

## **Agreement to Provide Planning Services Between the County of Santa Barbara and the City of Carpinteria**

**THIS AGREEMENT** is made this 16th day of March, 2010, by and between the City of Carpinteria, an incorporated city (hereafter CITY) and the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY), wherein COUNTY agrees to provide and CITY agrees to pay for the services specified in the exhibits attached hereto and incorporated by reference.

**WHEREAS**, City has requested COUNTY to provide Energy planning services to CITY, as set forth more fully in the attached exhibits; and

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** The designated representatives for CITY and COUNTY shall be set forth in the exhibits hereto. The listed representatives in each exhibit shall be for the purposes of administration of the services in that exhibit only. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered to the contact parties specified in each exhibit. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

### **3. SCOPE OF SERVICES.**

A. COUNTY agrees to provide Energy planning services to CITY in accordance with Exhibit A attached hereto and incorporated herein by this reference. Additional services may be contracted for by the amendment of this paragraph to incorporate additional Exhibits by reference.

B. Both parties acknowledge their continuing need for separate legal advice as to the programs and projects to be administered hereunder. City shall consult with counsel as required to ensure that these programs and projects meet City's needs, protect City's interests and comply with applicable laws. CITY shall be solely responsible for the legal work associated with the interpretation and prosecution of its ordinances, and defense of their content and application.

C. City shall undertake all processes required by law for the award of contracts for environmental documents and other services including but not limited to public bidding, and evaluation of consultants' qualification and competence, and shall advise County of any actions required to comply with the law or protect City's interests. City acknowledges that this agreement does not obligate County to provide any legal advice whatsoever to City.

D. City acknowledges that it has requested that County provide no legal services to CITY and that when the Energy Division acting in their capacity as contractors to the CITY requires legal advice or approval of documents, it shall be the responsibility of CITY to provide that advice. Any need for consultation or rendering of opinions by the City Attorney will be arranged through the

City Manager and COUNTY shall not be liable for any loss or damages which may accrue as a result of delay or failure in communication, whether between CITY and COUNTY or otherwise.

E. No obligation under this Agreement shall require performance of service by either party's personnel in violation of State law, including the Political Reform Act.

#### 4. **TERM**

A. **Basic Term.** The term of this agreement shall commence February 17, 2010 and continue for a term of five (5) years, expiring February 16, 2015, unless sooner terminated pursuant to paragraph 10, below, or extended as described in Paragraph 4.B.

B. **Extended Term.** The term of this Agreement may be extended for successive periods if the legislative body of both parties determines to so extend the term and written notice of such renewal is given to the other party at least three (3) months prior to expiration. The extended terms shall be referred to as First Extended Term, Second Extended Term, et cetera.

5. **COMPENSATION OF COUNTY.** COUNTY shall be paid for performance under this Agreement in accordance with the terms of the exhibit attached hereto and incorporated herein by reference.

6. **INDEMNIFICATION AND INSURANCE.** CITY and COUNTY agree to defend, indemnify and save harmless the other party and to procure and maintain insurance in accordance with the provisions of **Exhibit "B,"** attached hereto and incorporated herein by reference.

7. **INDEPENDENT CONTRACTOR.** It is expressly understood between the parties to this contract that no employer/employee relationship is intended; the relationship of COUNTY to CITY being that of an independent contractor, and CITY and COUNTY each retain sole and independent liability for the actions of its employees.

8. **NONEXCLUSIVE AGREEMENT.** CITY acknowledges that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with other Santa Barbara County cities and/or other agencies to provide the same or similar services.

9. **ASSIGNMENT.** Neither CITY nor COUNTY shall assign any of its rights or transfer any of its obligations under this Agreement without the prior written consent of the other party and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

10. **TERMINATION.** This Agreement may be terminated as follows:

A. **By COUNTY.** COUNTY may terminate this Agreement in whole or in part at any time, whether for COUNTY'S convenience or because of the failure of CITY to fulfill the obligations as set forth herein.

1. For Convenience. COUNTY may terminate this Agreement upon six (6) months (182 days) written notice. Upon the date of termination, COUNTY shall cease work and notify CITY as to the status of its performance.

2. For Cause. Should COUNTY believe that CITY has defaulted in the performance of this Agreement or materially breached any of its provisions, COUNTY may notify CITY of such default or material breach. CITY shall have thirty (30) days to correct or amend such default or material breach, and if CITY fails to do so, COUNTY may, at COUNTY'S sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CITY.

B. By CITY. CITY may terminate this Agreement in whole or in part at any time, whether for CITY'S convenience or because of the failure of COUNTY to fulfill the obligations as set forth herein.

1. For Convenience. CITY may terminate this Agreement upon six (6) months written notice. COUNTY shall be entitled to payment for services rendered through the termination date including any prorated amount of compensation due hereunder less payments, if any, previously made.

2. For Cause. Should CITY believe that the COUNTY has defaulted in the performance of this Agreement or materially breached any of its provisions, CITY may notify COUNTY of such default or material breach. COUNTY shall have thirty (30) days to correct or amend such default or material breach, and if COUNTY fails to do so, CITY may, at CITY'S sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CITY.

Notwithstanding any other payment provision of this Agreement, CITY shall pay COUNTY for service performed to the date of termination.

11. **SECTION HEADINGS.** The section headings, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

12. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY or CITY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

14. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY or CITY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY or CITY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY or CITY.

15. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement, along with its several exhibits and other documents incorporated herein by

reference, contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

16. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

17. **COMPLIANCE WITH LAW.** COUNTY and CITY shall, each at its sole cost and expense, comply with all County, State and Federal ordinances, regulations and / or statutes now in force or which may hereafter be in force with regard to the Agreement. The judgment of any court of competent jurisdiction, or the admission of CITY or COUNTY in any action or proceeding against CITY or COUNTY, whether CITY or COUNTY is a party thereto or not, that CITY or COUNTY has violated any such ordinance, regulation and / or statute, shall be conclusive of the fact as between CITY and COUNTY.

18. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California.

19. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

20. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CITY and COUNTY each hereby warrant that they shall not have breached the terms or conditions of any other contract or agreement to which CITY or COUNTY may be obligated, which breach would have a material effect hereon.

21. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in this Agreement. In the event of conflict between the provisions contained in the numbered sections of this Agreement, Exhibits and subsequent contract Amendments, the most current contract Amendment shall prevail over the provisions, Exhibits and/or prior Amendments.

22. **REPRESENTATION BY COUNSEL** The parties hereto acknowledge that both have been represented by counsel and have participated in the drafting of this agreement and that therefore no ambiguity or inconsistency in the wording of this agreement shall be construed to the detriment of either party because of their status as a drafter of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove written.

COUNTY OF SANTA BARBARA

CITY OF CARPINTERIA

By: \_\_\_\_\_  
JANET WOLF  
Chair, Board of Supervisors

By: Gregg A. Carty  
GREGG CARTY  
Mayor

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

JAYNE DIAZ  
CITY CLERK

By: \_\_\_\_\_  
Deputy  
County of Santa Barbara

By: Jayne Diaz  
Clerk  
City of Carpinteria

APPROVED AS TO FORM:  
DENNIS MARSHALL  
COUNTY COUNSEL

PETER N. BROWN  
CITY ATTORNEY

By: William M. Wilson  
Deputy County Counsel  
County of Santa Barbara

By: P. N. Brown  
City Attorney  
City of Carpinteria

APPROVED AS TO FORM:  
RISK MANAGER

By: Raymond  
Risk Manager  
County of Santa Barbara

APPROVED AS TO FORM:  
ROBERT GEIS  
COUNTY AUDITOR-CONTROLLER

By: Jim Geis  
Auditor-Controller  
County of Santa Barbara

## **EXHIBIT A**

1. **Designated Representative.** County Director of Planning and Development, or his/her designee, at (805) 568-2000 is the representative of the Santa Barbara County Planning and Development Department (hereafter "COUNTY P&D") and will administer this AGREEMENT for and on behalf of COUNTY P&D. City Manager, or his/her designee, at (805) 684-5405, is the authorized representative for CITY and will administer this AGREEMENT for and on behalf of CITY. Changes in designated representatives shall be made only after advance written notice to the other party.
2. **Notices.** Any notice or consent required or permitted to be given under this AGREEMENT shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

**To COUNTY P&D**

Director  
Planning and Development  
123 E. Anapamu Street  
Santa Barbara, CA 93101

**To CITY**

City Manager  
City of Carpinteria  
5775 Carpinteria Avenue  
Carpinteria, CA 93013

3. **Standard Services.**

A. **Service.** COUNTY P&D shall deliver Energy Permitting and Planning services for oil and gas development, production, storage, transportation and processing related to onshore and offshore oil and gas operations. These services include: staff support for permitting and compliance for the Carpinteria Oil and Gas Plant Facility, for any other energy facility operated therein, for any other future energy project in the City's permit jurisdiction, for any demolition of energy facilities or reclamation of sites where energy facilities are or once were located, general code and permit compliance efforts, for briefings on leasing and for response to incidents as needed within the incorporated area of the CITY. Services also include participation on the County's Systems Safety Reliability Review Committee ("SSRRC") for safety review of projects for benefit of CITY as needed. For any City projects, SSRRC's role shall be solely one of advising and making recommendations to the appropriate City official, who shall make any and all decisions on the project.

B. **Compensation of County.** COUNTY P&D will be reimbursed by CITY for all expenses incurred for providing the services described above. COUNTY P&D will invoice CITY directly for all services on a monthly basis.

4. **General Provisions.**

A. **Initiation and Administration of Services.** City shall have authority to determine the scheduling and extent of services to be provided pursuant to this Agreement. However, COUNTY reserves its right to decline to provide specific services for cause, in which case it shall provide CITY with written notice within ten (10) working days of the City's request for said services. County shall provide City with an estimate of time and cost upon request to assist in the permit process and/or other services as described herein.

B. **Supervision.** Subject to the terms of this AGREEMENT, COUNTY P&D shall retain exclusive authority over the activities of its personnel and contractors working within the CITY. The planning, organization, scheduling, direction, supervision, standards of performance, and disciplining of COUNTY P&D personnel, and all other related matter incidental to the delivery of services to the CITY, shall be as determined by COUNTY P&D. COUNTY P&D shall give its professional attention and supervision to the fulfillment of all provisions of this AGREEMENT by its personnel and shall be responsible for the timely performance of the services required by this AGREEMENT.

C. **Mutual Cooperation.** To facilitate efficient and effective delivery of services under this AGREEMENT, COUNTY P&D shall have full cooperation and assistance from CITY, its officers, agents and employees, and CITY shall likewise have full cooperation and assistance from COUNTY P&D, its officers, agents and employees.

D. **Staffing.** Except as otherwise agreed to by the parties or otherwise provided for in this AGREEMENT, estimated staffing for the provision of services rendered under this AGREEMENT for the term of this AGREEMENT shall be as set forth in the following table:

STAFFING SCHEDULE		
Position	Approximate FTE	Approximate Hourly Rate
Deputy Director	0.05	\$90.14
Energy Specialist	0.15	\$87.30
Planner III	0.25	\$76.68
Total	0.45	

In addition to the hourly rate, a percentage of indirect and overhead costs will be billed based on the number of hours worked. Staffing levels are estimates based on submitted and expected project applications and workload. Actual staffing levels will vary based on actual hours worked. Time is billed for actual hours worked. Hourly rates may be adjusted by COUNTY provided written notice is given to CITY a minimum of thirty (30) days in advance of any such adjustment becoming effective.

E. **Personnel.**

1) **Status of Employees.** All persons employed by COUNTY P&D in the performance of services and functions for CITY pursuant to this AGREEMENT shall remain COUNTY P&D employees. Except as otherwise provided herein, no person employed by COUNTY P&D shall have any rights to pension, civil services, or other status or rights from CITY by virtue of this AGREEMENT and no person employed by CITY shall have any rights to pension, civil services, or other status or rights from COUNTY P&D by virtue of this AGREEMENT.

2) **No CITY Liability for Compensation.** CITY shall not assume any liability for the direct payment of any salaries, wages or other compensation to any COUNTY P&D personnel performing services hereunder for CITY. Except as otherwise specified herein, CITY shall not be liable for Workers' Compensation claims or indemnity to any COUNTY P&D employee for injury or illness arising out of his or her employment with COUNTY P&D.

3) Orientation. COUNTY P&D shall provide personnel assigned to CITY, pursuant to the terms of this AGREEMENT, with appropriate orientation regarding the special needs and circumstances of CITY.

F. **Maintenance of Records.** COUNTY P&D shall keep reasonably detailed records showing the hours and classifications of the employees involved in performing services under this AGREEMENT. Such records shall be maintained by COUNTY P&D pursuant to COUNTY P&D practice and as required by law, and shall be available to CITY for inspection during COUNTY P&D regular business hours and after reasonable prior notice to COUNTY P&D. Copies of such records shall be provided to CITY upon request by authorized CITY staff.

G. **Final Decision-Making Responsibility.** The final responsibility and final Authority on all decisions concerning any project, for which CITY is the authority, or lead agency for environmental review purposes, lies in the sole discretion of CITY.

H. **COUNTY P&D Duty to CITY.** COUNTY P&D understands and agrees that its responsibility to provide all services, tasks and duties under this AGREEMENT is owed solely to CITY and that its accountability under this AGREEMENT shall likewise be solely to CITY and not to any third party.

I. **Reports, Maps and Documents.** All reports, studies, exhibits, maps, agreements, data and other work, materials and documents prepared or used to prepare COUNTY P&D's work product under this AGREEMENT shall be the property of CITY and shall be turned over to CITY upon completion or termination of this AGREEMENT. CITY may use, duplicate, disclose and/or disseminate, in whole or in part, in any manner it deems appropriate, COUNTY P&D's work product.

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## **Exhibit B**

*The purpose of Exhibit B is to address liability & insurance issues.*

### **1. Indemnification**

A. Indemnification by CITY. CITY shall indemnify, defend and hold COUNTY and COUNTY'S agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or consultation provisions, including those circumstances where COUNTY enforces CITY ordinances that are deemed or declared unconstitutional or other cause which arises out of, relates to or results from the activities or omissions, negligent or otherwise, under this Agreement of CITY, and CITY'S officers, agents and employees.

B. Indemnification by County. Except as is provided in Paragraph 1(A) above, COUNTY shall indemnify, defend and hold CITY, and CITY's agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorney's fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arises out of, relates to or results from the activities or omissions, negligent or otherwise, under this Agreement of COUNTY, and COUNTY'S officers, agents and employees.

C. No Agency. Except as otherwise specified herein, for the purposes of this section, CITY shall not be deemed to be COUNTY'S agent and COUNTY shall not be deemed to be CITY'S agent.

D. Notification. Each party shall give the other prompt notification when it first learns of an incident or occurrence covered, or likely to be covered, under the terms of this section, as well as prompt notification if a claim is made or suit is brought against a party based on an incident or occurrence covered, or likely to be covered, by the terms hereof.

E. Continuing Obligation. To the extent that COUNTY has agreed to indemnify, defend and hold harmless CITY, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during this Agreement. To the extent that CITY has agreed to indemnify, defend and hold harmless COUNTY, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during the term of this Agreement.

F. Insurance. Either party may purchase commercial insurance to cover its exposure hereunder, in whole or in part.

### **2. Insurance**

A. Workers' Compensation. COUNTY warrants that it is permissibly self-insured for workers' compensation coverage and agrees that its employees providing services to CITY

pursuant to this Agreement will be covered by COUNTY's self-insurance program for all injuries arising out of or occurring in the course and scope of their employment. COUNTY reserves the right at its sole discretion to purchase a workers' Compensation policy at any time during the term of this Agreement.

B. Liability. COUNTY warrants that it is self-insured for liability and property damage claims up to its current self-insured retention and that it purchases excess liability insurance for claims in excess of that amount. CITY shall maintain insurance against claims for liability and property damage in an amount of not less than two million dollars (\$2,000,000), combined single limit coverage. COUNTY shall be named as an additional insured on any liability policy of CITY. The parties shall maintain such insurance coverage in full force and effect during the term of this Agreement.

C. Proof of Insurance. Upon request by either party, the other party shall provide evidence of the above insurance coverage, listing the other party as an additional insured. Each such insurance coverage policy shall provide that such policy may not be cancelled or changed except after at least thirty (30) days prior written notice to the other party. The foregoing insurance coverage shall not limit the indemnification obligations for the parties as set forth in the above listed indemnification, and the failure to maintain said coverage shall constitute a material breach of this Agreement.

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