

**Cooperative Agreement to
Implement a Contractual Assessment Program
in the County of Santa Barbara**

This Agreement is made by and between the County of Santa Barbara ("County") and the City of Santa Barbara ("City"); the County and the City are also referred to hereafter as the "Parties".

RECITALS

A. The County and the City are committed to development of renewable energy sources and energy efficiency and water efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change.

B. Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Act") authorizes cities and counties to assist property owners in financing the cost of installing distributed generation renewable energy sources and energy and water efficient improvements that are permanently fixed to their property through a contractual assessment program.

C. On December 1, 2009, the Board of Supervisors of the County directed County staff to implement a municipal energy finance program (the "Program") pursuant to the Act.

D. The City has, by its Resolution No. 10-012, adopted on March 9, 2010, approved a proposed resolution of intention of the Board of Supervisors to establish the Program and consented to the inclusion of properties in the incorporated area of the City in the Program.

E. The City has reviewed the County's draft Administrative Guidelines for the Program, which will serve as the report required by the Act, and which outlines the policies, initial list of eligible improvements, administration and financing plan for the Program.

F. The Parties agree that property owners in the incorporated territory of the City should have the opportunity to participate in the Program under the terms and conditions contained in this Agreement.

G. Any renewable energy credits associated with the improvements financed through the Program will be retained and used at the discretion of the property owner.

H. The City will participate in the Program with the agreement that the County will hold the carbon credits for the benefit of the Program and future use, transfer, or sale of any carbon credits generated from Program improvements, in the boundaries of the City of Santa Barbara, will be determined by mutual agreement of the City and County.

I. The City will require a water check-up as part of water efficiency projects proposed for properties located in the incorporated territory of the City.

J. The City will require compliance with the City of Santa Barbara Solar Design Guidelines for any solar projects proposed in the City's incorporated territory.

K. The Parties understand that the City may have preferences that meet the needs of the owners of property in the incorporated territory of the City. The Parties will work together to consider those preferences.

The Parties agree as follows:

1. RECITALS.

The above recitals are true and correct.

2. COMMUNICATION/DESIGNATED REPRESENTATIVES.

The persons identified below as the Designated Representative shall, upon execution of this Agreement, have authority to grant discretionary approvals identified in this Agreement. Except as otherwise specifically provided in this Agreement, any notice, submittal, or communication required or permitted to be served on a party, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

County	
Project Manager:	David Matson
	Housing and Community Development Director
Phone:	(805) 568-2068
Fax:	(805) 568-2289
Email:	dmatson@co.santa-barbara.ca.us
Designated Representative:	
City	
Project Manager:	Nina Johnson
	Assistant to the City Administrator
Phone:	(805) 564-5307
Fax:	(805) 897- 1993
Email:	njohnson@SantaBarbaraCA.gov
Designated Representative:	Lori Pedersen, Administrative Analyst

3. COUNTY RESPONSIBILITIES.

A. Except as provided in paragraph B below, the County shall make the Program available to the owners of property in the incorporated territory of the City subject to the same terms and conditions applicable to property owners in the unincorporated area of the County.

B. If, at any time, the City wishes to request modifications to the Program for property owners in the incorporated territory of the City, the City shall so notify the County in writing and shall identify the modifications the City requests to be implemented within the incorporated territory of the City. The County shall evaluate such request within 60 days and shall notify the City in writing of the steps and conditions that would be necessary, if any, to implement the City's request. If the County concludes that the request is not feasible or is

detrimental to the Program, it may, after discussion with the City, deny the request but shall work with the City to attempt to otherwise address the City's desires.

4. CITY RESPONSIBILITIES.

A. The City agrees to process permits for all projects and improvements the installation of which are financed through the Program where a permit is required by the City; in instances where a permit is not required for the improvements to be financed under the Program, then the City agrees to establish a process for confirmation and sign-off by the City for such improvements financed through the Program that is reasonably acceptable to the County. The City shall charge its usual and customary fees for such permits or a flat fee for any confirmation and sign-off for improvements not requiring a permit. The City understands that the County intends to rely upon issuance of a final permit as evidence that the financed improvements have been installed by the property owner according to local building code requirements, or, where a permit is not required for such improvements, a sign-off by the City that the improvements are in place on the participating property. City staff will work with County staff to coordinate verification of installed improvements through agreed-upon measures, for example, random inspections.

B. The City agrees to make information about the Program that is provided to the City by the County available at appropriate locations in the City. The City agrees to work with the County to market the Program through such means as inserting information into the City's utility bills, linking to the Program's website from the City's website, and including information on the Program in community information bulletins.

5. ADDITIONAL REQUIREMENTS.

A. Amendment: Changes to this Agreement may be authorized only by written amendment to this Agreement, signed by the Parties.

B. No Waiver of Breach: The waiver by any party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any later breach of the same or any other term or promise contained in this Agreement.

C. Construction: To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The Parties covenant and agree that, in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

D. Making of Agreement: The Parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. The Parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

E. No Third-Party Beneficiaries: Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

F. Applicable Law and Forum: This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Santa Barbara.

G. Captions: The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

H. Merger: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by all parties.

I. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

J. Entire Agreement: This Agreement is the entire Agreement between the Parties.

6. EFFECTIVE DATE.

This Agreement shall become effective upon execution by the Parties.

7. TERMINATION.

Either Party may terminate its participation in this Agreement by giving one hundred eighty (180) days advance written notice to the other Party of its intent to terminate its participation in this Agreement. Termination shall not affect the validity of any contractual assessment agreement already entered into by the County with the owner of property within the incorporated area of the City.

8. COUNTERPART SIGNATURES.

This Agreement may be executed in counterpart and each of the executed counterparts shall have the same force and effect as an original instrument and as if all of the parties to the aggregate counterparts had signed the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.


CITY



By: _____
City Administrator

Authorized by Resolution No. 10-012

Date: March 16, 2010

Attest: 
City Clerk

COUNTY OF SANTA BARBARA

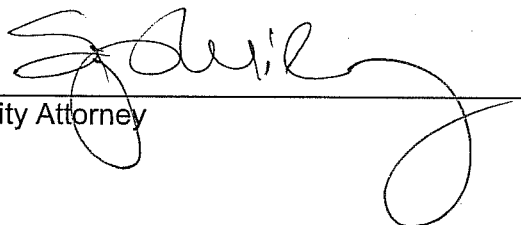
By: _____
Chair, Board of Supervisors

Date: _____

Attest:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

APPROVED AS TO FORM:
STEPHEN P. WILEY
CITY ATTORNEY

By: 
City Attorney

APPROVED AS TO FORM:
DENNIS A. MARSHALL
COUNTY COUNSEL

By: 
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 

