

DRAFT CONTRACT

**ASSESSMENT CONTRACT
CITY OF YUCAIPA ENERGY INDEPENDENCE PROGRAM**

This Assessment Contract (“Contract”) is made and entered into as of this _____ day of _____, by and between the CITY OF YUCAIPA, a California municipal corporation (“City”), and _____ (“Owner”).

RECITALS

A. City has established the Energy Independence Program (“EIP” or “Program”) pursuant to which City may levy assessments against developed residential, commercial, and industrial properties located in City, with the consent of the owners of such properties, to finance the acquisition, construction, or installation of certain qualifying renewable energy systems and energy efficient improvements. The purpose and method of administering assessments under the Program are described in the City of Yucaipa Energy Independence Program Report and Administrative Guidelines adopted by the City Council on _____, 200__, as it may be amended from time to time (the “Report”).

B. EIP is authorized by Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the “Act”).

C. Owner has submitted to City that certain EIP Loan Application dated _____, 200__, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference (the “Application”). The Application describes, among other things, the renewable energy system(s) and/or energy efficiency improvements which are to be financed under the Program, and to be constructed or installed on the property of Owner described in Exhibit “B” attached hereto and incorporated herein by this reference (the “Property”). City has approved the Application as provided in the Report.

D. Owner wishes to participate in the Program by executing this Contract with City and using monies advanced by City hereunder to finance the acquisition, construction, or installation on the Property of renewable energy systems and/or energy efficiency improvements described in the Application (“Energy Improvements”). The Energy Improvements and their construction and/or installation are collectively referred to herein as the “Work.”

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

Section 1. Contract Documents; Term.

(a) This Contract, together with the Application and the documents and instruments attached to and referenced in this Contract and the Application, are collectively referred to herein as the “Contract Documents.”

(b) The term of this Contract shall be until the Assessment described herein and all accrued interest thereon, together with any applicable penalties, costs, fees, and other charge have been paid in full.

Section 2. Loan Amount; Assessment; Incidental Expenses.

(a) Subject to the conditions set forth herein, City agrees to advance monies to Owner in the amount of the actual cost of the Work (the “Loan Amount”), provided the Loan Amount shall not exceed _____ Dollars (\$ _____) (the “Maximum Loan Amount”). The EIP Administrator shall determine the Loan Amount on the basis of the best available written evidence of the Work’s actual cost and in the exercise of the EIP Administrator’s best judgment. The EIP Administrator shall determine the Loan Amount before advancing monies to Owner hereunder and following the post-completion inspection of the Energy Improvements by EIP Staff, as described in Section 4 below. In the event that the actual cost of the Work exceeds the Maximum Loan Amount, Owner shall be solely responsible for the payments of all costs of the Work which exceed the Maximum Loan Amount, and Owner agrees to in any event to complete the Work and to fund all costs associated with such completion which may exceed the Maximum Loan Amount.

(b) In consideration of the monies advanced by City hereunder, Owner promises to pay, without offset or deduction, an assessment levied against the Property pursuant to this Contract, the Act and applicable law (the “Assessment”) together with the interest thereon as described herein. Upon execution of this Contract, City will execute and cause to be recorded a notice of assessment in the office of the County of San Bernardino Auditor-Controller/Recorder (“County Recorder”) substantially in the form set forth in Exhibit “C” attached hereto and incorporated herein by this reference (the “Notice of Assessment”).

(c) Upon recordation of the Notice of Assessment, the Assessment and each installment thereof and the interest and penalties thereon, shall constitute a lien upon the Property until paid. Initially, as reflected in the Notice of Assessment, upon recordation of the Notice of Assessment, the Assessment shall equal the Maximum Loan Amount. Following City’s advance of monies to Owner hereunder, the Assessment shall equal the Loan Amount.

(d) Interest shall accrue on the unpaid Assessment from the date City disburses the Loan Amount to Owner at the simple interest rate of seven percent (7%) per annum and shall be payable in installments as set forth on Exhibit “D” attached hereto and incorporated herein by this reference. Interest shall be computed on the basis of three hundred sixty (360) days a year. If a court of competent jurisdiction determines the interest or other charges provided for herein in connection with the Assessment or the Annual Administrative Assessment (described in paragraph (f) below) exceed the limits permitted by applicable law, then: (i) any such interest or

charge shall be reduced by the amount necessary to reduce the interest or charge to the permitted limit; and (ii) any sums already collected which exceed permitted limits will be refunded by City. The EIP Administrator, in his discretion, may make the refund by making a direct payment to Owner or by crediting the refund amount against the next installment or installments of the Assessment (described in paragraph (e) below).

(e) Annual installments of the Assessment, together with the annual interest of the Assessment, shall be collected on the property tax bill pertaining to the Property. The annual portion of the assessment coming due in any year, together with the annual interest on the Assessment, shall be payable in the same manner and at the same time and in the same installments as the general taxes of the City on real property. The amount of each Assessment installment and the interest on the unpaid Assessment that will be placed on the tax roll each year is set forth in Exhibit "D."

(f) In addition to the Assessment, until the Assessment and the interest thereon is paid in full, Owner promises to pay, without deduction or offset, an annual administrative assessment levied against the Property pursuant to this Contract, the Act and applicable law to pay costs incurred by City resulting from the administration and collection of the Assessment and from the administration or registration of any associated bonds or other financing arrangement, as described in the Report, and from the administration of any reserve fund and other related funds (the "Annual Administrative Assessment"). The Annual Administrative Assessment shall not exceed fifty dollars (\$50) per year. The EIP Administrator shall annually determine the amount of the Annual Administrative Assessment, not to exceed the amount set forth in the preceding sentence. The Annual Administrative Assessment shall be collected in the same manner as the Assessment. The Annual Administrative Assessment shall become a lien upon the Property at the same time as the property tax becomes a lien each year on the Property.

(g) The execution of this Contract by the parties constitutes the confirmation of the Assessment and the Annual Administrative Assessment by the City Council and the levy of the Assessment and the Annual Administrative Assessment against the Property without any further action required by the parties. Owner expressly consents to the levy of the Assessment and Annual Administrative Assessment on the Property and the recordation of the Notice of Assessment, all as described herein, in the Act and in applicable law.

(h) The lien of the Assessment shall be co-equal to and independent of the lien for general taxes, and, except as provided in Government Code section 53935.6, not subject to extinguishment by the sale of the Property on account of the nonpayment of any taxes, and is prior and superior to all liens, claims and encumbrances on or against the Property except (i) the lien for general taxes or ad valorem assessments in the nature of and collected as taxes levied by the State of California or any county, special district or other local agency, (ii) the lien of any special assessment or assessments the lien date of which is prior in time to the lien date of the Assessment, (iii) easements constituting servitudes upon or burdens to the Property, (iv) water rights, the record title to which is held separately from the title to the Property, and (v) restrictions of record.

(i) Owner acknowledges that as cumulative remedy, if any installment of the Assessment, or any interest thereon, together with any penalties, costs, fees, and other charges accruing under applicable taxation provisions are not paid when due, the City Council may order that the same be collected by an action brought in a court of competent jurisdiction to foreclose the lien of the Assessment to the extent permitted, and in the manner provided by, applicable law.

(j) Owner may prepay the Assessment, in whole or in part, at any time upon the payment of the amount, including an amount equal to \$_____ or _____ percent (___%) of the amount of the Assessment to be prepaid, determined by the EIP Administrator in accordance with the Report. Owner shall notify the EIP Administrator in writing of Owner's determination to prepay the Assessment, in whole or in part, at least thirty (30) business days prior to the date Owner intends to prepay the Assessment.

(k) Owner expressly acknowledges that the construction and/or installation of the Energy Improvements on the Property confer a special benefit to the Property in an amount at least equal to the Assessment.

(l) Owner expressly waives the notice, protest and hearing procedures of any applicable law other than the Act with respect to the levy and collection of the Assessment and Annual Administrative Assessment.

Section 3. Use of Proceeds

Owner shall use the Loan Amount for the sole purpose of paying the reasonable costs and expenses of the Work on the Property, and in connection therewith Owner shall comply with all requirements set forth in the Contract Documents.

Section 4. Loan Disbursement Procedures

(a) Notwithstanding anything to the contrary contained herein, City shall have no obligation to disburse the Loan Amount hereunder unless and until each of the following conditions is satisfied, or any such condition is expressly waived by the EIP Administrator:

(i) The receipt by the EIP Administrator of a written certification from Owner, and the contractor(s), if any, that performed the Work, stating the actual cost of the Work and that the Work is complete. Such certification shall be in form and substance acceptable to the EIP Administrator.

(ii) An inspection of the Work by City Staff, and a determination by the EIP Administrator that the Work has been completed in full compliance with the requirements of the Contract Documents.

(iii) The receipt by the EIP Administrator of such other documents and instruments as the EIP Administrator may require, including but not limited to, if applicable, the sworn statements of contractor(s) and releases or waivers of lien, all in compliance with the requirements of applicable law.

(iv) Owner has, as appropriate, executed and delivered to the EIP Administrator the Contract Documents and other such documents or instruments pertaining to the Loan Amount or the Work as the EIP Administrator may require.

(v) As of the date of disbursement of the Loan Amount, the EIP Administrator shall have determined that the representations of the Owner contained in the Contract Documents are true and correct, and no Default (as defined in Section 13 below) shall have occurred or be continuing.

(vi) No stop payment or mechanic's lien notice pertaining to the Work has been served upon City and remains in effect as of the date of disbursement of the Loan Amount.

(vii) City shall have received a title policy with regard to the monies advanced to Owner hereunder.

(viii) Owner will, within fifteen (15) business days of presentation by the EIP Administrator, execute any and all documents or instruments required by the Contract Documents in connection with the disbursement of the Loan Amount.

(b) Upon satisfaction of waiver of the conditions described in paragraph (a) above, City will disburse the Loan Amount to Owner, provided, City shall not be under any obligation to disburse the Loan Amount until the first day of the month immediately following the month in which all of the foregoing conditions were satisfied or waived.

Section 5. Reports.

Owner agrees, upon request of the EIP Administrator, to promptly deliver to the EIP Administrator, or, if appropriate, cause its contractor(s) to promptly deliver to the EIP Administrator, a written status report regarding the Work.

Section 6. Representations and Warranties of Owner.

Owner promises that each representation and warranty set forth below is true, accurate, and complete as of the date of this Contract, and the date of the disbursement of the Loan Amount. The disbursement of the Loan Amount shall be deemed to be a reaffirmation by Owner of each and every representation and warranty made by Owner in this Contract. If Owner is comprised of the trustees of a trust, the following representations shall also pertain to the trustor(s) of the trust.

(a) Formation; Authority. If Owner is anything other than a natural person, it has complied with all laws and regulations concerning its organization, existence and the transaction of its business, and is in good standing in each state in which it conducts its business. Owner is the owner of the Property and is authorized to execute, deliver and perform its obligations under the Contract Documents, and all other documents and instruments delivered by Owner to City in connection therewith. The Contract Documents have been duly executed and delivered by Owner and are valid and binding upon and enforceable against Owner in accordance with their

terms, and no consent or approval of any third party, which has not been previously obtained by Owner, is required for Owner's execution thereof or the performance of its obligations contained therein.

(b) Compliance with Law. Neither Owner nor the Property is in violation of, and the terms and provisions of the Contract Documents do not conflict with, any regulation or ordinance, any order of any court or governmental entity, or any building restrictions or governmental requirements affecting Owner or the Property.

(c) No Violation. The terms and provisions of the Contract Documents, the execution and delivery of the Contract Documents by Owner, and the performance by Owner of its obligations contained therein, will not and do not conflict with or result in a breach of or a default under any of the terms or provisions of any other agreement, contract, covenant, or security instrument by which Owner or the Property is bound.

(d) Other Information. All reports, documents, instruments, information and forms of evidence that have been delivered to City concerning the disbursement hereunder and the Loan Amount are accurate, correct, and sufficiently complete to give City true and accurate knowledge of their subject matter.

(e) Lawsuits. There are no lawsuits, tax claims, actions, proceedings, investigations or other disputes pending or threatened against Owner or the Property which may impair Owner's ability to perform its obligations hereunder, or which may impair City's ability to levy and collect the Assessment and the Annual Administrative Assessment.

(f) No Event of Default. There is no event that is, or with notice or lapse of time or both would be, a Default under this Contract.

(g) Accuracy of Declarations. The declarations of Owner contained in the Application are accurate, complete, and true.

Section 7. Owner's Covenants.

Owner promises to keep each of the following covenants:

(a) Completion of Work and Maintenance of Energy Improvements. Owner shall, or shall cause its contractor(s) to, promptly commence construction of the Work, and diligently continue such Work to completion, in good and workmanlike manner and in accordance with sound construction and installation practices. Owner shall maintain the Energy Improvements in good condition and repair.

(b) Compliance with Law and Agreements. In commencing and completing the Work, Owner shall comply with all existing and future laws, regulations, orders, building restrictions and requirements of, and all agreements with and commitments to, all governmental, judicial and legal authorities having jurisdiction over the Property or the Work, and with all recorded instruments, agreements, covenants and restrictions affecting the Property.

(c) Permits, Licenses and Approvals. Owner shall properly obtain, comply with and keep in effect all permits, licenses and approvals which are required to be obtained from any governmental authority in order to commence and complete the Work. Owner, upon the request of the EIP Administrator, shall promptly deliver copies of all such permits, licenses and approvals to the EIP Administrator.

(d) Site Visits. Owner grants City, its agents and representatives the right to enter and visit the Property at any reasonable time, after giving reasonable notice to Owner, for the purposes of observing the Work. City will make reasonable efforts during any site visit to avoid interfering with Owner's use of the Property. Owner shall also allow City to examine and copy records and other documents of Owner which relate to the Work. Any site visit, observation or examination by City shall be solely for the purposes of protecting City's rights under the Contract Documents.

(e) Protection Against Lien Claims. Owner shall promptly pay or otherwise discharge any claims and liens for labor done and materials and services furnished to the Property in connection with the Work. Owner shall have the right to contest in good faith any claim or lien, provided that it does so diligently and without delay in completing the Work.

(f) Insurance. Owner shall provide, maintain and keep in force at all times until the Work is completed, builder's all risk property damage insurance on the Property, with a policy limit equal to the full replacement cost of the Work.

(g) Notices. Owner shall promptly notify City in writing of any Default under this Contract, or any event which, with notice or lapse of time or both, would constitute a Default hereunder.

Section 8. Completion of the Work.

(a) Consent and Authorization. This Contract constitutes consent and authorization, pursuant to Section 5898.21 of the Act, for Owner to purchase directly the related equipment and materials for the Energy Improvements and to contract directly for the construction and/or installation of the Energy Improvements on the Property.

(b) Date of completion of the Work. Subject to Section 13(f) below, Owner agrees to complete the Work on or before _____, 20__.

Section 9. Mechanic's Lien and Stop Notices.

In the event of the filing of a stop notice or the recording of a mechanic's lien pursuant to applicable law of the State of California and relating to the Work, the EIP Administrator may summarily refuse to disburse the Loan Amount, and in the event Owner fails to furnish the EIP Administrator a bond causing such notice or lien to be released within ten (10) days of notice from the EIP Administrator to do so, such failure shall, at the option of the City, constitute a Default under the terms of this Contract. Owner shall promptly deliver to EIP Administrator copies of all such notices or liens.

Section 10. Indemnification.

(a) Owner shall indemnify, defend, protect and hold harmless City and all agents, employees, attorneys and representatives of City (collectively, the “City Parties”), from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys’ fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, (i) the Contract Documents, (ii) the disbursement of the Loan Amount, (iii) the Work, (iv) the Energy Improvements, (v) any breach or Default by Owner under the Contract Documents, (vi) the levy and collection of the Assessment [and the Annual Administrative Assessment], (vii) the imposition of the lien of the Assessment, and (viii) any other fact, circumstance or event related to City’s extension and disbursement of the Loan Amount to Owner or Owner’s performance of its obligations under the Contract Documents (collectively, the “Liabilities”), regardless of whether such Liabilities shall accrue or are discovered before or after the disbursement of the Loan Amount.

(b) The indemnity obligations described in this Section 10 shall survive the disbursement of the Loan Amount, the payment of the Assessment in full, the transfer or sale of the Property by Owner, and the termination of this Contract.

Section 11. Waiver of Claims.

For and in consideration of City’s execution and delivery of this Contract, Owner, for itself and for its successors-in-interest to the Property and for anyone claiming by, through, or under Owner, hereby waives the right to recover from and fully and irrevocably releases the City Parties from any and all claims, obligations, liabilities, causes of action, or damages, including attorneys’ fees and court costs, that Owner may now have or hereafter acquire against any of the City Parties and accruing from or related to (i) the Contract Documents, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Assessment and the Annual Administrative Assessment, (iv) the imposition of the lien of the Assessment, (v) the issuance and sale of any bonds or other evidence of indebtedness, or other financial arrangements entered into by City pursuant to the Program, (vi) the performance of the Work, (vii) the Energy Improvements, (viii) any damage to or diminution in value of the Property that may result from the Work, (ix) any personal injury or death that may result from the Work, (x) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Work or the Energy Improvements, (xi) the merchantability and fitness for any particular purpose, use or application of the improvements, (xiii) the workmanship of any third parties, and (xiv) any other matter with respect to the Program. This release includes claims, obligations, liabilities, causes of action, and damages of which Owner is not presently aware or which Owner does not suspect to exist which, if known by Owner, would materially affect Owner’s release of the City Parties.

OWNER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“SECTION 1542”), WHICH IS SET FORTH BELOW:

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

BY INITIALING BELOW, OWNER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Owner's Initials

The waivers and releases by Owner contained in this Section 11 shall survive the disbursement of the Loan Amount, the payment of the Assessment in full, the transfer or sale of the Property by Owner, and the termination of this Contract.

Section 12. Further Assurances.

Owner shall execute any further documents or instruments consistent with the terms of this Contract, including documents and instruments in recordable form, as City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Contract and disbursing the Loan Amount.

Section 13. Events of Default.

(a) Subject to the further provisions of this Section 13, the failure of any representation or warranty of Owner contained herein to be correct in all material respects, or the failure or delay by Owner to perform any of its obligations under the terms or provisions of the Contract Documents, other than with respect to the payment of the Assessment, shall constitute a non-monetary default hereunder (“Default”). Owner must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, but in any event, within the time set forth in Section 13(b) below.

(b) If a Default occurs, prior to exercising any remedies under the Contract Documents or the Act, City shall give Owner notice of such Default. If the Default is reasonably capable of being cured within thirty (30) days, Owner shall have such period to effect a cure prior to the exercise of remedies by City under the Contract Documents or the Act. If the Default is such that it is reasonably capable of being cured, but not within such thirty (30) day period, and Owner (i) initiates corrective action within such thirty (30) day period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Owner shall have such additional time as is reasonably necessary to cure the Default prior to exercise of any remedies by City. However, in no event shall City be precluded from exercising its remedies if its security becomes

or is about to become materially jeopardized by any failure to cure a Default, or if the Default is not cured within one hundred and twenty (120) days after the first notice of Default is given.

(c) Subject to the provisions of paragraph (b) above, if any Default occurs City may exercise any or all rights and remedies available to it under applicable law, at equity, or as otherwise provided herein. Upon the election of City, if there has been no disbursement of the Loan Amount, this Contract shall terminate and, except as otherwise expressly provided herein, the parties have no further obligations or rights hereunder.

(d) Subject to the provisions of Section 17 hereof, any and all costs and expenses incurred by City in pursuing its remedies hereunder shall be additional indebtedness of Owner to City hereunder.

(e) Except as otherwise expressly stated in this Contract or as otherwise provided by applicable law, the rights and remedies shall not preclude exercise by City, at the same time or different times, of any other rights or remedies for the same Default or any other Default. No failure or delay by City in asserting any of its rights and remedies as to any Default shall operate as a waiver of any Default or of any such rights or remedies, or deprive City of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(f) Performance of the covenants and conditions imposed upon Owner hereunder with respect to the commencement and completion of the Work shall be excused while and to the extent that, Owner is prevented from complying therewith by war, riots, strikes, lockouts, action of the elements, accidents, or acts of God beyond the reasonable control of Owner; provided, however, that such event is not caused by the fault, negligent or misconduct of Owner; and provided, further, as soon as the cause or event preventing compliance is removed or ceases to exist the obligations shall be restored to full force and effect and Owner shall immediately resume compliance therewith and performance thereof.

(g) Remedies with respect to the nonpayment of the Assessment or other amounts payable by Owner hereunder are governed by the provisions of Section 2 hereof.

Section 14. Compliance with Local, State and Federal Laws.

Owner shall perform the Work, or cause the Work to be performed, in conformity with all applicable laws, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards. Owner agrees to indemnify, defend and hold the City Parties harmless from and against any cost, expense, claim, charge or liability relating to or arising directly or indirectly from any breach or failure of Owner or its contractor(s) or agents to comply with such laws, rules or regulations. The indemnification obligations described in this Section 14 shall survive the disbursement of the Loan Amount, the payment of the Assessment in full, the discharge of the lien, and the termination of this Contract.

Section 15. Severability.

Each and every provision of this Contract is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Contract or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and shall be enforced to the extent permitted by law.

Section 16. Notices.

All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal delivery (by recognized courier service or otherwise). Notices shall be considered given upon the earlier of (a) personal delivery or (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party thereafter be given as demanded in that notice:

To City: City of Yucaipa
 34272 Yucaipa Blvd.
 Yucaipa, CA 92399
 Attention: [EIP Administrator]

To Owner: _____

 Attention: _____

Section 17. Attorney's Fees and Costs.

In the event that any action is instituted to enforce payment or performance under this Contract, the parties agree that the non-prevailing party shall be responsible for and shall pay all costs and all attorneys' fees incurred by the prevailing party in enforcing this Contract.

Section 18. No Waiver.

No disbursement of the Loan Amount based upon inadequate or incorrect information shall constitute a waiver of the right of City to receive a refund thereof from Owner.

Section 19. Governing Law.

This Contract shall be governed by the laws of the State of California. Any legal action brought under this Contract must be instituted in the Superior Court of the County of San Bernardino, State of California, or in an appropriate municipal court in that County or in the United States District Court for the Central District of California.

Section 20. Amendment of Contract.

No modification, rescission, waiver, release or amendment of any provision of this Contract shall be made except by a written agreement executed by Owner and City.

Section 21. City May Assign; Role of City.

City, at its option, may (i) assign any or all of its rights and obligations under this Contract, and (ii) pledge and assign its right to receive the Assessment and the Annual Administrative Assessment, and any other payments due to City hereunder, without obtaining consent from Owner.

Section 22. Owner Assignment Prohibited.

In no event shall Owner assign or transfer any portion of this Contract or Owner's rights or obligations under the Contract without the prior express written consent of City, which consent may be granted or withheld in the sole and absolute discretion of the City.

Section 23. Relationship of Owner and City.

The relationship of Owner and City pursuant to this Contract is that of debtor and creditor and shall not be or be construed to be a joint venture, equity venture, partnership, or other relationship.

Section 24. General.

Time is of the essence of this Contract and of each and every provision hereof. This Contract, together with the other Contract Documents, constitutes the entire agreement between the parties hereto, and there shall be no other agreement regarding the subject matter thereof unless signed in writing by the part to be charged. If there is more than one "Owner," the obligations hereunder of all Owners shall be joint and several.

Section 25. Counterparts.

This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 26. Special Termination.

Notwithstanding anything to the contrary contained herein, this Contract shall terminate and be of no further force or effect if Owner has submitted to the EIP Administrator a notice of its decision to cancel this transaction on or prior to the date and time described in the Notice of Right to Cancel which was delivered to Owner upon its execution of this Contract.

Section 27. No Third Party Beneficiary Rights.

This Contract is entered into for the sole benefit of Owner and City and, subject to the provisions of Sections 10, 11 and 21, no other parties are intended to be direct or incidental beneficiaries of this Contract and no third party shall have any right in, under or to this Contract.

IN WITNESS WHEREOF, Owner and City have entered into this Contract as of the date and year first above written.

OWNER:

Date of Execution by Owner:

_____, 200__

CITY:

CITY OF YUCAIPA, a
municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

STATE OF CALIFORNIA }ss.

COUNTY OF _____ }

On _____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

STATE OF CALIFORNIA }ss.

COUNTY OF _____ }

On _____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

EXHIBIT "A"

[ATTACH COPY OF EXECUTED AND APPROVED APPLICATION]

EXHIBIT "B"

DESCRIPTION OF THE PROPERTY

EXHIBIT “C”
NOTICE OF ASSESSMENT

[to be provided]

EXHIBIT “D”

**SCHEDULE OF ASSESSMENT INSTALLMENTS, INTEREST THEREON, [AND THE
MAXIMUM ADMINISTRATIVE ASSESSMENT]**

[to be provided]