of the City of Santee, California, on the 10th day of April, 2013, and thereafter **ADOPTED** by the City Council of the City of Santee, California, at a Regular Meeting thereof held this ____ day of _____, 2013, by the following vote to wit:

AYES:

NOES:

ABSENT:

APPROVED:

RANDY VOEPEL, MAYOR

ATTEST:

PATSY BELL, CMC, CITY CLERK

City of Santee
COUNCIL AGENDA STATEMENT

1E

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE APPROVAL OF THE EXPENDITURE OF \$59,229.11 FOR MARCH 2013
LEGAL SERVICES AND RELATED COSTS

DIRECTOR/DEPARTMENT Tim K. McDermott, Director of Finance *TM*

SUMMARY

Legal service billings proposed for payment for the month of March 2013 total \$59,229.11 as follows:

- 1) General Retainer Services - \$13,367.72
- 2) Labor & Employment - \$320.00
- 3) Litigation & Claims - \$4,413.23
- 4) MHFP Litigation - \$9,382.57
- 5) Special Projects-General Fund (primarily Community Oriented Policing) - \$17,109.63
- 6) MHFP Commission - \$60.00
- 7) Bond Proceeds (Prospect Ave. Project) - \$7,818.85
- 8) Applicant Initiated Projects - \$6,757.11

FINANCIAL STATEMENT *TM*

Account Description: Legal Services

General Fund:	AMOUNT	BALANCE
Adopted Budget	\$ 382,000.00	
Revised Budget	\$ 415,000.00	
Prior Expenditures	(242,706.72)	
Current Request	(44,593.15)	\$ 127,700.13
Other Funds (excluding applicant initiated items):		
Adopted Budget	\$ 10,000.00	
Revised Budget	\$ 74,165.58	
Prior Expenditures	(63,941.71)	
Current Request	(7,878.85)	\$ 2,345.02

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION *LS*

Approve the expenditure of \$59,229.11 for March 2013 legal services and related costs

ATTACHMENT (Listed Below)

Legal Services Billing Summary

LEGAL SERVICES BILLING SUMMARY
FY 2012-13

Category	Adopted Budget	Revised Budget	Spent Year to Date	Available Balance	Current Request	
					Mo/Yr	Amount
General Fund:						
General / Retainer	\$ 162,000.00	\$ 162,000.00	\$ 107,064.70	\$ 54,935.30	Mar-13	\$ 13,367.72
Labor & Employment	10,000.00	10,000.00	8,509.29	1,490.71	Mar-13	320.00
Litigation & Claims	50,000.00	50,000.00	34,424.77	15,575.23	Mar-13	4,413.23
MHFP Litigation	74,000.00	107,000.00	50,639.16	56,360.84	Mar-13	9,382.57
Special Projects	86,000.00	86,000.00	42,068.80	43,931.20	Mar-13	17,109.63
Total	\$ 382,000.00	\$ 415,000.00	\$ 242,706.72	\$ 172,293.28		\$ 44,593.15
Other City Funds:						
Special Projects	\$ -	\$ 28,063.74	\$ 28,063.74	\$ -		\$ -
MHFP Commission	10,000.00	10,000.00	7,594.98	2,405.02	Mar-13	60.00
Total	\$ 10,000.00	\$ 38,063.74	\$ 35,658.72	\$ 2,405.02		\$ 60.00
Bond Proceeds:						
Prospect Avenue Project	\$ -	\$ 36,101.84	\$ 28,282.99	\$ 7,818.85	Mar-13	\$ 7,818.85

LEGAL SERVICES BILLING SUMMARY
FY 2012-13

Category	Adopted Budget	Revised Budget	Spent Year to Date	Available Balance	Amount
<i>Applicant-initiated (paid from developer/applicant deposits)</i>					
Cheyenne Development	n/a	n/a	\$ 4,257.40	n/a	\$ 869.19
Riverview (Ryan)	n/a	n/a	4,163.79	n/a	-
Castlerock	n/a	n/a	37,532.87	n/a	4,319.49
Wal-Mart	n/a	n/a	18,248.96	n/a	1,568.43
Mission Trails Villas	n/a	n/a	3,505.55	n/a	-
Fresenius Dialysis Clinic	n/a	n/a	2,416.32	n/a	-
Total			\$ 70,124.89		\$ 6,757.11

Total Previously Spent to Date FY 2012-13		Total Proposed for Payment	
General Fund	\$ 242,706.72	General Fund	\$ 44,593.15
Other City Funds	35,658.72	Other City Funds	60.00
Bond Proceeds	28,282.99	Bond Proceeds	7,818.85
Developer Deposits	70,124.89	Developer Deposits	6,757.11
Total	\$ 376,773.32	Total	\$ 59,229.11

City of Santee
COUNCIL AGENDA STATEMENT

1F

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE AUTHORIZE EXECUTION OF AN AGREEMENT WITH SAN DIEGO COUNTY WATER AUTHORITY FOR THE USE OF PROPOSITION 84 FUNDS TO CONDUCT A PILOT STUDY FOR THE INSTALLATION OF INFILTRATION STRIPS IN CONCRETE FLOOD CONTROL CHANNELS

DIRECTOR/DEPARTMENT Pedro Orso-Delgado, Development Services *PK(fon)*

SUMMARY:

This item requests City Council Authorization for the Deputy City Manager to execute an agreement with San Diego County Water Authority (SDCWA) to obtain Proposition 84 funds to conduct a pilot project. The grant application was supported by the City Council on December 15, 2010. The project is to install infiltration strips into concrete flood control channels with the objective of eliminating dry weather flows (groundwater egress, irrigation runoff). The elimination of dry weather flows into the San Diego River and Forester Creek is needed to attain water quality standards from the San Diego Regional Water Quality Control Board.

The pilot study will be used to determine which materials and designs are most effective for installation in a concrete flood control channel. The development of this best management practice should allow water quality standards to be attained in concrete channels without more costly and disruptive measures. Channels have been identified for inclusion in the study based on water quality monitoring data and to maximize any resulting benefit to the City. Among the channels in the study area are "Woodglen Vista", "Halberns", and that along "Fanita Drive".

ENVIRONMENTAL REVIEW

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15301 (Existing Facilities). A notice of exemption will be filed with the State Clearinghouse prior to commencing the project.

CITY ATTORNEY REVIEW

N/A

Completed

FINANCIAL STATEMENT *m*

The grant in the maximum amount of \$242,500 will cover 74% of the project costs with local matching funds of at least 26% (approximately \$83,400) required. The matching funds requirement will be met with existing Development Services staff time and previously-incurred dry weather monitoring costs (dating back to October 2008) relevant to the project.

RECOMMENDATION *PK*

Authorize the City Manager to execute an agreement between SDCWA and the City of Santee for the use of Proposition 84 funds in a pilot study for the installation of infiltration strips.

ATTACHMENTS Agreement

AGREEMENT
for the
INTEGRATED REGIONAL WATER MANAGEMENT PROGRAM
BETWEEN
SAN DIEGO COUNTY WATER AUTHORITY
AND
CITY OF SANTEE
PROJECT NO. 84-8-80008

This Agreement between the San Diego County Water Authority, a county water authority (Water Authority), and the City of Santee, a Local Project Sponsor (LPS), sets forth the understanding of the Water Authority and the LPS (collectively Parties) for distribution of a grant award from the State of California Department of Water Resources (State).

Recitals:

1. WHEREAS, On November 2006, California voters approved Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act to assists in financing projects associated with Integrated Regional Water Management (IRWM) Plan pursuant to Chapter 8 (commencing with Section 79560 Division 26.5 of the California Water Code (CWC), collectively referred to as IRWM Program.
2. WHEREAS the Integrated Regional Water Management plan was adopted by MOU in the San Diego region in June 2005, and re-executed in 2009.
3. WHEREAS, On September 21, 2011 a new MOU was executed among the City of San Diego, County of San Diego, and Water Authority for Fiscal Years 2009-2013 IRWM Grant Program. The MOU establishes the San Diego Regional Water Management Group (RWMG), and the Parties' roles regarding the San Diego IRWM Plan and the division of responsibilities for administration of IRWM grant monies.

The Recitals are incorporated herein and, the Parties do agree as follows:

1. Definitions:

The following words and terms, unless otherwise defined, shall mean:

- a. LPS means Local Project Sponsor. An LPS is a proponent of individual projects that will be funded as part of the IRWM Program grant from the State. The role of an LPS could be performed by entities such as the Water Authority, County of San Diego, City of San Diego, Water Authority member agency, a municipality, a joint powers authority, a local public agency, a non-profit 501(c) (3) or a Native American tribe. The LPS for this Agreement is the **City of Santee**.

- b. Grant Agreement means the Grant Agreement no. **4600009707** between the San Diego County Water Authority and the State of California, dated **December 12, 2012**, for the disbursement of \$7.9 million in grant funds. **Project: 8 - Pilot Concrete Channel Infiltration** is one of the projects listed in the Grant Agreement and the project that will be performed by the LPS under this agreement.
 - c. LPS Agreement (Agreement): This agreement between the Water Authority and the Local Project Sponsor for the performance of the project and receipt of the grant funds allocated for that project.
2. **Term of agreement:** The term of this Agreement begins on _____ and terminates on **May 31, 2017**, or when all Parties' obligations under this Agreement have been fully satisfied. .
3. **Grant Amount:** The maximum amount payable by State under the Grant Agreement for this Project shall not exceed **\$242,500**.
4. **Project costs:** The reasonable total cost of the Project is estimated to be **\$325,900**. These costs are summarized in Exhibit C, Summary Budget Table 1. LPS shall fund the difference, if any, between the estimate of total project cost and the Grant Amount specified in paragraph 3. The LPS is only responsible for funding the difference for its project (*Funding Match plus Other Cost Share* as shown on *Exhibit C, Summary Budget Table 1*). LPS cost share for the project funded through this Agreement is estimated to be **\$83,400**. LPS funding match is at least **26%** of the total project costs, unless a Disadvantage Community project waiver is granted. Costs for the funding match may include cost share performed after September 30, 2008. Costs paid for by another State funding cannot be considered as a funding match.
5. **Budget Contingency: Limit of State Funds.** Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 is subject to the availability of State funds including any mandates from the Department of Finance, the Pooled Money Investment Board or any other state authority. The Water Authority will not make payments of any kind, including advances or reimbursements, until funding is made available by the State Treasurer. If the State ceases payment, the Water Authority has no obligation to make payments for any work done and not reimbursed by the State.
6. **LPS responsibilities:**
- (a) LPS shall perform the scope of work for this project including project construction and management, oversight, compliance and operations and maintenance associated with the project. LPS shall also be solely responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers, and all providers of services under this Agreement.

LPS shall fulfill its obligations in a manner that is consistent with this agreement, the Grant Agreement and the IRWM Program.

(b) LPS shall be responsible for all disputes arising out of its contracts for work including, but not limited to, bid disputes and payment disputes with its contractors and consultants or other entities. State or Water Authority will not mediate disputes between LPS and any other entity regarding performance of work.

(c) LPS shall promptly perform, or cause to be performed, all IRWM Program work as described in the scope of work for the Project(s) identified in Exhibit A, Work Plan. LPS shall be responsible for oversight, compliance, and operations and maintenance of Project(s) identified in the Grant Agreement. LPS or its representatives shall perform regular inspections of any construction work in progress.

(d) LPS is solely responsible for design, construction, and operation and maintenance of Project(s) identified in Exhibit A. Review or approval of plans, specifications, bid documents, or other construction documents by State or the Water Authority is solely for the purpose of proper administration of grant funds and shall not relieve or limit responsibilities of LPS with regard to its contractual obligations.

e) LPS shall faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Exhibit B Schedule and Exhibit C Budget. LPS shall comply with all of the terms and conditions of this Agreement and applicable California Public Resources Code (PRC) requirements.

7. Basic Conditions: Water Authority shall have no obligation to disburse money for a project under this agreement until LPS has satisfied the following conditions in accordance with the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

- a) LPS shall demonstrate the availability of sufficient funds to complete the project, as stated in the Grant Award/Commitment Letter, by submitting the most recent 3 years of audited financial statements.
- b) LPS shall comply with PRC §75102 to notify the California Native American tribe (which is on the contact list maintained by the Native American Heritage Commission) of Project Construction if that tribe has traditional lands located within the area of the Project.
- c) For groundwater management and recharge projects and for projects with potential groundwater impacts, the LPS shall demonstrate compliance with

the groundwater compliance options set forth on page 15 of the IRWM Program Guidelines, dated August 2010.

- d) For the term of this agreement, LPS must submit timely Quarterly Progress Reports as required by Paragraph 17, "Submission of Reports."
- f) LPS shall submit all deliverables as specified in this Paragraph of this agreement and the Work Plan in Exhibit A.
- e) Before beginning construction or implementation activities, LPS shall submit to the State the following, if applicable:
 - 1) Final plans and specifications certified by a California Registered Civil Engineer as to compliance for the approved project as listed in Exhibit A, Work Plan of this LPS Agreement.
 - 2) Documents required by the project under the California Environmental Quality Act (CEQA). Work that is subject to CEQA and/or environmental permitting shall not proceed under this agreement until the following actions are performed:
 - i. LPS submits all applicable environmental permits as indicated on the Environmental Information Form submitted to the Water Authority
 - ii. Documents that satisfy the CEQA process are received by the Water Authority and submitted to the State.
 - iii. LPS receives CEQA compliance review from the State, and
 - iv. LPS receives written concurrence from the State of Lead Agency's CEQA document(s) and State notice of verification of environmental permit submittal. State's concurrence of CEQA documents is fully discretionary and shall constitute a condition precedent to any work (ex. construction or implementation activities) for which it is required. Therefore, the LPS should get concurrence from the State, through the Water Authority, on CEQA before beginning any of the work that is subject to CEQA. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. LPS must also demonstrate that it has complied with all applicable requirements of the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/implementation.
 - v. If any of the requirements does not apply, LPS shall submit an explanation in writing to the Water Authority.
 - 3) A monitoring plan as required by Paragraph 21, Project Monitoring Plan Requirements."

8. Disbursement by State and Payment by Water Authority: Following the review of each invoice, the Water Authority will approve invoice and disburse payment subject to the availability of funds through normal State and Water Authority processes. Funds will be disbursed by the State and then the Water Authority in response to each approved invoice in accordance with Exhibit F, Disbursement Process. All money disbursed by the Water Authority under this Agreement and all interest earned by LPS shall be used solely to pay eligible costs. Within forty-five (45) days of receipt of funds from the State, Water Authority shall disburse the funds to the LPS. No disbursement shall be required at any time or in any manner, which is in violation of, or in conflict with, federal or state laws, rules or regulations or which may require any rebates to the federal government or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation.

9. Eligible Project Cost: Costs as described in Exhibit A (Work Plan) and in accordance with Exhibit B (Schedule) and Exhibit C (Budget).

(a) Eligible costs include the reasonable and necessary costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigation, monitoring, and project construction. Only work performed **after** the date of grant award, **August 16, 2011**, shall be eligible for reimbursement.

(b) Reasonable administrative expenses may be included as Project Costs and will depend on the complexity of the project preparation, planning, coordination, construction, acquisitions, implementation, and maintenance. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the project including the portion of overhead and administrative expenses that are directly related to the projects included in this Agreement in accordance with the generally accepted accounting practices.

Advanced funds will not be provided. Costs that are not deemed eligible project costs cannot be counted as cost share. Costs that are **not** eligible for reimbursement include but are not limited to:

- i. Costs, other than those noted above, incurred prior to the award date of the Grant.
- ii. Operation and maintenance costs, including post construction performance and monitoring costs.
- iii. Purchase of equipment not an integral part of a project.
- iv. Establishing a reserve fund.
- v. Purchase of water supply.
- vi. Monitoring and assessment costs for efforts required after project construction is complete.
- vii. Replacement of existing funding sources for ongoing programs.
- viii. Travel and per diem costs.

- ix. Support of existing agency requirements and mandates (e.g. punitive regulatory agency requirements).
- x. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to the effective date of the grant award with the State.
- xi. Payment of principal or interest of existing indebtedness or any interest payments unless the debt is incurred after execution of this LPS Agreement, the Water Authority and the State agree in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise eligible costs. However, this will only be allowed as LPS cost share (i.e. Funding Match)
- xii. Overhead not directly related to project costs.

10. Method of Payment. After the disbursement requirements in Paragraph 7 “Basic Conditions” are met, the Water Authority will disburse the whole or portions of the grant amount to the LPS, less any required retention, following receipt from LPS of an invoice for costs incurred, and timely Quarterly Progress Reports as required by Paragraph 17, “Submission of Reports.” A Progress Report is required for every invoice submitted.

Invoices submitted by LPS shall include the following information:

- a) Costs incurred for work performed in implementing the IRWM project during the period identified in the particular invoice.
- b) Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for a project during the period identified in the particular invoice for the construction, operation, or maintenance of a project.
- c) Appropriate receipts and reports for all costs incurred.
- d) If an LPS can prove financial hardship, the LPS may submit, with Water Authority’s written approval, an unpaid contractor’s invoice. A copy of the contractor’s unpaid invoice must be received prior to billing the Water Authority. Upon receipt of funds (less retention) from the Water Authority, the LPS must pay the contractor’s invoice in full and provide proof of payment to the Water Authority within 30 days of Water Authority payment to the LPS.
- e) Financial Hardship conditions will be decided on a case by case basis. In general, if the size and scope of a project is beyond the ability of an LPS to manage given its limited financial resources and cash flow in comparison to the anticipated quarterly payment schedule, and with

disregard to financial capability, and the LPS can prove it has the management and expertise to undertake the project, the Water Authority may at its discretion opt to pay for vendor expenses in advance of the LPS making payment to the outside vendor. Advance payments will not be made for LPS in-house costs, including employee salaries and overhead. The Water Authority may require, at its sole discretion, the use of an escrow account to ensure the payment is made to the outside vendor in a timely manner.

- f) Invoices shall be submitted on forms provided by the Water Authority and shall meet the following format requirements:
 - a. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - b. Invoices must **be itemized and organized** based on the categories or tasks specified in the Exhibit C. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - c. Sufficient evidence (i.e., receipts, copies of checks, time sheets or financial system reports) must be provided for all costs included in the invoice.
 - d. Each invoice shall **clearly delineate** those costs claimed for reimbursement from the State's grant amount, as depicted in Paragraph 3, "Grant Amount" and those costs that represent LPS' share of costs, as identified in, in Paragraph 4, "LPS Cost Share."
 - e. Invoice shall be accompanied by a coversheet that summarizes task items (a) through (h).
 - f. Original signature and date (in ink) of Grantee's Project Manager.

Payment will be made no more frequently than monthly, in arrears, upon receipt of an invoice bearing the Grant Agreement number. Submit the original and three (3) copies of the invoice form to the following address:

San Diego County Water Authority
Attention: Loisa Burton
Grant Administrator
4677 Overland Avenue
San Diego, CA 91911

Failure to use the above address may result in the return of the project invoice. Invoice may be submitted electronically (i.e. via a Web Tool) as instructed by the Grant Administrator.

11. Withholding of Grant Reimbursements by the Water Authority. If the State or the Water Authority determines that a project is not being implemented in accordance with the provisions of this Agreement and and/or the Grant Agreement, or that the LPS has failed to comply with the provisions of this Agreement, and if LPS does not remedy any such failure to the State or the Water Authority's satisfaction, the Water Authority may withhold from LPS all or any portion of the grant amount and take any other action that it deems necessary to protect its interests. The Water Authority may require the LPS to immediately repay all or any portion of the disbursed grant amount with interest, consistent with its determination. The Water Authority may consider LPS' refusal to repay the requested disbursed grant amount a contract breach subject to the default provisions in Paragraph 13, "Default Provisions."

If the Water Authority notifies LPS of its decision to withhold the entire grant amount from LPS pursuant to this Paragraph, this LPS Agreement shall terminate upon receipt of such notice by LPS and shall no longer be binding on either party.

12. Continuing Eligibility. LPS must meet the following ongoing requirements to remain eligible to receive State grant funds:

- a) For urban water suppliers that receive grant funds governed by this Grant Agreement,) compliance with the Urban Water Management Planning Act (CWC§10610 *et. seq.*)
- b) For groundwater management and recharge projects and for projects with potential groundwater impacts, the LPS must demonstrate compliance with the groundwater compliance options set forth on page 15 of the IRWM Program Guidelines, dated August 2010.

13. Default Provisions. Grantee will be in default under this LPS Agreement if any of the following occur:

- a) Breach of this LPS Agreement, or any supplement or amendment to it, or any other agreement between LPS and the Water Authority evidencing or securing Grantee's obligations.
- b) Making any false warranty, representation, or statement.
- c) Failure to operate or maintain projects.
- d) Failure to make any remittance required by this LPS Agreement.
- e) Failure to comply with Labor Compliance Program (LCP) requirements.

- f) Failure to meet any of the requirements set forth in Paragraph 12, "Continuing Eligibility."

If an event of default occurs, the Water Authority may do any or all of the following:

- g) Declare that the Grant be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.
- h) Terminate any obligation to make future payments to LPS
- i) Terminate the LPS Agreement.
- j) Take any other action that it deems necessary to protect its interests.

14. Permits, Licenses, Approvals and Legal Obligations. LPS shall be responsible for ensuring any and all permits, licenses, and approvals required for performing their obligations under this Agreement are obtained under applicable federal, State and local laws, rules, and regulations, guidelines, and requirements for each project described in Exhibit A.

15. Relationship of Parties. The LPS is solely responsible for design, construction, and operation and maintenance of its Projects within the San Diego IRWM Program. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of grant funds by State and shall not be deemed to relieve or restrict responsibilities of the LPS under this Agreement.

16. LPS Representation. Local Project Sponsor shall comply with all terms, provisions, conditions, and written commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by LPS in the application, documents, amendments, and communications filed in support of its request for Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 financing.

17. Submission of Reports. The submittal and approval of all reports is a requirement for the successful completion of this Grant Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the Water Authority's Grant Administrator, and shall be submitted in both electronic and hard copy forms. If requested, LPS promptly provides any additional information deemed necessary by the Water Authority and the State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit E. The timely submittal of reports is a requirement for initial and

continued disbursement of State funds. Submittal and subsequent approval by the Water Authority and the State, of a Project Completion Report for each project is a condition precedent for the release of any funds retained for such project.

- a) Quarterly Progress Reports: LPS shall submit Quarterly Progress Reports on a regular and consistent basis to meet the State's requirement. Quarterly Progress Reports shall be submitted electronically **fifteen** (15) calendar days after the end of previous quarter (ex: 15th day of March, June, September and December for the preceding quarter) to the IRWM Project Manager as specified in Exhibit B. Quarterly Progress Report shall provide a brief description of the work performed, Grantees activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this LPS Agreement during the reporting period. It should also include cost information, including grant and local cost share spent and reimbursable costs for the period and to date. Issues must be resolved by the **twentieth** (20th) day of the reporting month (for example: by March 20 of the first reporting period of December thru February).
- b) Project Completion Reports: LPS shall prepare and submit to the Water Authority a Project Completion Report for its project. LPS shall submit a Project Completion Report within **sixty** (60) calendar days of project completion. The Project Completion Report shall include a description of actual work done, any changes or amendments to the project, and a final schedule showing actual progress versus planned progress, and copies of any final documents or reports generated or utilized during a project. The Project Completion Report shall also include, if applicable, certification of final project completion by a registered civil engineer, consistent Standard Condition D-15, "Final Inspections and Certification of Registered Civil Engineer." A DWR "Certification of Project Completion" form will be provided by the State through the Water Authority.
- c) Project Performance Reports: Grantee shall submit a Project Performance Report for each project to State within **sixty** (60) calendar days after the first operational year of a project has elapsed. This record keeping and reporting process shall be repeated, for each project, annually for a total of 10 years after the completed project begins operation.

18. IRWM Program Performance and Assurances: LPS agrees to promptly perform or cause to be performed all IRWM Program work as described in the final plans and specifications for each project and implement the project in accordance with applicable provisions of the law. If the Water Authority must enforce this provision by legal action, LPS shall pay all costs incurred by the Water Authority including, but not limited to, reasonable attorneys' fees, legal expenses, and other costs.

- 19. Labor Compliance:** LPS will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including, but not limited to, Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5) and payment of prevailing wages for work done and funded pursuant to these Guidelines, including any payments to the Department of Industrial Relations under California Labor Code Section 1771.3.
- 20. Operations and Maintenance of Project:** For the useful life of construction and implementation projects and in consideration of the Grant made by State, LPS agrees to ensure or cause to be performed the commencement and continued operation of the project, and shall ensure or cause the project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The LPS shall contractually assume all operations and maintenance costs of the facilities and structures for their respective project; The Water Authority shall not be liable for any cost of such maintenance, management, or operation. LPS may be excused from operations and maintenance only upon the written approval of the San Diego IRWM Program Manager. For purposes of this LPS Agreement, “useful life” means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; “operation costs” include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and “maintenance costs” include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. Refusal of Grantee to ensure operation and maintenance of the project in accordance with this provision may, at the option of State, be considered a breach of this Grant Agreement and may be treated as default under Paragraph 13, “Default Provisions.”
- 21. Statewide Monitoring Requirement:** If it has a groundwater project or if a project includes groundwater monitoring requirements, LPS shall ensure that the project is consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76 (commencing with Section 10780) of Division 6 of CWC). If the project affects water quality, it shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including where applicable, the Surface Water Ambient Monitoring Program carried out by the State Water Resources Control Board.
- 22. Project Monitoring Plan Requirements:** The LPS Agreement work plan should contain activities to develop and submit to State a monitoring plan for its project. Along with the Attachment 6 Project Performance Measures Tables requirements outlined on page 21 of the Proposition 84 Round 1 Implementation Proposal Solicitation Package, the Project Monitoring Plan should also include:
- a) Baseline conditions.

- b) Brief discussion of monitoring systems to be utilized.
- c) Methodology of monitoring.
- d) Frequency of monitoring.
- e) Location of monitoring points.

A monitoring plan shall be submitted to the Water Authority prior to disbursement of grant funds for construction or monitoring activities for each project in this LPS Agreement. See Exhibit G (“Requirements for Data Submittal”) for web links and information regarding other State monitoring and data reporting requirements.

23. Notification of Water Authority: For each project, Grantee shall promptly notify the Water Authority, in writing, of the following items:

- a) Events or proposed changes that could affect the scope, budget, or work performed. Local project sponsor agrees that no substantial change in the scope of a project will be undertaken until written notice of the proposed change has been provided to the Water Authority, which it will forward to the State and the State has given written approval for such change. Substantial changes generally include changes to the terms/scope of work, schedule, and budget. See Exhibit H for guidance on Agreement Amendment requirements.
- b) Any public or media event publicizing the accomplishments and/or results of this LPS Agreement and that provide the opportunity for attendance and participation by State’s representatives and the Water Authority. Grantee shall make such notification at least **fourteen** (14) calendar days prior to the event. For the purposes of this paragraph, blog posts, newspaper, radio, and television interviews not initiated by the LPS shall not be considered to be a public or media event.
- c) Completion of work on a project shall include final inspection of a project by a Registered Civil Engineer, if applicable as determined and required by State, and in accordance with Standard Condition D-15 (Final Inspections and Certification of Registered Civil Engineer). Furthermore, the LPS shall provide the State the opportunity to participate in the inspection. LPS shall make such notification at least fourteen (14) calendar days prior to the final inspection.

24. Project Managers: Any party may change its Project Manager upon written notice to the other parties.

- a) Water Authority’s Project Manager shall be **Mark Stadler**, Principal Water Resources Specialist. Water Authority’s Project Manager shall be its representative for the administration of this Agreement and shall have full authority to act on behalf of the Water Authority, including authority to execute all payment requests.
- b) LPS’s Project Manager, **Helen Davies**, shall be its representative for the administration of this Agreement and shall have full authority to act on behalf of LPS, including authority to execute all payment requests, demand, request, consent, or approval that either party desires or is required to give to the other party under this LPS Agreement shall be in writing.

25. **Notices:** All may be transmitted by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, return receipt requested, postage prepaid; (iii) by “overnight” delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by electronic means. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

26. **Project Representatives:** The Project Representatives during the term of this Grant Agreement are as follows.

Direct all inquiries to the Project Managers:

San Diego County Water Authority
Mark Stadler
IRWM Program Manager
4677 Overland Avenue
San Diego, CA 92123
Phone (858) 522-6735
e-mail MStadler@sdcwa.org

City of Santee
Helen Davies
Stormwater Program Manager
10601 Magnolia Avenue
Santee, CA 92071
Phone (619) 258-4100 x177
e-mail hdavies@ci.santee.ca.us

27. **Termination, Immediate Repayment, Interest:** The Agreement may be terminated by written notice at any time before completion of the IRWM Program at the option of Water Authority or State if LPS breaches the Agreement, and has been asked to cure the breach within a reasonable time and fails to do so. If the Agreement is terminated, LPS shall, upon demand, immediately repay to State an amount equal to the amount of grant funds disbursed to LPS. Interest shall accrue on all amounts due at the legal rate of interest allowed by law from the date that notice of termination is mailed to LPS to the date of full repayment.

28. **Indemnity – Hold Harmless:**

(a) To the fullest extent permitted by law, the LPS shall (1) immediately defend, and (2) indemnify the Water Authority, the State, and their directors, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from LPS' performance of services under this contract, or any negligent or wrongful act or omission of the LPS or LPS' officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The LPS' obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole negligence or willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the LPS indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) The duty to defend is a separate and distinct obligation from the LPS's duty to indemnify. The LPS shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Water Authority and State, the Water Authority and State, their directors, officers, and employees, immediately upon tender to the LPS of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the LPS from its separate and distinct obligation to defend Water Authority and State. The obligation to defend extends through final judgment, including exhaustion of any appeals.

(c) The review, acceptance or approval of the LPS's work or work product by any indemnified party shall not affect, relieve or reduce the LPS's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

29. Insurance:

(a) The LPS shall procure and maintain during the period of performance of this Contract insurance from insurance companies admitted to do business in the State of California, as set forth in this Section or as additionally required by supplemental condition. An approved combination of pooled and self-insurance coverage is an acceptable alternative for general liability, auto coverage, or workers comp. These policies shall be primary insurance as to the Water Authority so that any other coverage held by the Water Authority shall not contribute to any loss under the LPS's insurance. Coverage may be provided by a combination of primary and excess insurance policies, provided all insurers meet the requirements of this Section.

(b) All insurance shall cover occurrences during the coverage period.

(c) The coverage amount of each policy of insurance shall be as required by the Water Authority.

(1) The following insurance and limits are required for the contract:

General Liability: Coverage at least as broad as ISO form GC 00 01 10 01

Limit per occurrence: 1,000,000

(d) The insurance policies shall be endorsed as follows:

(1) For the general commercial liability as well as excess or umbrella insurance covering risks within the scope of that type of insurance, the Water Authority, its directors, officers, employees and agents are included as additional insureds with regard to liability and defense of suits or claims arising from the operations, products and activities performed by or on behalf of the Named Insured. The LPS's insurance applies separately to each insured, including insureds added pursuant to this paragraph, against whom claim is made or suit is brought except with respect to the policy limits of liability. The inclusion of any person or entity as an insured shall not affect any right which the person or entity would have as a claimant if not so included. Any failure of the named insureds to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the insureds added pursuant to this paragraph. The additional insured endorsement shall provide coverage at least as broad as ISO form CG 20 10 10 93.

(2) The LPS's insurance shall be primary. Any other insurance or self-insurance available to the Water Authority or persons stated in paragraph (1) shall be in excess of and shall not contribute to the Contractor's insurance.

(3) The insurance shall not be canceled or materially reduced in coverage except after 30 days prior written notice receipted delivery has been given to the Water Authority, except 10 days notice shall be allowed for non-payment of premium.

(e) Unless otherwise specified, the insurance shall be provided by an acceptable insurance provider, as determined by the Water Authority, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A- (A minus) " or better and a financial size of \$10 million to \$24 million (Class V) or better, or a Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state and the program assures a financial

capability at least equal to the required classification and size for admitted insurers.

(f) Certificates of insurance and endorsements shall be provided by the LPS and approved by the Water Authority before execution of the Contract. Endorsements may be provided on forms provided by the Water Authority, or substantially equivalent forms provided by the insurer.

Additional Insured: All Consultants/Contractors performing the scope of work on behalf of the LPS shall name the Water Authority and State (including their directors, officers, employees, and agents) as an additional insured on their Commercial General Liability policy and the policy shall be endorsed with use of an ISO form CG 20 10 10 93 or equivalent.

30. **Laws and Venue:** This Agreement shall be interpreted in accordance with the laws of the state of California. If any action is brought to interpret or enforce any term of this Agreement the action shall be brought in a state or federal court in San Diego County.
31. **Assignment:** A Party shall not assign, sublet, or transfer this Agreement or any rights or interest in this Agreement without the written consent of the Water Authority, which may be withheld for any reason.
32. **Integration:** This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding should be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the Parties.
33. **Incorporation of standard conditions and LPS commitments:** The following exhibits are attached and made a part of this Agreement by this reference:
 - Exhibit A – Work Plan
 - Exhibit B – Schedule
 - Exhibit C – Budget
 - Exhibit D – Standard Conditions
 - Exhibit E – Report Format and Requirements
 - Exhibit F- Disbursement Process
 - Exhibit G- Requirements for Data Submittal
 - Exhibit H- State and Water Authority Auditing and Documentation Requirements
34. **Signatures:** The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below:

SAN DIEGO COUNTY WATER AUTHORITY Approved as to form and legality:

By: _____
Ken Weinberg
Director of Water Resources

By: _____
Rosann Gallien
Deputy General Counsel

CITY OF SANTEE

Local Project Sponsor

Approved as to form and legality:

By: _____
Keith Till, City Manager

By: _____
City Attorney

ATTEST:

Patsy Bell, City Clerk

City of Santee
COUNCIL AGENDA STATEMENT

1G

MEETING DATE

April 24, 2013

AGENDA ITEM NO.

ITEM TITLE RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE ACCEPTING THE CITYWIDE PAVEMENT REPAIR AND REHABILITATION PROGRAM 2011 PROJECT (CIP 2011-01) AS COMPLETE AND AUTHORIZING THE RECORDING OF A NOTICE OF COMPLETION

DIRECTOR/DEPARTMENT

Pedro Orso-Delgado, Development Services *POD*

SUMMARY

This item requests City Council accept the Citywide Pavement Repair and Rehabilitation Program 2011 Project (CIP 2011-01) as complete and authorize the recording of a Notice of Completion.

City Council awarded the construction contract for the Citywide Pavement Repair and Rehabilitation Program 2011 Project (CIP 2011-01) to Hazard Construction on June 22, 2011 in the amount of \$3,533,172.30. A Notice to Proceed was issued on July 25, 2011 and the work was completed on March 15, 2013. Seventeen change orders were approved for the project in the amount of \$155,232.22.

FINANCIAL STATEMENT *m*

Funding was provided through Transnet.

Design Planning, Management and Bidding	\$ 62,204.22
Construction Contract	3,533,172.30
Construction Change Orders	155,232.22
Construction Management and Inspection	165,686.57
Materials Testing Services	<u>11,545.58</u>

Total Project Cost

\$ 3,927,840.89

CITY ATTORNEY REVIEW

N/A

Completed

RECOMMENDATION *ll*

Adopt the attached Resolution accepting the Citywide Pavement Repair and Rehabilitation Program 2011 Project (CIP 2011-01) as complete and authorizing the recording of a notice of completion.

ATTACHMENTS

Resolution

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE ACCEPTING THE CITYWIDE PAVEMENT REPAIR AND REHABILITATION PROGRAM 2011 PROJECT (CIP 2011-01) AS COMPLETE AND AUTHORIZING THE RECORDING OF A NOTICE OF COMPLETION

WHEREAS, the City Council awarded the construction contract for the Citywide Pavement Repair and Rehabilitation Program 2011 Project (CIP 2011-01) to Hazard Construction on June 22, 2011 for \$3,533,172.30; and

WHEREAS, City Council authorized staff to approve construction change orders not to exceed \$466,501.59; and

WHEREAS, Staff approved a total of seventeen construction change orders in the amount of \$155,232.22; and

WHEREAS, Materials and testing services for the project totaled \$11,545,58; and

WHEREAS, Construction management and inspection for the project totaled \$165,686.57; and

WHEREAS, the project was completed for a total project amount of \$3,927,840.89; and

WHEREAS, Hazard Construction has completed the project in accordance with the contract plans and specifications.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Santee, California, that the work for the construction of the Citywide Pavement Repair and Rehabilitation Program 2011 Project is accepted as complete on this date and the City Clerk is directed to record a "Notice of Completion."

ADOPTED by the City Council of the City of Santee, California, at a Regular Meeting thereof held this 24th day of April 2013, by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

APPROVED:

RANDY VOEPEL, MAYOR

ATTEST:

PATSY BELL, CMC, CITY CLERK

City of Santee
COUNCIL AGENDA STATEMENT

1H

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE AWARD AND AUTHORIZE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TO URS FOR THE TOWN CENTER COMMUNITY PARK LANDSCAPE IRRIGATION WELL STUDY

DIRECTOR/DEPARTMENT

Bill Maertz, Community Services *mm*

SUMMARY

At the January 23, 2013 City Council meeting, the Council authorized the advertising of a Request-for-Proposals to evaluate the effect to the Santee-El Monte Basin aquifer from the proposed installation of a water well at Town Center Community Park and whether the well will have an impact to other wells within the aquifer (CIP 2013-31). The use of this well to irrigate the landscaping at TCCP is anticipated to have an annual cost savings to the General Fund of \$104,000. It is calculated the irrigation savings will provide a return on this investment within two years. In addition, the use of well water will buffer the City from future recycled water rates which are scheduled to increase the next five years by 20%. It will also buffer the city from any pass-through increases imposed on Padre Dam by other agencies.

The City advertised the Request-for-Proposals and received five proposals. Four were determined to be complete. Each proposal was rated based on several factors including project experience, methodology to perform work, scope of work, technical expertise, proposed schedule for project implementation and cost of services.

Staff recommends awarding a Professional Services Agreement to URS to evaluate the effect to the Santee-El Monte Basin aquifer from the proposed installation of a water well at Town Center Community Park and its compliance with the California Environmental Quality Act at a cost not to exceed \$15,786. Staff also recommends the Council authorize the City Manager to execute the Professional Services Agreement.

Once the study is complete staff will return to the City Council for further direction regarding the installation of the water well.

ENVIRONMENTAL REVIEW

This item is categorically exempt per section 15306 Class 6 "Information Collection", which provides an exemption from the requirements of the California Environmental Quality Act for basic data collection, as the proposed water well study will not result in a serious or major disturbance to an environmental resource.

FINANCIAL STATEMENT *mm*

This item along with additional consultant services and the reimbursement for staff engineering and administrative costs will be funded with a transfer of \$30,000 in Park-in-Lieu funds currently budgeted in the Capital Improvement Program General Park Improvements project. This project will result in estimated annual cost savings to the General Fund of \$104,000, which would increase over time as water costs rise.

CITY ATTORNEY REVIEW

N/A Completed

RECOMMENDATION *mm*

1. Award a Professional Services Agreement to URS to evaluate the effect to the Santee-El Monte Basin aquifer from the proposed installation of a water well at Town Center Community Park and its compliance with the California Environmental Quality Act at a cost not to exceed \$15,786; and
2. Authorize the City Manager to execute the Professional Services Agreement; and
3. Authorize the transfer of \$30,000 of Park-in-Lieu funds from the General Park Improvements project to the Town Center Community Park Landscape Irrigation Well project.

ATTACHMENTS

None

City of Santee
COUNCIL AGENDA STATEMENT

3A

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE AN ORDINANCE AMENDING SECTIONS 9.68.030 AND 9.60.040 OF THE SANTEE MUNICIPAL CODE REGULATING THE CONSUMPTION OF ALCOHOL IN TOWN CENTER COMMUNITY PARK AND DEFINING AGGRESSIVE SOLICITING

DIRECTOR/DEPARTMENT Bill Maertz, Community Services 

SUMMARY The city has constitutional authority to regulate consumption of alcoholic beverages in public places. At the March 8, 2006 City Council meeting, the Council adopted Ordinance 455 limiting the times at which the consumption of alcohol is permitted at Mast Park. This curtailed the consumption of alcoholic beverages during weekdays and reduced alcohol related incidents at Mast Park.

Recently, the Department of Community Services has received numerous complaints from citizens regarding persons consuming alcohol and disrupting the safe atmosphere of Town Center Community Park during weekdays. Sheriff's Department personnel have noticed a relationship between consumption of alcohol in the park and violations such as Drunk-in-Public and other such alcohol-related activity. Such activity has discouraged families and others wishing to use the park from doing so.

As with the adoption of the Ordinance 455 limiting the times at which the consumption of alcohol is permitted at Mast Park, staff is recommending the City Council adopt the attached Ordinance limiting the times at which the consumption of alcohol is permitted at Town Center Community Park. This ordinance will encourage the use of the park for lawful, peaceful purposes by families and other members of the community and discourage unlawful alcohol-related activities.

In addition, per direction given at the March 13, 2013 City Council meeting, staff redefined aggressive soliciting, which is included in the attached Ordinance.

ENVIRONMENTAL REVIEW

N/A

FINANCIAL STATEMENT 

The proposed Ordinance will not have a financial impact.

CITY ATTORNEY REVIEW

N/A

Completed

RECOMMENDATION 

Introduce and conduct first reading of the Ordinance.

ATTACHMENTS (Listed Below)

Ordinance

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA, AMENDING SECTIONS 9.68.030 AND 9.60.040 OF THE SANTEE MUNICIPAL CODE REGULATING THE CONSUMPTION OF ALCOHOL IN TOWN CENTER COMMUNITY PARK AND TO DEFINE AGGRESSIVE SOLICITING

WHEREAS, possession and consumption of alcoholic beverages in certain City parks has been linked to increased criminal activities in those parks and increased litter in the watershed; and

WHEREAS, the City strives to serve the public health, safety and welfare, to assure a cleaner and more hygienic environment for the City, its residents and visitors, and to decrease the instances of litter; and

WHEREAS, the City strives to prevent aggressive soliciting on property open to the public, which threatens the public health, safety and welfare.

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

Section 1. Section 9.68.030 of the Santee Municipal Code is deleted in its entirety and replaced with the following:

Section 9.68.030 Prohibited possession of opened container, public property.

A. It is unlawful for any person to enter upon, be, or remain upon, any public street, sidewalk, alley or public property when in possession of any receptacle which contains any alcoholic beverage and which has been opened, or the seal broken, or the contents of which have been partially removed except at the following public places: Santee Lakes Regional Park; Santee city parks, except Mast Park as set forth in subsection B of this section, Town Center Community Park as set forth in subsection C of this section; Mission Trails Regional Park; and Buildings 7 and 8 of the Santee Civic Center.

B. It is unlawful for any person to enter upon, be, or remain upon the premises of Mast Park when in possession of any receptacle which contains any alcoholic beverage and which has been opened, or the seal broken, or the contents of which have been partially removed, except as follows: on weekends during all hours at which Mast Park is open to the public as designated by the city council or the department of community services. For purposes of this subsection, the term "weekend" is defined as between twelve a.m. on each Saturday and twelve a.m. on each Monday; on any legal holiday(s) designated by the department of community services; and as authorized by a permit issued prior to the occurrence by the department of community services pursuant to its authority to promulgate rules and regulations for the operation of city parks subject to approval of the city council under Section 12.28.030 of this code.

C. It is unlawful for any person to enter upon, be, or remain upon the premises of Town Center Community Park when in possession of any receptacle which contains any alcoholic beverage and which has been opened, or the seal broken, or the contents of which have been partially removed except as follows: on weekends during all hours

at which Town Center Community Park is open to the public as designated by the city council or the department of community services. For purposes of this subsection, the term "weekend" is defined as between twelve a.m. on each Saturday and twelve a.m. on each Monday; on any legal holiday(s) designated by the department of community services; and as authorized by a permit issued prior to the occurrence by the department of community services pursuant to its authority to promulgate rules and regulations for the operation of city parks subject to approval of the city council under Section 12.28.030 of this code.

Section 2. Section 9.60.040.B of the Santee Municipal Code is hereby amended as follows:

B. For the purposes of this section, a person "coerces, threatens, hounds, harasses or intimidates another person" when:

1. The solicitor's conduct would cause a reasonable person in the position of the solicitee to fear for their safety;
2. The solicitor intentionally blocks the path of the solicitee;
3. The solicitor persists in following the solicitee closely, and continues to demand money or other things of value after the solicitee has rejected the solicitation by words or conduct;
4. The solicitor blocks, obstructs, or prevents the free access to the entrance of any building open to the public; or
5. The solicitor fails to comply with any posted sign or signs indicating times, manners, or places where soliciting is permitted. Any such sign must contain lettering in a font size of at least 1/2 inch in height.

Section 3. Severability. If any provision or clause of this Ordinance or the application thereof is held unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses, or applications of this Ordinance which can be implemented without the invalid provision, clause, or application, it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, adopted and/ or ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, and/or phrases may be declared invalid or unconstitutional.

Section 4. This Ordinance shall become effective thirty (30) days after its passage.

Section 5. The City Clerk is hereby directed to certify the adoption of this ordinance and cause the same to be published as required by law.

INTRODUCED AND FIRST READ at a Regular Meeting of the City Council of the City of Santee, California, on the ____ day of _____, 2013, and thereafter **ADOPTED** at a Regular Meeting of said City Council held on the _____ day of _____, 2013, by the following vote to wit:

AYES:

NOES:

ABSENT:

APPROVED:

ATTEST:

RANDY VOEPEL, MAYOR

PATSY BELL, CMC, CITY CLERK

City of Santee
COUNCIL AGENDA STATEMENT

6A

MEETING DATE April 24, 2013

AGENDA ITEM NO.

ITEM TITLE **LOCATION AGREEMENT BETWEEN THE CITY OF SANTEE AND
HD SUPPLY FACILITIES MAINTENANCE, LTD.**

DIRECTOR/DEPARTMENT Keith Till, City Manger *KT*

SUMMARY The City Council is to consider entering into an agreement whereby HD Supply occupies a business location in Santee and expands the company's facility while establishing Santee as the permanent point of sale for retail transactions.

BACKGROUND When the State of California abolished redevelopment effective February 2012, Santee and approximately 400 other municipalities lost the primary tool available for economic development. This necessitated the use of alternative approaches to boosting the business economy, creating jobs and generating sales tax.

In this case, the economic development tool comes in the form of an incentive payment made by the City to induce HD Supply to establish its considerable retail activities in Santee, making Santee the point of sale and therefore the recipient of sales tax revenue. This incentive payment is to be made only if HD Supply's retails sales in Santee result in tax revenue of at least \$500,000 annually. When that threshold is met, Santee will make an incentive payment to HD Supply equal to 50% of the sales tax revenue of \$500,000 or above. If the actual sales tax revenue in a given year is exactly \$500,000, Santee would pay HD Supply \$250,000 and keep \$250,000 for the general fund. The term of this agreement is 20 years.

If not for this incentive payment, there would be no reason for HD Supply to establish Santee as its permanent point of sale.

FINANCIAL STATEMENT *mm* If HD Supply's retail sales in Santee result in local sales tax revenue of less than \$500,000 annually, the City will retain all of it. If it generates \$500,000 or more in local sales tax revenue annually, the City's cost for the incentive payment will be 50% of the local sales tax generated.

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION Adopt the attached resolution approving the location agreement between the City of Santee and HD Supply Facilities Maintenance, Ltd.

ATTACHMENTS (Listed Below)

Resolution
Location agreement

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA
AUTHORIZING THE EXECUTION OF A LOCATION AGREEMENT WITH HD SUPPLY
FACILITIES MAINTENANCE**

WHEREAS, HD Supply Facilities Maintenance, Ltd. ("HD Supply") supplies maintenance, repair and operations products and customer service to owners and managers of multifamily, hospitality, educational and commercial properties, healthcare providers, and municipal and government facilities; and

WHEREAS, The City of Santee desires to foster economic development within the City, and after the elimination of redevelopment agencies, has sought alternative means of boosting the business economy, creating jobs and generating sales tax; and

WHEREAS, HD Supply desires to create a permanent business location and expand its facilities in part to permanently establish a new point of sale for certain retail sales and to provide opportunities for continued growth and expansion of its business activities; and

WHEREAS, The City desires to provide incentives that allow HD Supply to create a permanent business location and point of sale within the City, which will generate jobs and local sales tax revenues in the City; and

WHEREAS, It is in the City's best interests to enter into a location agreement with HD Supply whereby the City will provide incentive payments to HD Supply which are proportionate with the amount of local sales tax revenues generated by HD Supply in exchange for HD Supply's creation of a permanent business location and point of sale within the City.

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

Section 1. The City Manager is hereby authorized to execute a location agreement with HD Supply Facilities Maintenance, Ltd. and other documents necessary to finalize the transaction.

Section 2. The execution of the location agreement does not qualify as a project subject to environmental review under the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines section 15378, because the location agreement is a government fiscal activity not involving any commitment to a specific project which may result in a potentially significant physical impact on the environment.

ADOPTED by the City Council of the City of Santee, California, at a Regular Meeting thereof held this _____ day of _____, 2013, by the following roll call vote to wit:

RESOLUTION NO. _____

AYES:

NOES:

ABSENT:

APPROVED

RANDY VOEPEL, MAYOR

ATTEST

PATSY BELL, CMC, CITY CLERK

LOCATION AGREEMENT

between

**City of Santee,
a California Municipal Corporation**

and

**HD Supply Facilities Maintenance, Ltd.,
a Florida Limited Partnership**

LOCATION AGREEMENT

ARTICLE 1 PARTIES AND EFFECTIVE DATE.

1.1 Parties. This Location Agreement (“**Agreement**”) is entered into by and between (i) **CITY OF SANTEE**, a California municipal corporation and charter law city (“**City**”) and (ii) HD Supply Facilities Maintenance, Ltd., a Florida limited partnership (“**Company**”).

1.1.1 City and Company are sometimes individually referred to herein as “**Party**” and collectively as “**Parties.**”

1.1.2 This Agreement shall be binding upon and shall inure to the benefit of City and Company and their respective successors, heirs, and assigns.

1.2 Effective Date. This Agreement will become effective on the date on which signed by the appropriate authorities of both City and Company (the “**Effective Date**”).

ARTICLE 2 RECITALS

2.1 Company supplies maintenance, repair and operations products and customer service to owners and managers of multifamily, hospitality, educational and commercial properties, healthcare providers, and municipal and government facilities (“**Business Activities**”).

2.2 Company has a temporary business location in the City at 101 Riverview Parkway, Santee, California 92071 (the “**Company Facility**”). Company desires to create a permanent business location and expand the Company Facility in part to permanently establish the City as the point of sale for the Company’s Retail Sales (as defined in Article 3 of this Agreement) for the Term of this Agreement, and to provide opportunities for continued growth and expansion of its Business Activities. Company’s intent is to establish a comparable operation to the one it maintains at 10641 Scripps Summit Court, San Diego, California 92131 (“**San Diego Location**”). Expanding the Company Facility will include, but not be limited to, creating call center jobs and setting aside office space for administrative staff and varying levels of support management.

2.3 City, in consideration of the permanent additional Local Sales Tax Revenues to be generated in the City by Company for the benefit of City and for the Term of this Agreement, which City would not otherwise realize without Company creating a permanent Company Facility, desires to provide the City Payment (as defined in Article 3 of this Agreement) to Company as incentive for locating its expansion, including without limitation, a permanent point of sale for Retail Sales for the Term of this Agreement within the City.

2.4 Such City Payment will be an amount paid from any legally available source of funds and shall be measured by a percentage of the Local Sales Tax Revenues generated in the City by Company and actually received by the City.

2.5 The expansion of the Company Facility in the City will provide significant public benefits to the City, in that the additional Local Sales Tax Revenues to be paid by Company represent a substantial and significant source of additional public revenue for the City, which may be used by the City for the funding of necessary public services and facilities, including, without implied limitation, public safety services and facilities. It will also increase economic development and job creation within the City.

2.6 Company and City wish to enter into this Agreement for the purposes described above.

ARTICLE 3 DEFINITIONS.

3.1 **Definitions.** Unless the context otherwise requires, the terms in this Article 3 shall for all purposes of this Agreement have the meanings defined herein. The following definitions apply equally to the singular and plural forms.

3.1.1 **“Agreement”** shall have the meaning set forth in Section 1.1.

3.1.2 **“Business Activities”** shall have the meaning set forth in Section 2.1.

3.1.3 **“Business Day”** means a day which is not a Saturday, Sunday, City furlough day or legal holiday on which banking institutions in the State or the City are closed.

3.1.4 **“City”** shall have the meaning set forth in Section 1.1.

3.1.5 **“City Payment”** means a quarterly or other payment to Company, payable from any legally available source of funds, in an amount equal to fifty percent (50%) of Local Sales Tax Revenues actually received by the City, as set forth in Section 4.2.

3.1.6 **“Company”** shall have the meaning set forth in Section 1.1.

3.1.7 **“Company Facility”** shall have the meaning set forth in Section 2.2.

3.1.8 **“Data and Documentation”** means any and all sales and use tax returns, bills, invoices, schedules, vouchers, receipts, cancelled checks, statements and other documents reasonably required by City to evidence Local Sales Tax Revenues paid by Company to the City.

3.1.9 **“Effective Date”** shall have the meaning set forth in Section 1.2.

3.1.10 **“Enforced Delays”** shall have the meaning set forth in Section 4.23.

3.1.11 **“Event of Default”** shall have the meaning set forth in Section 4.6.

3.1.12 **“Financial Assistance”** means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief or rebates, relief from public improvement obligations, and payment for public improvements to or for the benefit of Company.

3.1.13 “First Fiscal Quarter” means the Fiscal Quarter commencing after the Effective Date of this Agreement.

3.1.14 “Fiscal Quarter” means one calendar year quarter (as used by retailers) within the Term and commencing on or about February 1, May 1, August 1, or November 1, and ending on, on or about as applicable, the immediately following April 30th, July 31st, November 30th, or January 31st. As an example, the first Fiscal Quarter of the 2013 Fiscal Year commences on February 4, 2013 and ends on the immediately following May 5, 2013.

3.1.15 “Fiscal Year” means one calendar year as used by retailers, which consists of fifty-two (52) consecutive weeks within the Term (as opposed to 365 days) and commencing on or about each February 1, and ending on or about the immediately following January 31st. As an example, the 2013 Fiscal Year commences on February 4, 2013 and ends on the immediately following February 2, 2014.

3.1.16 “Increased Amount” shall have the meaning set forth in Section 4.2.5.

3.1.17 “Local Sales Tax Revenues” means that portion of the Sales Tax, if any, paid by Company upon taxable sales and uses attributable to the operations of Company (or affiliated companies which locate or relocate their sales offices in or to the City during the Term of this Agreement, as further described in Section 4.2 of this Agreement) and allocated and paid to and actually received by the City under the Sales and Use Tax Law. Local Sales Tax Revenues shall not include any of the following: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Diego, a district or any entity (including an allocation to a statewide or countywide pool) other than the City, (iii) any administrative fee charged by the SBE, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except the City’s) law, rule, or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Term, or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/ or pledged to a specific use other than for deposit into or payment from the City’s general fund.

Without limiting the generality of the foregoing, City and Company acknowledge that as of the Effective Date of this Agreement, the California legislature has adopted certain legislation commonly known as the “Triple-Flip” which diverts to the State of California a portion of the Local Sales and Use Tax Revenue that was, prior to the Triple Flip’s enactment, payable to the City. Currently, the Triple Flip diverts 25% of the Local Sales Tax Revenue that previously was payable to the City. City and Company acknowledge that such legislation will cause a reduction of up to twenty five percent of the Local Sales Tax Revenue which would otherwise be attributable to Company’s sales and that such reduction will cause a corresponding temporary decrease in the City Payment to Company. Furthermore, Company and City acknowledge that it is possible that the Triple Flip or some other alternative may be enacted and effective during one or more years during the term and may materially and negatively impact the amount of the City Payment. City does not make any representation, warranty or commitment concerning the future action of the California legislature with respect to the Bradley-Burns Tax Revenue that may be allocated to the City. Company agrees that it is undertaking its obligations

pursuant to this Agreement based upon its own investigation of the risks associated with any legislative changes that would affect the amount of the Allocation Payment.

Notwithstanding the preceding paragraph, City acknowledges that the California Legislature has provided for the payment to the City of other revenues for the purpose of offsetting any losses in the Local Sales Tax Revenue. As such, City agrees to use such replacement revenues as part of the definition of the Local Sales Tax Revenue covered by this Agreement to the extent permitted by law and will continue to do so, as long as they are (i) intended to offset the loss of any or all Local Sales Tax Revenue allocable to the City, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales and use tax revenues received by California municipalities.

If the Sales and Use Tax law is further amended, terminated or rescinded, and Local Sales Tax Revenues are calculated in an alternate manner or are replaced or partially replaced by an alternate revenue stream (i) arising from the retail sale, storage, use or other consumption of tangible personal property by the Company from or on property located in the City, or (ii) designated as being a replacement for Local Sales Tax Revenues previously generated by the retail, sale, storage, use or other consumption of tangible personal property on or from locations in the City, then Local Sales Tax Revenues shall also mean those revenues actually paid or caused to be paid by the Company and ultimately collected for the City in the alternate manner of calculation or the alternate revenue stream, as long as the City receives its portion of such revenues and has the legal right under California law to retain and control the disposition of substantially all of its portion thereof, provided that such revenues shall only be considered Local Sales Tax revenues to the extent that they actually offset the loss of Local Sales Tax Revenues (including both current Local Sales Tax Revenues and prior period Local Sales Tax Revenues).

3.1.18 “Penalty Assessments” means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed or otherwise collected from Company.

3.1.19 “Refund Amount” shall have the meaning set forth in Section 4.2.5.

3.1.20 “Retail Sales” means all sales of tangible personal property with a point of sale in the City to any person or entity which is subject to the Sales and Use Tax Law and which generates Local Sales Tax Revenues. Retail Sales specifically excludes sales of tangible personal property made from the San Diego Location and walk-up sales at any of the Company’s warehouses in California.

3.1.21 “Retail Sales Office” means any form of business entity of Company, or a subsidiary or affiliate of Company, which maintains a Retail Sales operation within the City at which Retail Sales transactions are consummated pursuant to the Sales Tax Law.

3.1.22 “San Diego Location” shall have the meaning set forth in Section 2.2.

3.1.23 “Sales Tax” means all sales and use taxes levied under the authority of the Sales and Use Tax Law, excluding Sales Tax which is to be refunded to Company because of an overpayment of Sales Tax.

3.1.24 “Sales and Use Tax Law” means (i) Part 1 of Division 2 of the California Revenue and Taxation Code, commencing with Section 6001, and any successor law thereto, (ii) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto, (iii) any legislation allowing the City or other public agency with jurisdiction in the City to levy any form of sales and use tax on the operations of Company, and (iv) regulations of the SBE and other binding rulings and interpretations relating to (i), (ii) and (iii) hereof.

3.1.25 “SBE” means the California State Board of Equalization, and any successor agency.

3.1.26 “Term” shall mean that period commencing as of the First Fiscal Quarter and ending twenty (20) years thereafter, unless earlier terminated or extended as provided by this Agreement. The Parties may extend this Agreement by mutual written consent for an equivalent Term or other term specified in an extension agreement.

ARTICLE 4 GENERAL TERMS

4.1 Location and Operation of Company Within City. Company has agreed to expand its temporary location and establish a permanent location as its point of sale within the City and agrees to continue to operate its Retail Sales activities in the City until this Agreement expires or is terminated by either Party as provided in Section 4.11.

4.1.1 The Retail Sales Office of Company has obtained and will maintain a retail sales tax permit from the SBE. Except as otherwise provided in this Agreement, Company agrees to conduct its business so that the point of sale for Retail Sales made by Company during the Term of this Agreement will be the City, pursuant to the Sales and Use Tax Law. In all Sales Reports filed by Company with the SBE relating to Retail Sales, where such a designation is permitted or required under the Sales and Use Tax Law, Company shall specify the City as the point of sale for all of its Retail Sales, with the exception of Retail Sales from a location other than the City as permitted by Section 4.1.2 of this Agreement.

4.1.2 Notwithstanding Section 4.1.1 of this Agreement,

- (i) the point of sale for Retail Sales made by the Company during the Term of this Agreement is not required to be the City if the Company makes a reasonable determination that certain sales activities cannot reasonably be located within the City including, without limitation, those retail sales made from its San Diego Location; and
- (ii) Company may make Retail Sales from a location that is not within the City, such as from its San Diego Location, to the extent any one or more of the following circumstances applies in whole or in part:
 - (a) The Company Facility, in which Company’s Retail Sales Offices

are located, is damaged, destroyed, or condemned, or access to the Company Facility is lost or materially interfered with, or Company is otherwise prevented from using and occupying the Company Facility for its Retail Sales Offices;

- (b) Company outgrows the Company Facility or its lease terminates or expires by its terms or for any other reason, and Company is unable to obtain replacement space suitable for Company's needs (taking into account the quality and size of any such replacement space and other commercially reasonable criteria) within the City on commercially reasonable terms;
- (c) City is in default under this Agreement;
- (d) City is no longer authorized or permitted to pay all or any portion of the City Payment to Company; or
- (e) Company is required by law or as a condition of sale required by customer to make certain sales from a location other than the Company's Retail Sales Offices within the City.

4.2 Payment of the City Payment. As consideration for Company's expansion and permanent location and operation in the City, as described in Section 4.1 of this Agreement, City shall pay Company the City Payment. City Payments will be made within thirty (30) days following the receipt of the Local Sales Tax Revenues by the City, in accordance with the conditions provided in Section 4.2.1. In the event any company affiliated with Company locates or relocates a sales office in or to the City during the Term of this Agreement, the term "Local Sales Tax Revenues" shall be deemed to include Local Sales Tax Revenues derived from taxable sales and uses attributable to the operations of such affiliated companies and City shall pay the City Payment attributable thereto to Company, or to such affiliated company, as directed by Company.

4.2.1 Conditions Precedent to City Payment. City's obligations under Section 4.2 are contingent on the satisfaction of the following conditions precedent:

- (i) Company having completely fulfilled its material obligations under this Agreement;
- (ii) City's receipt and reasonable approval of the Data and Documentation; and
- (iii) The City's actual receipt of Local Sales Tax Revenues of no less than Five Hundred Thousand Dollars (\$500,000.00) during a Fiscal Year. All receipts shall relate to the Fiscal Year in which the sales generating such receipts were made, such that the preceding amount can be averaged over a twelve (12) month period constituting a Fiscal Year.

If City's actual receipt of Local Sales Tax Revenues is less than \$500,000.00

during a Fiscal Year, City may elect thereafter either to make City Payments on a quarterly basis or to make City Payments at the end of each Fiscal Year. For example, if during the Fiscal Year ending on or about January 31, 2015, the City receives Local Sales Tax Revenues of less than \$500,000.00, but has made quarterly City Payments during the Fiscal Year from approximately February 1, 2014 through January 31, 2015, the City may elect to make a single annual City Payment at the end of the next Fiscal Year, ending on or about January 31, 2016, which payment will be contingent on the City receiving Local Sales Tax Revenues of at least \$500,000.00 during the Fiscal Year from February 1, 2015 through January 31, 2016. Pursuant to this Section, the City may elect each Fiscal Year to make quarterly or annual City Payments on the basis of all conditions precedent being satisfied during the previous Fiscal Year.

4.2.2 Adequate Consideration. Each City Payment due and payable shall constitute the total payment to Company for the Fiscal Quarter, Quarters or Year, as applicable, to which it relates, and shall be paid by City for and in consideration of the expansion and permanent location and operation by Company of the Business Activities in the City during such Fiscal Quarter, Quarters or Year, as applicable. The Parties have determined and agreed that the City Payment represents fair consideration to Company for its covenants and obligations hereunder.

Both City and Company expressly acknowledge and agree that Company will receive no compensation under this Agreement other than the City Payment. Company will not be entitled to any other reimbursement or compensation from the City for any costs incurred by Company in performing or preparing to perform its obligations under this Agreement.

4.2.3 City Business License and Permits. Company acknowledges that it is solely responsible for any and all applicable fees and permits.

4.2.4 No Carry Forward or Back. City and Company acknowledge and agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a Fiscal Year-to-Fiscal Year basis, except as otherwise provided in this Agreement. Revenues generated in one Fiscal Quarter may be carried forward or back to any prior or future Fiscal Quarter of that Fiscal Year, it being the express agreement and understanding of the Parties that for each Fiscal Year the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Fiscal Year.

4.2.5 Recapture or Increase of City Payments. If, due to an error in the calculation or allocation of the Local Sales Tax Revenues, the SBE determines that any of the Local Sales Tax Revenues received by the City must be repaid or increased, offset against or added to future Sales Tax payments, or otherwise recaptured ("Refund Amount") or increased ("Increased Amount"), the Company shall pay the City the Refund Amount or the City shall pay the Company the Increased Amount utilizing one of the following methods:

(i) Within thirty (30) days after written notice of the Refund Amount from City, Company shall either repay the miscalculated or misallocated Refund Amount, which the City previously paid to Company, or offset the Refund Amount by agreeing, in writing, that the City may withhold all or portions of future City Payments until the Refund Amount is repaid

in full, or otherwise provide for the recapture of the Refund Amount by the City. Alternatively, after written notice from Company, City shall either pay the Increased Amount in the next City Payment or enter into an agreement for the payment of the Increased Amount. If either Party fails to make such payment, or enter into an agreement for such payment or recapture, within the timeframes set forth in this Section, then such obligation shall accrue interest from the date of such Party's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, until paid.

(ii) Further, if at any time, SBE fails or refuses to remit to the City all or any portion of any Local Sales Tax Revenues applicable to any time period during the Term, then such Local Sales Tax Revenues retained by the SBE shall not be considered in calculating any City Payment under this Agreement, unless and until such retained Local Sales Tax Revenues are paid to the City at any time during the Term of this Agreement, whereupon such payment shall be included in the next City Payment due Company. Notwithstanding the preceding, if the reason for SBE's refusal is because of any act or omission of the City (and not the Company), then the City shall be obligated to make such City Payment in full.

(iii) Notwithstanding anything contained herein to the contrary, City is responsible for paying its share of any Local Sales Tax Revenue it received that is later required to be refunded pursuant to this Agreement.

4.3 Compliance with Legal Requirements. Company covenants and agrees that its employment and other business practices will comply in all material respects with the requirements of any applicable federal, state and city statutes, rules, regulations and ordinances.

4.4 Tax Information. Company acknowledges that, as a public entity, City is subject to the California Public Records Act, and may be required to provide discloseable documents, including Sales Tax reporting and payment information related to Sales Taxes, in response to a request for public records. City shall notify Company in writing of any request for Company's Sales Tax reporting and payment information from a third party. The Company must respond to the City's written notice within seven (7) calendar days and identify any and all proprietary, trade secret, or confidential commercial or financial information which is the subject of the third-party request. Company shall indemnify the City for any costs, fees and other liabilities associated with its refusal to permit disclosure of such identified information; otherwise, the requested information may be released.

4.5 Audit of Books and Records.

4.5.1 City Review of Company Records. Anytime receipts in a Fiscal Year fall below the threshold level identified in Paragraph 4.2.1(iii), Company shall during normal business hours, upon no less than seventy-two (72) hours prior written request from City, make its books and records relating to the calculation and determination of Company's rights and obligations under this Agreement available at no cost to City and/or its designees (including its accountants and/or attorneys who must agree in writing to keep such information confidential) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of Company's evidentiary rights and privileges arising pursuant to any

provision of law. Furthermore, all such books and records may only be made available and introduced as evidence in any proceeding brought to enforce this Agreement or as otherwise ordered by any court of competent jurisdiction if an order preserving their confidentiality is obtained. City shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of Company's books and records; provided, however, that any audit and/or investigation undertaken in connection with any proceeding to enforce this Agreement, or as otherwise ordered by the court, may be recovered as an item of litigation expense pursuant to Section 4.26 but only to the extent such costs are reasonable and necessary.

4.5.2 Company Review of City Records. Upon reasonable notice, City shall allow Company and its representatives to review records of the receipt of Local Sales Tax Revenues by the City, including information received from SBE relating to Company. In the event of an underpayment of Local Sales Tax Revenue by the SBE, the City will promptly use its best efforts to pursue its available administrative remedies against the SBE, at no cost to Company. Company shall have the right to be present at and participate in all SBE administrative proceedings, at Company's cost and expense. If the City fails to use its best efforts to pursue such administrative remedies, then City shall be liable to Company for that portion of any City Payment lost as a result of such failure, which lost portion shall be included in the next City Payment to become due to Company.

4.6 Event of Default. Each of the following shall constitute an "Event of Default":

4.6.1 Failure by a Party to comply with and observe any of the conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within thirty (30) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period, notice requirement, or remedy is specified under any other section of this Agreement, then the specific provision shall control.

4.6.2 Any representation or warranty contained in this Agreement or in any application, financial statement, certificate, or report submitted pursuant to this Agreement proves to have been incorrect in any material respect when made and is not corrected after notice and opportunity to cure as provided in 4.6.1 above.

4.7 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another Party.

4.7.1 Rights not Granted under Agreement. This Agreement is not, and shall not be construed to be, a statutory development agreement under Government Code Section 65864 *et seq.* or any other law. This Agreement is not, and shall not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by the City

concerning any project, development, or construction by Company in the City. This Agreement does not, and shall not be construed to, exempt Company in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development or construction of Company within the City. This Agreement does not, and shall not be construed to, exempt Company from the application and/or exercise of the City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

(i) **Defense of this Agreement.** In the event a third-party files a legal action challenging the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, the City may terminate this Agreement on thirty (30) days' written notice to Company without any further obligation to perform the terms of this Agreement and without any liability to Company resulting from such termination, unless Company unconditionally agrees to indemnify and defend the City against such third-party legal action. Should Company agree to do so, such notification shall be in writing. Notwithstanding anything contained herein to the contrary, City is responsible for paying its share of any Local Sales Tax Revenue it received that is later required to be refunded pursuant to this Agreement.

4.8 No Financial Assistance. Except as provided in Section 4.11 or if the Company, in its sole judgment, determines that City has defaulted and failed to cure as provided in Section 4.6 this Agreement, Company covenants and agrees for the period beginning on the Effective Date and continuing until and including the expiration of this Agreement, Company will not directly or indirectly solicit or accept any Financial Assistance from any other public or private person or entity, to the extent such Financial Assistance is given for the purpose of causing or would result in either Company's relocation from the City or termination of this Agreement.

4.9 Sole Compensation. Both City and Company expressly acknowledge and agree that Company will receive no compensation under this Agreement from City except as expressly set out in this Agreement. The City Payment shall not be reduced or offset for any costs or expenses incurred by City in performing or preparing to perform its duties under and pursuant to this Agreement, which shall be paid solely by the City out of legally available funds.

4.10 Expiration/Termination. This Agreement will terminate upon the expiration of the Term, in the Event of Default that remains uncured, described in Section 4.6, by either Party, or by mutual written consent of all Parties to this Agreement. Except as otherwise provided, upon such termination all executory obligations under this Agreement that accrue or arise subsequent to the date of termination shall also terminate, but obligations that have accrued or arisen prior to such termination shall remain in full force and effect. Without limiting the generality of the foregoing, no termination of this Agreement shall operate to release or discharge City from any obligation to make the City Payment with respect to sales occurring prior to the date of termination or to release or discharge Company from any obligation to refund City any overpaid City Payment(s) or other portion of the City Payment in accordance with Section 4.2.

4.11 Reserved.

4.12 Reserved.

4.13 Amendment of Agreement. At any time, City and Company may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce Company to maintain its operations in the City when this Agreement could otherwise be terminated. City and Company agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both City and Company.

4.14 California Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

4.15 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

4.16 Business Days. Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date, which constitutes a Business Day.

4.17 Tax Consequences. Company shall be responsible for federal, state and/or local income taxes resulting from its receipt of the City Payment.

4.18 Consent. Whenever consent or approval of any Party is required under this Agreement, that Party shall not unreasonably withhold, delay or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

4.19 Notices and Demands. All notices or other communications required or permitted between City and Company under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopy, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the Parties at the addresses provided below, subject to the right of either Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been received on the second Business Day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopy or courier service (e.g., Federal Express), shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

If to the City: City Manager
 10601 Magnolia Avenue
 Santee, CA 92071

With a copy to: Shawn Hagerty
Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92120

If to the Company: HD Supply Facilities Maintenance, Ltd.
10641 Scripps Summit Court
San Diego, California 92131-3961
Attn: Company President

With a copy to: HD Supply, Inc.
3100 Cumberland Boulevard SE # 1700
Atlanta, GA 30339-5940
Attn: General Counsel

4.20 Non-liability of City Officials and Employees. No council member, officer, official, contractor, consultant, attorney or employee of City shall be personally liable to Company, any successors or assignees, or any lender or other party holding an interest in Company or Company's property, in the event of any default or breach by City, or for any amount which may become due to Company or to its successors or assignees, or on any obligations arising under this Agreement.

4.21 Non-liability of Company Officials and Employees. No board member, official, contractor, consultant, attorney, parent company or employee of Company shall be personally liable to City, any voluntary or involuntary successors or assignees in the event of any default or breach by Company, or for any amount which may become due to City or to its successors or assignees, or on any obligations arising under this Agreement.

4.22 Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. Neither Party is relying on any statement, representation or warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that none of us is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing.

4.23 Changes in General Economic Conditions. The Parties expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Agreement, and which occur at any time after the execution of this Agreement, are not Enforced Delays and do not provide either Party with grounds for asserting the existence of a delay or

excuse in the performance of any covenant or undertaking which may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions, or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not an Enforced Delay and does not excuse the performance by such Party of its obligations under this Agreement.

4.24 Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the obligations of City and Company under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder shall be extended where delays in performance are due to war, insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God; acts of a public enemy; acts of governmental authorities; epidemics; quarantine restrictions; and freight embargoes (collectively, “**Enforced Delays**”) provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of Company to obtain or maintain financing for its operations or due to City’s inability to make City Payments payable to Company. In no event shall either Party be deemed in default of this Agreement because of an Enforced Delay event.

4.25 Arbitration.

(a) If a controversy or claim arises out of or relates to the Agreement, or the breach thereof, and if said controversy or claim cannot be settled through negotiation, the parties agree first to try in good faith to settle such controversy or claim by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. Mediation is a condition precedent to arbitration in section (b) below.

(b) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by final arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Optional Rules for Emergency Measures of Protection, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration will be conducted in the County of San Diego, California (or such other venue the parties may agree to), in accordance with the United States Arbitration Act. There shall be three arbitrators, named in accordance with such rules. The award of the arbitrators shall be accompanied by a statement of the reasons upon which the award is based.

4.26 No Violation of Government Code section 53084.5. The parties agree that Government Code section 53084.5 does not apply to the transactions contemplated under this Agreement. In the event that a claim is made against the City to the contrary, Company agrees to defend such claims, both on its own behalf and that of the City, and City agrees to cooperate in the defense of any claim that this Agreement and/or the payment of City Payments under this Agreement, violate or are illegal or impermissible as a result of Government Code section 53084.5. Company further agrees to indemnify and hold harmless City and its officers, employees and elected and appointed officials from and against all liabilities that may arise from

or relate to this Agreement or occur as a result of a final determination by a court of competent jurisdiction that this Agreement violates Government Code section 53084.5. City and Company may, but are not required to, agree in a separate writing to share the costs of such defense. Notwithstanding anything contained herein to the contrary, City is responsible for paying its share of any Local Sales Tax Revenue it received that is later required to be refunded pursuant to this Agreement.

4.27 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement then the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section, Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section shall survive any termination of this Agreement.

4.28 Jurisdiction and Venue. After arbitration is completed in accordance with Section 4.25 above, any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate California state court in San Diego County, California. Both Parties hereto irrevocably consent to the personal jurisdiction of that court. City and Company each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction.

4.29 Interpretation. City and Company acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

4.30 No Waiver. Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver by any Party of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

4.31 Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

4.32 No Third Party Beneficiaries. The performance of the respective obligations of City and Company under this Agreement are not intended to benefit any party other than City or Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

4.33 Warranty Against Payment of Consideration for Agreement. Company warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Company.

4.34 Severability. City and Company declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms; provided, if at any time the City fails to have the legal right to retain and control the disposition of all or substantially of its portion of the Local Sales Tax Revenues, or the obligation of City to pay the City Payment is held to be void or unenforceable, either Party will have the right, on written notice, to terminate this Agreement without any further liability to the other Party.

4.35 Further Acts and Releases. City and Company each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

4.36 Reserved.

4.37 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

4.38 Interruption of Operations Caused by Enforced Delays. Company will not be considered to have ceased operations at the Company Facility to the extent that those operations are delayed or rendered impracticable by Enforced Delays provided that the operations resume as soon as reasonably practical after the Enforced Delays have ended and any repairs or other work necessitated by the Enforced Delays have been performed (these repairs and other work will be performed with diligence).

[Signatures on following page]

**SIGNATURE PAGE
TO
LOCATION AGREEMENT**

**CITY OF SANTEE,
a California municipal corporation**

Dated: _____

By: _____
Keith Till
City Manager

ATTEST:

Dated: _____

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

Dated: _____

By: _____
Shawn Hagerty
City Attorney
BEST BEST & KRIEGER LLP

**COMPANY:
HD SUPPLY FACILITIES MAINTENANCE, LTD.,
a Florida Limited Partnership**

Dated: _____

By: _____
Anesa Chaibi
President and CEO

CERTIFICATION OF LIMITED PARTNERSHIP AUTHORITY

The undersigned general partners of HD Supply Facilities Maintenance, Ltd., a Florida limited partnership ("Partnership"), do hereby certify that we are all of the general partners of the Partnership, there are no other general partners and no consent or approval of any other person is required for the undersigned to make the certifications set forth in this Certificate.

We further certify that the following named person(s):

are, without any additional or further consent of any person, authorized and empowered for and on behalf of and in the name of the Partnership to: (1) sign and deliver that certain Location Agreement between the City of Santee and HD Supply Facilities Maintenance, Ltd ("Agreement"), regarding the Partnership's location of certain business activities within the City of Santee, California and the City's payment of certain monies to the Partnership and performance of other obligations set forth in the Agreement; (2) sign, enter into, make and/or deliver all other documents to be signed, entered into, made and/or delivered by or on behalf of the Partnership in connection with the transactions contemplated in the Agreement; and (3) take all actions that may be considered necessary by or on behalf of the Partnership to conclude the transactions and complete the activities contemplated in the Agreement.

The authority conferred and certified to in this Certificate shall be considered retroactive and any and all acts authorized in this Certificate that were performed before the making of this Certificate are approved and ratified. The authority conferred and certified to in this Certificate shall continue in full force and effect until the City Manager of the City of Santee shall have received notice in writing from all of the general partners of the Partnership of the revocation of this Certificate.

We further certify that: (1) the activities covered by the authorities certified to in this Certificate and the foregoing certifications constitute duly authorized activities of the Partnership; (2) these authorities and certifications are now in full force and effect; (3) there is no provision in any document under which the Partnership is organized and/or that governs the Partnership's continued existence limiting the power of the undersigned to grant such authority or make the certifications set forth in this Certificate; and (4) all such power, authority and certifications are in conformity with the provisions of all such documents.

Partnership General Partners:

By:

City of Santee
COUNCIL AGENDA STATEMENT

6B

MEETING DATE

April 24, 2013

AGENDA ITEM NO.

ITEM TITLE RESOLUTION APPROVING ASSOCIATE MEMBERSHIP BY THE CITY OF SANTEE IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY AND AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT; and RESOLUTION AUTHORIZING THE CITY OF SANTEE TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF SANTEE; AND AUTHORIZING RELATED ACTIONS

DIRECTOR/DEPARTMENT

Kathy Valverde, Assistant to the City Manager *KV*

SUMMARY

In 2010, the City of Santee joined a state and county-wide property assessed clean energy financing program (PACE) known as CaliforniaFIRST. The California FIRST Program is an effective means of offering property owners the opportunity to reduce their energy and water costs by financing certain renewable energy, energy efficiency and water conservation improvements on their properties.

A similar program is now being offered through the California Enterprise Development Authority (CEDA), known as the FIGTREE PACE and Job Creation Program. FIGTREE will provide an alternative for property owners to choose from. Like CaliforniaFIRST, in order for Santee residents to take advantage of the FIGTREE financing program, the City must formally adopt a resolution to become a member of CEDA and adopt a resolution authorizing participation in the program.

Details of the FIGTREE Program are outlined further in the attached staff report.

FINANCIAL STATEMENT *fm*

There is no cost to become a member of CEDA or to participate in the FIGTREE PACE Program.

CITY ATTORNEY REVIEW

N/A Completed

RECOMMENDATION *KV*

1. Adopt Resolution approving Associate Membership in the California Enterprise Development Authority (CEDA); and authorizing and directing the execution of an Associate Membership Agreement with CEDA;
2. Adopt Resolution authorizing the City of Santee to join the FIGTREE PACE program; authorizing CEDA to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City of Santee; and authorizing related actions.

ATTACHMENTS

1. Staff Report
2. Resolution approving Associate Membership in CEDA and authorizing the execution of an Associate Membership Agreement
3. Associate Membership Agreement
4. Resolution authorizing the City to join the FIGTREE PACE program and related actions

STAFF REPORT

FIGTREE Property Assessed Clean Energy Financing and Job Creation Program

April 24, 2013

Background

California has an abundance of sunshine, making solar energy a plausible energy generation option for many of the state's residents and businesses. But with the high cost of adding solar panels to a home or business, not everyone who wants solar energy can afford it. Additionally, many property owners want to reduce water and energy use and, at the same time, save money by investing in energy efficiency and/or water conservation improvements. Yet most people still resist making these improvements due to the large upfront cost. Realizing that cost is a major factor when deciding whether to upgrade a property to be more efficient, the State passed two bills that help with these affordability issues.

California law has long provided counties and cities with the power to issue bonds and levy assessments on the property tax bill to finance public projects such as sewers, parks, and the undergrounding of utilities. With the passage of Assembly Bill 811 (AB 811) in 2008 and Assembly Bill 474 in 2009, all California cities and counties now have the ability to create property assessed clean energy (PACE) financing programs which facilitate low-interest loans to property owners for making energy and water efficient improvements and installing renewable energy projects such as solar panels on their properties. Loans are paid back via a contractual assessment on the property tax bill.

Program Summary

The California Enterprise Development Authority (CEDA), a joint powers authority formed by the California Association for Local Economic Development (CALED), is the sponsoring joint powers authority of the FIGTREE Property Assessed Clean Energy (PACE) and Job Creation Program. CALED was formed in 1980 and has grown to over 700 members, representing cities, counties, state and federal agencies, economic development corporations, and the private sector.

The FIGTREE PACE Program provides the City of Santee with an effective no-cost mechanism of offering property owners the opportunity to make energy and water efficiency retrofits to their property with little or no up-front costs. In many cases, the savings realized from these improvements exceed payment obligations required for the financing. Examples of cost saving retrofits include high efficiency air conditioners, dual-pane windows, renewable energy such as solar photovoltaic systems, insulation, cool roofs, and other permanently installed energy efficient improvements.

Under the FIGTREE PACE Program, a property owner voluntarily commits to the recording of an assessment lien on his/her property which is then repaid over time on the annual County property tax bill as an assessment line item. Once the City

approves the subject resolution for participation in the FIGTREE PACE Program, the program will provide financing at the request of a property owner. The FIGTREE PACE Program is available to commercial property owners and certain residential properties which are not subject to FHFA guidelines. In most instances, if the owner sells the property the repayment obligation remains an obligation of the property.

Participation in the FIGTREE PACE Program is completely voluntary. Property taxes for properties in the City that do not choose to participate are unaffected by the program. Additionally, under the FIGTREE PACE Program, the City has no direct contractual relationship with property owners. Property owners who choose to participate will contract directly with the California Enterprise Development Authority (CEDA) and potential contractors to perform work.

CEDA is expected to issue limited obligation bonds, notes or other forms of indebtedness to fund FIGTREE PACE projects. The FIGTREE Program has already funded retrofit projects through the issuance of bonds. The indebtedness will be issued by CEDA and secured solely by the assessment revenues from the liens on participating properties.

The City's revenues and funds will not be pledged to the payment of the bonds. All ongoing administration and coordination will be managed by CEDA. **The FIGTREE Program does not impose any financial or administrative burdens on the City.**

Benefits to Property Owners and the City of Santee

The benefits of the FIGTREE Program to a property owner include:

- Only property owners who choose to participate in the program will have assessments imposed on their property. Property owners who choose not to participate will have no impact to their property tax bill.
- Property owners can match the life of the repayment obligation with the useful life of the financed improvements.
- In many cases, the savings realized from the improvements exceed payment obligations.
- The approach gives residential and commercial properties throughout the region access to the municipal bond market for all sizes of projects, which may produce a lower borrowing cost compared to a stand-alone City program.

The benefits of the FIGTREE Program to the City include:

- The City is able to assist property owners in becoming more energy efficient with minimal staff time and no cost.
- The City does not have to issue bonds or incur debt, nor is City obligated to repay the bonds issued by CEDA or to pay the assessments levied on the

participating properties. The City will incur no obligation of indebtedness as a result of participation in the FIGTREE Program.

- The City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in such assessment payments, or the issuance, sale or administration of the bonds in connection with FIGTREE Program.
- CEDA will be responsible for the formation and ongoing administration of the AB 811 district necessary to levy contractual assessments of this type. The City will incur no ongoing responsibility or cost for these activities.

Recommended Actions

In order for the City of Santee to participate in the FIGTREE PACE Program through the California Enterprise Development Authority (CEDA), a Resolution joining CEDA needs to be adopted and an Associate Membership Agreement must be approved which would provide for Associate Member status. This would allow the City to participate in the FIGTREE PACE Program, and other bond financings offered through CEDA.

It is recommended that the City Council adopt the attached Resolutions authorizing the City of Santee to become an Associate Member of CEDA and join the FIGTREE PACE Program.

If approved, this action authorizes CEDA to conduct assessment district proceedings on behalf of the City, levy contractual assessments, pursue remedies in the event of delinquencies, issue bonds or other forms of indebtedness to finance the improvements in connection with the FIGTREE PACE Program, and authorizes miscellaneous related actions.

RESOLUTION NO. _____

**RESOLUTION APPROVING ASSOCIATE MEMBERSHIP BY THE CITY OF SANTEE
IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY AND
AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE
MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF
THE CITY IN THE AUTHORITY**

WHEREAS, the City of Santee ("City") is a charter city, organized and operating under the laws of the State of California; and

WHEREAS, the City, upon authorization of the City Council, may pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "JPA Law") enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them; and

WHEREAS, the City and other public agencies wish to jointly participate in economic development financing programs for the benefit of businesses and nonprofit entities within their jurisdictions offered by membership in the California Enterprise Development Authority ("Authority") pursuant to an Associate Membership Agreement and Joint Exercise of Powers Agreement Relating to the California Enterprise Development Authority ("Agreement"); and

WHEREAS, under the JPA Law and the Agreement, the Authority is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of the Authority will not be the debts, liabilities or obligations of the City or the other members of the Authority; and

WHEREAS, the City is willing to become an Associate Member of the Authority subject to the provisions of the Associate Membership Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Santee, California, hereby finds, determines and declares as follows:

Section 1. The City Council hereby specifically finds and declares that the actions authorized hereby constitute public affairs of the City. The City Council further finds that the statements, findings and determinations of the City set forth in the preambles above are true and correct.

Section 2. The Associate Membership Agreement presented to this meeting and on file with the City Clerk is hereby approved. The City Manager, the City Clerk and other officials of the City are each hereby authorized and directed, for and on behalf of the City, to execute and deliver the Associate Membership Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The officers and officials of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this resolution and the Associate Membership Agreement. All such actions heretofore taken by such officers and officials are hereby confirmed, ratified and approved.

Section 4. This resolution shall take effect immediately upon its passage.

ADOPTED by the City Council of the City of Santee, California, at a regular meeting thereof held this 24th day of April 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

RANDY VOEPEL, MAYOR

ATTEST:

PATSY BELL, CMC, CITY CLERK

ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

CITY OF SANTEE, CALIFORNIA

This ASSOCIATE MEMBERSHIP AGREEMENT ("Associate Membership Agreement") is made and entered into this 24th day of April 2013 by and between the CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY ("Authority") and the CITY OF SANTEE, CALIFORNIA ("City"), a charter city organized and operating under the laws of the State of California.

WITNESSETH:

WHEREAS, the Cities of Selma, Lancaster and Eureka (individually, a "Member" and collectively, the "Members"), have entered into a Joint Powers Agreement, dated as of June 1, 2006 (the "Agreement"), establishing the Authority and prescribing its purposes and powers; and

WHEREAS, the Agreement designates the Executive Committee of the Board of Directors and the President of the California Association for Local Economic Development as the initial Board of Directors of the Authority; and

WHEREAS, the Authority has been formed for the purpose, among others, to assist for profit and nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest; and

WHEREAS, the Agreement permits any other local agency in the State of California to join the Authority as an associate member ("Associate Member"); and

WHEREAS, the City desires to become an Associate Member of the Authority;

WHEREAS, the City Council of the City has adopted a resolution approving the Associate Membership Agreement and the execution and delivery thereof;

WHEREAS, the Board of Directors of the Authority has determined that the City should become an Associate Member of the Authority;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Authority and the City do hereby agree as follows:

Section 1. Associate Member Status. The City is hereby made an Associate Member of the Authority for all purposes of the Agreement and the Bylaws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by the City and the Authority, the City shall be and remain an Associate Member of the Authority.

Section 2. Restrictions and Rights of Associate Members. The City shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Voting Members of the Authority. In addition, no officer, employee or representative of the City shall have any right to become an officer or director of the Authority by virtue of the City being an Associate Member of the Authority.

Section 3. Effect of Prior Authority Actions. The City hereby agrees to be subject to and bound by all actions previously taken by the Members and the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

Section 4. No Obligations of Associate Members. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City.

Section 5. Execution of the Agreement. Execution of this Associate Membership Agreement and the Agreement shall satisfy the requirements of the Agreement and Article XII of the Bylaws of the Authority for participation by the City in all programs and other undertakings of the Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Associate Membership Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

**CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY**

CITY OF SANTEE, CALIFORNIA

By: _____
Gurbax Sahota, Board Chair

By: _____
Keith Till, City Manager

Attest:

Attest:

Michelle Stephens, Asst. Secretary

Patsy Bell, City Clerk

APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

City Attorney

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY OF SANTEE TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF SANTEE; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Enterprise Development Authority ("CEDA") is a joint exercise of powers authority, comprised of cities and counties in the State of California, including the City of Santee ("City"); and

WHEREAS, CEDA has adopted the FIGTREE Property Assessed Clean Energy (PACE) and Job Creation Program ("Program" or "FIGTREE PACE") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements ("Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness ("Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) ("1915 Act") upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property within its jurisdiction ("Participating Property Owners") to participate in FIGTREE PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

WHEREAS, CEDA will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements; and

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention ("ROI") to be adopted by CEDA in connection with such assessment proceedings, a copy of which is attached hereto as Exhibit A; and

WHEREAS, said ROI sets forth the territory within which assessments may be levied for FIGTREE PACE which territory shall be coterminous with the City's official boundaries of record at the time of adoption of the ROI (the "Boundaries"); and

WHEREAS, pursuant to Chapter 29, the City authorizes CEDA to conduct assessment proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue bonds or other forms of indebtedness to finance the Improvements in connection with FIGTREE PACE; and

WHEREAS, to protect the City in connection with operation of the FIGTREE PACE program, FIGTREE Energy Financing, the program administrator, has agreed to defend and indemnify the City; and

WHEREAS, based upon such authorization as provided in the Participation Agreement, a copy of which is attached hereto as Exhibit B, the City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued in connection with FIGTREE PACE.

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

Section 1. On the date hereof, the City Council hereby finds and determines that the issuance of Bonds by CEDA in connection with FIGTREE PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

Section 2. In connection with FIGTREE PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;
- (2) The Participating Property Owners, who shall be the legal owners of such property, voluntarily execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and
- (3) The City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in such assessment payments, or the issuance, sale or administration of the Bonds in connection with FIGTREE PACE.

The City Council hereby approves the Participation Agreement between the City and CEDA in the form attached hereto. The City Council hereby authorizes the City Manager to execute the Participation Agreement with such changes as the City Manager deems appropriate in order to commence the FIGTREE PACE program within the jurisdiction of the City.

Section 3. Pursuant to the requirements of Chapter 29, CEDA has prepared and will update from time to time the "Program Report" for FIGTREE PACE ("Program Report") and associated documents, and CEDA will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to make applications for FIGTREE PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with FIGTREE PACE: Assistant to the City Manager and Finance Director.

Section 5. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by CEDA in accordance with the Program Report to implement FIGTREE PACE for Participating Property Owners.

Section 6. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 7. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to FIGTREE Energy Resource Company.

Section 8. Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

ADOPTED by the City Council of the City of Santee, California, at a regular meeting thereof held this 24th day of April 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

RANDY VOEPEL, MAYOR

ATTEST:

PATSY BELL, CMC, CITY CLERK

Attachments: Exhibit A – Resolution of Intention
Exhibit B – Participation Agreement

EXHIBIT A

**California Enterprise Development Authority (CEDA)
Resolution of Intention
to establish a FIGTREE PACE Program
in the City of Santee**

RESOLUTION NO. _____

RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS IN THE CITY OF SANTEE

WHEREAS, the California Enterprise Development Authority (“CEDA”) is a joint powers authority organized and existing pursuant to the Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the “Agreement”) dated as of June 1, 2006, among the cities of Eureka, Lancaster and Selma; and

WHEREAS, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

WHEREAS, CEDA has obtained authorization from the City of Santee (the “City”) located in the County of San Diego (the “County”) to conduct assessment proceedings and to enter into contractual assessments to finance the installation of Authorized Improvements within the jurisdictional boundaries of the City pursuant to Chapter 29; and

WHEREAS, CEDA desires to declare its intention to establish a FIGTREE PACE program (“FIGTREE PACE”) in the City, pursuant to which CEDA, subject to certain conditions set forth below, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Board of Directors hereby finds and determines the following:

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.

- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.
- (d) A public purpose will be served by establishing a contractual assessment program, to be known as FIGTREE PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

Section 2. Determination of Public Interest. The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the City pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the "Report"), as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the City.

Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by FIGTREE Energy Financing (the "Program Administrator") upon consultation with FIGTREE PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that is payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date), and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of CEDA to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the FIGTREE PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption

fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the FIGTREE PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the "Board"), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on _____, _____, at ____ A_, for the purposes of allowing interested persons to object to, or inquire about, the proposed FIGTREE PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed FIGTREE PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates, not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

Section 8. Report. The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

- a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner within the City.
- c) A statement of CEDA's policies concerning contractual assessments including all of the following:
 - (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
 - (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
 - (3) A maximum aggregate dollar amount of contractual assessments.
 - (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
- d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.
- e) A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the County, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the County on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 2013.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Larry Cope, Secretary

EXHIBIT B

Participation Agreement

PARTICIPATION AGREEMENT

by and among the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and

FIGTREE ENERGY FINANCING

and the

CITY OF SANTEE

Dated as of _____, 2013

PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT, made and entered into as of _____, 2013, by and among the CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, a joint powers agency organized and existing under the laws of the State of California (“CEDA”), third party administrator FIGTREE Energy Financing (“FIGTREE”), and the City of Santee, a charter city, organized and existing under the laws of the State of California (“Participating Member”);

WITNESSETH:

In consideration of the mutual covenants herein contained, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree, as follows:

Recitals

- (a) The CEDA is a joint powers agency organized and existing pursuant to the Joint Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California; and
- (b) The CEDA has adopted the FIGTREE Property Assessed Clean Energy (PACE) and Job Creation Program (the “Program” or “FIGTREE PACE”), for the financing of renewable generation and energy efficient and water savings equipment on improved commercial, industrial and residential property within the Participating Member’s jurisdiction; and
- (c) The CEDA has retained third party administrator, FIGTREE, to carry out the implementation of the Program; and
- (d) The Participating Member is either a municipal corporation or other public body and a member of the CEDA in good standing; and
- (e) The Participating Member has authorized the CEDA to form an assessment district (the “District”) for the PACE financing of renewable generation and energy efficient and water savings improvements on certain properties owned by property owners who voluntarily agree to participate in the Program (“Program Participant”); and
- (f) The CEDA intends to issue bonds, notes or other forms of indebtedness (the “Bonds”) to finance improvements within the District and in consideration therefore, assessments shall be recorded against each parcel prior to the issuance of the Bonds. Installments of principal and interest sufficient to meet annual debt service on the Bonds, and related administration costs and expenses, are to be included on the regular county tax bills sent to each Program Participant.

- (g) The Participating Member desires to authorize the CEDA to (i) record the assessment against the participating property owner's parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law") and (iii) prepare program guidelines for the operations of the Program; and
- (h) The Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. Under the Law, the Participating Member must designate the parties who shall be responsible to proceed with collection and foreclosure of the liens on the properties within the District. The Program Report provides for accelerated foreclosure; and
- (i) The Participating Member desires to appoint the CEDA as its representative to proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the Marks Roos Act.

NOW THEREFORE:

Section 1. Recitals. The Recitals contained herein are true and correct and are hereby incorporated herein by reference.

Section 2. Appointment of CEDA. The City is not and will not be deemed to be an agent of FIGTREE or CEDA as a result of this Agreement. The Participating Member hereby appoints the CEDA as its representative to record the assessment against each Program Participant's parcel and administer the District in accordance with the Law. The Participating Member hereby designates the CEDA as the entity which shall proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the Marks Roos Act.

Section 3. Indemnification. FIGTREE has provided the CEDA with an indemnification for negligence or malfeasance of any type as a result of the acts or omissions of FIGTREE, its officers, employees, subcontractors and agents, arising from or related to negligent performance by FIGTREE of the work required under the agreement between FIGTREE and CEDA. FIGTREE, on behalf of itself and the CEDA, agrees to defend, indemnify, and hold harmless the Participating Member, its officers, agents, employees and attorneys from and against any and all liabilities, claims, or demands arising or alleged to arise as a result of the CEDA or FIGTREE'S performance or failure to perform under this Agreement or the Program, except that arising from the sole negligence or willful misconduct of Participating Member.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement by their officers duly authorized as of the day and year first written above.

CALIFORNIA ENTERPRISE DEVELOPMENT
AUTHORITY

By: _____
Gurbax Sahota, Chair

FIGTREE ENERGY FINANCING

By: _____
Mahesh Shah, CEO

CITY OF SANTEE

By: _____
Keith Till, City Manager

APPROVED TO AS FORM

By: _____
Shawn Hagerty, City Attorney