

## RESOLUTION NO. 2013-013

### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY APPROVING AND AUTHORIZING EXECUTION AND DELIVERY OF (1) A SETTLEMENT AGREEMENT AND GENERAL RELEASE BY AND AMONG THE AUTHORITY, B.D. CARNAHAN MANAGEMENT SERVICES, INC. AND BILL D. CARNAHAN; AND (2) AN EMPLOYMENT AGREEMENT BY AND BETWEEN THE AUTHORITY AND BILL D. CARNAHAN, ALL RELATED TO BILL D. CARNAHAN'S SERVICE AND EMPLOYMENT AS EXECUTIVE DIRECTOR OF THE AUTHORITY; AND AUTHORIZING OTHER ACTIONS NECESSARY AND APPROPRIATE TO GIVE EFFECT TO EACH OF THE AFORESAID AGREEMENTS.**

WHEREAS, the Southern California Public Power Authority ("the Authority") is a public entity duly organized and existing under the Joint Exercise of Powers Act (Cal. Govt. Code § 6500 et seq.) pursuant to a Joint Powers Agreement ("JPA") entered into by and among the Cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside and Vernon, and the Imperial Irrigation District (collectively, "Members"), with authority to engage in various activities supportive of the Members' electric utilities; and

WHEREAS, pursuant to a Management Consulting Agreement dated March 13, 2000 ("Consulting Agreement"), between the Authority and B.D. Carnahan Management Services, Inc. ("BDCMS"), as well as pursuant to Resolution No. 2000-9 of the Authority's Board of Directors ("Board"), Bill D. Carnahan ("Carnahan") has served as the Executive Director and Treasurer/Auditor of the Authority as an "independent contractor," which as amended has continuously remained in effect through the date hereof; and

WHEREAS, immediately prior to the effective date of the Consulting Agreement, Carnahan retired from his position with the City of Riverside as its Public Utilities Director and began receiving a monthly retirement allowance from the California Public Employees Retirement System ("CalPERS") as a CalPERS annuitant; and

WHEREAS, at all relevant times, the Authority itself had a contract with CalPERS under which the Authority provided retirement benefits to its employees, but because Carnahan was treated as an independent contractor rather than as an employee of the Authority he was not enrolled as a member of CalPERS and no member or employer contributions were made to CalPERS on account of payments made to BDCMS for services rendered; and

WHEREAS, the Authority, the Board, BDCMS and Carnahan all relied on expert advice that indicated the aforesaid arrangement was legally permissible; and

WHEREAS, CalPERS commenced a Public Agency Review (“Audit”) of the Authority in 2010 which concluded that due to the nature of the duties performed by Carnahan over the entire term of the Consulting Agreement, he should have been classified as an employee and enrolled as a member of CalPERS instead of being classified as an independent contractor (and not enrolled in CalPERS); and

WHEREAS, based on its Audit conclusions, on January 25, 2013, CalPERS informed Carnahan and SCPPA that Carnahan must be reinstated to membership in CalPERS retroactive to March 13, 2000, that Carnahan must henceforth be classified by the Authority as an employee and his payroll earnings be reported to CalPERS, that CalPERS be reimbursed the amount of retirement benefits paid to Carnahan and to Gwen Carnahan, his former wife, since Carnahan’s retirement from employment with the City of Riverside, and that CalPERS be paid all member and employer contributions that should have been made from and after March 13, 2000; and

WHEREAS, pursuant to previous action of the Board, the Board’s Executive Committee has investigated this matter and has recommended that it is in the best interests of the Authority to terminate the Consulting Agreement and enter into an Employment Agreement with Carnahan under which Carnahan would serve as Executive Director as an employee of the Authority; and

WHEREAS, provisions for terminating the Consulting Agreement and authorizing an Employment Agreement are set forth in a Settlement Agreement and General Release (“Settlement Agreement”), a copy of which has been presented to the Board prior to adoption of this Resolution; and

WHEREAS, the Executive Committee recommends approval of the aforesaid Settlement Agreement and General Release, which BDCMS and Carnahan have indicated is acceptable to them.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

1. The terms and conditions of the Settlement Agreement and the Employment Agreement are hereby approved in substantial form.

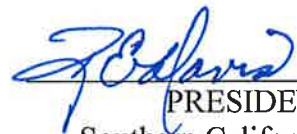
2. Each of the President, Vice President and Secretary, is hereby authorized to execute and deliver the Settlement Agreement and the Employment Agreement referenced above in the form as shall best carry forth the interests of the Authority, as well as to execute and deliver other documents or instruments which may be necessary to carry out the intent of this Resolution, and to do and cause to be done any and all acts and things deemed necessary or advisable for carrying out the transactions contemplated by this Resolution (including, but not limited to, making such changes to the agreements, documents and instruments referred to in this Resolution if such changes are determined by the President, Vice President or Secretary to be necessary or advisable).

3. To the fullest extent not inconsistent with this Resolution and the matters addressed herein, Resolution No. 2000-9 shall remain in full force and effect. The appointment

of Carnahan as Executive Director and Treasurer/Auditor of the Authority provided for in said Resolution No. 2000-9 shall continue to apply to him as though without interruption for so long as he remains employed by the Authority in such capacities, and Carnahan shall continue to have the same authority and perform the duties and responsibilities of those positions delegated to him upon his original appointment thereto along with such additional duties and responsibilities as may have been delegated to him over the years by the Board.

3. This resolution shall be effective immediately.

THE FOREGOING RESOLUTION is approved and adopted by the Authority this 21th day of March 21, 2013.

  
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PRESIDENT  
Southern California Public  
Power Authority

ATTEST:

  
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ASSISTANT SECRETARY  
Southern California Public  
Power Authority