

## **ORDINANCE NO. 1480**

### **AN ORDINANCE OF THE COUNCIL OF THE CITY OF BANNING AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF RENEWABLE ENERGY FROM THE ASTORIA 2 SOLAR PROJECT THROUGH A POWER SALES AGREEMENT WITH THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**WHEREAS**, pursuant to the provisions relating to the joint exercise of powers found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, as amended (the “Joint Powers Act”), the City of Banning (the “City”) and certain other public bodies (collectively, the “Members”) have entered into a Joint Powers Agreement, as amended (the “Joint Powers Agreement”), which creates the Southern California Public Power Authority (“SCPPA”), a public entity separate and apart from the Members; and

**WHEREAS**, pursuant to the terms of the Joint Powers Act and the Joint Powers Agreement, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission on behalf of its Members, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, operate and administer projects involving systems, methodologies and programs for the acquisition, supply, procurement and delivery of secure, long-term reliable supplies of renewable electric energy and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, constructed, operated, maintained, and administered and to provide by agreement for the performance and carrying out of any such activities; and

**WHEREAS**, the City has need for a long-term source of renewable energy to satisfy the City’s renewable portfolio standard requirements and replace energy lost from the divestiture of San Juan Unit 3 in 2017, and desires to ensure the reliable delivery of solar energy to fulfill a portion of these needs; and

**WHEREAS**, SCPPA and certain of its Members, to wit, currently the Cities of Azusa, Banning, Colton, and Vernon, as well as non-SCPPA agencies, including the Cities of Corona, Lodi, Moreno Valley and Rancho Cucamonga, and the Power and Water Resources Pooling Authority (collectively, the “Project Participants”) have investigated the feasibility of the purchase of solar electric capacity and energy and the acquisition and development of solar energy and related facilities in order to provide a long-term supply of renewable energy to meet a portion of the electrical generation needs of the Project Participants while also helping them meet policy and regulatory goals for increasing the amount of electricity obtained from renewable energy resources; and

**WHEREAS**, SCPPA and the Project Participants have identified a solar energy facility known as RE Astoria 2 Solar Project, which is being developed by RE Astoria 2 Solar LLC (“RE Astoria 2”), a Delaware limited liability company, an affiliate of Recurrent Energy LLC, also a Delaware limited liability company. The Project is to have a nameplate capacity of 75 MW and is to be located in Kern County, California. The Project will include the siting, construction and installation of the solar facility. SCPPA desires to acquire a major portion of the electric capacity and energy of the Project from RE Astoria 2, and each SCPPA Member desires to obtain electric capacity and associated energy and environmental attributes of the Project from

SCPPA pursuant to a RE Astoria 2 Solar Project Power Sales Agreement between SCPPA and such SCPPA Member (the “Power Sales Agreement”); and

**WHEREAS**, SCPPA, and the non-SCPPA agency project participants, propose to enter into a Power Purchase Agreement with RE Astoria 2 (the “Power Purchase Agreement”) to provide, among other things, for the purchase of approximately 75 MWs of capacity and associated energy and environmental attributes from the Project. The form of the Power Purchase Agreement is attached as an Appendix to the Power Sales Agreement; and

**WHEREAS**, the Power Purchase Agreement also provides an Option Agreement providing the Project Participants with an option to purchase the Project; and

**WHEREAS**, there has been submitted to this Council the form of the Power Sales Agreement by and between SCPPA and the City of Banning for the purchase of 8 MWs of Project capacity and associated energy, including as an Appendix thereto, the form of the Power Purchase Agreement with the form of the Project Purchase Option Agreement, Joint Participation Agreement, Land Option Agreement, and Land Lease Agreement (the “Banning Power Sales Agreement”); and

**WHEREAS**, the Council of the City of Banning finds and determines that it is in the best interests of the City and its residents to purchase Project capacity and the associated energy and environmental attributes from SCPPA pursuant to the Banning Power Sales Agreement.

**NOW THEREFORE**, the City Council of the City of Banning does ordain as follows:

**SECTION 1.** The Council hereby approves the Banning Power Sales Agreement, including all Appendices and attachments thereto, between the City and SCPPA with respect to the RE Astoria 2 Solar Project, in substantially the form submitted to the Council, attached herewith as Exhibit “A”.

**SECTION 2.** The Mayor is hereby authorized to execute and deliver the Banning Power Sales Agreement, with such changes, insertions and omissions as shall be approved by the City Manager, and with approval of the City Attorney as to form. The City Clerk is hereby authorized to attest to such execution.

**SECTION 3.** The City Manager, or his/her designee, is authorized to execute and deliver any and all other documents and instruments and to do and cause to be done any and all acts and things necessary or advisable for carrying out the responsibilities and transactions under the Banning Power Sales Agreement as contemplated by this Ordinance.

**SECTION 4.** If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this City Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid portion thereof had been deleted.

**SECTION 5.** Pursuant to Section 54241 of the Government Code of the State of California, this Ordinance is subject to the provisions for referendum applicable to the City.

SECTION 6. This City Council shall certify to the enactment of this Ordinance and shall cause this Ordinance to be published in accordance with Section 54242 of the Government Code of the State of California.

SECTION 7. Unless a petition shall be filed requiring that this Ordinance be submitted to referendum, thirty (30) days from and after its enactment, this Ordinance shall take effect and be in full force, in the manner provided by law.

**PASSED, APPROVED AND ADOPTED** this 24<sup>th</sup> day of June, 2014.

\_\_\_\_\_  
Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire and Wydner, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1480 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 10<sup>th</sup> day of June, 2014, and was duly adopted at a regular meeting of said City Council on the 24<sup>th</sup> day of June, 2014, by the following vote, to wit:

AYES: Councilmembers Miller, Peterson, Welch, Westholder, Mayor Franklin

NOES: None

ABSENT: None

ABSTAIN: None

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Marie A. Calderon, City Clerk  
City of Banning, California

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## **Exhibit “A”**