

**AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA**

January 25, 2011
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Invocation –
- Pledge of Allegiance
- Roll Call – Councilmembers Botts, Franklin, Machisic, Robinson, Mayor Hanna

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.)

CORRESPONDENCE: Items received under this category may be received and filed or referred to staff for future research or a future agenda.

PRESENTATIONS:

1. Recognition of Banning Senior Center from Riverside County **(ORAL)**
Office on Aging – Michele Wilham, Office on Aging Deputy Director
and Luella Thornton, Advisory Council Member

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.

2.	Spark of Love Toy Drive Presentation	(ORAL)
3.	Administrative Offices of the Courts – Update on Construction	(ORAL)

APPOINTMENTS:

1.	Appointment of Two Planning Commission Members	1
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IV. CONSENT ITEMS

(The following items have been recommended for approval and will be acted upon simultaneously, unless any member of the City Council wishes to remove an item for separate consideration.)

Motion: That the City Council approve Consent Item 1 through 5

Items to be pulled _____, _____, _____, _____ for discussion.

(Resolutions require a recorded majority vote of the total membership of the City Council)

1.	Approval of Minutes – Joint Meeting – 01/11/11	9
2.	Approval of Minutes – Regular Meeting – 01/11/11.	10
3.	Resolution No. 2011-04, Authorizing the Expenditure of Late Ambulance Penalty Fees for the Purchase of Emergency Medical and Rescue Equipment	34
4.	Approval of Accounts Payable and Payroll Warrants for Month of September 2010	38
5.	Approval of Accounts Payable and Payroll Warrants for Month of October 2010	41

- Open for Public Comments
- Make Motion

V. PUBLIC HEARINGS

(The Mayor/Chairman will ask for the staff report from the appropriate staff member. The City Council/Utility Board will comment, if necessary on the item. The Mayor/Chairman will open the public hearing for comments from the public. The Mayor/Chairman will close the public hearing. The matter will then be discussed by members of the City Council/Utility Board prior to taking action on the item.)

1.	Zone Text Amendment No. 10-97505: Standards and Guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune-Telling, Mobile Vending and Code Clean-Up.	
Staff Report		44
Recommendation: That the City Council a) Adopt a Negative Declaration in compliance with the California Environmental Quality Act Section 15000 et seq.; and b) Adopt Ordinance No. 1434, amending the “Zoning Ordinance” Standards and Guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune-Telling, Mobile Vending and Code Clean-Up.		

Mayor asks the City Clerk to read the title of Ordinance No. 1434:

"An Ordinance of the City Council of the City of Banning, California, Adopting An Initial Study/Negative Declaration and Approving Zoning Text Amendment No. 10-97505 to Adopt Development Standards and Guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune Telling, Mobile Vending, and Code Clean-Up.

Motion: I move to waive further reading of Ordinance No. 1434.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1434 pass its first reading.

2. Adopt Ordinance No. 1435, Authorizing the Execution of an Agreement For the Purchase of Renewable Energy from the La Paz Solar Tower Project Through a Power Sales Agreement With the Southern California Public Power Authority.

Staff Report 89

Recommendation: That the City Council adopt Ordinance No. 1435.

Mayor asks the City Clerk to read the title of Ordinance No. 1435:

"An Ordinance of the City Council of the City of Banning Authorizing the Execution of An Agreement for the Purchase of Renewable Energy From the La Paz Solar Tower Project Through a Power Sales Agreement With the Southern California Public Power Authority.

Motion: I move to waive further reading of Ordinance No. 1435.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1435 pass its first reading.

VI. REPORTS OF OFFICERS

1. Code Enforcement Program – Community Development Director (ORAL)

VII. ANNOUNCEMENTS/REPORTS (Upcoming Events/Other Items if any)

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

VIII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Schedule Meeting with Banning Library Board (*City Clerk – Check Dates*)
3. Update on Economic Development Plan
4. Review of Fees and Rates
5. Consideration of Speaker Cards
6. Annual Review of Pledge of Civility and Code of Conduct

IX. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 8 a.m. to 5 p.m.

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (909) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

CITY COUNCIL AGENDA REPORT OF OFFICERS

DATE: January 25, 2011

TO: Mayor and City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Appointment of Two Planning Commission Members

RECOMMENDATION

That the City Council appoint two Planning Commission members.

JUSTIFICATION

The Municipal Code Chapter 2.28 sets the duties, responsibilities, and terms of the Planning Commission. The Planning Commission consists of five (5) members. The term for two of the members – Commissioners Buddy Hawkins and Harold Barsh expires at the end of January 2011. In order to conduct City's Planning agency functions as delegated in the Municipal Code, the two members whose terms have expired must be appointed by the City Council.

BACKGROUND

Staff released solicitations to recruit interested citizens to serve on the Planning Commission on December 10, 2010 in the Record Gazette and via the internet. Commissioners Buddy Hawkins and Harold Barsh submitted their applications. Both of them have served faithfully on the Planning Commission. Commissioner Hawkins has served for 4 years. Commissioner Barsh has served for 14 1/2 years.

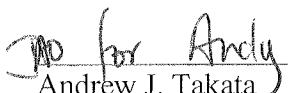
FISCAL REVIEW

There is no additional fiscal impact for staffing of the Planning Commission since the expenses have been included in the current budget.

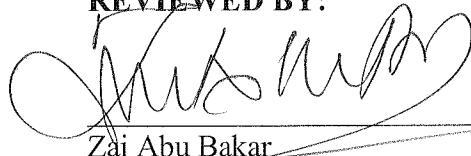
CONCLUSION

That the City Council appoint Commissioners Hawkins and Barsh to the Planning Commission for four-year terms.

APPROVED BY:


Andrew J. Takata
City Manager

REVIEWED BY:


Zai Abu Bakar
Community Development Director

Attachments:

1. Resolution No. 2011-07
2. Chapter 2.28 of the Banning Municipal Code

ATTACHMENT 1

Resolution No. 2011-07

RESOLUTION NO. 2011-07

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, APPOINTING TWO
MEMBERS OF THE BANNING PLANNING COMMISSION
TO FOUR-YEAR TERMS**

WHEREAS, Banning Municipal Code Section 2.28 directs that the bylaws and ordinances governing the Planning Commission and are adopted and amended by the City Council of the City of Banning; and

WHEREAS, the Planning Commission consists of five (5) members and serve for four-year terms, which shall be staggered every two years concurrent with the City elections; and

WHEREAS, the terms of two Planning Commission members – Commissioners Buddy Hawkins and Harold Barsh - expired in January 2011; and

WHEREAS, the appointment of the two Planning Commissioners whose terms have expired in January 2011 for additional four year terms is required so that the Planning Commission can conduct the planning agency business as designated by the Municipal Code; and

WHEREAS, the applications for the two-seats on the Planning Commission was advertised in the Record Gazette from December 10, 2010 and on the Internet; and

WHEREAS, two applications were received from Buddy Hawkins and Harold Barsh; and

WHEREAS, the City Council has reviewed the two applications.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

SECTION 1. Buddy Hawkins and Harold Barsh are hereby appointed to the Planning Commission for four-year terms.

SECTION 2. The Mayor shall sign this resolution and the City Clerk shall attest thereto.

PASSED, APPROVED, and ADOPTED this 25th day of January, 2011.

Barbara Hanna, Mayor
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Resolution No. 2011-07 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 25th day of January 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

Chapter 2.28 of the Banning Municipal Code

Chapter 2.28**PLANNING COMMISSION****Sections:**

2.28.010 **Planning commission—**
Membership requirements.

2.28.020 **Term and vacancies.**

2.28.030 **Compensation.**

2.28.040 **Rules of procedure.**

2.28.050 **Duties and responsibilities.**

2.28.060 **Conflict of interest requirements.**

2.28.070 **Staff liaison.**

2.28.080 **Meeting times and places.**

2.28.090 **Adoption.**

2.28.010 Planning commission—
Membership requirements.

A. Members of the planning commission shall be residents of the City of Banning who hold no other municipal office in the city. Members may not be employees of the city.

B. Proof of residency shall be submitted at time of application to the commission through voter registration, utility bill at a physical address within the city boundaries. Residency shall be confirmed prior to appointment and maintained throughout the term served. (Code 1965, § 2-5.)

2.28.020 Term and vacancies.

A. The planning commission shall consist of five members.

B. Planning commissioners shall serve four-year terms, which shall be staggered every two years concurrent with the city elections. Appointments shall be made by the city council. Applications shall be made available and the closing date announced at least two months prior to the expiration of the commissioner's term to be filled.

C. Members shall serve at the pleasure of the council and may be removed at any time by a majority vote of the entire council.

D. Any member who is unexcused for two consecutive regular meetings of the commission or six

meetings within a twelve-month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the city council may appoint a new member to serve in the resigned commissioner's place for the remainder of their term.

E. To be excused from any such meeting, a member shall notify the planning department, at least forty-eight hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute an excused absence. (Code 1965, § 2-6.)

2.28.030 Compensation.

A. Members of the planning commission shall not receive compensation; reasonable traveling expenses to and from conferences and/or special field trips and training sessions shall be reimbursed.

B. Upon authorization by the city manager, the planning commission and members of its staff, may attend city planning conferences or meetings, or hearings on city planning legislation, or matters affecting the planning of the city. The reasonable expenses of such attendance shall be charged upon the funds allocated to the commission.

C. All fundings shall be established through the City of Banning budget, which shall be approved by the city council. (Code 1965, § 2-7.)

2.28.040 Rules of procedure.

A. A quorum of the planning commission shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the planning commission to hold a meeting.

B. In the event that only three commissioners are present, any actions recommending amendment to the Municipal Code or general plan must be unanimous; all other actions would require a majority vote of the commission in attendance. A tie vote shall constitute a denial of the matter or request brought before the planning commission.

C. The commission shall adopt rules for the transaction of business and shall keep a record of its transactions, findings, and determinations. The Brown Act and "Robert's Rules in Plain English" by

Doris P. Zimmerman (Harper Perennial) shall be incorporated into such rules.

D. The commission shall follow all applicable city fiscal and administrative policies and procedures. (Code 1965, § 2-8.)

2.28.050 Duties and responsibilities.

A. The planning commission shall exercise those functions of the planning agency of the city delegated to it in the Banning Municipal Code.

B. At the regular February meeting, the planning commission shall choose a chairperson and a vice-chairperson from among the planning commission members. The chairman and vice-chairman shall serve for one term. Both positions shall rotate every year. All members must be present to conduct this business.

1. The chairperson shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.

2. The vice-chairperson shall assume all duties of the chairperson in his or her absence.

3. In the event the chairperson and vice-chairperson are both absent, an acting chairperson shall be appointed from the commission for the meeting from those present.

C. The planning commission's scope of responsibility is to:

1. Prepare, review, adopt, and recommend to the city council for its adoption, a long range, comprehensive general plan to guide the future physical development and conservation of the city and its adjoining environs based on geographic, social, economic and political characteristics of the community;

2. Prepare, review, adopt and recommend to the city council for its adoption of special area specific plans for identifiable areas, wherein more detailed guidelines are needed to supplement the objectives of the general plan;

3. Review development applications submitted to the city for consistency with adopted plans and ordinances. Approve or deny applications when final authority is granted to the planning commission by the Municipal Code. Make a recommendation on

those actions for which the city council is the final reviewing approval body;

4. Act as the appeal body on decisions made by the community development director;

5. Perform such other functions and duties as the city council may from time to time direct and/or provide within the Banning Municipal Code.

D. The commission may form ad-hoc subcommittees in accordance with the Brown Act, and make appointments to that subcommittee, as it deems necessary. A quorum of commission members may not be appointed to serve in a single subcommittee. Before forming a subcommittee, the commission shall establish a specific mission and term for the subcommittee.

E. The planning commission is an important function within the City of Banning, and as such, certain expectations are held by the city council in making the appointment of individuals to the commission. These expectations include the following:

1. Commissioners will attend all regular meetings and special meetings as they arise;

2. Commissioners will communicate expected and unexpected absences to the planning department, prior to the meeting;

3. Commissioners will communicate any potential conflicts of interest on agenda items to the planning department in advance of the hearing to allow confirmation of a quorum;

4. Commissioners will arrive on time to each meeting, fully participate, and remain in attendance until the end of each meeting;

5. Commissioners will prepare themselves for each meeting by reading the agenda, reports and other materials, and visiting the site, as necessary, and communicate any questions to the secretary in advance of the hearing.

Pursuant to Resolution 2000-41, if a commissioner visits the site prior to a hearing on the matter, the commissioner shall disclose at the hearing such evidence and observation gathered during the site visit;

6. Commissioners are encouraged to attend the annual planner's institute (Monterey and Southern California) or an equivalent planning training program given by a University of California campus (or

approved equivalent) and may attend other planning conferences and or training classes as the need and opportunities arise. The city will also provide regular in-service training and make-up training where attendance is required;

7. New commissioners are expected to become familiar with the city's general plan, the "Planning Commission Handbook" (prepared by the State of California), and relevant Municipal Code sections particularly those relevant to zoning to become familiar with these documents. The "Guide for New Members" distributed by the Planning Commissioners Journal and www.plannersweb.com are other valuable resources for new commissioners;

8. Applicants to the planning commission will be expected to attend a brief orientation session explaining the role of commissioners, the planning process, and the expectations of commissioners that are appointed; and

9. New commission members will attend an expanded orientation session with the liaison to the commission and other staff, as deemed necessary, to provide new appointees with a solid understanding immediately upon appointment. The orientation will include an overview of the planning process, a review of the commission's structure, policies and by-laws, a summary of available documents and resources, and a review of the commission's relationship with citizens, staff, developers, and the governing body.

F. The planning commission may serve on regional boards or commissions as directed by the city council.

G. The planning commission shall participate in annual meetings with the city council to discuss development activity, development doctrine, policies, etc. (Code 1965, § 2-8.1.)

2.28.060 Conflict of interest requirements.

A. The State of California Political Reform Act requires planning commission members to disclose interests in investments, real property, and income derived within the City of Banning or from sources doing business within the City of Banning. Filings

are required within ten days of assuming office and on an annual basis.

B. Members shall not work for the "pass" cities, which include Beaumont, Calimesa, and Riverside County in roles, such as economic development, planning, or redevelopment.

C. If an apparent conflict of interest arises, the member shall inquire of the city attorney or staff prior to the meeting. (Code 1965, § 2-8.2.)

2.28.070 Staff liaison.

A. The staff liaison to the planning commission shall be the community development director.

B. The planning commission liaison, supported by the secretary to the planning commission (a staff position), shall be responsible for:

1. Confirming that a quorum will be present prior to each meeting;

2. Receiving and recording all exhibits, petitions, documents, or other material presented to the planning commission in support of, or in opposition to, any issue before the planning commission;

3. Signing all meeting minutes and resolutions upon approval;

4. Preparing and distributing agendas and agenda packets;

5. Facilitating the tape recording of meetings and preparation of minutes; and

6. Responding to all questions from planning commission members regarding agenda items in advance of meetings. (Code 1965, § 2-8.3.)

2.28.080 Meeting times and places.

A. The planning commission shall meet on the first Tuesday of each month at 6:30 P.M. at the city council chambers located at 99 E. Ramsey Street.

B. Commissioners will attend special meetings as they arise. (Code 1965, § 2-8.4.)

2.28.090 Adoption.

A. This document, as adopted and amended by council resolution, shall serve as the bylaws for the commission. (Code 1965, § 2-9.)

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/11/11
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Hanna on January 11, 2011 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS/
BOARDMEMBERS PRESENT:

Councilmember Botts
Councilmember Franklin
Councilmember Machisic
Councilmember Robinson
Mayor Hanna

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager/Executive Director
David J. Aleshire, City Attorney/Agency Counsel
June Overholt, Administrative Services Director
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney said that the City Council will go into closed session pursuant to Government Code Section 54957.6 in regards to labor negotiations with the department heads on executive contracts and one matter of potential litigation pursuant to the provisions of Government Code Section 496.9. The Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.8 in regards to real property negotiations on Stagecoach Plaza: 3285 – 3499 W. Ramsey Street (APNs 537-090-057, 537-090-058, 537-090-059, 537-090-067).

Mayor Hanna opened the item for public comments. There were none.

Meeting went into closed session at 4:02 p.m. and returned to regular session at 5:00 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:10 p.m.

Marie A. Calderon, City Clerk/
Agency Secretary

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/11/11
REGULAR MEETING

A regular meeting of the Banning City Council and a Joint Meeting of the City Council and the Banning Utility Authority was called to order by Mayor Hanna on January 11, 2011 at 5:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Councilmember Robinson
Mayor Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager
David J. Aleshire, City Attorney
June Overholt, Administrative Services Director
Duane Burk, Public Works Director
Fred Mason, Electric Utility Director
Zai Abu Bakar, Community Development Director
Leonard Purvis, Police Chief
Jeff Stowells, Fire Battalion Chief
Heidi Meraz, Community Services Director
Marie A. Calderon, City Clerk

The invocation was given by Pastor Victor of Victory Outreach. Councilmember Botts invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney said that the City Council and the Agency met closed session. On the agenda there was review of the evaluation process on department heads and the contracts and no reportable action was taken. With respect to real property negotiations for the Agency they talked about negotiations on the Stagecoach Plaza property and a status report was given and direction was given for further negotiations. There was also discussion in regards to one potential litigation matter and status report was given on that item.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schuler announced that REARS (Riverside Emergency Animal Rescue System) is having recertification training on the January 22nd at 9 a.m. at the Van Buren Blvd. Animal Shelter. Anyone that has been involved can get recertified and they don't need to bring their horse trailers but they will talk about the practical training and the sling training for dogs if you don't have a lease. She also thanked Duane Burk and City staff for the response to her flooding issue. She

said it was her problem but it was caused by the erosion especially at the vacant lot to the west of her and that would be 1104 W. Westward and the owner does not see this as a problem. It is persistent and increasing erosion is the issue. Starting at the south east corner of 12th and West Westward there is no more dirt to channel the water along side the street. The problem was exacerbated when at the last resurfacing which was several years ago the road bed was raised and is now two inches above the adjoining City-owned ten foot setback. There is no dirt berm holding the water back from gushing down across Hank Lefler's property and causing major damage to her paddocks in the equestrian facility. The City came out and put sand bags there but put them in the wrong place causing the water to pool behind the sand bags and then tunneling underneath and the problem was the same. What is really needed is to use excess dirt and create a dirt berm along side from the corner of 12th Street, along the side of West Westward so it runs down the gutter and curb which is on her property. They need to deposit enough dirt as a temporary issue and solution but eventually they will have to put an asphalt berm up there and keep that from recreating the same problem over and over again.

Annell Elmore, 1368 Wyte Way addressed the Council thanking the City of Banning and Riverside County for allowing her to be a part of the RHDC Program. She thinks that it is the best program that she has experienced. The workers were so efficient in what they did and any questions that she had they were able to answer and the work was completed in a very timely manner. She hopes that other residents of Banning will have a chance to experience what she experienced. She said her house is about 30 years old and it was long overdue for improvements and they couldn't afford to do what was necessary. If you see the house now compared to what it looked like before, its looks like a totally different house. She said she is still excited and they just signed the final papers last Thursday. She said her house looks great and she hopes more residents in Banning will get to experience what she did because she is a lifetime resident of Banning and plans to be here. She said when she rides around throughout Banning east, west, north and south you can see the improvements that have been done to a lot of the houses and it just makes her proud that she still lives here. Hopefully the City of Banning can get more funding so more people can get the help that in which we were long overdue for.

Sue Palmer, 17th Street addressed the Council stating that she hopes the Banning City Council and the other elected officials in Banning are working with the Banning Police Department for your safety in light of what has happened in Arizona just a few days ago. We are all concerned about the safety of our elected officials and that nothing happens to anyone of you. She hopes that the Council has a plan to work with the police department and ensure your safety at all these public meetings and when you are going to different events.

Bob Ewart, 1219 Cypress Point Dr. addressed the Council stating that they have all been working on, to some extent or another, on helping our neighbors and friends and residents of our city to prepare to survive or at least minimize the effects of a large scale disaster in our community. He gave a little summary of where they are in their efforts and what they have been doing for 21 years in terms of planning for large scale disasters. In the 21 years that he has been here the police departments have gotten a little larger but not much and the fire departments are exactly the same so while they are very capable people in terms of the police department that is not their principle obligation to go door to door and rescue people and provided emergency medical treatment, etc. that is the fire department's job and while this is all going on the people that need the services keep increasing. So in recognition of this escalating problem over the years they have gone into and been relatively successful in organizing and helping to organize gated communities and communities that have organized administrative bodies in to developing

systems whereby they can help themselves or at least sustain themselves until they can get professional help. In the city of Banning every one of those kinds of communities over the last 20 years has had a pretty effective disaster response organization but it is deteriorating due to age, infirmity and apathy but most of them are still in tact. What Council person Debbie Franklin brought to his attention was that we have done a pitiful job in random neighborhoods. Those are people who are not included in some sort of gated community. So they had a lot of conversation and they want to gain Council's support to embark on a program called NEST (Neighborhood Emergency Service Teams). This is not financial support but they would like to divide the city up into areas that have like unique problems and obstacles and limitations and interests and try to help them develop teams within the framework and complexity of their unique district. They would like to start this on Thursday, January 13th and meet in the Council Chambers from 6:30 to 7:30 p.m. and in the meantime they will try to solicit as many people as they can from the 9 districts that they have already identified that fit that profile and see if they can get that off the ground. If it works well here, then he sees it as a Passcom operation. You may or may not be aware of the fact that over the last few years the Passcom organization has managed or assisted the management of specialized programs for Calimesa and for the Bench and so forth and this is one of those programs. By the time they get this program a little bit more sophisticated it may fit the needs of all the other communities in our Pass Area but right now it is a Banning program.

Councilmember Franklin said that they are working with the Office of Emergency Services so they will be present at the meeting because they are assisting in this process also.

Councilmember Botts thanked Mr. Ewart because there are always complaints on both sides of the issues and we never have the opportunity to say thank you enough for all the volunteers that do fantastic things and Passcom is something that is not really visible to the average persons in Banning.

Mr. Ewart said that Neighborhood Emergency Service Teams (NEST) incorporates things like CERT (Community Emergency Response Teams) and Neighborhood Watch and Charlene Sakurai initiated at the meeting a discussion about floods and the severe weather we had recently and the lack of preparedness of the community to deal with those kinds of things. That is the idea and if you can build a chain in those districts that share unique problems to deal with floods and all, we are all going to be better off.

Art Welch, 4952 Copper Creek addressed the Council announcing the Veterans Expo that will take place on Saturday, January 22nd at the City Hall in Beaumont from 9 a.m. to 1 p.m. This is the second expo to be held and at the first expo they had over 250 people. The objective of the expo is to explain, not only to veterans but to spouses, families and anyone that is connected with the military in any manner, the benefit programs that are available to them through all of the state and federal services. There have been several updates and changes that took place over the last year so he would encourage all veterans and family members who have an interest in this to please attend. They will have services there from the VA, state agencies, and also local agencies to share this information with them. He is extending an invitation to the whole Pass Area to take advantage of this Expo. He would also like to personally invite all of the City Council of Banning and the City Manager and his staff to attend. This is being sponsored by P.A.S.S. (Pass Area Supporting Service members) which is a very active organization in helping veterans that are on active duty today and those that have returned from active duty. It is also being supported by Senator Bill Emmerson and also State Assemblyman Paul Cook. In conjunction with the

Expo the Lions Club, District 4L5 will also conduct a free vision screening and free glasses, if they have the glasses that fit your screening at the end of the session. This is open to all ages.

Ron Klimczak, 247 E. Barbour addressed the Council regarding the election and the selection of the Mayor (see Exhibit "A").

Charlene Sakurai, 4985 Bermuda Dunes addressed the Council stating that February 12, 2011 is Go Red for Women. It is part of the American Heart Association's national effort to raise the awareness of women's heart health issues in regards to their risks for not only heart attack but also for stroke. This is our way in Banning of participating and this is their fourth year of doing this event and it is \$12.00 per person and includes lunch, a speaker, a drawing and a lot of fun. It is also a way to get some new tips on how to make your health better. She invites all women to come on February 12th starting at 11:30 a.m. and it will last about two hours. You can make reservations by calling the Banning Cultural Alliance at 922-4911 or you can go on line to banningculturalalliance.org

Fred Sakurai, 4985 Bermuda Dunes addressed the Council stating that we have heard a short little talk about what went wrong in Banning this past year at the election and what has not. Let's be happy that we have an open Council meeting as opposed to our neighbor. We have an opportunity to come here and speak our peace and the TV camera is going to catch everything and will let everybody else on Channel 10 know what is going on and we have an open City.

CORRESPONDENCE: None at this time.

PRESENTATIONS:

1. BPAL -- Shop with a Hero Program Presentation

Chief Purvis said that he would like to present a video in reference to a really fun program that they did on December 4th called "Shop With a Hero". He thanked Mayor Hanna and Councilmembers Franklin and Machisic for attending the event. He said in regards to the program every year the Police Activities League (B.P.A.L.) hosts 20 to 22 children throughout the Pass Area and they are treated to a special day. They came to the police station and were checked in and given a B.P.A.L. Shop With a Hero T-Shirt and met with Smoky the Bear. After that they went in limousines provided by Chris McCallum of Dream Makers Limousines to Banning Estates Mobile Home Park and they were treated to a catered breakfast by Consuelos Restaurant, met with Santa (Bill Dickson) and they each received a hundred one dollar bills. They got back into the limousines and proceeded to the Morongo Indian Reservation Administrative Center where they took a picture in the Veterans Memorial Area with Vice-Chairman Maurice Lyons and Tribal Council Members Damon Sandoval and Charles Martin. This was the first time that the Morongo Band of Mission Indians were involved and sponsored the program with \$3,000 dollars which paid for the shirts, the food, and 18 of the 22 sponsorships of \$100 each. There were 18 B.P.A.L. Members and two children from the Morongo Indian Reservation and two children from the Hmong community. After that they proceeded in the limousines via police escort to Wal-Mart in Beaumont where they spent their \$100 dollars. He said that they have teamed together with Beaumont for the last three years.

Mayor Hanna thanked all of the employees and all of the volunteers and Santa that made this possible. It was a really wonderful event.

APPOINTMENTS:

1. City Council Committee Assignments

Mayor Hanna said that in our internal rules the way this runs is that the Mayor recommends and the Council approves any of the appointments. There are a couple of regional committees and then smaller local committees that we are involved in. She said as she has said every year when we do this she really believes in continuity so she is not recommending very many changes.

Western Riverside Council of Governments (WRCOG) – Machisic, alternate-Hanna
Riverside Transit Agency (RTA) – Robinson, alternate – Botts
Riverside County Transportation Commission (RCTC) – Botts, alternate-Robinson
Pass Area Transportation NOW Committee – Robinson, alternate-Franklin
Regional Conservation Authority – Machisic, alternate-Hanna
Tribal Distribution Fund Committee (County Appt.) – Machisic
Economic Development Committee Liaison – Robinson
Government Access Channel Committee – Robinson and Botts
Public Utility Advisory Committee for City of Banning – Hanna
TUMF Zone Committee – Machisic, alternate-Franklin
Southern California Association of Governments (SCAG) – Robinson
League of California Cities – Hanna
Banning Chamber of Commerce – Robinson, alternate-Botts
San Gorgonio Pass Water Agency – Botts, alternate-Robinson
Community Action Agency – Franklin

2 X2 Council Working Groups

Banning Unified School District – Franklin and Hanna
Morongo Band of Mission Indians – Hanna and Machisic
Mt. San Jacinto College – Hanna and Robinson
Airport – Botts and Franklin
Highland Springs Ave. Task Force – Robinson and Franklin

Councilmember Botts said he felt that the Airport Ad Hoc Committee should be dropped. He said he can't remember the last time they met and staff is working on multiple issues there and he doesn't think it is needed anymore.

Councilmember Franklin asked staff is there any advantage of having an Ad Hoc from the Council for the Airport.

Mr. Burk said that he would ask the Council to keep the Ad Hoc Committee only for the sole reason as we move forward with the FBO and some other activities that may be coming forward. He knows that in the past they haven't met a lot and that was because of regulatory reasons in trying to get in compliance with the FAA and we are now in compliance and we will be moving forward in more of a partnership with people and would like to keep this as an active ad hoc.

Councilmember Botts said that he would like to be dropped off the Airport Ad Hoc. Mayor Hanna asked if one of the other Councilmembers would like to serve. Councilmember Robinson volunteered to be on that committee.

Mayor Hanna said that the Airport Ad Hoc Committee will be Franklin and Robinson.

Councilmember Robinson said that there was a Fire Dept. Committee that met with Beaumont and the County of Riverside and they were rather successful and we do have other fire department issues that will be coming up over the next year or two so he would recommend that they maintain that committee of himself and Councilmember Machisic. There was Council consensus.

Mayor Hanna said that they will maintain the Fire Dept. Committee of Robinson and Machisic.

City Manager said another committee that we left off was Banning Heights which is currently Mayor Hanna and Councilmember Machisic. Mayor Hanna said that was correct and that was in regards to the flume issue.

Mayor Hanna said that they will maintain the Banning Heights Committee of Hanna and Machisic.

Councilmember Franklin said that she wanted to put her name back in for RTA since there was no justification given as to why she was taken off that committee and when you talked about County committees some people are on more than others.

Mayor Hanna said she understands and she is on none of them herself except as an alternate only.

Motion Botts/Robinson to accept the recommendations as made for the committee assignments. Motion carried with Councilmember Franklin voting no.

CONSENT ITEMS

Councilmember Franklin pulled Consent Item No. 4 for discussion.

1. Approval of Minutes – Joint Meeting – 12/14/10

Recommendation: That the minutes of the joint meeting of December 14, 2010 be approved.

2. Approval of Minutes – Regular Meeting – 12/14/10

Recommendation: That the minutes of the regular meeting of December 14, 2010 be approved.

3. Ordinance No. 1433 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 15.08 of the Banning Municipal Code By Adopting by Reference the Entirety of the Latest California Building Code, Residential Code, Green Building Standards Code, Plumbing Code, Mechanical Code, Electrical Code, and International Property Maintenance Code, All Relative to Construction Codes.

Recommendation: That Ordinance No. 1433 pass its second reading and be adopted.

5. Resolution No. 2011-03, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2011/2012.

Recommendation: That the City Council adopt Resolution No. 2011-03.

6. 2009-10 Annual Report of Development Impact Fees

Recommendation: That the City Council review and approve the 2009-10 Annual Report of Development Impact Fees as required by the Mitigation Fee Act.

7. Report of Investments for October 2010

Recommendation: That the City Council receive and place these required monthly Reports of Investments on file.

8. Report of Investments for November 2010

Recommendation: That the City Council receive and place these required monthly Reports of Investments on file.

9. Resolution No. 2011-06, Declaring the Existence of a Local Emergency Under Government Code Section 8630 and Chapter 2.48, Disaster Operations and Relief of the City of Banning Municipal Code.

Recommendation: That the City Council adopt Resolution No. 2011-06.

Motion Machisic/Franklin to approve Consent Items 1, 2, 3, and 5 through 8.

City Manager said that there was an added item on a secondary agenda. City Clerk said that it was number 9 on the agenda.

Councilmember Machisic amended his motion to include Consent Item No. 9. Councilmember Franklin seconded the motion.

Mayor Hanna opened the item for public commits. She stated that Item No. 9 is Resolution No. 2011-06, Declaring the Existence of a Local Emergency Under Government Code Section 8630 and Chapter 2.48, Disaster Operations and Relief of the City of Banning Municipal Code. City Manager said this is because of the past storms and we did have some damage and if there is FEMA money available we are trying to get the money to reimburse ourselves whatever percent that may be for the damages. There were none. **Motion carried, all in favor.**

4. Resolution No. 2011-02, Authorizing a Budget Appropriation of Funds to Cover Expenses Related to Capital Projects Funded by the Electric Utility Bonds.

Councilmember Franklin asked that this item be explained because it is a budget appropriation of funds in the amount exceeding \$300,000.00.

Mr. Mason explained that the bulk of the money is for the final true-up payment for the Banning substation for the addition of the third line. The way that process works is that Edison makes a estimate and the City makes a full payment based on that and then after the project is done Edison does a true-up of the actual cost for the project and then they either submit a final invoice for the balance or provide a credit if there was an overpayment. In this case when Edison submitted the initial true-up invoice it was for a total of a little over a million dollars and staff said that is double what the original costs were which was \$528,000 and we asked for clarification and so they came back and provided detailed information on actual costs. He said they went through it and had questions so they had a number of meetings where he brought forward his concerns. Edison did an intense internal audit and they determined there were items that had been billed to Banning that should have been absorbed by Edison. Edison was doing an expansion at the Banning Substation that benefited Edison but somehow those costs got included to Banning so they actually reduced it by \$275,000. So the bulk of the item \$275,000 is the actual balance that is due to Edison. The other \$23,950.00 is the undergrounding contract for the Downtown Corridor. We are having a consultant come in and put together an extensive scheduling component that has the materials, manpower, time costs for undergrounding from Fourth Street to Hargrave and Williams to Livingston. The \$12,400.00 is the legal cost for the purchase buyback of the excess electric bonds.

Councilmember Machisic said his comments are of a different nature is that a lot of times when things go bad we blame the staff for whatever has gone wrong and of course that is wrong because we have to accept some of the responsibility. But Fred mentioned something in the second paragraph of the background in that we received a bill from Edison for about \$519,000.00 and the staff contested that cost and they reduced the cost by \$221,000.00. Now that is a lot of money particularly in the financial condition that we are in and so he would like to commend staff for their due diligence in studying the problem and coming up with this because he depends on the staff to do this kind of work all the time.

Councilmember Franklin said that she just wanted to make sure there was no impact to the ratepayers for this because that is a question that came up. Mr. Mason said not at all. This is from the actual electric bonds that were sold so the monies were sitting out there and we basically appropriate as we need them. He said as they continue with the underground project staff will be coming to Council to appropriate additional funds.

Mayor Hanna opened the item for public comments. There were none.

Motion Machisic/Botts to approve Consent Item No. 9, adopting Resolution No. Resolution No. 2011-02 appropriating funds from the Electric Bond Fund balance in the amount of \$311,798.08 to cover expenses related to capital projects funded by the Electric Utility bonds ("Bonds"). Motion carried, all in favor.

Mayor Hanna said she would like to note to the rest of the Council that in the minutes of December 14, 2010 we agreed that we would submit any questions we had regarding the scalping plant to staff so if you would please submit those to the City Manager it would be appreciated.

Mayor Hanna recessed the regular meeting of the City Council and called to order a joint meeting of the Banning City Council and the Banning Utility Authority.

CONSENT ITEMS

1. Resolution No. 2011-01UA, Awarding the Contract for Project No. 2010-01WW, Iron Sponge Media and Granulated Activated Carbon Drum Filter Replacement to Prominent Systems, Inc. of City of Industry, CA for an Amount "Not to Exceed" \$39,700.00.

Recommendation: That the Banning Utility Authority adopt Resolution No. 2011-01UA.

2. Resolutions Authorizing the Amendment of the Fiscal Year 2009-10 Budget to Include Certain Necessary Adjustments and the Fiscal Year 20010-11 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2009-10 Appropriations and Associated Revenues.

Recommendations:

- a) That the City Council adopt Resolution No. 2011-05, Authorizing the Amendment of Fiscal Year 2009-10 Budget to Include Certain Necessary Adjustments and the Fiscal Year 2010-11 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2009-10 Appropriations and Associated Revenues.
- b) That the Banning Utility Authority adopt Resolution No. 2011-02 UA, Authorizing Amendments of the Fiscal Year 2010-11 Water and Wastewater Budgets to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2009-10 Appropriations and Associated Revenues.

Motion Machisic/Robinson to adopt Consent Items 1 and 2. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

Mayor Hanna adjourned the joint meeting of the Banning City Council and the Banning Utility Authority and reconvened the regular City Council Meeting.

REPORTS OF OFFICERS

1. Resolution No. 2011-01, Authorizing a \$0.0236/kWh Increase to the Low Income Qualified Baseline Service Rate (also Known as the Banning Electric Alternative Rate "BEAR") and Approving the City of Banning Electric Utility Rate Schedule. (Staff Report – Fred Mason, Electric Utility Director)

Mr. Mason said the matter before Council is basically with regards to the low income assistance rate. At this time Mr. Mason gave a power-point presentation on this item (see Exhibit "B"). He said that in summary the proposed BEAR rate provides a 33% reduction for qualified customers. It allows for adequate funding of other Public Benefit Programs. Right now that \$126,000 does not provided enough funding for the other programs that are offered to the public. This would put Banning in line with other municipal utilities that spend between 25-30% of public benefit funds on low income assistance. We are currently at about 60% so that would bring our allocation down in line with the rest of the municipal utilities. This also fulfills the intent of AB 1890 and AB 995 which is basically to have the money spread between the Energy Conservation Programs, Renewable Energy and Low Income Assistance. He said that some programs have been cancelled as a result of funding and so forth and since we met the State's Senate Bill 1 Solar PV rebate

requirements of \$2 million, we actually funded almost \$2.5 million, we have actually eliminated that program so at this point the City does not offer Solar PV rebates. We don't have the funding for it. However, we do have one outstanding project and that is the high school project and he previously updated the Council on that project. To date we have 108 completed solar PV projects and with the high school and it makes 109 total projects completed. The high school originally applied for the rebate program two and their original estimated project cost was \$772,920.00. That would have provided them an estimated rebate of \$343,520.00. However, because it has taken awhile for them to get it completed solar PV costs have dropped significantly and for that same project today (and they resubmitted a revised application) the estimated cost is down to \$418,000.00 so it has basically dropped from \$773,000.00 to \$418,000.00 which is wonderful for the school district and this presents a revised estimated rebate of \$209,000.00. When the school first applied for the rebate our rebates were \$4.00 and we actually maintained them at \$4.00 instead of dropping them down the 7% each year. It is a per watt rebate with a maximum of 50% of project costs so since the project costs have dropped so much they are actually going to get the maximum rebate of 50%. So that \$209,000.00 is a 50% rebate of the \$418,000.00 project costs. They anticipate being done sometime this year and we look forward to providing them that rebate.

City Manager asked Mr. Mason to explain to the Council that two years ago is when they applied and they received the grant according to what the Council had set before. It was not something you decided.

Mr. Mason said that at a previous Council meeting he made the statement that he had approved to fund them at the higher amount. The higher amount is the \$4.00 per watt which is what they were approved at initially. What the reduction is the State requires that we do a 7% reduction in the rebate and what we did we said because they applied when it was \$4.00 that we would go ahead and hold that \$4.00 per watt rebate amount even though they were not done yet. So it wasn't that we did anything wrong or illegal; we just held that and in this case the per watt prices does not matter anymore because it is going to be solely on 50% of project costs.

Mayor Hanna said that on page 100 of the packet below the graph of BEAR Program Participants as you said 105 of all utility residential customers are currently participating in the BEAR program and you didn't mention this time that there is a income requirement that you have to be of a certain level of income or lower. It also states that demographic data suggests that more than 1/3rd of all utility residential customers qualify for the program. She said personally she would be very interested to see the demographic information.

Mr. Mason said that the Community Development Director provided this and this is documentation from the Regional Housing Allocation Plan from SCAG (Southern California Association of Governments). It actually shows that 39% of our households are low income.

Councilmember Machisic said as he remembers in some numbers shared last year you said because of the rebates that we were giving on solar, appliances, etc. our total use went down 6% and are you are proposing then that we switch some of this money that we have been giving in rebates and are we required by law to give a certain percentage to the rebates because our rebates as a rule have been very generous. He said that when he talks about rebates in relationship to low income people there is no comparison. He said that he would rather support people in our community. It's great if we could conserve but at the same time we have to look out for the population here so how much have you reduced the money for the rebates this year.

Mr. Mason said that they are not required by law to give a certain percentage in rebates. In regards to the rebates they have actually cut the air-conditioning rebates in half and the maximum that anyone can get is \$250.00. There have been other programs where they have actually reduced the amount. Councilmember Machisic said so that is not mandated by some regulation or law so we could actually lower that even. Mr. Mason said absolutely.

Councilmember Machisic said in regards to the school grant the school made an application three years ago or so and that amount of money we had available three or four years ago was much more than we have now. So his feeling is that financial conditions have changed dramatically in the last couple of years for the City and he is concerned if we made an agreement based on the funds we had available then, isn't that disproportionate now when we are low on funds.

Mr. Mason said no because we actually had money set aside specifically for the PV program and regardless they were actually excess monies above the \$684,000.00 that we had set aside for the PV rebates so that actually doesn't have a direct impact on our annual \$684,000.00 budget.

Councilmember Franklin asked Mr. Mason to go back to the slide showing what we used to collect and what we are collecting now because she wants to make sure that she is understanding that because of the rate increase in 2009 there are more dollars than before and is that correct in the Public Benefit Fund.

Mr. Mason said the Public Benefit Fund is based on the retail sales so when we had a rate increase in 2009 he believes it was about \$655,000.00 in 2008 and then in 2009 with the increase because it was not a full year it didn't reflect that but with a full year at \$24 million versus \$22.5 million that we had before in retail sales then yes it does increase the amount. The 2.85% of that \$1.5 million is what gets added to the public benefit budget.

Councilmember Franklin said so there is more money available than before but we are not talking about increasing the number of people able to be assisted unless we increase the rate they have to pay.

Mr. Mason said the amount that was increased was approximately \$15,000 to \$25,000 dollars. That is the amount that the budget actually increased based upon the rate increase we had in 2009. The numbers that he presented show that there is a skewed amount of \$400,000.00 being spent on the low income assistance versus \$126,000.00 being spent on energy conservation. That is what we are trying to balance here is that before the rate increase the amount that was being spent on low income assistance was \$200,000.00 and after the rate increase because of the low income rate was not increased at the same time that the regular baseline rate was that basically doubled the amount that was being subsidized for low income assistance. So what we are trying to do is basically rectify that and put the amount that is being subsidized back to the pre 2009 rate increase level. Before we were spending \$200,000.00 on subsidizations; now we will be spending \$235,000.00 instead of \$400,000.00.

Councilmember Franklin said that part of our low income population includes our seniors who are still on fixed incomes and actually have reduced incomes. She said when you are talking about these dollars do we do any kind of energy conservation training or recommendations for people who are receiving these funds and is there a limit to the amount of funds that people get.

Mr. Mason said that the limit is based on the baseline allocation. If they use the full baseline allocation they get \$390. That is the annual amount of the subsidy. If their usage is 400 kWh per month in the summertime, then they wouldn't have as much of a subsidy because they are not using the full baseline allocation.

Councilmember Franklin said once they are on the program they are able to stay on it indefinitely even though there is a limit that they can get every year. Mr. Mason said that was correct. All they have to do is renew their application each year.

Councilmember Franklin asked then do we give any kind of training or recommendations regarding energy conservation. Mr. Mason said yes they are always provided with the energy conservation handouts and flyers with the application. They are not required to take any kind of training.

Councilmember Machisic said in this school grant that you are giving for conservation is that a one time operation. Mr. Mason said yes.

Mayor Hanna opened the item up for public comments. There were none.

There was further Council discussion of not raising rates right now, looking at possibly changing the program a bit, training in energy conservation and monetary budgeting, scaling back energy conservation and renewable energy programs, increasing the rate for BEAR customers and then using those funds to fund more people on the BEAR program and going back to the drawing board and coming back with some ideas.

Councilmember Franklin said she would like to see if there is a way to go back and actually re-work this so that we are not raising their rates. Councilmember Botts said he would second that.

Mayor Hanna said there is a motion to leave the BEAR rates as they are at this time and for staff to consider the comments made today whether to pursue any additional programs.

Mayor Hanna opened the item for public comments. There were none.

City Manager said that option 3 of the staff reports states, "Do not increase the BEAR rate or PBC (Public Benefit Charge), and continue to scale back the energy conservation and renewable energy programs." That would take care of what you would want.

Mayor Hanna said but we are also asking to consider if there are any other alternatives.

Councilmember Franklin said that she would amend her motion to not increase the BEAR (Banning Electric Alternative Rate) rate or PBC (Public Benefit Charge), and continue to scale back the energy conservation and renewable energy programs and consider any other alternatives. Seconded by Councilmember Botts. Motion carried, all in favor.

2. Request for lease of portion of Dysart Park by Alliance for Youth Employment Skills ("AYES").

(Staff Report – Heidi Meraz, Community Services Director)

Mrs. Meraz gave the staff report and stating that Mr. Ben While was in attendance to answer any questions regarding the program itself. What AYES has requested is to use a portion of Dysart Park to offer a program to teach youth how to cultivate seeds and to grow plants that are native to California. This has gone to the Parks and Recreation Advisory Committee on two separate occasions and through a consensus do feel that this is an appropriate use for space at the park but does have to be handled in a manner that is acceptable to other groups that use the park. They were asking to use a portion of an equestrian parking area which in her personal opinion is not a good choice. However she did meet with Mr. White down at the park and looked at what they could realistically use that would not interfere with other programs at the park and were able to find a location west of the arena. She pointed out that there were three good reasons that they saw as beneficially: 1) offering the program to youth in our community; 2) by having someone there at the park it would cut down on vandalism, and 3) the program would have the potential of doing some beautification at the park. She passed out a map highlighting the area and stated that by utilizing that area it does reduce the amount they requested. The amount requested was originally 7,000 square feet and this takes it down to about 4,000 square feet.

Councilmember Botts said he was not clear on the fiscal data. He thinks that you are asking us to subsidize this and the rent on the space would be \$1.00 a year but then under daily use for Dysart Park of \$125.00 and classrooms for a total annual cost of \$8,640.00. Mrs. Meraz said she was showing what the cost would be if someone were to rent it. It is not realistic to believe that at that park we would be able to, at this point, rent that but essentially what we would be waving in fees. They are asking to use classroom space so if they were to utilize that classroom so many days per year that is what the total annual cost would be.

Councilmember Franklin said she knows that the Milo P. Johnson School is currently on school property and was there any discussion with the school district about going just a little bit west of where that school is now so that the students don't have to be transported. Also you talked about having other people involved and are you thinking about partnering with other groups like the Sun Lakes Garden Club.

Mr. White said they actually wanted to have it on a facility that is not related to the school in order to have an opportunity for other members of the community to be able to participate. So up until now they have been working solely within the school and within a program there. There are limitations in terms of hours, who should be on school property from the standpoint of maintaining the integrity of what they are doing at the schools and by having it on City property enables us to broaden it out. We actually want to be able to be much broader than we have been with the school. That was really their intention before even starting the program at the school. Also, they were definitely thinking about partnering with other groups. He said he has spoken informally with some people involved in such groups.

Councilmember Franklin said she wanted to confirm that this would not interfere with any equestrian activities. Mrs. Meraz said no.

Councilmember Robinson said that you are looking at other multiple uses for that facility and do you think that this would interfere with any other multiple uses that might say would interfere with their project or anything like that. Mrs. Meraz said being in the location that it is being placed on this map she doesn't see it interfering with anything.

Councilmember Machisic said he was glad that she came back with a modification and with this being an area of a City park he is much in favor of a program of this kind dealing with young people but at the same time he is very concerned that we utilize that park so that as many groups that can help our community residents have an experience in it is prime in his mind.

Councilmember Franklin asked in any way does this impact the Park Master Plan that we are on the verge of approving. And what is the time frame we are talking about for this group to use it.

Mrs. Meraz said that it will not affect the Parks Master Plan and before the group would be able to use the park there would be the need for a formal lease in place to be reviewed by the City Attorney and then back to the Council for final approval and the lease would be for the term of a year and it would be renewable.

Mr. White said in regards to the program what they are looking at doing is providing a program that will enable young people in this area that are experiencing some difficulties in the employment environment to have some job training and some skills building and also at the same time provide to the community some information and education about water conservation and using drought tolerant and native plants. They are really hoping to accomplish several objectives at the same time and think that there are some additional spinoff benefits in terms of possibly providing some plant material that can be used by the City in city parks and in areas that you feel would be appropriate. Also to provide to the community some information and some example of what can be done with materials like this. It really comes at a time when California and the entire southwest is facing some real constraints in terms of water issues and there are State laws that are being implemented that require landscape plants for new construction/new projects both public and private so they think that they are coming with this at a really good time.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Inge Schuler, resident
Sue Palmer, resident
Bill Dickson, resident
Don Smith, resident

There was some further Council discussion on this item and the phenomenal work that Mr. White is doing with the young adults in our community and the developmentally disabled.

Motion Botts/Robinson that the City Council direct staff to negotiate lease agreement with AYES for utilization of portions of Dysart Park for the sole purpose of providing horticulture and landscape training for youth and young adults in our community. Motion carried, all in favor.

ANNOUNCEMENTS/REPORTS (*Upcoming Events/Other Items if any*)

City Council

Councilmember Robinson –

- He has been appointed to the RTA (Riverside Transit Agency) Board Admin and Operations Committee. There are only six people on this committee that make recommendations to the RTA Board. Beaumont and Calimesa have also been appointed to this committee.

■ Councilmember Machisic –

- RCA (Regional Conservation Authority) and WRCOG (Western Riverside Council of Governments) are not scheduled to meet this month but they did have a special meeting yesterday. He said that he has reported that they had acquired 43,000 plus acres for conservation and they passed a resolution to approve trying to acquire 2,987 acres of conservation land which is up for tax payment but they have not paid their taxes. The cost on this approximately 3,000 acres will be about \$1 million dollars which is about \$350 dollars an acre which is definitely very cheap. There is one restriction and when you try to acquire tax property that is in default they indicated that it would take at least one year before the process would be accomplished and they also indicated that the people who own this property and owe the taxes they can come at the last minute and pay the taxes and redeem their property. But if we could get any portion of these 3,000 acres that would be a huge jump in acquiring property.

■ Councilmember Franklin –

- Thanked the community at large and those people specifically who participated in the Holiday Wish Program. They were able to help 111 families which was over 341 children and that was all through donations from private individuals, as well as, private businesses and it would not have happened without community support. She also wanted to thank all the volunteers who did everything from shopping to wrapping to delivering the items to the families.
- This morning she attended a Passcom Meeting and they received an update from the Office of Emergency Services in regards to the December storm damage. She doesn't know if she got it all correct but they said that throughout the state there has been \$75 to \$80 million dollars worth of damage. In Riverside County it is approximately \$35 million dollars worth of damage. To get a Presidential Declaration for assistance the County would have had to have had \$5 million so we are at \$35 million which does include the damage that we have had here in Banning. The requirement for the Presidential Declaration for individual assistance is probably not going to be met here in Riverside because you have to have 800 homes with declared damage and we don't have 100 yet.

■ Mayor Hanna –

- She said she would like to mention to the community and particularly the City Council to consider reserving March 31, 2011 and April 4, 2011 because the Inland Empire Economic Partnership is going to have its first "Quality of Life Summit". They are trying to bring together Riverside and San Bernardino Counties for two days and will focus on the areas of Education and Workforce, Healthcare and Well-Being, Transportation and Infrastructure, and Business and Sustainability.

City Committee Reports – There were none.

Report by City Attorney – None at this time.

Report by City Manager

- Bus Route #6 is being re-routed so it goes by Mt. San Jacinto College and it started Monday.

- In regards to storm damage he wanted to thank the staff or all of the work they did preparing for the storm, as well as, the work they did during the storm. Because of some of their work we had a lot less damage than we would have especially when you talk about our water ponds. There were some electric poles that were tilting down and so those had to be replaced. Also, Jeff Stowells with Cal Fire in regards to the canyon had to get some emergency services there and they actually were able to create a road with the use of bulldozers and he knows that the residents of the canyon do appreciate that.

City Manager said that he would like to have June Overholt briefly talk little bit about Governor Brown's first budget brush and how it could affect us. This is the first budget and it will change dramatically before it gets to the end but there are some implications of some big hits to us especially in Redevelopment.

Ms. Overholt addressed the Council stating that they were on a conference call today with the League with one of the representatives from the Governor's Office trying to get some understanding of the proposed budget. Basically the 222 page document that has been made available has three major components from the Governor's perspective. One, shifting responsibilities to local counties and cities for various services that he deems are better provided from the local perspective. So the concern from the local entities is that are those revenues coming with that responsibility. So there is some concern that with those responsibilities our temporary revenues that are coming in, those temporary revenues really are subject to the ballot measure the Governor is proposing in June. Two, so that leads into extending the temporary tax rates and the fees that were approved a few years ago. He wants to extend those for five years and take those to the people for a vote and the goal is to somehow get approval for a ballot measure that would go in June and seek the people's approval. Third, cut State spending. Those areas that seem to have a more direct hit on the cities are the redevelopment agencies. He is proposing to completely eliminate those and if he gets his way, they will be eliminated as of July 1, 2011. If that is the case, we will have to make some pretty significant decision making between now and then. He does have to get approval from all the other legislators to make that happen as part of his proposal. Then somehow we will need to have some management agency that would then manage the existing debt that the City already has in the Agency. We would be able to retain the property taxes to continue to pay that if we understand correctly what he is saying. But anything that he deems as discretionary tax increment through the Redevelopment Agency then that would be kept and part of it would go to the State and then the rest would be distributed to the school districts, counties and cities. She thinks that his thought process is that because we are going to get a little piece of that pie back into the General Fund then somehow that would be available to do the economic development that we are doing with 100%. So it is makes sense to him but to her it feels a lot like gimmicks. There are some rules on how the cities would be able to actually go to the local constituents to try to pass a tax measure for economic development. Then, in regards to Prop 22, it is a bit vague on how he is addressing it. He believes that in his office he is not restricted from eliminating the redevelopment agencies based on Prop 22. This will probably generate some lawsuits to challenge his interpretation. Regarding the Housing set a side she believes the intent is those purposes would continue and whatever funds are currently set a side for low and moderate housing needs would then be put in a Housing Authority and if we do not have one here, that would an action item that we would need to consider in preparation of this possibility. The purpose of a redevelopment agency is really to help with blight in a community and also to help with infrastructure and economic development and that is what the City has been attempting to do since we have an Agency here in town. In regards to tax increment, when the Agency was established in the City there was a base in property taxes that was collected and the increment means any growth in property tax that occurs that is considered the increment and that

was goes to the Redevelopment Agency. The way the Governor looks at that money is that it is lost revenue and it should have gone to the counties and the school districts. The City has a pass-through arrangement with the school district so they are made whole. So the City in essence has been benefitting from the growth and property tax and that has helped the community and the Governor wants to take that money and put into the State's budget to help them with their issues. So are options are really to oppose the Governor's recommendation; explore the possibility of a Housing Authority and then be prepared if this actually does happen and what the budget impacts are because that loss in revenue does affect some code enforcement services that we provide to Redevelopment, some cultural arts that we provide through that, some public safety programs and staff so there are quite a few things that we would no longer be funded through what we consider our discretionary resources in the Redevelopment Agency. The other two areas that affect cities are the Enterprise Zones and those are any tax benefits such as hiring credits and credits for sales tax paid. Then what is called "Realignment" goes back to her earlier comment which was what the Governor considers to be services that are better provided at the local level and pushing those to the cities and counties to provide those. His goal and how he states it in his budget is to protect essential public services and provide those services in the most effective and efficient manner. But that shift seems to impact the counties most but we will have residual impacts because it touches public safety, the court systems, how incarcerations occur, and it touches Cal Fire and how they provide medical aid in communities and there is the possibility on how that would affect us when we have mutual aid. From just an economic outlook perspective his budget is kind of assuming some improvement in the two to four year range.

City Manager said that for the audience Proposition 22 was just passed this last election by 61% of voters which basically protects local revenues from being taken by the State.

City Manager asked Mr. Mason to give a quick update on the Electric Bonds.

Mr. Mason, Electric Utility Director said basically we haven't had a lot of activity. Back in September in received the last correspondence from Kinsell, Newcomb and DeDois who are doing the work for us and at that point we had repurchased \$5,575,000.00 and the average price was par so that means that we didn't have to pay a premium. We actually got them back for the amount that we sold them for which was outstanding because we initially thought that we might have to pay a premium. What he said at that point was there was a change in the bond market and it was going to be very difficult to get large purchases. We may not get the full \$10 million that we were hoping to get. We will continue looking out at the market and see if there are people who are interested in selling those back to the City.

ITEMS FOR FUTURE AGENDAS

New Items -

Councilmember Franklin said she would like to add the consideration of speaker cards for a couple of reasons. She thinks it would be easier for staff to be able to understand what people's names are in case they are not sure how to spell them. Also for the public to know if they are coming up to speak during the regular public comment time versus on a specific item and if there are multiple people that are coming up to speak, that they don't have to stand in line but they would be able to know when they are being called that that is the time for them to come up and you don't have to worry about somebody from the front missing somebody that is coming from

the back. She would like to see if the Council concurs if this is something that staff could look into. **There was Council consensus.**

Councilmember Franklin said the other thing was to maybe have an annual review of our Civility and Ethics Code and our Decorum so that everybody understands what we are trying to do here. This would be to have a presentation during a Council meeting on what our codes are and open it up for discussion if there are any questions or changes. **There was Council consensus.**

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Schedule Meeting with Banning Library Board (*City Clerk – Check Dates*)
3. Update on Economic Development Plan
4. Review of Fees and Rates
5. Approach in regards to Code Enforcement (*1/25/10*) (*Zai*)
6. Yard Sale Signs (*1/25/10*) (*Zai*)

Mayor Hanna said she was able to attend the Banning Library Board meeting and they are very eager to meet with the Council and are looking forward to hearing from the City to arrange for a joint meeting.

ADJOURNMENT

By common consent the meeting adjourned the meeting at 7:20 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

Recd 1/11
Cancelled mtg.

council members
staff
residents + guests

Row Klineczak 247 S. Barber St

As a 30 year resident of
Banning, I have seen
a lot of bad decisions
and bad politics in this
city. None have compelled
me to attend a meeting
before now.

But first
My friends, neighbors and
I voted for Debbie Franklin
based on her merits ~~and service~~^{communitie}
and leadership.

Congratulations Ms Franklin
on your re-election

Mr. Bettis, you also got
our vote, but before
you rest on your laurels,
understand why you are
there.

Three candidates - while
wanting change - had
nothing to offer.

Mr Miller and Mr Taylor
campaigned against Debbie.

You, Mr Botts, got our votes
by default, and, won by
a small margin.

Now, make no mistake; you
~~know~~ ~~know that you are~~
are here
~~to~~ on Debbie Franklin's
coat tails

Now the sewage
The last council meeting
was discussing with sewage.
Not the pictures presented
later, but the speech spewed
by Mr Botts in nominating
Ms Henné; and the subsequent
vote.

Mr Botts after the parade
of voters endorsing Franklin
in previous meetings and the
election results how would you think
Henné was the peoples choice? 2

Councilwoman Horne

your cohorts here may have

given you the title of

mayor - but the ~~elitists~~
people

~~elitists~~ did not

It is time for direct

election of mayor.

3

Banning Electric Utility

Available Funds

- Retail sales for FY 2010-11 are projected at \$24M
- $\$24M * 2.85\% = \$684,000$
- Total amount available to administer and fund all the Utility Rebate and Incentive programs – plus Low Income Assistance

B.E.A.R. Low Income Assistance

Background

- AB 1890 and AB 995 require the collection of Public Benefit Funds set at 2.85% of Electric Utility retail sales
- Funds are only to be spent on:
 - Energy Conservation Programs
 - Renewable Energy
 - Research & Development
 - Low Income Assistance

BEAR Participation Levels

- Current participation is approx 1,000 customers
- BEAR rate applies to Baseline allocation which is 4,696 kWh per year
- Total quantity of electricity subsidized under the BEAR program is approximately 4,696,000 kWh per year

Baseline Rate History

- BEAR Baseline rate since Oct 2007 = \$0.0672 / kWh

- Regular Baseline rate as of May 2007 = \$0.1098 / kWh

- Regular Baseline rate as of Oct 2009 = \$0.1498 / kWh

Current Subsidization Levels

- BEAR rate = \$0.0672 / kWh
- Current Baseline rate = \$0.1498 / kWh
- Current rate subsidized = \$.0826 / kWh
(\$0.1498 - \$0.0672 = \$0.0826)
- Total current BEAR subsidization is approximately \$388,000 per year

Proposed Subsidization Levels

- Proposed BEAR rate = \$0.0998 / kWh
- Current Baseline rate = \$0.1498 / kWh
- Proposed rate subsidized = \$.0500 / kWh
(\$0.1498 - \$0.0998 = \$0.0500)
- Total proposed BEAR subsidization would be approximately \$235,000 per year

Current Public Benefit Budget

Total projected Revenue =	\$684,000
Program Administration =	\$160,000
BEAR Subsidization =	\$388,000
HELP Contribution =	\$ 10,000
All Other Programs =	\$126,000

BEAR Baseline Bill

	308 kWh Baseline	Winter	Current	Proposed
Customer Charge		\$ 3.00	\$ 3.00	
Energy		\$ 20.70	\$ 30.74	
Street Lighting		\$ 2.00	\$ 2.00	
Total Bill	\$ 25.70	\$ 35.74	Increase	\$ 10.04

	558 kWh Baseline	Summer	Current	Proposed
Customer Charge		\$ 3.00	\$ 3.00	
Energy		\$ 37.50	\$ 55.69	
Street Lighting		\$ 2.00	\$ 2.00	
Total Bill	\$ 42.50	\$ 60.69	Increase	\$ 18.19

Proposed Public Benefit Budget

Total projected Revenue =	\$684,000
Program Administration =	\$160,000
BEAR Subsidization =	\$235,000
HELP Contribution =	\$ 10,000
All Other Programs =	\$279,000

Summary

- Proposed BEAR rate provides a 33% reduction for qualified customers
- Allows for adequate funding of other Public Benefit programs
- Puts Banning in line with other Municipal utilities that spend between 25-30% of PB funds on Low Income Assistance
- Fulfills intent of AB1890 and AB 995

CITY COUNCIL AGENDA

Date: January 25, 2011

To: City Council

From: Jeff Stowells, Fire Services Battalion Chief

Subject: Resolution 2011-04 authorizing expenditure of funds obtained from American Medical Response Fine Money Distribution (April 2009 – March 2010).

RECOMMENDATION: The City Council adopt Resolution No. 2011-04, authorizing the expenditure of \$9,412.52 received from American Medical Response.

JUSTIFICATION: The money obtained through late ambulance response penalty fees must be spent on medical and/or rescue equipment

BACKGROUND: The fire department uses thermal imaging cameras (TIC) to detect heat in areas that we can not access. The camera is also used to scan rooms filled with smoke to find victims still within the fire building. With this camera we can find and rescue victims along with minimizing damage to the structure by determining that there is no fire or heat with out opening the enclosed area. The current TIC has been repaired several times and is currently unserviceable and needs to be replaced.

FISCAL DATA: The total cost of the new TIC is \$9,555.19. The difference in the cost and received funds of \$142.67 will come out of the current approved fire department budgeted funds.

RECOMMENDED BY:


Jeff Stowells
Fire Services, Battalion Chief

APPROVED BY:


Andrew Takata
City Manager

REVIEWED BY:


June Overholt
Administrative Director

RESOLUTION NO. # 2011-04

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING THE EXPENDITURE OF LATE AMBULANCE PENALTY
FEES FOR THE PURCHASE OF EMERGENCY MEDICAL AND RESCUE
EQUIPMENT.**

WHEREAS, as set forth in the Emergency Medical Service Agreement (EMSA) penalty fees are assessed for late ambulance response times, and

WHEREAS, for the 2009–2010 reporting period, the City of Banning has recovered \$9,412.52 in late ambulance response penalty fees, and

WHEREAS, the recovered penalty fees are utilized to purchase Emergency Medical and Rescue Equipment to upgrade and enhance the Emergency Medical Service capabilities of the Fire Department to protect the citizens of Banning;

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning hereby authorize the expenditure of \$9,412.52 for the purchase of medical and rescue related equipment and authorize the City Finance Department to make the appropriate budget adjustments.

PASSED, APPROVED, AND ADOPTED this 25th day of January 2011.

Barbara Hanna, Mayor

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution 2006-77 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 14th day of November, 2006, and

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was duly adopted at a regular meeting of said City Council held on the 14th day of November, 2006, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning

American Medical Response Fine Money Distribution
Annual Report (April 2009 – March 2010)

	FINE PAYMENT %	DISTRIBUTION AMOUNT
Central Zone Total	---	\$86,209.25
City of Moreno Valley	59%	\$50,863.46
City of Perris	31%	\$26,724.87
Riverside County (Central Zone)	10%	\$8,620.93
Desert Zone Total	---	\$62,673.25
Riverside County (Desert zone)	32%	\$20,055.44
City of Palm Springs	27%	\$16,921.78
City of La Quinta	10%	\$6,267.33
City of Desert Hot Springs	19%	\$11,907.92
City of Coachella	12%	\$7,520.79
Northwest Zone Total	---	\$80,313.75
Riverside County (Northwest Zone)	53%	\$42,566.29
City of Corona	40%	\$32,125.50
City of Norco	7%	\$5,621.96
Pass Zone Total	---	\$22,410.75
City of Calimesa	13%	\$2,913.40
City of Banning	42%	\$9,412.52
Riverside County (Pass Zone)	12%	\$2,689.29
City of Beaumont	33%	\$7,395.55
San Jacinto / Hemet Zone Total	---	\$29,494.75
City of Hemet	62%	\$18,286.75
Riverside County (San Jacinto Zone)	17%	\$5,014.11
City of San Jacinto	21%	\$6,193.90
Southwest Zone Total	---	\$109,298.50

CITY COUNCIL AGENDA

Date: January 25, 2011

TO: City Council

FROM: June Overholt, Administrative Services Director

SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of September 2010

RECOMMENDATION: The City Council review and ratify the following reports per the California Government Code.

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of September 2010.

The reports are:

Expenditure approval lists

September 2, 2010	245,320.39
September 9, 2010	127,000.44
September 16, 2010	857,080.30
September 23, 2010	218,193.06
September 30, 2010	378,235.52

January 19, 2011 2,407,354.93 (September Month End)

Payroll check registers

September 10, 2010	6,331.42
September 23, 2010 Manual Check	4,173.33 ¹
September 24, 2010	7,295.24

Payroll direct deposits*

September 10, 2010	279,318.61
September 24, 2010	287,173.95

As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

* Included on the September month end expenditure approval list of 1/19/2011.

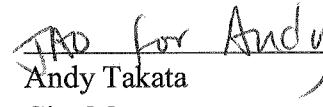
⁽¹⁾ Due to Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:


June Overholt
Administrative Services Director

APPROVED BY:


Andy Takata
City Manager

Fund/Department Legend:

General Fund – 001

Departments

0001 – General
1000 – City Council
1200 – City Manager
1300 – Human Resources
1400 – City Clerk
1500 – Elections
1800 – City Attorney
1900 – Fiscal Services
1910 – Purchasing & A/P
2060 – TV Government Access
2200 – Police
2210 – Dispatch
2300 – Animal Control

2400 – Fire
2700 – Building Safety
2800 – Planning
3000 – Engineering
3200 – Building Maintenance
3600 – Parks
4000 – Recreation
4010 – Aquatics
4050 – Senior Center
4060 – Sr. Center Advisory Board
4500 – Central Services
4800 – Debt Service
5400 – Community Enhancement

All Other Funds

003 - Riverside County MOU
100 – Gas Tax Street Fund
101 – Measure A Street Fund
103 – SB 300 Street Fund
104 – Article 3 Sidewalk Fund
110 – CDBG Fund
111 – Landscape Maintenance
132 – Air Quality Improvement Fund
140 – Asset Forfeiture-Police Fund
144 – Local Law Enforcement Block Grant
146 – San Gorgonio Gang Task Force
148 – Supplemental Law Enforcement
149 – Public Safety Sales Tax Fund
150 - State Park Bond Fund
200 – Special Donation Fund
201 – Sr. Center Activities Fund
202 – Animal Control Reserve Fund
203 – Police Volunteer Fund
204 – D.A.R.E. Donation Fund
300 – City Administration COP Debt Service
360 – Sun Lakes CFD #86-1
365 – Wilson Street #91-1 Assessment Debt
370 – Area Police Computer Fund
375 – Fair Oaks #2004-01 Assessment Debt
376 – Cameo Homes
400 – Police Facilities Development
410 – Fire Facility Development
420 – Traffic Control Facility Fund
421 – Ramsey/Highland Home Road Signal
430 – General Facilities Fund
441 - Sunset Grade Separation Fund
444 - Wilson Median Fund
451 – Park Development Fund

470 – Capital Improvement Fund
475 – Fair Oaks #2004-01 Assessment District
600 – Airport Fund
610 – Transit Fund
660 – Water Fund
661 – Water Capital Facilities
662 – Irrigation Water Fund
663 – BUA Water Capital Project Fund
669 – BUA - Water Debt Service
670 – Electric Fund
672 – Rate Stability Fund
673 – Electric Improvement Fund
674 - '07 Elec Revenue Bond Project Fund
675 – Public Benefit Fund
678 - '07 Elec Revenue Bond Debt Service Fund
680 – Wastewater Fund
681 – Wastewater Capital Facility Fund
683 – BUA Wastewater Capital Project Fund
685 – State Revolving Loan Fund
689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Insurance Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 – Utility Billing Administration
810 – CRA – Low/Mod Fund
830 – CRA – Debt Service Fund
850 – CRA - Administration Fund
854 – CRA Low/Mod Bond Fund
855 - 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – CRA - Project Fund

CITY COUNCIL AGENDA

Date: January 25, 2011

TO: City Council

FROM: June Overholt, Administrative Services Director

SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of October 2010

RECOMMENDATION: The City Council review and ratify the following reports per the California Government Code.

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of October 2010.

The reports are:

Expenditure approval lists		
October 4, 2010	Manual Check	62.85 ¹
October 7, 2010		1,172,488.15
October 14, 2010		359,837.34
October 21, 2010		227,973.71
October 26, 2010	Manual Check	545.00 ¹
October 28, 2010		203,772.24
January 19, 2011		4,296,672.78 (October Month End)
Payroll check registers		
October 8, 2010		6,375.74
October 22, 2010		6,384.43
Payroll direct deposits*		
October 8, 2010		292,312.62
October 22, 2010		284,628.40

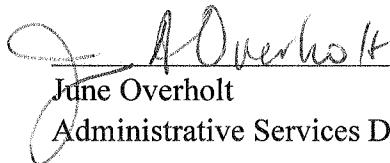
As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

* Included on the October month end expenditure approval list of 1/19/2011.

⁽¹⁾ Due to Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:


June Overholt
Administrative Services Director

APPROVED BY:


Andy Takata
City Manager



Fund/Department Legend:

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Departments

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360 – Sun Lakes CFD #86-1
365 – Wilson Street #91-1 Assessment Debt
370 – Area Police Computer Fund
375 – Fair Oaks #2004-01 Assessment Debt
376 – Cameo Homes
400 – Police Facilities Development
410 – Fire Facility Development
420 – Traffic Control Facility Fund
421 – Ramsey/Highland Home Road Signal
430 – General Facilities Fund
441 - Sunset Grade Separation Fund
444 - Wilson Median Fund
451 – Park Development Fund

470 – Capital Improvement Fund
475 – Fair Oaks #2004-01 Assessment District
600 – Airport Fund
610 – Transit Fund
660 – Water Fund
661 – Water Capital Facilities
662 – Irrigation Water Fund
663 – BUA Water Capital Project Fund
669 – BUA - Water Debt Service
670 – Electric Fund
672 – Rate Stability Fund
673 – Electric Improvement Fund
674 - '07 Elec Revenue Bond Project Fund
675 – Public Benefit Fund
678 - '07 Elec Revenue Bond Debt Service Fund
680 – Wastewater Fund
681 – Wastewater Capital Facility Fund
683 – BUA Wastewater Capital Project Fund
685 – State Revolving Loan Fund
689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Insurance Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 – Utility Billing Administration
810 – CRA – Low/Mod Fund
830 – CRA – Debt Service Fund
850 – CRA - Administration Fund
854 – CRA Low/Mod Bond Fund
855 - 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – CRA - Project Fund

**CITY COUNCIL
PUBLIC HEARING**

DATE: January 25, 2011

TO: Honorable Mayor and City Council Members

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: **ZONE TEXT AMENDMENT NO. 10-97505:**
Standards and Guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune-Telling, Mobile Vending and Code Clean-Up

STAFF RECOMMENDATION

That the City Council takes the following actions:

1. Adopt a Negative Declaration in compliance with the California Environmental Quality Act Section 15000 et seq.; and,
2. Adopt Ordinance No. 1434 amending the “Zoning Ordinance” Standards and Guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune-Telling, Mobile Vending and Code Clean-Up.

BACKGROUND/ANALYSIS

The City Council approved the General Plan and Zoning Ordinance on January 31, 2006. The Zoning Ordinance ensures the orderly development of all lands within the City's corporate boundaries to protect the public health, safety and welfare. The adopted Zoning Ordinance contains no provision for tattoo and body piercing parlors, hookah and smoking lounges, fortune-telling, and mobile vending land uses. Therefore, these land uses are prohibited.

Staff received several inquiries from the public regarding these land uses. On April 13, 2010, City Council adopted Interim Urgency Ordinance No. 1422 that established a 45-day temporary moratorium. On May 25, 2010, the City Council adopted Interim Urgency Ordinance No. 1423 extending that temporary moratorium for 10 months and 15 days until regulations could be prepared by staff for consideration by Planning Commission and City Council.

The concerns related to the subject land uses are listed as follows:

The practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born disease such as hepatitis. Additionally, the

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image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment.

The establishment of hookah and smoking lounges produces secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Moreover, smoking lounges may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.

Consistent with the City's image as primarily a single-family community, fortune telling may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone.

The unrestricted sale and distribution of food, beverages, merchandise or services from mobile vendors or pedestrians within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the risk of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is contrary to the public welfare.

Planning Commission's Recommendation

On December 1, 2010, the Planning Commission held a noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendments. At this public hearing the Planning Commission approved Resolution No. 2010-13 recommending approval of Zone Text Amendment No. 10-97505 to the City Council.

Therefore, Title 17 of the Banning Municipal Code (Zoning Ordinance) is proposed to be amended as follows:

Add the following definitions to code section 17.04.070:

Smoking Lounge means any establishment or location that is dedicated, in whole or in part, to the smoking or use of tobacco cigarettes, cigars, chewing tobacco, and dipping tobacco, or other tobacco substances which under state law may only be legally sold to persons age 18 and older; 'smoking lounges' include, without limitation, establishments referred to as cigar bars or lounges, hookah cafes, tobacco clubs or tobacco bars. A 'smoking lounge' does not include grocery or convenience store establishments that sell tobacco products where (i) such tobacco products are not the establishment's primary merchandise, and (ii) the establishment has no area dedicated to the smoking or use of tobacco products.

Tattoo Parlor means any business or premises dedicated to the act or process of marking or coloring the skin of any person by the insertion of pigment under or in the skin or by the production of scars. The term 'tattoo parlor' does not include businesses that offer permanent make-up as a service that is secondary to other business services.

Body Piercing Parlor means any business or premises dedicated to the piercing, puncture or perforation of human skin or tissue, or the insertion of jewelry or other objects into or under the skin or tissue, for decorative, non-medical purposes; the term 'body piercing parlor' does not include businesses that offer ear-only piercing as a service that is secondary to other business services, or acupuncture clinics.

Fortune-Telling means the telling of fortunes, forecasting of future events or furnishing of any information not otherwise obtainable by the ordinary process of knowledge, by means of any occult or psychic power, faculty or force, including, but not limited to clairvoyance, clairaudience, cartomancy, psychometry, phrenology, spirits, tea leaves, or other such reading, mediumship, seership, prophecy, augury, astrology, palmistry, necromancy, mindreading, telepathy, or other craft, art, science, cards, talisman, charm, potion, magnetism, magnetized article, or substance, crystal gazing, oriental mysteries or magic, of any kind or nature.

Mobile Vending Vehicle - shall mean any vehicle, as that term is defined in the California Vehicle Code, which is equipped or primarily used for retail sales of fruits, vegetables or produce, and/or prepared, pre-packaged, or unprepared, unpackaged food of any kind on any public street, alley or highway or private street or alley within the City limits. The inventory of these vehicles is not necessarily limited to edible items and may include non-food sundries. A human powered cart for such vending also qualifies as a mobile vending vehicle.

Add the following code section:

17.12.020 Permitted, conditional and prohibited uses.

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

	DC	GC	HSC	PO	I	AI	BP	IMR
Services								
Tattoo and Body Piercing Parlors	X	C	C	C	C	C	X	X
Hookah and Smoking Lounges	X	C	C	C	C	C	C	X
Fortune-Telling	X	C	C	C	C	C	C	X
Mobile Vending	T	T	T	T	T	T	T	T

Add the following code section:

17.12.050 Use Specific Standards

Table 17.12.050
Use Specific Development Standards

	DC	GC	HSC	PO	I	AI	BP	IMR
Q. Tattoo and Body Piercing Parlors		*	*	*	*	*		

Q. Tattoo and Body Piercing Parlors.

As indicated in Table 17.12.020, a Conditional Use Permit is required for tattoo and/or body piercing businesses. The following standards shall apply:

1. The business shall not be located within 1,000 feet of any other tattoo and/or body piercing parlor as measured from any point from the outer boundaries of the property containing the business.
2. The business shall not be located within 500 feet of any adult-oriented business as measured from any point from the outer boundaries of the property containing the business.
3. The business shall not be located within 500 feet of any business selling alcoholic beverages, as measured from any point from the outer boundaries of the property containing the business.
4. The business shall not be located within 100 feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property.
5. The business shall not be located within 600 feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.
6. The business shall maintain in a sanitary condition at all times both the facilities and employees of the business. All walls, ceilings, floors, furnishings, and instruments used for tattoo and piercing shall be kept in good repair, and maintained in a clean and sanitary condition. Employees shall be required to wash their hands prior to any contact with customers.
7. Officers of the Police Department, Code Enforcement Division, and the Fire Department shall have the right to enter any tattoo and body piercing businesses during regular business hours to make reasonable inspection to ascertain whether the provisions of this

chapter are being complied with, provided reasonable and normal business operations shall not be interfered with by said inspection.

8. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

Table 17.12.050
Use Specific Development Standards

	DC	GC	HSC	PO	I	AI	BP	IMR
R. Hookah and Smoking Lounge		*	*	*	*	*	*	

R. Hookah and Smoking Lounge.

As indicated in Table 17.12.020, a Conditional Use Permit is required for hookah and smoking lounge businesses. The following standards shall apply:

1. The business shall not be located within 1,000 feet of any other hookah and smoking lounge as measured from any point from the outer boundaries of the property containing the business.
2. The business shall not be located within 500 feet of any adult-oriented business as measured from any point from the outer boundaries of the property containing the business.
3. The business shall not be located within 100 feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property
4. The business shall not be located within 600 feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.
5. An outdoor patio shall be required together with any proposed or existing hookah or smoking lounge use.
6. The hours of operation shall be no earlier than 7:00 a.m. and no later than 11:00 p.m.

Table 17.12.050
Use Specific Development Standards

	DC	GC	HSC	PO	I	AI	BP	IMR
S. Fortune-Telling.		*	*	*	*	*	*	

S. Fortune-Telling.

As indicated in Table 17.12.020, a Conditional Use Permit is required for fortune-telling businesses. The following standards shall apply:

1. The business shall not be located within 1,000 feet of any other fortune-telling businesses as measured from any point from the outer boundaries of the property containing the business.
2. The business shall not be located within 500 feet of any adult-oriented business as measured from any point from the outer boundaries of the building lease space containing the business.
3. The business shall not be located within 100 feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property.
4. The business shall not be located within 600 feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.
5. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

Add the following code section:

17.108.020

K. Mobile Vending of food, beverages, merchandise or services from a vehicle as defined by the California Vehicle Code including any non-self-propelled or nonmotorized vehicle or similar vending device and a cart propelled by human power.

17.108.070 Requirements and Prohibitions for Mobile Vending

The unrestricted sale and distribution of food, beverages, merchandise or services from mobile vendors within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances constitutes a detriment to the public health, safety, and welfare because of the increased risk of injury to pedestrians and damage to personal property in the vicinity. Therefore the following requirements and prohibitions shall apply:

A. Mobile Vending Requirements.

1. Technical Staff review shall be required in accordance with Chapter 17.104 of the “Zoning Ordinance”.

2. All mobile vendors shall comply with State of California and County of Riverside regulations for food handling including obtaining the respective agency permits.
3. All mobile vendors shall comply with the standards set forth in Section 17.104.060 *Criteria governing review* of the “Zoning Ordinance”.

B. Mobile Vending Prohibitions.

1. No food, beverages, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor upon public property without the authorization of the public entity.
2. No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor on private property without the express written consent of the owner or lessee of the property and except in conformity with health, safety and zoning regulations contained herein.
3. No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor within five hundred (500) feet from any public school property, measured in a straight line to the nearest point of the school property between 7:00 a.m. and 4:00 p.m. on regular school days; except in commercial zones, on private property, with the express written consent of the owner or lessee of the property and in conformity with health, safety and zoning regulations contained herein.
4. No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor that is not on an improved surface and that is creating an obstruction to vehicles, pedestrians or parking.

Code Clean-up

1. Note 3 “Must include a minimum of fifty percent new product sales” from Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses is repealed in its entirety (Note 3 is attached to *Auto, mobile home and motor vehicle sales, and parts sales, new and used*).
2. Amend **Single-family dwellings, existing** in Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses to a permitted use as follows:

	DC	GC	HSC	PO	I	AI	BP	IMR
Residential Uses								
Single-family dwellings, existing	P	X	X	X	X	X	X	X

3. Amend **Second Dwelling Unit** in Table 17.08.020 Permitted, Conditional and Prohibited Residential Uses to permitted uses for MDR and HDR zones as follows:

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Residential Uses									
Second Dwelling Unit	P	P	P	P	P	P	P	P	X

4. Title 6 of the Banning Municipal Code (Animals) is hereby amended as follows:

*Amend **Limit of Animals** is Section 6.08.100 as follows:*

No person shall keep, house, confine or maintain more than the number specified in the “Zoning Ordinance” of adult dogs or cats in any combination in any place in the city except in licensed commercial establishments.

5. Title 10 of the Banning Municipal Code (Stopping, Standing and Parking) is hereby amended as follows:

Section 10.12.070 *Unlawful parking-Peddlers, vendors* is repealed in its entirety.

ENVIRONMENTAL DETERMINATION

The City Council, in light of the whole record before it including, but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Department as provided in the Staff Report dated January 25, 2011, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

The City Council has analyzed this proposed project and has determined that a Negative Declaration is required per the California Environmental Quality Act (“CEQA”) under Section 15070(a) regarding negative declarations, Section 15268 regarding ministerial projects, and Section 15378 regarding the definition of “project” of the CEQA Guidelines, which provide that the adoption of an ordinance by a city is considered a project which requires the preparation of an Initial Study. However, the Project (the adoption of an ordinance amending the City of Banning “Zoning Ordinance”) does not have negative impacts on the environment. A Negative Declaration is proposed for adoption.

2. Multiple Species Habitat Conservation Plan (MSHCP).

The amendment to the “Zoning Ordinance” does not relate to any one physical project and is not subject to the MSHCP. Further, projects subject to this resolution will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR ZONE TEXT AMENDMENT NO. 10-97505

1. The proposed Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal states "*A balanced, well-planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*". The amendment to the Municipal Code to provide development standards and guidelines for tattoo and body piercing parlors, hookah and smoking lounges, fortune-telling, and mobile vending land uses will ensure a functional pattern of land uses by imposing limits on the location of the subject uses in relation to other uses; and, ensure that the quality of life, health, safety, and welfare of the community is not compromised by designating specified zones and regulations for the subject uses. As to each Zoning Text Amendment adopted in Section 3 below, the following findings are specifically made and adopted:

- a. *With Respect to Tattoo and Body Piercing Parlors.* It is in the best interest of the public health, safety and welfare that the City conditionally permit tattoo and body piercing parlors and regulate the proximity of such establishments away from residential and family-oriented uses and school/daycare uses because the practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born disease such as hepatitis. Additionally, the image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment.
- b. *With Respect to Smoking Lounges.* It is in the best interest of the public health, safety and welfare that the City conditionally permit smoking lounges and to regulate the proximity of such establishments away from residential and family-oriented uses and school/daycare uses and because the establishment of smoking lounges produces secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Moreover, smoking lounges may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.
- c. *With Respect to Fortune-Tellers.* It is in the best interest of the public health, safety and welfare that the City conditionally permit fortune-tellers and to regulate the proximity of such establishments away from residential and family-oriented uses and school/daycare uses because, consistent with the City's image as primarily a single-family community, fortune telling and other uses may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone.

d. With Respect to Mobile Vending. It is in the best interest of the public health, safety and welfare that the City regulate the practice of mobile vending (as defined herein) because the unrestricted sale and distribution of food, beverages, merchandise or services from mobile vendors or pedestrians within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the risk of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is contrary to the public welfare including:

- i) the sale of unhealthy and unregulated food products raises concerns about health and food safety;
- ii) the potential sale of other products not legal for sale to minors (cigarettes, alcohol and other drugs, etc.);
- iii) the unsafe conditions resulting from children darting in and out of cars and crossing streets to reach mobile vendors; and
- iv) the conduct of some of the mobile vendors raising concerns that school children might be subject to inappropriate verbal comments and other forms of harassment.

2. The proposed Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The Zone Text Amendment is internally consistent with the existing provisions of the “Zoning Ordinance”. City staff has checked all sections of the “Zoning Ordinance” to ensure that there are no references to tattoo and body piercing parlors, hookah and smoking lounges, fortune telling, and mobile vending land uses and confirmed that with the amendment the “Zoning Ordinance” is internally consistent.

3. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act (“CEQA”) under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15378 regarding the definition of “project” of the CEQA Guidelines; and, a Negative Declaration is hereby recommended for adoption by City Council.

PUBLIC COMMUNICATION

In advance of the Planning Commission hearing held on December 1, 2010, the proposed Zone Text Amendment was advertised in the *Press Enterprise* newspaper on November 12, 2010. The Planning Commission considered verbal comments for or against the proposal at that hearing. No written comments were received.

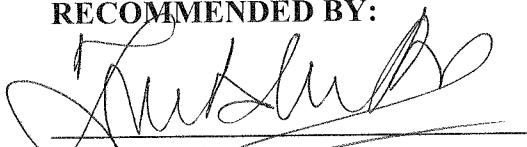
In advance of the City Council hearing held this day, the proposed Zone Text Amendment No. 10-97505 was advertised in the *Record Gazette* newspaper on January 14, 2011. As of the date of this report, staff has not received any verbal or written comments for or against the proposed Zone Text Amendment.

APPROVED BY:


for Andy

Andy Takata
City Manager

RECOMMENDED BY:



Zai Abu Bakar
Community Development Director

REVIEWED BY:


June Overholt

June Overholt
Administrative Services Director

PREPARED BY:



Brian Guillot
Assistant Planner

CC Attachments:

1. Ordinance No. 1434.
2. Initial Study and Negative Declaration.

Attachment 1

(Ordinance No. 1434)

ORDINANCE NO. 1434

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ADOPTING AN INITIAL STUDY/NEGATIVE DECLARATION AND APPROVING ZONING TEXT AMENDMENT NO. 10-97505 TO ADOPT DEVELOPMENT STANDARDS AND GUIDELINES FOR TATTOO AND BODY PIERCING PARLORS, HOOKAH AND SMOKING LOUNGES, FORTUNE TELLING, MOBILE VENDING, AND CODE CLEAN-UP

WHEREAS, the proposed Zoning Text Amendment No. 10-97505 was duly initiated by the City of Banning; and

WHEREAS, the Municipal Code provides for “Zoning Ordinance” amendments consistent with the goals and policies of the General Plan; and

WHEREAS, in response to public inquiries, staff has identified that no provision is made in the adopted “Zoning Ordinance” for tattoo and body piercing parlors, hookah and smoking lounges, fortune telling, and mobile vending land uses; and

WHEREAS, it is necessary to regulate the subject uses to prevent community-wide adverse impacts, increased crime, decreased property values and the deterioration of neighborhoods that can be brought about by the concentration of the subject uses and their location near sensitive uses and to ensure compatibility of such uses with surrounding land uses and properties and to avoid any impacts associated with such uses. Also, a code clean-up is included; and

WHEREAS, on November 12, 2010, the City published a public hearing notice for Zoning Text Amendment No. 10-97505 in the *Press Enterprise* newspaper in compliance with state law and Chapter 17.68 of the Banning Zoning Ordinance; and

WHEREAS, on December 1, 2010, the Planning Commission held a noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to Zoning Text Amendment No. 10-97505 and at which time the Planning Commission considered the proposed Zoning Text Amendment and recommended City Council approval; and

WHEREAS, on January 25, 2011, the City Council held a noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to Zone Text Amendment No. 10-97505; and

WHEREAS, at said public hearing on January 25, 2011, the City Council considered and heard public testimony and comments regarding Zoning Text Amendment No. 10-97505; and

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WHEREAS, at this public hearing, the City Council has analyzed this proposed project and has determined that a Negative Declaration is required per the California Environmental Quality Act (“CEQA”) under Section 15070(a) regarding negative declarations, Section 15268 regarding ministerial projects, and Section 15378 regarding the definition of “project” of the CEQA Guidelines, which provide that the adoption of an ordinance by a city is considered a project which requires the preparation of an Initial Study. However, the Project (the adoption of an ordinance amending the City of Banning “Zoning Ordinance”) does not have negative impacts on the environment; a Negative Declaration is proposed for adoption; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on January 25, 2011.

NOW THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Banning as follows:

SECTION 1: ENVIRONMENTAL FINDING.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Department as provided in the Staff Report dated January 25, 2011, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

The City Council has analyzed this proposed project and has determined that a Negative Declaration is required per the California Environmental Quality Act (“CEQA”) under Section 15070(a) regarding negative declarations, Section 15268 regarding ministerial projects, and Section 15378 regarding the definition of “project” of the CEQA Guidelines, which provide that the adoption of an ordinance by a city is considered a project which requires the preparation of an Initial Study. However, the Project (the adoption of an ordinance amending the City of Banning “Zoning Ordinance”) does not have negative impacts on the environment. A Negative Declaration is proposed for adoption.

2. Multiple Species Habitat Conservation Plan (MSHCP):

The amendment to the “Zoning Ordinance” does not relate to any one physical project and is not subject to the MSHCP. Further, projects subject to this resolution will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

SECTION 2: REQUIRED FINDINGS.

1. The proposed Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal states "*A balanced, well-planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*". The amendment to the Municipal Code to provide development standards and guidelines for tattoo and body piercing parlors, hookah and smoking lounges, fortune-telling, and mobile vending land uses will ensure a functional pattern of land uses by imposing limits on the location of the subject uses in relation to other uses; and, ensure that the quality of life, health, safety, and welfare of the community is not compromised by designating specified zones and regulations for the subject uses. As to each Zoning Text Amendment adopted in Section 3 below, the following findings are specifically made and adopted:

- a. *With Respect to Tattoo and Body Piercing Parlors.* It is in the best interest of the public health, safety and welfare that the City conditionally permit tattoo and body piercing parlors and regulate the proximity of such establishments away from residential and family-oriented uses and school/daycare uses because the practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born disease such as hepatitis. Additionally, the image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment.
- b. *With Respect to Smoking Lounges.* It is in the best interest of the public health, safety and welfare that the City conditionally permit smoking lounges and to regulate the proximity of such establishments away from residential and family-oriented uses and school/daycare uses and because the establishment of smoking lounges produces secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Moreover, smoking lounges may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.
- c. *With Respect to Fortune-Tellers.* It is in the best interest of the public health, safety and welfare that the City conditionally permit fortune-tellers and to regulate the proximity of such establishments away from residential

and family-oriented uses and school/daycare uses because, consistent with the City's image as primarily a single-family community, fortune telling and other uses may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone.

- d. *With Respect to Mobile Vending.* It is in the best interest of the public health, safety and welfare that the City regulate the practice of mobile vending (as defined herein) because the unrestricted sale and distribution of food, beverages, merchandise or services from mobile vendors or pedestrians within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the risk of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is contrary to the public welfare including:
 - i) the sale of unhealthy and unregulated food products raises concerns about health and food safety;
 - ii) the potential sale of other products not legal for sale to minors (cigarettes, alcohol and other drugs, etc.);
 - iii) the unsafe conditions resulting from children darting in and out of cars and crossing streets to reach mobile vendors; and
 - iv) the conduct of some of the mobile vendors raising concerns that school children might be subject to inappropriate verbal comments and other forms of harassment.

2. The proposed Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The Zone Text Amendment is internally consistent with the existing provisions of the "Zoning Ordinance". City staff has checked all sections of the "Zoning Ordinance" to ensure that there are no references to tattoo and body piercing parlors, hookah and smoking lounges, fortune telling, and mobile vending land uses and confirmed that with the amendment the "Zoning Ordinance" is internally consistent.

3. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act ("CEQA") under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15378 regarding the definition of "project" of the CEQA Guidelines; and, a Negative Declaration is hereby adopted.

SECTION 3: ZONING ORDINANCE AMENDMENT.

Add the following definitions to code section 17.04.070:

Smoking Lounge means any establishment or location that is dedicated, in whole or in part, to the smoking or use of tobacco cigarettes, cigars, chewing tobacco, and dipping tobacco, or other tobacco substances which under state law may only be legally sold to persons age 18 and older; 'smoking lounges' include, without limitation, establishments referred to as cigar bars or lounges, hookah cafes, tobacco clubs or tobacco bars. A 'smoking lounge' does not include grocery or convenience store establishments that sell tobacco products where (i) such tobacco products are not the establishment's primary merchandise, and (ii) the establishment has no area dedicated to the smoking or use of tobacco products.

Tattoo Parlor means any business or premises dedicated to the act or process of marking or coloring the skin of any person by the insertion of pigment under or in the skin or by the production of scars. The term 'tattoo parlor' does not include businesses that offer permanent make-up as a service that is secondary to other business services.

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Fortune-Telling means the telling of fortunes, forecasting of future events or furnishing of any information not otherwise obtainable by the ordinary process of knowledge, by means of any occult or psychic power, faculty or force, including, but not limited to clairvoyance, clairaudience, cartomancy, psychometry, phrenology, spirits, tea leaves, or other such reading, mediumship, seership, prophecy, augury, astrology, palmistry, necromancy, mindreading, telepathy, or other craft, art, science, cards, talisman, charm, potion, magnetism, magnetized article, or substance, crystal gazing, oriental mysteries or magic, of any kind or nature.

Mobile Vending Vehicle - shall mean any vehicle, as that term is defined in the California Vehicle Code, which is equipped or primarily used for retail sales of fruits, vegetables or produce, and/or prepared, pre-packaged, or unprepared, unpackaged food of any kind on any public street, alley or highway or private street or alley within the City limits. The inventory of these vehicles is not necessarily limited to edible items and may

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include non-food sundries. A human powered cart for such vending also qualifies as a mobile vending vehicle.

Add the following code section:

17.12.020 Permitted, conditional and prohibited uses.

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

	DC	GC	HSC	PO	I	AI	BP	IMR
Services								
Tattoo and Body Piercing Parlors	X	C	C	C	C	C	X	X
Hookah and Smoking Lounges	X	C	C	C	C	C	C	X
Fortune-Telling	X	C	C	C	C	C	C	X
Mobile Vending	T	T	T	T	T	T	T	T

Add the following code section:

17.12.050 Use Specific Standards

Table 17.12.050
Use Specific Development Standards

	DC	GC	HSC	PO	I	AI	BP	IMR
Q. Tattoo and Body Piercing Parlors		*	*	*	*	*		

Q. Tattoo and Body Piercing Parlors.

As indicated in Table 17.12.020, a Conditional Use Permit is required for tattoo and/or body piercing businesses. The following standards shall apply:

1. The business shall not be located within 1,000 feet of any other tattoo and/or body piercing parlor as measured from any point from the outer boundaries of the property containing the business.
2. The business shall not be located within 500 feet of any adult-oriented business as measured from any point from the outer boundaries of the property containing the business.
3. The business shall not be located within 500 feet of any business selling alcoholic beverages, as measured from any point from the outer boundaries of the property containing the business.

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4. The business shall not be located within 100 feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property.
5. The business shall not be located within 600 feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.
6. The business shall maintain in a sanitary condition at all times both the facilities and employees of the business. All walls, ceilings, floors, furnishings, and instruments used for tattoo and piercing shall be kept in good repair, and maintained in a clean and sanitary condition. Employees shall be required to wash their hands prior to any contact with customers.
7. Officers of the Police Department, Code Enforcement Division, and the Fire Department shall have the right to enter any tattoo and body piercing businesses during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being complied with, provided reasonable and normal business operations shall not be interfered with by said inspection.
8. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

Table 17.12.050
Use Specific Development Standards

	DC	GC	HSC	PO	I	AI	BP	IMR
R. Hookah and Smoking Lounge		*	*	*	*	*	*	

R. Hookah and Smoking Lounge.

As indicated in Table 17.12.020, a Conditional Use Permit is required for hookah and smoking lounge businesses. The following standards shall apply:

1. The business shall not be located within 1,000 feet of any other hookah and smoking lounge as measured from any point from the outer boundaries of the property containing the business.
2. The business shall not be located within 500 feet of any adult-oriented business as measured from any point from the outer boundaries of the property containing the business.
3. The business shall not be located within 100 feet of any residential use as

measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property

4. The business shall not be located within 600 feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.
5. An outdoor patio shall be required together with any proposed or existing hookah or smoking lounge use.
6. The hours of operation shall be no earlier than 7:00 a.m. and no later than 11:00 p.m.

Table 17.12.050
Use Specific Development Standards

	DC	GC	HSC	PO	I	AI	BP	IMR
S. Fortune-Telling.		*	*	*	*	*	*	

S. Fortune-Telling.

As indicated in Table 17.12.020, a Conditional Use Permit is required for fortune-telling businesses. The following standards shall apply:

1. The business shall not be located within 1,000 feet of any other fortune-telling businesses as measured from any point from the outer boundaries of the property containing the business.
2. The business shall not be located within 500 feet of any adult-oriented business as measured from any point from the outer boundaries of the building lease space containing the business.
3. The business shall not be located within 100 feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property.
4. The business shall not be located within 600 feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.
5. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

Add the following code section:

17.108.020

K. Mobile Vending of food, beverages, merchandise or services from a vehicle as defined by the California Vehicle Code including any non-self-propelled or nonmotorized vehicle or similar vending device and a cart propelled by human power.

17.108.070 Requirements and Prohibitions for Mobile Vending

The unrestricted sale and distribution of food, beverages, merchandise or services from mobile vendors within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances constitutes a detriment to the public health, safety, and welfare because of the increased risk of injury to pedestrians and damage to personal property in the vicinity. Therefore the following requirements and prohibitions shall apply:

A. Mobile Vending Requirements.

1. Technical Staff review shall be required in accordance with Chapter 17.104 of the "Zoning Ordinance".
2. All mobile vendors shall comply with State of California and County of Riverside regulations for food handling including obtaining the respective agency permits.
3. All mobile vendors shall comply with the standards set forth in Section 17.104.060 *Criteria governing review* of the "Zoning Ordinance".

B. Mobile Vending Prohibitions.

1. No food, beverages, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor upon public property without the authorization of the public entity.
2. No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor on private property without the express written consent of the owner or lessee of the property and except in conformity with health, safety and zoning regulations contained herein.
3. No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor within five hundred (500) feet from any public school property, measured in a straight line to the nearest point of the school property between 7:00 a.m. and 4:00 p.m.

on regular school days; except in commercial zones, on private property, with the express written consent of the owner or lessee of the property and in conformity with health, safety and zoning regulations contained herein.

4. No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a mobile vendor that is not on an improved surface and that is creating an obstruction to vehicles, pedestrians or parking.

Code Clean-up

1. *Note 3 "Must include a minimum of fifty percent new product sales" from Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses is repealed in its entirety (Note 3 is attached to Auto, mobile home and motor vehicle sales, and parts sales, new and used).*
2. *Amend Single-family dwellings, existing in Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses to a permitted use as follows:*

	DC	GC	HSC	PO	I	AI	BP	IMR
Residential Uses								
Single-family dwellings, existing	P	X	X	X	X	X	X	X

3. *Amend Second Dwelling Unit in Table 17.08.020 Permitted, Conditional and Prohibited Residential Uses to permitted uses for MDR and HDR zones as follows:*

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Residential Uses									
Second Dwelling Unit	P	P	P	P	P	P	P	P	X

4. Title 6 of the Banning Municipal Code (Animals) is hereby amended as follows:

Amend Limit of Animals is Section 6.08.100 as follows:

No person shall keep, house, confine or maintain more than the number specified in the "Zoning Ordinance" of adult dogs or cats in any combination in any place in the city except in licensed commercial establishments.

5. Title 10 of the Banning Municipal Code (Stopping, Standing and Parking) is hereby amended as follows:

Section 10.12.070 *Unlawful parking-Peddlers, vendors* is repealed in its entirety.

SECTION 4: SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5: EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days after its 2nd reading in accordance with California law.

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PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2011.

Barbara Hanna, Mayor
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1434 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 25th day of January, 2011, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2011, by the following vote, to wit:

AYES:

NOES:

ABSEN:

ABSTAIN:

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

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Attachment 2

(Initial Study and Negative Declaration)



CITY OF BANNING Initial Study/Negative Declaration for Zone Text Amendment # ZTA 10-97505

DEVELOPMENT STANDARDS AND GUIDELINES FOR TATTOO AND BODY PIERCING PARLORS, HOOKAH AND SMOKING LOUNGES, FORTUNE TELLING AND OCCULT ARTS, MOBILE VENDING AND CODE CLEAN-UP

November 10, 2010

City of Banning
Community Development Department
99 E. Ramsey Street
Banning, California 92220

Zai Abu Bakar
Community Development Director
(951) 922-3131

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**City of Banning Initial Study/Negative Declaration
for
Zone Text Amendment # ZTA 10-97505**

EXECUTIVE SUMMARY

This Initial Study assesses the potential environmental impacts of Zone Text Amendment, ZTA# 10-97505, an amendment to the Banning “Zoning Ordinance” to establish development standards and guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune Telling and Occult Arts, Mobile Vending and Code Cleanup uses in the specified zoning districts. The purpose of the project is to regulate the subject uses to prevent community-wide adverse impacts, increased crime, decreased property values and the deterioration of neighborhoods that can be brought about by the concentration of the subject uses and their location near sensitive uses and to ensure compatibility of such uses with surrounding land uses and properties and to avoid any impacts associated with such uses.

The project adds/modifies various portions of the Banning “Zoning Ordinance” to conditionally permit the subject uses in certain zoning districts. Previously, the subject uses were not permitted in the “Zoning Ordinance”.

The results of the Initial Study show that there is no substantial evidence that the Project would have a significant effect on the environment. A Negative Declaration is being recommended for adoption.

1. INTRODUCTION

Purpose and Scope

This Initial Study serves as the environmental review of the proposed Project, as required by the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., the State CEQA Guidelines, and the City of Banning Local Guidelines for Implementing CEQA.

In accordance with Section 15063 of the State CEQA Guidelines, the City is required to prepare an Initial Study to determine if the Project may have a significant effect on the environment. This Initial Study is intended to be an informational document providing the Planning Commission, City Council, other public agencies, and the general public with an objective assessment of the potential environmental impacts that could result from the implementation of the Project.

Incorporation by Reference

This Initial Study is based in part on the information and analysis contained in other environmental and planning documents. These documents are hereby incorporated by reference in their entirety into this Initial Study, as authorized by Section 15150 of the State CEQA Guidelines. All of the documents incorporated by reference are listed in Section 7 of this Initial Study.

2. EVALUATION OF ENVIRONMENTAL IMPACTS

An Environmental Checklist Form (Form) has been used to evaluate the potential environmental impacts associated with the proposed Project. The Form has been prepared by the Resources Agency of California to assist local governmental agencies, such as the City of Banning, in complying with the requirements of the Statutes and Guidelines for implementing the California Environmental Quality Act.

The Form has been used by the City of Banning to review the effects of the proposed Project with respect to the following environmental factors. The environmental factors checked below would be potentially affected by this project, involving at least one impact that is "Potentially Significant Impact". Based on the analysis contained in this Initial Study, the following environmental factors are affected by the proposed project.

<input type="checkbox"/> Aesthetics	<input type="checkbox"/> Hydrology/Water Quality	<input type="checkbox"/> Population/Housing
<input type="checkbox"/> Agriculture Resources	<input type="checkbox"/> Hazards & Hazards Materials	<input type="checkbox"/> Public Services
<input type="checkbox"/> Air Quality	<input type="checkbox"/> Land Use and Planning	<input type="checkbox"/> Recreation
<input type="checkbox"/> Biological Resources	<input type="checkbox"/> Mineral Resources	<input type="checkbox"/> Transportation/Traffic
<input type="checkbox"/> Cultural Resources	<input type="checkbox"/> Noise	<input type="checkbox"/> Utilities/Service Systems
<input type="checkbox"/> Geology/Soils		

In the Form, a series of questions is asked about the Project for each of the above-listed environmental factors. A brief explanation is then provided for each question on the Form.

There are four possible responses to each question:

A. Potentially Significant Impact.

This response is used when the Project has the potential to have an effect on the environment that is considered to be significant and adverse.

B. Potentially Significant Unless Mitigation Incorporated.

This response is used when the Project has the potential to have a significant impact, which is not expected to occur because:

- a. Mitigation measures have been incorporated into the Project design in order to reduce the impact to a less than significant level; or,
- b. Adherence to existing policies, regulations, and/or design standards would reduce the impact of the Project to a less than significant level.

C. Less Than Significant Impact.

This response is used when the potential environmental impact of the Project is determined to be below known or measurable thresholds of significance and thus would not require mitigation.

D. No Impact.

This response is used when the proposed Project does not have any measurable impact.

3. ENVIRONMENTAL DETERMINATION

On the basis of this initial evaluation, I find that:

- The proposed Project could not have a significant effect on the environment, and a Negative Declaration will be prepared.
- Although the proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures, described in Exhibit C (attached), have been added to the Project. A Mitigated Negative Declaration will be prepared.
- The proposed Project may have a significant effect on the environment, and an Environmental Impact Report is required.
- The proposed Project may have a potentially significant impact unless mitigation is incorporated, but at least one of the impacts has been: 1) adequately analyzed in an earlier document pursuant to applicable legal standards and 2) addressed by mitigation measures based on the earlier analysis as described on the attached sheets. An Environmental Impact Report is required, but it is to analyze only those impacts that have not already been addressed.
- Although the proposed Project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier Environmental Impact Report (EIR) or in a Negative Declaration pursuant to applicable legal standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or Negative Declaration, including revisions or mitigation measures that are imposed upon the proposed Project, nothing further is required.

Approved for distribution by:

Signature:

Zai Abu Bakar, Community Development Director

Prepared by:

Zai Abu Bakar, Community Development Director

Date:

November 10, 2010

Public Review:

November 12, 2010 through December 1, 2010

4. PROJECT DESCRIPTION

Project Title: Zone Text Amendment #ZTA 10-97505 - An amendment to the Banning "Zoning Ordinance" to adopt development standards and guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune Telling and Occult Arts, Mobile Vending and Code Cleanup

Applicant: City of Banning
99 E. Ramsey Street
Banning, California 92220

Project Description: Zone Text Amendment 10-97505 is an amendment to the Banning "Zoning Ordinance" to establish development standards and guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune Telling and Occult Arts, Mobile Vending and Code Cleanup uses in the specified zoning districts.

Approvals Required:

In order to complete and approve the Project, the City of Banning would need to take the following actions:

- Approval of a Negative Declaration;
- Approval of Zone Text Amendment ZTA #10-97505 and adoption of an Ordinance;
- Issuance of Conditional Use Permits and issuance of Building and Safety permits.

5. ENVIRONMENTAL ANALYSIS CHECKLIST

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS. Would the Project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
II. AGRICULTURAL RESOURCES. Would the Project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
III. AIR QUALITY. Would the Project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the region is in non-attainment under an applicable federal or state ambient air quality standard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
(including releasing emissions with exceeded quantitative thresholds for ozone precursors)?				
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IV. BIOLOGICAL RESOURCES. Would the Project:				
a) Have a substantial adverse effect, either directly or through habitat modification, on any species identified as candidate, sensitive or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservancy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
Conservation Plan, or other approved local, regional, or state habitat conservation plan?				
V. CULTURAL RESOURCES. Would the Project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VI. GEOLOGY AND SOILS. Would the Project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
or collapse?				
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code, creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems if sewers are not available?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VII. HAZARDS AND HAZARDOUS MATERIALS. Would the Project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site included on the list of hazardous materials sites compiled per Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would it result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a Project within the vicinity of a private airstrip, would the Project result in a safety hazard for people residing or working in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VIII. HYDROLOGY AND WATER QUALITY. Would the Project:				
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing or planned land uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in such a way as to result in flooding either on-site or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water exceeding the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
h) Place, within a 100-year flood hazard area, structures that would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IX. LAND USE AND PLANNING. Would the Project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
X. MINERAL RESOURCES. Would the Project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XI. NOISE. Would the Project:				
a) Expose persons to a generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Expose persons to a generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Create a substantial permanent increase in ambient noise levels in the Project vicinity above levels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
existing without the Project?				
d) Create a substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the Project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a Project within the vicinity of a private airstrip, would the Project expose people residing or working in the Project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XII. POPULATION AND HOUSING. Would the Project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace a substantial number of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XIII. PUBLIC SERVICES. Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant Environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
a) Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
XIV. RECREATION:				
a) Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the Project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XV. TRANSPORTATION/TRAFFIC. Would the Project:				
a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS. Would the Project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the Project from existing entitlements and resources, or new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider, which serves or may serve the Project, that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. MANDATORY FINDINGS OF SIGNIFICANCE				
a) Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or an endangered threatened species, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the Project have impacts that are individually limited, but cumulatively considerable? (Are the incremental effects of the Project considerable when viewed in connection with those of past Projects, those of other current Projects, and those of probable future Projects?)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the Project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

6. EXPLANATION OF THE ITEMS MARKED ON THE ENVIRONMENTAL CHECKLIST FORM

Checklist Item I Aesthetics.

a-d **No Impact (Scenic Vista, Scenic Resources-State Scenic Highway, Visual Character, Light/Glare).** The project is an amendment to the Banning “Zoning Ordinance” for a use that will have a less than significant impact on aesthetic resources, visual character or light/glare. Any use involving new construction or expansion of an existing use will be evaluated as a conditional use at the appropriate time when more information is known.

Checklist Item II Agricultural Resources.

a-c **No Impact (Farmland Conversion, Zoning, Land Use)** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on agricultural resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item III Air Quality.

a-e **No Impact (Air Quality Plan, Air Quality Standards, Cumulative Considerable Net Increase/Criteria, Sensitive Receptors, Pollutant Concentrations, Odors, Global Climate Change).** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on air quality. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item IV Biological Resources.

a-f **No Impact (Listed Species, Riparian Habitat, Natural Communities, Wetlands, Wildlife Movement, Local Policies – Tree Preservation, Conservation Plans).** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on biological resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item V Cultural Resources.

a-d **No Impact (Historic Resource, Archeological Resources, Paleontological Resources, Disturbance of Human Remains).** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on cultural resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VI Geology and Soils.

a-e **No Impact (Alquist-Priolo Zone, Seismic Ground Shaking, Seismic Ground Failure, Liquefaction, Landslide, Soil Erosion, Loss of Topsoil, Unstable Geologic Unit, Expansive Soil, Septic Tank Suitability)** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on geology and soils. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VII Hazards and Hazardous Materials.

a-h **No Impact (Transport, Use, Disposal of Hazardous Materials, Upset and Accident Conditions Involving Hazardous Materials, Emit if Handle Hazardous Materials within 1/4 mile from a School, Identified Hazardous Site, Within Airport Plan Area, Safety Hazard from Private Airstrip, Impair Emergency Evacuation Plan, Wildland Fire Hazard).** The project is an

amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on hazard and hazardous materials. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known. As a conditional use any new or expansion of an existing use within the airport land use plan area would require review and approval of the Riverside County Airport Land Use Commission and Federal Aviation Administration review and approval and conditioned accordingly.

Checklist Item VIII Hydrology and Water Quality.

a-j **No Impact (Water Quality, Waste Discharge, Groundwater, Drainage Patterns Flooding, Storm Drains, Water Quality, Housing in 100-Year Flood Hazard Area, Flood Levee or Dam, Seiche, Tsunami, or Mudflow.)** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on hydrology and water quality. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item IX Land Use and Planning.

a-c **No Impact (Physical Division, Land Use Plans, Conservation Plans)** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on land use and planning. Guidelines and regulations which provide standards for use is proposed in the Municipal Code as part of this Zone Text Amendment to ensure that there is no land use impacts. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item X Mineral Resources.

a-b **No Impact (Loss of Mineral Resources, Site Delineated as Mineral Resource Site)** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on mineral resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XI. Noise.

a-f. **No Impact (Exceed Noise Standard, Groundborne Vibration, Ambient Noise Levels, Temporary Noise Levels, Airport Noise, Private Airstrip)** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on noise. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XII Population and Housing.

a-c **No Impact (Population Growth, Displace Housing)** The project is an amendment to the Banning “Zoning Ordinance” for a use that will not have an impact on population and housing. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XIII Public Services.

a-c **No Impact (Fire Services, Police Services, Schools, Parks, Other Public Facilities)** The project is an amendment to the Banning “Zoning Ordinance” for a use and will not create a direct demand for public services. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XIV. Recreation

a-b **No Impact (Existing Facilities, New or Altered Facilities)** The project is an amendment to the Banning “Zoning Ordinance” for a use and will not create a direct demand for recreation services. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XV Transportation/Traffic.

a-g **No Impact (Roadway Capacity and Level of Service, Congestion Management Program (CMP), Air Traffic Patterns, Roadway Design Hazards, Emergency Access, Parking, Alternative Transportation)** The project is an amendment to the Banning “Zoning Ordinance” for a use and will not create an increase in traffic. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XVI. Utilities and Service Systems

a-g **No Impact (RWQCB Wastewater Treatment, New Water and Wastewater Facilities, New Storm-water Drainage Facilities, Water Supplies, Wastewater, Landfill, Solid Waste)** The project is an amendment to the Banning “Zoning Ordinance” for a use and will not create a demand for new utility service or the construction of new facilities. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XVII. Mandatory Findings of Significance

a. **No Impact (Environment and Habitat)** Based on the analysis contain in this Initial Study, the proposed project will not impact Aesthetics, Agriculture Resources, Air Quality, Biological Resources, Cultural Resources, Geology/Soils, Hydrology/Water Quality, Land Use and Planning, Mineral Resources, Noise, Population/Housing, Public Services, Recreation, Transportation/Traffic, and Utility/Services Systems. Thus the project would have no impact on the environment.

It will not degrade the quality of the environment and no habitat, wildlife populations, and plant and animal communities would be impacted. The purpose of the project is to provide zoning districts in which an amendment to the Banning “Zoning Ordinance” to establish development standards and guidelines for Tattoo and Body Piercing Parlors, Hookah and Smoking Lounges, Fortune Telling and Occult Arts, Mobile Vending and Code Cleanup uses in the specific zoning districts. Any use involving construction or expansion of a building will be evaluated at the appropriate time when more information is known.

b. **No Impact (Cumulatively Considerable)** Based on the analysis contain in this Initial Study, the projects purpose is to regulate the subject uses to prevent community-wide adverse impacts, increased crime, decreased property values and the deterioration of neighborhoods that can be brought about by the concentration of the subject uses and their location near sensitive uses and to ensure compatibility of such uses with surrounding uses and properties and to avoid any impacts associated with such uses. The amendment addresses standards and guidelines for the subject uses as conditional uses in specific zoning districts. The project does not create environmental impacts. Any use involving construction or expansion of a building will be evaluated at the appropriate time when more information is known.

c. **No Impact (Human Beings)** The implementation of the project amends the City’s “Zoning Ordinance” as identified in this Initial Study and compliance with mandatory City requirements, proposed standards and guidelines, would not result in significant impacts to human beings, either directly or indirectly. Any use involving construction or expansion of a building will be evaluated at the appropriate time when more information is known.

7. INCORPORATION BY REFERENCE

This Initial Study is based in part on the information and analysis contained in the documents listed below. These documents are hereby incorporated by reference in their entirety into this Initial Study. Copies of all documents incorporated herein are available for review in the Community Development Department at the Banning Civic Center, 99 E. Ramsey Street, Banning, and California, 92220.

A. City of Banning General Plan

This document provides a vision for the future development of the community. It is the official policy statement of the City Council intended to guide the private and public development of the City. The General Plan was adopted March 2006.

B. Environmental Impact Report (EIR) for the City of Banning General Plan and Zoning Ordinance

This document was prepared to review the environmental constraints and opportunities associated with the adoption of the Banning Comprehensive General Plan and Zoning Ordinance that was adopted March 2006. The EIR is designed to be used as an information database to facilitate the streamlining of, or tiering of the environmental review process for subsequent projects for the City.

C. City of Banning Municipal Code

The Municipal Code contains various regulations and development standards that govern use and development of properties within the City. The Zoning Ordinance was adopted in March 2006.

D. City of Banning Local Procedures for Complying with CEQA

These procedures identify how the City implements CEQA and the State CEQA Guidelines. These local procedures were put into effect in order to comply with Section 15022 of the State CEQA Guidelines.

8. LIST OF PREPARERS

Listed below are the persons who prepared or participated in the preparation of the Initial Study:

Project Manager:

Brian Guillot, Assistant Planner

Reviewed by:

Zai Abu Bakar, Community Development Director

CITY COUNCIL AGENDA

Date: January 25, 2011
TO: Honorable Mayor and City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Adopt Ordinance No. 1435 Authorizing the Execution of an Agreement for the Purchase of Renewable Energy from the La Paz Solar Tower Project Through a Power Sales Agreement With the Southern California Public Power Authority

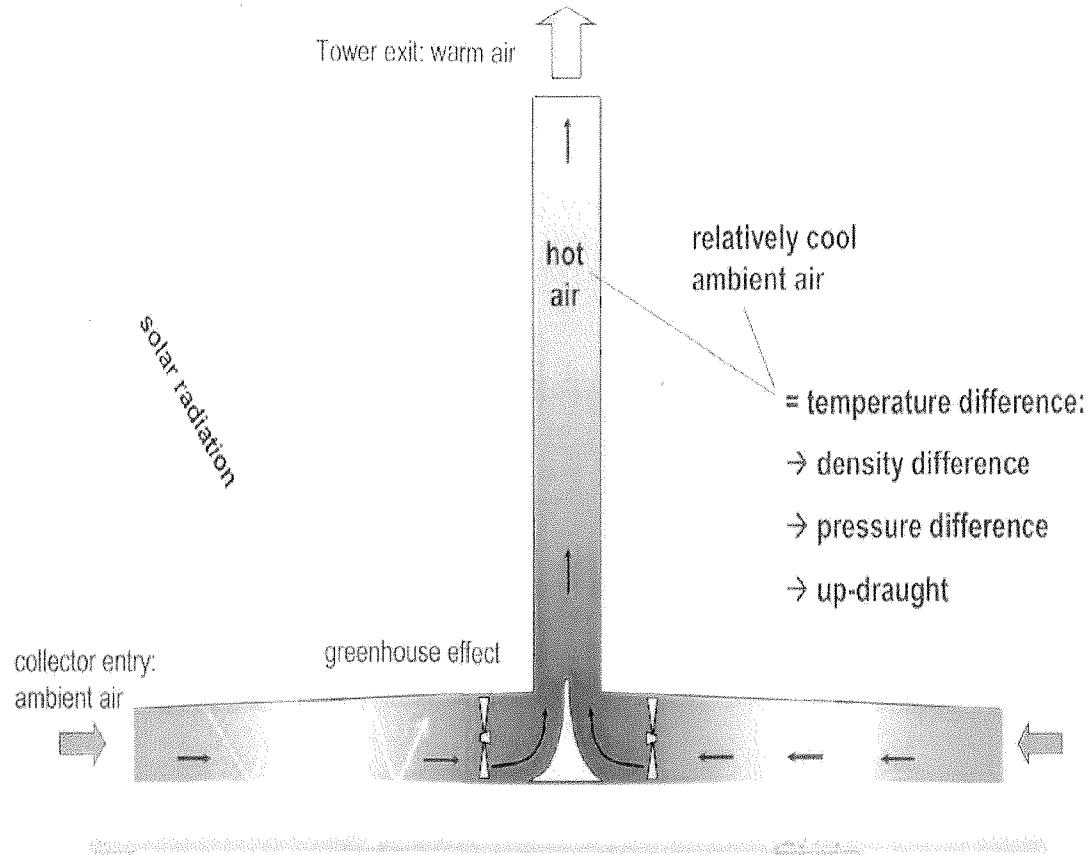
RECOMMENDATION: It is recommended that the City Council approve Ordinance No. 1435 authorizing the execution of the La Paz Solar Tower Project Power Sales Agreement (“La Paz PSA”) with the Southern California Public Power Authority (“SCPPA”).

JUSTIFICATION: Executing said La Paz PSA will allow the City’s Electric Utility (“Utility”) to continue to meet the requirements of the City’s Renewable Portfolio Standard (“RPS”), currently set at 33% by December 31, 2020.

BACKGROUND: The Utility was the first Southern California electric utility to meet the State mandated 20% renewable by 2010, and currently is serving 21% of its retail sales from renewable resources. Recent renewable requirements established by the California Air Resources Board (“CARB”) require 24% in 2015, 28% in 2018 and 33% in 2020.

The La Paz Solar Thermal Tower Project is proposed by EnviroMission Inc., and it is scheduled to begin commercial operation by 2015. At current projected retail sales levels, the La Paz PSA would bring the Utility’s renewable level up to approximately 25%, thereby meeting the CARB’s 2015 requirement.

The project would consist of three major elements: a circular, umbrella shaped, solar heat collector, thermal chimney, and up to 32 electric generators coupled to turbines propelled by the fast moving air. When heated by sun the air under the umbrella shaped collector would rush toward the highest point of the collector to eventually “escape” through the solar chimney mounted at the center of the collector. Rushing air would propel the turbines placed radially around the circumference of the collector. Please reference the conceptual diagram below:



The proposed La Paz project will be sited in Arizona, in close proximity to the California state border, and interconnected to the transmission system operated by Western Area Power Administration (Western). However, power from the project would be contractually delivered to SPPA members via Western's transmission to the Marketplace substation operated by the Los Angeles Department of Water and Power (LADWP).

It is noteworthy to observe that since the project power production would be a function of solar insolation, the anticipated daily energy production level of the project would closely follow a typical shape of Southern California load demand.

Project Allocations: At the time of writing this report, it is expected that the output of the La Paz facility will be allocated amongst the SPPA members as follows (please note that some below listed SPPA participants may not have yet obtained approvals from their respective boards or councils):

Azusa 2 MW
 Anaheim 10 MW
 Banning 2 MW
 Burbank 27 MW
 Glendale 12 MW
 Imperial Irrigation District 15 MW
 Pasadena 10 MW
 Riverside 25 MW
 Total 103 MW

The highlights of the proposed transaction are as follows:

1. Size: 200MW – SCPPA subscription is expected to be for approximately half of the facility capacity (103 MW). SCPPA may increase this amount so long as any portion of the facility capacity remains unsubscribed.

2. Expected Capacity Factor: 60%

3. Price:

- a. For production up to 63% annual capacity factor, the price of delivered energy is \$95.50/MWh for the first fifteen years and then increases by \$1/MWh each year thereafter.
- b. For production greater than 63% annual capacity factor, the price is reduced by 40%.

4. Guaranteed Energy: If there is a failure to achieve at least a 48% annual capacity factor starting in the third year of operation, SCPPA can terminate the contract after two years of consecutive non-performance

5. In-service Date: Late 2014

6. Term: 30 years to Dec. 31, 2045

7. Facility Location: La Paz County, Arizona

8. Delivery Point(s): For Banning - Marketplace 500kV or McCullough 500kV substations

9. Ongoing Performance Guarantee & Security: A \$15 million security fund (prorated based on the SCPPA subscription level) will be established at commercial operation to provide funds to ensure seller compliance with the performance parameters specified in the agreement.

10. Milestone Dates & Security (Secured by LOCs): The developer must meet the following milestones by the indicated date or the indicated sums (prorated by SCPPA's share of the project) will be owed to SCPPA for missing that particular milestone date. For example, if SCPPA subscribes for 50% of the project and construction is not started by Nov 1, 2012, SCPPA would receive \$1.5 million and the agreement/project would be terminated.

- a. Financing - Nov. 1, 2011 - \$0.75 million
- b. Permit - Feb. 1, 2011 - \$1 million
- c. Transmission Interconnection - May 1, 2012 - \$2 million
- d. Construction Start - Nov. 1, 2012 - \$3 million
- e. COD - Nov. 1, 2014 - \$15 million

11. Option(s):

- a. SCPPA will have the option to purchase its share of the facility after ten years at fair market value.
- b. SCPPA will have the option to purchase a second facility on comparable terms with standard escalators.

12. Favored Nation: If the developer enters into a deal, with better terms, with another entity other than SCPPA, for a period longer than two years in duration, those better terms must also be offered to SCPPA.

In general there would be four (4) agreements related to SCPPA's participation in the project: SCPPA executes three (3) agreements with project developer EnviroMission Inc. - a Power Purchase Agreement, Project Purchase Option Agreement with attached Participation Agreement, and a Project Operation and Maintenance Agreement. The SCPPA Board has already voted and approved to have the SCPPA Executive Director execute these three agreements.

Each SCPPA member participating in the project must execute the standard Power Sales Agreement with SCPPA pertinent to the project.

Although the associated technology of a solar thermal chimney is not fully developed yet, the negotiated business arrangement by SCPPA members terms is such that "no money is at risk" if the project fails or proves to be difficult to develop.

The average present value price for La Paz energy is about \$65 per MWh assuming a 60% annual capacity factor and a uniform 3% discount rate over the 30 yr term of the PPA. Given that the bulk of project power will be produced in the peak and mid peak periods, this is a favorable price compared to other renewable technologies available today.

Banning's proposed participation level is 2 MW of a 200 MW project. Assuming performance objectives are met by the project, renewable energy from La Paz would represent about 5% of Banning's projected retail load in 2015.

FISCAL DATA: The La Paz project will require no contribution to construction costs. Banning would only pay for actual energy received at the contract stipulated prices. The projected annual cost, based on the anticipated project output, would be about \$1 million per year, commencing in 2015, for the first 15 years and would increase approximately 1% per year thereafter until the 30 year contract is fulfilled. Depending on Banning's load growth, a rate increase may not be required in 2015 to cover the added renewable energy expense. However, if the Utility were to just maintain its current load, the maximum potential rate increase required in 2015 to cover this energy expense would be 4%.

RECOMMENDED BY:


Fred Mason
Electric Utility Director

APPROVED BY:


Andrew J. Takata
City Manager


June Overholt
Administrative Services Director

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ORDINANCE NO. 1435

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BANNING AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF RENEWABLE ENERGY FROM THE LA PAZ SOLAR TOWER 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 City’s renewable portfolio standard requirements and desires to ensure the reliable delivery of solar energy to fulfill a portion of these requirements; and

WHEREAS, SCPPA and certain of its Members, to wit, currently the Cities of Anaheim, Azusa, Banning, Burbank, Glendale, Pasadena and Riverside and the Imperial Irrigation District (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 the La Paz Solar Tower Project (the “Project”), that will be owned by EnviroMission (USA), Inc., a Delaware corporation (“EnviroMission”) and an affiliate of EnviroMission Limited. The Project is to have a nameplate capacity of 200 MW and is to be located in western La Paz County, Arizona. The Project will include the siting, construction and installation of the solar tower facility containing, among other things, thirty-two 6.25 MW pressure-staged turbine generators. SCPPA desires to acquire a major portion of the electric capacity and energy of the Project from EnviroMission, and each Project Participant desires to obtain electric capacity and associated energy and environmental attributes of the Project from SCPPA pursuant to a La Paz Solar Tower Project Power Sales Agreement between SCPPA and such Project Participant (the “Power Sales Agreement”); and

WHEREAS, SCPPA proposes to enter into a Power Purchase Agreement with EnviroMission (the “Power Purchase Agreement”) to provide, among other things, for the purchase by SCPPA of approximately 103 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 for SCPPA and EnviroMission to enter into an Option Agreement providing SCPPA with options to purchase a percentage ownership interest in the Project equivalent to the percentage of the capacity of the Project purchased by SCPPA under the Power Purchase Agreement. Exhibits to the Option Agreement include the forms of a Participation Agreement (the “Participation Agreement”) and a Project Operation and Maintenance Agreement (the “Project O&M Agreement”) which are to be entered into by SCPPA with EnviroMission if SCPPA exercises its purchase option. The Participation Agreement and the Project O&M Agreement provide for the management and operation of the Project by SCPPA and EnviroMission as co-owners; and

WHEREAS, in the event that it exercises its option to purchase such ownership interest in the Project, SCPPA would issue bonds to finance the cost of acquisition of such ownership interest; and

WHEREAS, the Power Sales Agreement provides for the purchase by a Project Participant from SCPPA of a designated amount of Project capacity and the associated energy and environmental attributes, whether such purchase be from the capacity and associated energy and environmental attributes of the Project purchased by SCPPA under the Power Purchase Agreement, or, if SCPPA exercises its option to purchase the ownership interest in the Project, from the capacity and associated energy and environmental attributes supplied from SCPPA’s ownership interest in the Project. Under the terms of each Power Sales Agreement the designated amount of a Project Participant’s Capacity Amount, Output Entitlement Share or Cost Share (as defined therein) may be increased or decreased by up to 50% but only subject to the conditions set forth in the Power Sales Agreement, including the approval by the representative of such Project Participant on the Project Coordinating Committee established pursuant to the Power Sales Agreement (the “Project Coordinating Committee”) and the approval of the SCPPA Board of Directors; and

WHEREAS, for its purchase of Project capacity and associated energy and environmental attributes, a Project Participant is to pay to SCPPA on a take or pay basis its share of SCPPA’s costs with respect to the Project (including debt service on SCPPA bonds if SCPPA should acquire the ownership interest in the Project), all in accordance with the terms of the Power Sales Agreement; 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 2 MWs of Project capacity and associated energy (subject to adjustment in accordance with the terms of the Power Sales Agreement), including as an Appendix thereto, the form of the Power Purchase Agreement with the form of Option Agreement attached as Appendix J to the Power Purchase Agreement and the forms of the Participation Agreement and Project O&M Agreement attached as Exhibits to the Option 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 I. The Council hereby approves the Banning Power Sales Agreement, including all Appendices and attachments thereto, between the City and SCPPA with respect to the La Paz Solar Tower Project, in substantially the form submitted to the Council.

Section II. The City Manager 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 (such approval to be conclusively evidenced by such execution), and with approval of the City Attorney as to form. The City Clerk is hereby authorized to attest to such execution.

Section III. 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 IV. 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 V. 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 VI. 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 VII. 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 _____ day of February, 2011.

Barbara Hanna, Mayor

ATTEST:

Marie A. Calderon, City Clerk

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

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. 1435 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 25th day of January, 2011, and was duly adopted at a regular meeting of said City Council on the _____ day of February, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

LA PAZ SOLAR TOWER PROJECT

POWER SALES AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

CITY OF BANNING, CALIFORNIA

Dated as of November 1, 2010

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LA PAZ SOLAR TOWER PROJECT

POWER SALES AGREEMENT

1. **PARTIES.** This La Paz Solar Tower Project Power Sales Agreement (this "Agreement"), is dated for convenience as of the 1st day of November, 2010, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," created under the provisions of the Act, and the CITY OF BANNING, CALIFORNIA, a municipal corporation organized and existing under the laws of the State of California. The CITY OF BANNING is also periodically designated in this Agreement as "Banning" or as "Purchaser," or, depending upon context, as "Project Participant." Banning and SCPPA are also sometimes herein referred to individually as a "Party" and together as the "Parties." In addition, Banning and the other members of SCPPA participating in the Project may be referred to collectively, in this Agreement, as "Project Participants."
2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts, which follow, are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections," "Annexes," "Appendices," "Schedules" and "Exhibits" shall be to Sections, Annexes, Appendices, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose nor given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:

- 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act"), by its members, which are municipalities and an irrigation district

that supply, among other things, electrical energy, in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term reliable supplies of renewable electric energy.

2.2 Pursuant to the terms of the Act, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, manage, operate, maintain 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, undertaken, constructed, managed, operated, maintained and administered and to provide by agreement for the performance and carrying out of any such activities.

2.3 Purchaser is a chartered California municipality which provides electric energy to its citizens through its municipally owned electric system. Purchaser is one of the parties to the SCPPA Joint Powers Agreement and is one of the eleven founding member municipalities which formed SCPPA. Since the initial creation of SCPPA pursuant to the Joint Powers Agreement, Purchaser has acted, in part, through SCPPA's Board of Directors to carry out generation, transmission and other projects through SCPPA.

2.4 During the past decade Purchaser and other SCPPA members have experienced the imposition of a substantial number of new environmental laws, rules, regulations and policies and revised resource requirements which have effectively required Purchaser and other SCPPA members to shift generation assets and increasingly turn to and rely upon renewable forms of energy generation, including solar energy technologies, systems and facilities, as a significant part of the generation resource portfolio necessary and appropriate to their electric systems. This shift to renewable energy including solar generation has created an ever-increasing need for the development of secure long-term arrangements for the acquisition of solar energy resources and the delivery of energy from solar generation facilities so that the Project Participants will be able to carry out their objectives to reliably supply their customers with renewable electric energy. The acquisition for the Project Participants of the resources and output of the solar energy generation facility reflected herein, including the procurement of the energy from this facility by way of the Power Purchase Agreement and the accompanying facility purchase

option and the associated ancillary provisions for acquisition and delivery of the resources and output of the facility and the benefits of its associated lines, substations, interconnections, leases, licenses, contract rights, clearances, permits, entitlements and other assets and infrastructure, has been carried forth at the request of the Project Participants to assist the Project Participants in their endeavors to meet their required renewable electric energy resource goals.

- 2.5 Over the course of the past several years members of SCPPA have investigated means and methods by which to acquire renewable energy generation resources and secure necessary long-term reliable supplies of renewable electric energy, including energy generated by facilities employing solar energy based technologies, to carry forth their generation responsibilities to their citizens.
- 2.6 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the "Renewable Electric Energy Resource Project" to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA's Joint Powers Agreement.
- 2.7 To further the aims of the proposed Renewable Electric Energy Resource Project, on January 19, 2006 the SCPPA Board of Directors approved Resolution 2006-2 which declared its intention to reimburse certain renewable resource expenditures from the proceeds of future financings, as required by United States Department of Treasury Regulations section 1.150-2.
- 2.8 Thereafter on March 17, 2006 the SCPPA Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project.
- 2.9 During the ensuing time frame following the creation of the Renewable Electric Energy Resource Project the Board of Directors approved certain additional resolutions declaring its intention to reimburse certain renewable resource expenditures from the proceeds of further future financings, as required by United States Department of Treasury Regulations section 1.150-2.
- 2.10 In pursuit of the goals of the Renewable Electric Energy Resource Project SCPPA has issued Requests for Proposals for potential renewable electric resources to address SCPPA member renewable energy needs, and the

Purchaser and other participants in the Renewable Electric Energy Resource Project have identified potential solar energy generation resources which are being developed in La Paz County, Arizona. This solar energy project has been denominated as the La Paz Solar Tower Project. The La Paz Solar Tower Project is being developed by EnviroMission (USA) Inc., a Delaware Corporation which in turn is a wholly owned subsidiary of EnviroMission Limited, a corporation formed in Australia. The La Paz Solar Tower Project entails a generating facility to be situated on an approximately 5700 acre site consisting principally of Arizona state lands

2.11 At the time of the formation of this Agreement, the Power Purchase Provider as the developer and owner of the La Paz Solar Tower Project has undertaken to develop, construct and operate, and pursuant to the Power Purchase Agreement to sell to SCPPA a portion of the output from the La Paz Solar Tower Project (the developed "Facility," as further described herein). The Facility, when fully developed, is contemplated to entail a solar power generating facility with an expected nameplate capacity of 200MW. The Facility is to be situated in western La Paz County along Arizona State Route 95 between the towns of Parker and Quartzite. The Power Purchase Provider's project development responsibilities will involve, among other things, the siting, construction, and installation of this solar tower facility. The facility is anticipated to contain thirty-two (32) 6.25 MW pressure-staged turbines. The turbines are to be mounted in 2x2 banks of four at the base of the generation facility. The interconnected grid from the facility is projected to include either one 230kv or 500kv substation interconnected by a 230kv or 500kv transmission line that will in turn provide access to the transmission system of the Western Area Power Administration. This project, to be developed by EnviroMission (USA) Inc., is contemplated to entail the solar generation facility, designated portions of the infrastructure facilities, transmission tie line, substation, SCADA system equipment, related communication lines, access roads, operations, maintenance and storage facilities, and other equipment, materials, and improvements associated with such facilities. The Facility which is slated to provide energy to the Project Participants includes all structures or improvements erected on the portion of the state land lease dedicated thereto, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery, and other articles attached thereto or to the extent used in connection therewith, and all spare parts which may from time to time be incorporated or installed in or attached thereto, all related contracts and agreements for services or for real or personal property or goods related thereto, all real or personal property owned, easement granted upon or related thereto, and all other real and tangible and intangible personal property leased or owned by the developer to the extent associated with the Project and placed upon or used in connection with the generation of electricity from the Project.

2.12 The Project Participants desire to obtain the SCPPA Facility Output and also to put into place certain acquisition alternatives under which SCPPA would be provided the ability to exercise an option to purchase or acquire the Facility or a portion thereof or to otherwise succeed to the ownership of the Facility or a portion thereof as well as related resources. It is the intention of the Project Participants, as well, to provide a means by which the Project Participants may secure such transmission and delivery resources as may be necessary to transmit, move or exchange the energy from the Facility as directed by the respective Project Participants.

2.13 To carry forth the Project goals, Purchaser and the other participants in the Renewable Electric Energy Resource Project have carried out extensive investigations into the advisability of the methodology for the acquisition of the long-term reliable supply of renewable electric energy from the Facility provided for through the Power Purchase Agreement for the purpose of carrying forth the goals of achieving a continuing systematic source of renewable electric energy.

2.14 The Project Participants have examined numerous alternatives. Based upon the investigations by Purchaser and the other participants in the Renewable Electric Energy Resource Project, the Project Participants have determined that, in the case of the La Paz Solar Tower Project, the purchase of solar energy under and pursuant to the provisions of the Power Purchase Agreement, together with the alternatives for acquisition of the Facility which are provided for in the Power Purchase and Security Agreements, provides the most desirable commercial structure by which to best achieve the Project Participants' renewable energy needs and best satisfy the continuing requirements of the Project Participants' respective renewable portfolio standards.

2.15 The Project Participants have participated in the negotiation of a power purchase agreement and related agreements, arrangements and mechanisms for the procurement of the SCPPA Facility Output of this La Paz County, Arizona solar generation facility by way of a transaction through which SCPPA will purchase the SCPPA Facility Output of this electric generation facility and will pay for SCPPA Facility Output, Replacement Energy, Excess Energy, Capacity Rights, Environmental Attributes and any other SCPPA Facility Output in connection with the delivery of the same, and which also provide certain acquisition alternatives under which SCPPA would be entitled to exercise an option to, purchase or acquire the Facility or an ownership interest therein or to otherwise succeed to the ownership in the Facility, its various interconnections, its associated transmission arrangements, its resources, its liabilities, its leases, contracts, permits, services and other related facility assets, rights and entitlements. In addition the Project Participants and SCPPA have further carried forth due diligence investigations and

plans and measures by which to provide appropriate project financing in connection with such potential acquisitions.

2.16 Purchaser and the other Project Participants have also examined and analyzed alternative methodologies and structures for the potential acquisition of solar generation to determine the most reliable framework with the best pricing attributes to provide the best value to each Project Participant's respective renewable generation portfolio. Purchaser and the other Project Participants have concluded that with respect to the La Paz Solar Tower Project, the methodology posed by way of the Power Purchase and Security Agreements set forth herein provides the Project Participants with the most desirable means to achieve secure reliable long-term supplies of solar generation.

2.17 The Project Participants have concluded that the purchase of solar generation under the Power Purchase Agreement and the potential option to purchase solar generation facilities contemplated through the Power Purchase Agreement and related agreements and the structure, design and planned methodologies contemplated herein, as part of the Project, will materially assist the Project Participants in carrying out their critical operating and business objectives to provide a long-term supply of solar energy for the generation needs of the Project Participants. SCPPA, Anaheim, Azusa, Banning, Burbank, Glendale, IID, Pasadena, Riverside anticipate that the SCPPA Facility Output produced by the Project will be utilized to serve the Project Participants' renewable energy needs within their respective service areas and will materially assist each respective utility in meeting its renewable portfolio standard.

2.18 To carry forth the objectives set forth herein, the Parties acknowledge, authorize and agree that SCPPA (i) is entering into the Power Purchase Agreement with EnviroMission (USA) Inc., an affiliate of EnviroMission Limited, which will provide, in part, for the purchase of SCPPA Facility Output from the Facility (ii) may enter into amendments of the Power Purchase Agreement as approved by the Coordinating Committee and the Board of Directors and (iii) in addition, will enter into other Power Purchase and Security Agreements which, along with other applicable provisions of the Power Purchase Agreement, will provide SCPPA with certain purchase rights as well as a mortgage, liens and security interests with respect to the Project and certain related facilities and property, all as shall inure to SCPPA for and on behalf of the Project Participants in accordance with each Project Participant's Output Entitlement Share and Output Cost Share, including all of the rights, benefits and entitlements and all of the duties, obligations, and liabilities under the Power Purchase and Security Agreements accruing through SCPPA, including the receipt of SCPPA Facility Output under and pursuant to the terms of the Power Purchase Agreement and this Agreement and (iv) may enter into such Project Agreements and such amendments to such Project Agreements as

the Coordinating Committee and the Board of Directors may from time to time approve.

2.19 In order to secure the performance of the Power Purchase Provider in connection with all of its obligations and requirements under the Power Purchase and Security Agreements, SCPPA has endeavored to provide for various legal mechanisms including Security Instruments and other contractual provisions under which SCPPA is entitled to exercise certain remedial rights and assurances, cure rights and foreclosure rights in order to assure the provision of electric energy by the Facility to satisfy the requirements of the Power Purchase Agreement. It is the intention of the Parties that the Project Participants, under the Power Sales Agreements, shall be reposed with the rights, benefits, liabilities, obligations and risks accruing to SCPPA pursuant to the provisions of these instruments in accordance with each Project Participant's Output Entitlement Share and Output Cost Share.

2.20 Purchaser has need for a long-term source of renewable energy to satisfy Purchaser's renewable portfolio standard requirements and desires to ensure the reliable delivery of solar powered electric energy generation to fulfill this requirement. Purchaser desires that SCPPA proceed with arrangements providing for the economic design, structuring, financing, Acquisition, development, implementation, operation and administration of the Project to procure such a long-term supply of secure renewable solar powered electric generation. To assist in meeting such future renewable generation needs, Purchaser has determined that it is desirable to enter into this Agreement to procure such renewable generation.

2.21 The Purchaser and the other Project Participants desire and intend through the Power Sales Agreements to provide for certain potential acquisition alternatives for SCPPA's purchase of the Facility or an ownership interest therein, including certain options under the Power Purchase and Security Agreements.

2.22 SCPPA will take or cause to be taken all reasonable steps necessary to cause to be secured, such contracts, instruments, rights and entitlements and all such governmental entitlements, permits, licenses and approvals as are necessary for SCPPA to secure the benefits of the Project, and will then proceed as appropriate with, all measures necessary for the economic design, structuring, financing, Acquisition, development, implementation, operation and administration of the Project, including, where applicable and in accordance with this Agreement, the potential purchase of all or any portion of the Project. To the extent provided through the Project Agreements, SCPPA will carry forth those measures as directed by Purchaser and the other Project Participants, associated with the operation and maintenance of those interests and facilities designated as part of the Project to provide a secure source of renewable energy for Purchaser and

the other Project Participants contracting with SCPPA therefor pursuant to the terms and conditions of the Project Agreements.

2.23 The Purchaser and the other Project Participants may desire to finance certain costs required for the Acquisition, financing, and development of the Project by way of funds raised through the issuance by SCPPA of Bonds. Except as otherwise provided herein, each Project Participant shall be solely responsible for its respective associated debt obligations, including but not limited to the repayment of its share of the Bonds, as provided in each Project Participant's Power Sales Agreement.

2.24 In accordance with the directions of the Project Participants and the determination of the Board of Directors SCPPA will finance the costs of acquiring and developing the Project or an ownership interest therein, including the acquisition of all or any portion of the Project, either pursuant to the Power Purchase Agreement or otherwise, through the issuance of Bonds. In addition, in the event certain other conditions should occur under which SCPPA shall determine to, and be provided opportunity to, purchase the Facility or an ownership interest therein pursuant to the Power Purchase and Security Agreements or otherwise acquire ownership in the Facility, it is anticipated that SCPPA will issue Bonds for the purpose of financing the costs thereof. To pay the costs of acquiring, financing, and developing the Project, SCPPA will enter into the Power Sales Agreements with the Project Participants which, among other things, will provide for the payment of all debt service associated with the Bonds. In order to enable SCPPA to issue Bonds it is necessary for SCPPA to have binding agreements with the Project Participants to pay all of SCPPA's costs associated with the Project, and all payments required to be made in accordance with the applicable provisions of the Power Sales Agreements entered into by the Project Participants, including payments required to be made under this Agreement, may be pledged by SCPPA as security for the payment of the applicable Bonds, and the interest thereon, subject to the application thereof to such purposes and on such terms as provided in the Indenture and as required by the Act. SCPPA shall further provide for the administration, operation and maintenance of the Project if acquired by it through the application of the payments required to be made by the Project Participants to SCPPA in accordance with the provisions of the Power Sales Agreements.

2.25 In order to enable SCPPA to carry out the activities necessary to the planning, economic design, structuring, financing, Acquisition, development, implementation, operation and administration of the Project on behalf of the Project Participants, it is necessary for SCPPA to have binding agreements with both Purchaser and the other Project Participants in the Project and to employ those payments made under the respective Power Sales Agreements for the purpose of securing and paying for the rights, services, entitlements and deliverables contemplated by each of the

Project Participants. SCPPA shall provide for the further investigation, implementation, administration, operation and maintenance of the Project if acquired by it through the application of the payments required to be made pursuant to the Power Sales Agreements in accordance with their provisions.

2.26 To the extent that SCPPA should finance any costs of acquisition of the Project with Bonds that are subject to any Federal Tax Law Requirements, it is necessary that both the Purchaser and the other Project Participants be unconditionally obligated to comply with such Federal Tax Law Requirements as determined and directed by SCPPA until such time as any such Bonds have been fully paid or redeemed and discharged.

2.27 Each Project Participant shall pay from its electric revenue fund, including any and all legally available electric system reserves, all amounts payable to SCPPA under its Power Sales Agreement, including but not limited to its Monthly Costs and all other costs, and such payments shall constitute an operating expense of the Project Participant's electric utility.

3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to pay SCPPA for its costs of Purchaser's share of the SCPPA Facility Output and in the event SCPPA acquires the Facility or an ownership interest therein to pay SCPPA for Purchaser's share of SCPPA's costs of administration, operation, maintenance and other related costs of the Facility or an ownership interest therein and debt service on SCPPA's Bonds issued therefor, and the maintenance of reserves under the Indenture securing such Bonds, the Parties agree as herein set forth.

4. **DEFINITIONS.** Appendix A to this Agreement sets forth definitions of certain terms used in this Agreement. The terms defined in Appendix A and this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out below:

4.1 **Agreement.** This Agreement, as it may be amended, modified or supplemented from time to time.

4.2 **Effective Date.** The date described in Section 20.1 hereof.

4.3 **[Intentionally Omitted]**

4.4 **Cost of Acquisition.** The Cost of Acquisition shall equal the sum of the amounts described in Sections 4.4.1 through 4.4.18. SCPPA shall apply, as a credit against the Cost of Acquisition, a proportionate share of all receipts, revenues and other moneys received by it from the sale, if any, of surplus equipment, materials, supplies or goods all if and to the extent held in or paid into (without duplication) Funds, and as provided for in the Indenture.

4.4.1 All costs associated with acquisition of the Facility or an ownership interest therein and its resources pursuant to the Power Purchase Agreement and for acquiring the Facility and its associated resources pursuant to any purchase option or requirement or pursuant to the purchase of rights, interests or options through any applicable Facility Credit Agreement or any other agreement, including, if applicable, any other agreement relating to any security in the Facility or an ownership interest therein or any assignment or consent to assignment, including the purchase of the Facility at any foreclosure sale or taking a deed in-lieu-of foreclosure, or otherwise purchasing the Facility or an ownership interest therein pursuant to any provisions in any of the Power Purchase and Security Agreements, including without limitation the following costs, as applicable: (i) the cost of acquiring the Facility or an ownership interest therein pursuant to the Power Purchase and Security Agreements, (ii) the cost of purchasing the Facility, as applicable, through any foreclosure sale or by way of any Security Instrument, (iii) the cost of planning, designing, acquiring, constructing, mitigating impacts, installing, and developing the Project or any Capital Improvements or any portion thereof, (iv) the cost of the exercise of cure rights or enforcement of rights with respect to any default by the Power Purchase Provider or any other counterparty under any agreements, mortgages, leases or other instruments relating to or affecting the Project, (v) the cost of contracting for and facilitating the delivery of the output of the Project at the prescribed Point of Delivery or other prescribed location, (vi) the cost, where applicable, of placing the Project into operation, concluding, terminating and decommissioning (as applicable) the Project, obtaining governmental approvals, certificates, permits, assurances, entitlements and licenses relating to the Project, including, where necessary, environmental entitlements, clearances or credits, heretofore or hereafter paid or incurred by SCPPA, (vii) all costs, expenses, obligations and liabilities associated with exercising all performance rights, options, benefits, entitlements, duties, liabilities and obligations under the Project Agreements, (viii) to the extent deemed appropriate by the Coordinating Committee, the cost of procurement of rights associated with interconnection, transmission, and the dispatching, scheduling and delivery of energy and for otherwise facilitating the sale, disposition, movement, taking and accounting for energy (including planning and design costs) and (ix) the cost of those measures taken for the benefit of, and in connection with, the Project that the Coordinating Committee determines shall be included within this Section 4.4.1.

4.4.2 All costs and expenses for investigation and development of the Project, for performance studies, for feasibility studies, economic studies, diurnal, barometric and meteorological studies, for modeling and planning, for examination of legal, environmental and regulatory issues and for securing of legal, environmental or regulatory approvals, for energy cost modeling, project modeling or projections, economic analyses, diurnal, barometric and meteorological forecasts and weather analyses, as well as costs for leases, lease options, lease related rights, land, land rights, land options, resources, turbines, facilities, regulatory developments, geographic, diurnal, barometric and meteorological investigation and analysis, and, if applicable, engineering, consultants, experts' fees, contractors' fees, processing fees, labor, materials, equipment, utility services and supplies, and legal fees and financing costs relating to and in connection with the Project.

4.4.3 The costs and expenses incurred in the issuance and sale of bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness (tax-exempt or taxable) from time to time issued, the proceeds of which have been used or will be required to be applied to one or more purposes for which Bonds could be issued, including, without limitation, legal, accounting, engineering, consulting, financing, technical, fiscal agent and underwriting costs, fees and expenses, bond discount, insurance, rating agency fees, and all other costs and expenses incurred in connection with the authorization, sale and issuance of the Bonds.

4.4.4 Interest accruing in whole or in part on Bonds for such period as SCPPA may reasonably determine to be necessary in accordance with the provisions of the Indenture.

4.4.5 To the extent not included in Total Monthly Costs, the cost of any administrative, regulatory or judicial proceeding or any litigation associated with the Power Purchase and Security Agreements or other Project Agreement, or any aspect of the operation, management or administration of the Project or in connection therewith.

4.4.6 To the extent not included in Total Monthly Costs, all costs incurred by SCPPA related to the acquisition of resources, agreements, facilities and supplies for solar energy acquisition, procurement, interconnection, transmission, sale, dispatching, scheduling, movement and delivery and all other incidental costs necessary for and in connection with the Project.

- 4.4.7 Training and testing costs, which are properly allocable to the cost of acquisition and development of the Project.
- 4.4.8 All costs of insurance, if any, applicable to the development of and in connection with the Project.
- 4.4.9 All costs relating to injury or damage claims or judgments paid by SCPPA in connection with the acquisition, development or implementation of the Project less proceeds of insurance, if any.
- 4.4.10 To the extent not included in Total Monthly Costs, legally required or permitted federal, state and local taxes relating to the Project.
- 4.4.11 All other costs incurred by SCPPA and properly allocable to the planning, design, acquisition and development of the Project, including, without limitation, all legal fees relating to the Project (including, but not limited to, legal fees incurred by SCPPA in the development or preparation of Project Agreements or in the enforcement of any provision or provisions of the Project Agreements).
- 4.4.12 The working capital requirements and reserves in such amounts as shall be required during development of the Project and for placing the Project in operation as deemed reasonably necessary by the Board of Directors, and as may be provided or required in the Indenture, and such additional amounts of working capital and reserves, as may be established pursuant to the Indenture.
- 4.4.13 Interest accrued in whole or in part on Bonds prior to and during development of the Project or during any time period as SCPPA may reasonably determine necessary for placing the Project or any component thereof in operation in accordance with the provisions of the Indenture.
- 4.4.14 The deposit or deposits from the proceeds of Bonds issued to finance such costs in any Fund established pursuant to the Indenture to meet the Project Debt Service reserve requirements for the Bonds.
- 4.4.15 Without duplication with respect to amounts otherwise provided in this Section 4.4, the deposit or deposits from the proceeds of Bonds issued to finance such costs in any other Funds established pursuant to the Indenture which deposit or deposits are required or permitted by the Indenture.

4.4.16 The payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any note or other evidence of indebtedness, if any should exist, which is issued in anticipation of Bonds for the purpose of financing the Cost of Acquisition.

4.4.17 All costs required to be paid to the Project Manager pursuant to any applicable agreement for project management which are applied or are to be applied thereunder to the payment of the Cost of Acquisition.

4.4.18 Without duplication, all other costs (including incidental financing costs and the costs of issuance of Bonds) financed by the issuance of Bonds (i) pursuant to Section 13 of this Agreement, (ii) for procurement of rights associated with the acquisition, production, generation, transmission, interconnecting, balancing, shaping, firming and delivery and for otherwise facilitating the dispatching, scheduling, disposition, movement, taking and accounting for SCPPA Facility Output (including planning and design costs) relating to, or for the benefit of, the Project that the Board of Directors determines shall be included within this Section 4.4.18, (iii) the acquisition of the Facility or an ownership interest therein or the rights and interests under any of the Power Purchase and Security Agreements; and (iv) any amounts required to be paid pursuant to section 148 of the Internal Revenue Code.

4.5 Delivery Point Output Cost Share. As to any Project Participant for each Power Supply Year during the term of the Power Purchase Agreement, the applicable percentage share, as set forth for such Project Participant in Appendix C hereof, of the Delivery Output Point cost component with respect to such Project Participant's Designated Point of Delivery. The Delivery Point Output Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.

4.6 Indenture Cost Share. As to any Project Participant for each Power Supply Year, the applicable percentage share, as set forth for such Project Participant in Appendix C hereof, of the Indenture cost component. The Indenture Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.

4.7 Total Monthly Costs. All of SCPPA's costs to the extent not paid from the proceeds of Bonds, certificates of participation, commercial paper, notes or other evidences of indebtedness issued in anticipation of Bonds, resulting from SCPPA's contracting for, providing for, accommodating, acquiring, and facilitating the Project, and from its administration,

ownership, operation and maintenance of and renewal and replacement of any facility, service or other element or component of the Project, including costs arising under any of the Power Purchase and Security Agreements or other Project Agreements. SCPPA shall apply, as a credit against Total Monthly Costs, any receipts, revenues and other moneys received by SCPPA from surplus equipment, materials, supplies or assets relating to the Project sold prior to the date of Commercial Operation for the benefit of SCPPA (not otherwise applied as a credit against the Cost of Acquisition as provided in Section 4.4) and any other amounts to be so applied as provided in the Indenture. Total Monthly Costs shall, as applicable, consist of (i) the Operating cost component (described in Section 4.9.1), (ii) the Delivery Point Output cost component (described in Section 4.8.1), (iii) the Transmission Services cost component (described in Section 4.9.2), (iv) the PPA General and Administrative cost component (described in Section 4.8.2), (v) the Ownership General and Administrative cost component (described in Section 4.9.3), (vi) a Reserve Fund cost component (described in Sections 4.8.3 and 4.9.4, (vii) the Indenture cost component (described in Section 4.9.5), and (viii) a Supplementary Services cost component to the extent SCPPA incurs such cost (described in Sections 4.8.4 and 4.9.6), and Total Monthly Costs shall include, but not be limited to, the items of cost and expense referred to in the Power Purchase and Security Agreements, the Ownership Participation and Related Agreements and this Section 4.7 that are accrued or paid by SCPPA during each Month of each Power Supply Year. In the event any Power Supply Year shall consist of fewer than twelve Months, the fraction set forth in Sections 4.8.2, 4.9.1, 4.9.3 and 4.9.5(b) shall be adjusted accordingly and, in the event of any revision of the Annual Budget after the commencement of any Power Supply Year, the amount determined pursuant to said Sections shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to said Sections shall be evenly apportioned over the remaining Months of such Power Supply Year.

4.8 Power Purchase Agreement Total Monthly Costs. The cost components of Total Monthly Costs during the term of the Power Purchase Agreement shall consist of the following:

4.8.1 The Delivery Point Output cost component of the Total Monthly Costs for each Month with respect to each of the respective Points of Delivery shall consist of the costs of the SCPPA Facility Output or Replacement Energy, as calculated at the applicable Energy Prices therefor, as delivered at such Point of Delivery during such Month.

4.8.2 The PPA General and Administrative cost component of the Total Monthly Costs for each Month shall consist of one-twelfth of the administrative and general costs with respect to

the Project, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, any taxes required to be paid by SCPPA with respect to SCPPA Facility Output or the Project, (ii) all expenses incurred in enforcing the Power Purchase Agreement and other Power Purchase and Security Agreements, and (iii) all costs related to the conducting of the business of SCPPA with respect to the Project, including the applicable portion of salaries, fees for legal, engineering, financial and other services, all other costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project, and all other expenses properly related to the conduct of such affairs of SCPPA.

4.8.3 The Reserve Fund cost component of the Total Monthly Costs shall consist of the monthly costs associated with a Project Participant's Project Cost Share that is necessary to establish and maintain the Reserve Funds at the level deemed prudent and appropriate by the Coordinating Committee and the SCPPA Board of Directors.

4.8.4 The Supplementary Services cost component of the Total Monthly Costs shall consist of all monthly costs incurred by SCPPA, if any, in connection with the transmission, dispatching, scheduling, firming, balancing, or delivery of and otherwise facilitating the disposition, movement, crediting and accounting for a Purchaser's Output Entitlement Share from its Designated Point of Delivery to one or more specified delivery point(s) as determined by such Purchaser pursuant to Sections 9.2 and 9.5.

4.9 Ownership Total Monthly Costs. In the event that SCPPA acquires the Facility or an ownership interest therein, commencing with such Acquisition by SCPPA, the cost components of Total Monthly Costs shall consist of the following:

4.9.1 The Operating cost component of the Total Monthly Costs for each Month shall consist of one-twelfth of the costs of all Operating Work, operating expenses, and all costs relating to, contracting for, providing for, managing, administering, producing, procuring, transporting and delivering of the SCPPA Facility Output during such Power Supply Year, including, but not limited to, as applicable, ordinary operation and maintenance costs or other operation and maintenance costs payable by SCPPA and, where applicable, costs of repairs, replacements, reconstitution and reconstruction of the Project (that are not included in any Cost of Acquisition), any other

costs payable by SCPPA in connection with SCPPA Facility Output; provided that the Operating cost component shall not include the Transmission Services cost component as set forth in Section 4.9.2.

4.9.2 The Transmission Services cost component of Total Monthly Costs for each Month and with respect to the Transmission Services applicable to the delivery of SCPPA Facility Output from the Point of Interconnection to each respective Point of Delivery, the costs of such Transmission Services, together with the associated Transmission Losses, for such Month.

4.9.3 The Ownership General and Administrative cost component of Total Monthly Costs for each Month shall consist of one-twelfth of the administrative and general costs (exclusive of costs included in the Operating cost component set forth in Section 4.9.1 above) with respect to the Project, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, taxes required to be paid by SCPPA with respect to the Project and any other costs payable by SCPPA in connection with SCPPA Facility Output, (ii) all expenses incurred in enforcing the Ownership Participation and Related Agreements and the expenses of enforcing the applicable covenants and provisions of the ground leases, leasehold interests, rights-of-way, estates and other interests and property associated with the Facility or an ownership interest therein, including all expenses of foreclosure or otherwise perfecting any property interest or security interest in the Facility, and (iii) all costs related to the conducting of the business of SCPPA with respect to the Project, including the applicable portion of salaries, fees for legal, engineering, financial and other services, all other costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project and all other expenses properly related to the conduct of such affairs of SCPPA; provided that the Ownership General and Administrative cost component shall not include the Transmission Services cost component as set forth in Section 4.9.2.

4.9.4 The Reserve Fund cost component of Total Monthly Costs shall consist of the monthly cost associated with a Project Participant's Project Cost Share that is necessary to establish and maintain the Reserve Funds at the level deemed prudent and appropriate by the Coordinating Committee and the SCPPA Board of Directors; provided, however, that to the extent such a Reserve Fund cost component of Total Monthly

Costs are paid by the Project Participants pursuant to the Indenture cost component of Total Monthly Costs, the Project Participants shall be credited for that amount of the monthly Reserve Fund cost component so paid by Project Participants which is contained in such monthly Indenture cost component.

4.9.5 The Indenture cost component of Total Monthly Costs, as applicable, shall consist of:

- (a) The amount, without duplication, which SCPPA is required under the Indenture to pay with respect to Debt Service or to pay or deposit during such Month into Funds established by the Indenture for Debt Service and for any Debt Service reserve requirements for the Bonds or for operating and other reserve requirements, including replenishment (the timing of which shall be in accordance with the provisions of this Agreement and the Indenture) of any reserves drawn down as a result of a failure of a Project Participant to pay all or any portion of its share of Monthly Costs;
- (b) One-twelfth of the amount (not otherwise included under any item in this Section 4.9 hereof) which SCPPA is required under the Indenture to pay or deposit during such Power Supply Year into any other Fund established by the Indenture, including, without limitation, any amounts required to make up a deficiency in any Fund required or permitted by the Indenture;
- (c) The amount of fees, expenses or other charges incurred or payable by SCPPA under the Indenture; and
- (d) Any rebate amount owed to the federal government.

4.9.6 The Supplementary Services cost component of the Total Monthly Costs shall consist of all monthly costs incurred by SCPPA, if any, and to the extent not included in Section 4.9.1 or Section 4.9.2, in connection with services for transmission, dispatching, scheduling, tagging, firming, balancing, swapping, exchanging or delivery and for otherwise facilitating the disposition, movement, taking, receiving, crediting and accounting for the SCPPA Facility Output provided for under this Agreement. The Supplementary Services cost component of the Total Monthly Costs shall also entail all monthly costs incurred by SCPPA, if any, which are necessary to move or otherwise handle Purchaser's Output Entitlement Share from its Designated Point of Delivery to one or more specified

delivery point(s) as determined by Purchaser pursuant to Sections 9.2 and 9.5.

4.10 Project Cost Share. For any Power Supply Year and as to any particular Project Participant, the share (expressed as a percentage), as set forth in Appendix B of this Agreement, attributable to such Project Participant with respect to Monthly Costs as provided in Section 7.1 and Section 7.2 hereof, other than financing and refinancing related costs associated with the Project. The Project Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix B as provided in Section 21.1.

4.11 Transmission Services Cost Share. As to any particular Project Participant, in the event that SCPPA shall acquire the Facility or an ownership interest therein, for each Power Supply Year commencing upon such acquisition, the applicable percentage share, as set forth for such Project Participant in Appendix C hereof, of the Transmission Services cost component with respect to the delivery of such Project Participant's Point of Interconnection Allocable Share of SCPPA Facility Output, less applicable Transmission Losses, from the Point of Interconnection to such Project Participant's Designated Point of Delivery. The Transmission Services Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.

5. PURCHASE AND SALE OF OUTPUT AND THE ROLES AND OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS.

5.1 Purchase and Sale of Output Entitlement Share. In accordance with the terms and conditions of this Agreement, commencing on the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of any Bonds, (iii) the effective date of the Power Purchase Agreement, or (iv) the date of the first delivery of energy to Purchaser pursuant to this Agreement, and continuing through the term of this Agreement, except as otherwise provided herein, SCPPA shall provide Purchaser its Output Entitlement Share of any and all products, rights, and benefits, whether tangible or intangible received or obtained by SCPPA with respect to the Project, including without limitation SCPPA Facility Output or, if applicable, Replacement Energy, at Purchaser's Designated Point of Delivery, and Purchaser shall be responsible for and pay its applicable Cost Share of any and all costs, liabilities and obligations associated with the acquisition of such products, rights, and benefits, which shall include without limitation all costs, liabilities and obligations associated with SCPPA Facility Output or Replacement Energy, as applicable, under the Power Purchase Agreement and any other applicable Project Agreement, or associated with the purchase and operation of the Facility upon any purchase or acquisition of the Facility

or an ownership interest therein by SCPPA, including purchase or acquisition of any rights pursuant to the Power Purchase and Security Agreements and any other applicable Project Agreement, and all costs, credits, liabilities and obligations under the Indenture or Bonds issued by SCPPA to finance the Project or any portion or component thereof, any Cost of Acquisition, or any Capital Improvements.

5.2 Output and Deliverables. During the term of the Power Purchase Agreement, SCPPA shall purchase and provide and Purchaser shall purchase from SCPPA and receive its Output Entitlement Share of the SCPPA Facility Output or Replacement Energy as delivered at Purchaser's Designated Point of Delivery in accordance with the Power Purchase Agreement. In the event that SCPPA shall acquire the Facility or an ownership interest therein, from and after such Acquisition SCPPA shall allocate at the Point of Interconnection the Purchaser's Point of Interconnection Allocable Share, as set forth in Appendix C of this Agreement, of the SCPPA Facility Output as delivered to the Point of Interconnection and shall deliver or cause the delivery of such allocated share of SCPPA Facility Output, less applicable Transmission Losses, to Purchaser at its Designated Point of Delivery, and Purchaser shall purchase and receive such SCPPA Facility Output delivered to its Designated Point of Delivery as its Output Entitlement Share of such SCPPA Facility Output. To the extent permitted by the Power Purchase and Security Agreements, the applicable Project Agreements, or otherwise determined by the Coordinating Committee or the Board of Directors, SCPPA will endeavor to take such actions or implement such measures as may be necessary or desirable for the utilization, maintenance or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Coordinating Committee or the Board of Directors deems to be in the Project Participants' best interests. To the extent not inconsistent with the Power Purchase and Security Agreements or other applicable Project Agreements, SCPPA may also be reposed with responsibilities for planning, designing, financing, developing, acquiring, insuring, contracting for, administering, operating and maintaining the Project to effectuate the delivery and sale of such share of SCPPA Facility Output or Replacement Energy, as applicable, to Purchaser. To the extent such services are available and can be carried forth in accordance with the Power Purchase and Security Agreements or other applicable Project Agreements, SCPPA shall also provide such other services, as approved by the Coordinating Committee or the Board of Directors, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the Power Purchase and Security Agreements or other applicable Project Agreements. SCPPA shall use its best efforts, on behalf of Purchaser and the other Project Participants, to secure the benefits of the transactions contemplated under the Power Purchase and Security Agreements or other applicable Project Agreements including, if

appropriate, SCPPA's acquisition of the Facility or an ownership interest therein and its associated resources, as well as the delivery of the SCPPA Facility Output or Replacement Energy, as applicable, contemplated by this Agreement, and shall endeavor to maintain and secure the rights and benefits accruing to SCPPA through the Power Purchase and Security Agreements and the other applicable Project Agreements in accordance with Purchaser's Output Entitlement Share. SCPPA is authorized to exercise the powers vested in SCPPA pursuant to the Act, its Joint Powers Agreement and this Agreement, as agent for Purchaser to fully carry forth Purchaser's objectives in the Project as set forth herein.

- 5.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager to develop, operate, maintain and administer the Project, or cause the Project to be developed, operated, maintained and administered, through any development, operating, project management or agency agreement or, as applicable, through the Power Purchase Agreement.
- 5.4 Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with Sections 5.4.1 or 5.4.2, respectively.
 - 5.4.1 SCPPA will prepare and submit to Purchaser a proposed Annual Budget at least 60 days prior to the beginning of each Power Supply Year. In connection with the preparation of the Annual Budget, SCPPA shall incorporate therein the Operating Budget (including an energy production costs budget and where appropriate a provision for the payment of costs of renewals, replacements or other costs of acquisition and development which are not being financed by proceeds of Bonds or other sources) for such Power Supply Year as prepared by the Project Manager and approved by the Coordinating Committee. Purchaser and the other Project Participants may then submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the Annual Budget. SCPPA shall adopt the Annual Budget not less than 30 nor more than 60 days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant; provided, however, the Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available prior to Commercial Operation of the Facility. As required from time to time during any Power Supply Year after seven days written notice to each Project Participant, SCPPA may, pursuant to the foregoing provisions for adopting the Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year.
 - 5.4.2 Any adjustment, and any other or further mechanism for adjustment, as may be required to address the variability of costs of operation of

the Project at any time during the Power Supply Year or the variability of or addition to any other Annual Budget component, may be incorporated into the Annual Budget as provided above, or any amendment to an Annual Budget at any time during any Power Supply Year upon the seven days written notice to each Project Participant as set forth in Section 5.4.1.

5.5 Reports. SCPPA will prepare and issue to Purchaser and the other Project Participants the following reports each quarter of a Power Supply Year:

- 5.5.1 Financial and operating statement relating to the Project.
- 5.5.2 Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

5.6 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of each of the properties and facilities comprising the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

5.7 Provide Information. Purchaser agrees to supply SCPPA, upon request, with such information, documentation and certifications as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the design, financing, refinancing, development, operation, administration, maintenance and ongoing activities of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory body or other authority.

5.8 Consultants and Advisors Available. SCPPA shall make available to the Coordinating Committee at the latter's request, all consultants and advisors, including, but not limited to, financial advisors, Bond Counsel and Tax Counsel, that are retained by SCPPA, and such consultants and advisors shall be authorized to consult with and advise the Coordinating Committee on Project matters.

5.9 Deposit of Insurance Proceeds. Except as otherwise may be required by any of the Project Agreements and unless otherwise provided by the Coordinating Committee, SCPPA promptly shall deposit with the Project Trustee or Lender any insurance proceeds received by SCPPA as a result of injury or damage to any insured interest attributable to any component or all or any portion of the Project. All insurance proceeds collectible by SCPPA as a result of an insured event affecting the Project shall be

applied as directed by SCPPA (which directions shall be in accordance with any applicable provisions of the Indenture).

5.10 Compliance with Federal Tax Law Requirements. Notwithstanding anything to the contrary in this Agreement, SCPPA and the Purchaser shall each take all actions necessary to comply in all respects with the Federal Tax Law Requirements applicable to any Bonds and shall refrain from taking any action that would result in or cause non-compliance with the Federal Tax Law Requirements applicable to any Bonds.

6. COORDINATING COMMITTEE.

6.1 Establishment and Authorization of the Coordinating Committee. The Coordinating Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the Project Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) the administration of any operating agreement or any maintenance agreement, (v) otherwise making any recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto, (vi) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed, (vii) making recommendations to the Board of Directors in connection with the exercise of any option, or other acquisition alternative, to purchase the Facility or any ownership interest therein under and pursuant to any of the Power Purchase and Security Agreements, including the purchase of rights and interests under the Facility Credit Agreements or under any arrangement or agreement with the Facility Lender or under any consents or assignments or any agreements relating thereto, and taking foreclosure action (or deed in-lieu-of foreclosure) under and pursuant to any of the Security Instruments or purchasing the Facility at foreclosure sale or otherwise; provided, however that any decision as to exercise of an option to purchase the Facility or an ownership interest therein or taking any such foreclosure action or such purchase at a foreclosure sale shall be subject to the approval of the Board of Directors, (viii) exercising any cure rights with respect to any default by the Power Purchase Provider under any agreements, deeds of trust, leases or other instruments and (ix) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed. The Coordinating Committee shall consist of one representative from each Project Participant. Each

Project Participant shall be entitled to cast a vote equal to its Project Cost Share as set forth in Appendix B hereof. SCPPA shall be entitled to one non-voting representative. SCPPA and Purchaser shall, within 30 days after SCPPA has entered into the Power Sales Agreement between SCPPA and Purchaser, give notice to SCPPA and any other Project Participant, of its representative on the Coordinating Committee. Alternate representatives may be appointed by similar written notice to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee or by the Board of Directors, in the absence of the regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant or Project Participants, which she/he represents. The chairperson of the Coordinating Committee ("Chairperson") shall be a representative of the Project Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson or SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law. For the purpose of conducting meetings, a quorum shall exist so long as SCPPA's representative and the representative of at least a majority of the Project Participants shall be present. Except as may otherwise be provided in an agreement to which all of the Project Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote of Project Participants having Project Cost Shares aggregating at least eighty percent (80%) of the total Project Cost Shares. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Project Participant and such Project Participant determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, such Project Participant, such Project Participant agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action. Should the Coordinating Committee address any determination to exercise the Project Purchase Option all Project Participants shall be given notice of any such proposed action, and the views of any Project Participant desiring to so provide its views to the Coordinating Committee, shall be considered prior to a vote on the proposed action. Unless the Board of Directors shall otherwise determine to require a majority vote pursuant to the terms of the Joint Powers Agreement, all actions with respect to the Project taken by the SCPPA Board of Directors shall require an affirmative vote of at least eighty percent (80%) of the Project Votes (as defined in SCPPA's Joint Powers Agreement, dated as of November 1, 1980, as amended from time to time) cast thereon. Purchaser acknowledges and agrees that SCPPA, through the Coordinating

Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Purchaser in connection with any such Project Agreement or supplement or amendment, provided that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement. Conducting of Coordinating Committee meetings and actions taken by the Coordinating Committee may be taken by vote given in an assembled meeting or by telephone, video conferencing, telegraph, telex, letter, e-mail or by any combination thereof, to the extent permitted by law.

6.2 Coordinating Committee Responsibilities. The Coordinating Committee shall have the following responsibilities:

- 6.2.1 Provide liaison between SCPPA and the Project Participants at the management or other levels with respect to Acquisition, further developments, operation and ongoing administration of the Project, and maintain a liaison between the Project Participants and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.
- 6.2.2 If any desired Project design, feasibility or planning studies or activities which are to be completed by SCPPA have not been completed by the Effective Date of this Agreement, oversee, as appropriate, the continuation and completion of such Project design, feasibility or planning studies or activities.
- 6.2.3 Exercise general supervision over any subcommittee established pursuant to Section 6.5.
- 6.2.4 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager pursuant to any applicable agreement.
- 6.2.5 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 5 and Section 7 of this Agreement.

- 6.2.6 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.7 Review, discuss and attempt to resolve any disputes among the Project Participants or the parties to any Project Agreements including, without limitation, the Power Purchase Provider, the counterparties under the Power Purchase and Security Agreements, the Lease, the Security Instruments, any rights-of-way with respect to the Project, any agreement providing for any interest in real estate with respect to the Project, any common facilities agreements, any transmission provider, any La Paz County officials or representatives, any community organizations, or any other counterparty with respect to any Project Agreement relating to the Project.
- 6.2.8 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the development, operation and ongoing administration of the Project.
- 6.2.9 Upon the request of the Project Participants affected thereby, acting by and through their respective representatives on the Coordinating Committee and in coordination with SCPPA's Board of Directors, adopt a resolution approving the revisions of Appendix B and Appendix C, as applicable, of this Agreement as provided in Section 21.1.
- 6.2.10 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the Facility or an ownership interest therein and the scheduling, handling, tagging, dispatching and crediting of SCPPA Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.
- 6.2.11 Review, develop, and if appropriate modify and approve rules, procedures and protocols for the monitoring, inspection and the exercise of due diligence activities in connection with the Acquisitions relating to the Project and the operation of the Facility.
- 6.2.12 Review, and, if appropriate, modify, approve or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, solar energy related data, electric generation information, solar energy production data, diurnal, barometric and meteorological information, solar tower and turbine mechanical

and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, firming, shaping, exchanging, balancing, movement, or other delivery information, climate and weather related matters, cloud conditions, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager, the counterparties to Project Agreements, experts; consultants or others.

- 6.2.13 In coordination with the Board of Directors, review, and, if appropriate, recommend, modify or approve rules, procedures, and protocols as provided in Section 10.3.
- 6.2.14 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager or, if applicable, the counterparty to any Project Agreement, to be followed by the Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of SCPPA Facility Output.
- 6.2.15 Review, modify and approve, if necessary, the schedule of planned activities formulated by the Project Manager or the counterparty with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to each Project Participant's electric system conditions, which may prevail during such planned activities
- 6.2.16 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under Section 11.6 or 11.8 of the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with any New Facility or any Additional Facility under Section 11.6 or 11.8, respectively, of the Power Purchase Agreement.
- 6.2.17 In connection with the Lease, review, exercise, or otherwise act upon any cure rights under Section 11.5 or Section 13.7 of the Power Purchase Agreement or take such other action under the Power Purchase Agreement or the Power Purchase and Security Agreements, or otherwise, in connection with the Lease as may be deemed to be in SCPPA's interest or otherwise appropriate.

6.2.18 Review, modify, approve or otherwise act upon any proposed change to the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.

6.2.19 Review, approve or otherwise act upon any proposed extension of any date set forth in Appendix I of the Power Purchase Agreement or of any Milestone Date under the Power Purchase Agreement which, in the discretion of the Coordinating Committee, may be appropriate, desirable or otherwise in SCPPA's interest. The Coordinating Committee may impose other conditions or qualifications upon the grant of any such extension as the Coordinating Committee shall deem appropriate.

6.2.20 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed SCPPA Energy under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.

6.2.21 Act upon such recommended changes, as the Coordinating Committee shall deem appropriate as set forth in Section 15.5 of the Power Sales Agreements. Such changes as may occur in such manner with respect to Appendix B and Appendix C herein shall be considered an element of the administration of this Agreement and shall be deemed an amendment of this Agreement and shall not require the consent of the Parties hereto.

6.2.22 Review, and if appropriate, approve, recommend, modify or otherwise act upon any matters or issues associated with Operating Work and any other matters or issues which may arise in the operation, maintenance or administration of the Project.

6.2.23 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or by any counterparty to any Project Agreements giving due recognition to the needs of all Project Participants.

6.2.24 Review and act upon any matters involving any Security and Assignment Agreement, including but not limited to the Milestone Security, the Performance Security, the Mortgage and any guarantee or letter of credit delivered to or for the benefit of SCPPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project, and take

such actions or make such recommendations as may be appropriate or desirable in connection therewith.

- 6.2.25 Review, and, if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or any counterparty with respect to any Project Agreement, and when requested by a Project Participant review, and, if appropriate, recommend, modify or approve those matters associated with any of the Points of Delivery or any other point or points designated for delivery of energy, delivery arrangements, transmission contracts, or other Project Agreements.
- 6.2.26 Review, and, if appropriate, recommend, modify or approve policies or programs formulated by the Project Manager, any counterparty under any Project Agreement or any other Person for the exchange of energy from the Facility.
- 6.2.27 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating the solar energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.
- 6.2.28 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.2.29 Review, modify and approve all Cost of Acquisition and costs of Operating Work and submit to the Board of Directors any budget revisions or other provisions for the payment or financing thereof.
- 6.2.30 Review, modify and approve SCPPA's insurance program with respect to the Project (as applicable) including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of any uninsured claim that the Project Manager may settle without prior approval of the Coordinating Committee.
- 6.2.31 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of SCPPA Facility Output to the respective Points of Delivery or from any of the Points of Delivery to other points or destinations, as applicable.
- 6.2.32 Review, modify and where appropriate, recommend or approve the implementation of practices and procedures to carry forth the

provisions of Section 9 herein, as may be applicable with respect to any of the Project Participants.

- 6.2.33 Identify, or develop criteria to identify, contracts or agreements relating to work or Operating Work that shall be deemed to be Major Contracts under any applicable project management or operating agreement.
- 6.2.34 Review, and to the extent permitted by this Agreement or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, form of final agreement, or any other matters with respect to Major Contracts.
- 6.2.35 Review, modify or approve recommendations, including recommendations of the Project Manager with respect to actions, disposition or use, if any, relating to Acquisition activities.
- 6.2.36 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Power Purchase and Security Agreements, the Ancillary Documents, the Interconnection Contracts, the Lease, the Security Instruments, any real estate instruments relating to the Facility or any other applicable Project Agreement, or as may otherwise be appropriate or beneficial to the Project.

- 6.3 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Purchaser and the other Project Participants shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests in the Facility and the Project as provided in Section 6.1 herein. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.3.1 Future Developments. The Board of Directors shall provide liaison among the Project Participants at the management level with respect to the direction of the Project and future developments arising out of the Power Purchase and Security Agreements, including any purchase or acquisition of the Facility or any portion thereof and shall carry out those measures necessary to address such developments, including any purchase or acquisition of the Facility or any portion thereof.
- 6.3.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA,

the Project Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA rights and interests in the Facility.

- 6.3.3 Scheduling procedures. When recommended by the Coordinating Committee, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be followed by the Project Participants for the scheduling, delivering, controlling and allocating SCPPA Facility Output associated with the Project.
- 6.3.4 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.3.5 Capital Improvements. The Board of Directors shall review, modify and approve if appropriate all Capital Improvements and Acquisitions undertaken with respect to the Project and all financing arrangements for such Capital Improvements or Acquisitions. The Board of Directors shall approve those budgets or other provisions for the payments associated with the Project and the financing for any development or Acquisitions associated with the Project.
- 6.3.6 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
- 6.3.7 Bond issuance. The Board of Directors shall have authority to approve any and all of the following: (1) each issuance of SCPPA indebtedness relating to the Project, (2) each supplement or amendment to the Indenture relating to the Project, (3) the Bonds issued to finance the purchase or acquisition of the Facility or any portion thereof, any New Facility or Additional Facility or any portion thereof, any Acquisition, any Capital Improvements, or any costs related to the exercise or enforcement by SCPPA of its rights with respect to any agreements, Mortgages, deeds of trust, leases or other Power Purchase and Security Agreements relating to or affecting the Project, or the purchase of rights and interests under the Facility Credit Agreements, or other Acquisitions to carry out the objectives of the Project, (4) the selection of underwriters for each series of Bonds, (5) the manner and timing of marketing (including of the manner of sale), amount, interest rates and other terms and conditions of each series of SCPPA indebtedness

associated with the Project, and (6) any other action necessary or appropriate to carry forth Section 13 of this Agreement.

6.3.8 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 5.4 of this Agreement.

6.3.9 Federal Tax Law Requirements. With respect to any Bonds, the Board of Directors, in consultation with Bond Counsel or Tax Counsel, shall develop and promulgate rules, procedures, and protocols, including the development and maintenance of relevant information and reporting procedures, and shall provide direction to the Purchaser and the other Project Participants with respect to the Federal Tax Law Requirements.

6.3.10 Revision of Appendices B and C. In coordination with the Coordinating Committee adopt a resolution approving the revisions of Appendix B and Appendix C, as applicable, of this Agreement as provided in Section 21.1.

6.3.11 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Coordinating Committee, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.

6.4 Periodic Audits. The Board of Directors or the Coordinating Committee may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPPA, and where deemed appropriate the Project Manager (if other than SCPPA), the Power Purchase Provider (to the extent provided under any of the Power Purchase and Security Agreements) and any other counterparty under any Project Agreement to the extent allowable, and any cost reimbursable consultant or cost reimbursable contractor relevant to the Acquisition, development, administration or operation of the Project, and such audit shall be completed and submitted to SCPPA as soon as reasonably practicable after the close of the Fiscal Year. SCPPA shall promptly furnish to Purchaser and the other Project Participants copies of all audits. No more frequently than once every calendar year, a Project Participant may, at its sole cost and expense, audit or cause to be audited the books and cost records of SCPPA, the Project Manager (if other than SCPPA), the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable consultant or cost reimbursable contractor relevant to the Acquisition, development, administration or operation of the Project.

6.5 Additional Committees. The Coordinating Committee, or the Board of Directors, as appropriate, may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorologic, operating, insurance, community relations, governmental relations, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Coordinating Committee or Board of Directors; provided, however, such authority, membership or duties shall not conflict with the provisions of any of the Project Agreements. Each such subcommittee shall be initially responsible to the Coordinating Committee.

6.6 Written Record. All actions, resolutions, determinations and reports made by the Coordinating Committee as required by this Agreement shall be set forth in a written record or its minutes.

6.7 Change in Representative. Each Project Participant shall promptly give written notice to the other Project Participants and SCPPA of any changes in the designation of its representative on the Coordinating Committee or any subcommittee, and SCPPA shall promptly give written notice to the other Project Participants of any changes in the designation of its representative on the Coordinating Committee or any subcommittee.

6.8 Costs of Consultants. Costs (or the applicable portion thereof) of consultants and others employed or appointed by the Coordinating Committee to perform the duties required hereunder, to the extent the Coordinating Committee is authorized to so employ or appoint, shall be included in the Cost of Acquisition or Total Monthly Costs, as appropriate, and shall be billed to SCPPA or the Project Manager (if other than SCPPA).

6.9 Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Coordinating Committee or any other committee in connection with his/her duties on such committee shall be paid by the Project Participant or Project Participants which he/she represents and shall not be an expense payable under this Agreement.

6.10 Inaction by Committee. It is recognized by SCPPA and the Project Participants that if the Coordinating Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time limits specified herein or in any otherwise applicable Project Agreement, then the Project Manager may take such action as in its discretion is necessary for its timely performance under any applicable Project Agreement pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to

allow the Project Manager to act in violation of the express terms of any applicable project management agreement or this Agreement.

6.11 Compliance with Indenture. It is recognized by SCPPA and the Project Participants that the planning, financing, development, acquisition, operation and maintenance of, and insurance programs relating to, the Project must comply in all respects with requirements of the Indenture and all licenses, permits and regulatory provisions necessary for such planning, financing, development, acquisition, operation and maintenance and it is therefore agreed that, notwithstanding Section 6.10 or any other provision of this Agreement, no action by the Coordinating Committee or the Project Manager (if a designee other than SCPPA) shall require SCPPA to act in any manner inconsistent with any such requirements or to refrain from acting as required by the Power Sales Agreements and if the Coordinating Committee or the Project Manager (if a designee other than SCPPA) shall fail to make recommendations or act with respect to any matter in connection with an action that is required to be taken pursuant to any of the foregoing, SCPPA shall take such action as is appropriate to assure compliance with the foregoing

6.12 Compliance with the Power Purchase Agreement and Transmission Arrangements. It is further recognized by SCPPA and the Project Participants that the planning, development, acquisition, operation and maintenance of the Project must comply with requirements of the Power Purchase Agreement, those transmission arrangements entered into to facilitate the delivery of SCPPA Facility Output and the licenses, permits and regulatory provisions applicable to such planning, development, acquisition, operation and maintenance and it is therefore agreed that, notwithstanding Section 6.10 or any other provision of this Agreement, no action by the Coordinating Committee, or the Project Manager (if a designee other than SCPPA) shall require SCPPA to act in any manner inconsistent with any such requirements or to refrain from acting in a manner required by such requirements.

6.13 Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical and other matters which may arise from time to time in connection with Operating Work, in appropriate cases the authority, duties and responsibilities of the Board of Directors or the Coordinating Committee, as the case may be under this Section 6, may be delegated to the Executive Director.

7. CHARGES AND BILLINGS.

7.1 Power Purchase Agreement Monthly Costs and Billing Statement. During the term of the Power Purchase Agreement the amount of Monthly Costs which shall be paid by Purchaser pursuant to a Billing Statement for a

particular Month shall be the sum of the following, as applicable, subject to Sections 7.9 and 7.10 hereof and any applicable adjustments as provided in Section 16 hereof:

- 7.1.1 Purchaser's Delivery Point Output Cost Share multiplied by the Delivery Point Output cost component of Total Monthly Costs (as provided in Section 4.8.1) with respect to Purchaser's Designated Point of Delivery for such Month.
- 7.1.2 Purchaser's Project Cost Share multiplied by the PPA General and Administrative cost component of Total Monthly Costs (as provided in Section 4.8.2 hereof) for such Month.
- 7.1.3 Purchaser's Project Cost Share multiplied by the Reserve Fund cost component of Total Monthly Costs (as provided in Section 4.8.3 hereof) for such Month.
- 7.1.4 Purchaser's share of the Supplementary Services cost component of Total Monthly Costs (as provided in Section 4.8.4 hereof) for such Month based on Purchaser's allocated share of any such services procured by SCPPA on behalf of the Purchaser.
- 7.1.5 By the fifth calendar day of each Month during each Power Supply Year, SCPPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the provisions of this Agreement. Such Billing Statement shall detail the costs described in this Section 7.1 and shall set forth, among other things, the amounts due for such Month by Purchaser with respect to the items of Monthly Costs set forth in this Section 7.1, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before 20 days after receipt of such Billing Statement.

- 7.2 Ownership Monthly Costs and Billing Statement. In the event that SCPPA shall acquire the Facility or an ownership interest therein, the amount of Monthly Costs which shall be paid by Purchaser pursuant to a Billing Statement for a particular Month, commencing upon such Acquisition, shall be the sum of the following, as applicable, subject to Sections 7.9 and 7.10 hereof and any applicable adjustments as provided in Section 16 hereof:

- 7.2.1 Purchaser's Project Cost Share multiplied by the Operating cost component of Total Monthly Costs (as provided in Section 4.9.1 hereof) for such Month.

- 7.2.2 Purchaser's Transmission Services Cost Share multiplied by the Transmission cost component of Total Monthly Costs (as provided in Section 4.9.2) for such Month with respect to Transmission Services applicable to the delivery of SCPPA Facility Output from the Point of Interconnection to Purchaser's Designated Point of Delivery.
- 7.2.3 Purchaser's Project Cost Share multiplied by the Ownership General and Administrative cost component of Total Monthly Costs (as provided in Section 4.9.3 hereof) for such Month.
- 7.2.4 Purchaser's Project Cost Share multiplied by the Reserve Fund cost component of Total Monthly Costs (as provided in Section 4.9.4 hereof) for such Month.
- 7.2.5 Purchaser's Indenture Cost Share as set forth in the Indenture Cost Shares column of Appendix C hereof multiplied by the Indenture cost component of Total Monthly Costs (as provided in Section 4.9.5 hereof) for such Month as the Indenture cost component has been reduced by interest earned on investments of amounts held under the Indenture if and to the extent not credited against the Cost of Acquisition or has been off-set or reduced by other amounts made available therefor as provided in the Indenture.
- 7.2.6 Purchaser's share of the Supplementary Services cost component of Total Monthly Costs (as provided in Section 4.9.6 hereof) for such Month based on Purchaser's allocated share of any such services procured by SCPPA on behalf of Purchaser.
- 7.2.7 By the fifth calendar day of each Month during each Power Supply Year, SCPPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the provisions of this Agreement; provided, however, that such Billing Statement, with respect to Debt Service and other obligations payable from the Debt Service Fund under the Indenture, shall instead include the amount, if any, to be paid by Purchaser with respect to the applicable Bonds and the other obligations payable from the Debt Service Fund that is due and payable in the immediately succeeding Month or as otherwise provided under the Indenture, and provided further, that such Billing Statement, with respect to the cost of SCPPA Facility Output provided by SCPPA to Purchaser under this Agreement, shall also include with respect to the performance by SCPPA or the counterparty under and pursuant to applicable Project Agreements, a charge or credit to Purchaser with respect to the costs or revenues attributable to Purchaser pursuant to and under any applicable

Project Agreement. Such Billing Statement shall detail the costs described in this Section 7.2 hereof and shall set forth, among other things, the amounts due for such Month by Purchaser with respect to the items of Monthly Costs set forth in this Section 7.2, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before 20 days after receipt of such Billing Statement.

7.3 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each Project Participant's Billing Statement with respect to the Total Monthly Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall satisfy all requirements of the Indenture and shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.

7.4 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth calendar day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within 30 days following receipt of written notification by Purchaser of such dispute.

7.5 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, SCPPA will submit to Purchaser and the other Project Participants a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 6.4. If, on the basis of the statement submitted as provided in this Section 7.5, the actual aggregate Monthly Costs and other amounts payable by the Project Participants for any Power Supply Year exceed the amount thereof which Purchaser and the other Project Participants have been billed, Purchaser and the other Project Participants

shall pay SCPPA, within 20 days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.5, the actual aggregate Monthly Costs or other amounts payable by the Project Participants for any Power Supply Year are less than the amount therefor which Purchaser and the other Project Participants have been billed, SCPPA shall, unless otherwise directed by Purchaser or the other Project Participants with respect to moneys owed to each, credit such excess against Purchaser's and the other Project Participants' next monthly Billing Statement. In the event that the failure of Purchaser to make its payments in accordance with this Agreement shall have resulted in the application of amounts in any reserve or other Fund under the Indenture or this Agreement to the payment of costs payable from such reserve or Fund and the other Project Participants shall have made up the deficiency created by such application or paid additional amounts as a result of a draw on such reserve or Fund, amounts thereafter paid to SCPPA by Purchaser for application to such past due payments including interest shall be credited on the Billing Statements of such other Project Participants in the next Month or Months as provided in the applicable provisions of Section 15.

- 7.6 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.
- 7.7 Interest on Late Payments. If Purchaser fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the lesser of (i) one percent per Month (12% per annum) on the unpaid amount of the bill or (ii) the monthly equivalent of the "prime" rate of interest as noticed in the Federal Reserve's HR 15 weekly bulletin (or the subsequent equivalent thereof) as of the date of nonpayment on the unpaid amount of the bill, until such Billing Statement is paid.
- 7.8 Prepayment of Monthly Costs. Purchaser may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Purchaser with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Purchaser and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Purchaser to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing

Statement shall not relieve or reduce Purchaser's other obligations under this Agreement.

7.9 Costs or Expenses Incurred for Sole Benefit of Purchaser. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Purchaser, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Purchaser, in which event only Purchaser (and no other Project Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Purchaser shall be deemed to be paid last from amounts paid by Purchaser for the payment of its Billing Statements.

7.10 Credit, or other Payment Attributable to a Specific Project Participant. Should any Project Participant make or provide, through any type of payment mechanism, for a separate payment or prepayment for SCPPA Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of SCPPA Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable Project Participant under such Project Participant's Power Sales Agreement. Such a credit may at the request of the applicable Project Participant be credited on the Project Participants subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the Project Participants project stabilization account or such a credit may be otherwise handled in such manner as the applicable Project Participant may reasonably request. The provisions of this Section 7.10 shall be in addition to the terms and provisions of Section 16 and shall not be applicable to any circumstances, conditions or matters that are within the scope of Section 16.

8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION.

8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA incurs or becomes obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) the effective date of the Power Purchase Agreement or (iv) the date of the first delivery of SCPPA Facility Output to Purchaser and continuing through the term of this Agreement, Purchaser shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Purchaser in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Step-Up Invoices or

Default Invoices received by Purchaser as a result of the operation of Section 15 hereof, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

- 8.2 **Source of Payments.** The Purchaser hereby represents and warrants that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its electric revenue fund, including any and all legally available electric system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 **Rate Covenant.** Purchaser will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Purchaser to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 **Authorizations.** The Purchaser hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or person, is required on the part of the Purchaser for the execution and delivery by the Purchaser of this Agreement, or the performance by the Purchaser of its obligations under this Agreement except for such as have been obtained.
- 8.5 **Conflicts.** Purchaser represents and warrants to SCPPA as of the Effective Date and as of the date of the opinion of counsel referenced in Section 13.4, that, to Purchaser's knowledge, the execution and delivery of this Agreement by Purchaser, and Purchaser's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Purchaser, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Purchaser's electric revenue fund.

8.6 Litigation. Purchaser represents and warrants to SCPPA as of the Effective Date and as of the date of the opinion of counsel referenced in Section 13.4 that, to Purchaser's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Purchaser (service of process on Purchaser having been made) in any court that questions the validity of the authorization, execution or delivery by Purchaser of this Agreement, or the enforceability on Purchaser of this Agreement.

9. OTHER TERMS AND SERVICES.

9.1 Delivery Procedures. Prior to the time at which any Energy will be delivered to Purchaser from the Facility, Purchaser will schedule and shall be obligated to take delivery of its Output Entitlement Share of the Energy to be delivered. The SCPPA Facility Output generated and produced from the Project shall be scheduled and delivered to Project Participants at their respective Designated Points of Delivery under any development, operating, project management or agency agreement and/or practices and procedures approved by the Coordinating Committee pursuant to Section 6.2, as applicable.

9.2 Other Services and Transmission From Points of Delivery. It is the obligation of Purchaser to receive its share of SCPPA Facility Output and to arrange for delivery of such SCPPA Facility Output to its ultimate destination or destinations after having reached its Designated Point of Delivery, as determined by Purchaser. However, to the extent specified by the Purchaser, and to the extent practicable for SCPPA to do so, SCPPA shall assist in arranging for Supplementary Services and for such additional transmission, interconnection arrangements, energy management, firming, shaping, swaps, exchanges or other services associated with the transmission, use or disposition of SCPPA Facility Output to be utilized by the Purchaser and to provide for delivery, accounting for, transferring and crediting the ownership and transfer of SCPPA Facility Output from such Purchaser's Designated Point of Delivery to any other points or destinations, as determined by the Purchaser.

9.3 Energy Services. Except as otherwise provided in this Agreement and subject to Section 18.1, nothing herein shall prevent or restrict Purchaser from providing for its own transmission, energy management services, firming, balancing, or exchanging services or otherwise using or dispatching its Energy under this Agreement; provided, however, that such services, use or activities shall not affect any of the obligations of Purchaser under this Agreement or, if applicable, result in or cause non-compliance with the Federal Tax Law Requirements, and shall at all times conform to the applicable requirements of Section 10 of this Agreement.

9.4 Actions Respecting Facility Purchase. SCPPA shall endeavor to take those actions and carry forth those measures necessary to maintain and preserve SCPPA's rights with respect to any purchase potential or purchase or acquisition options contained in the Power Purchase and Security Agreements and, if so determined pursuant to the terms of this Agreement, to facilitate any such purchase or acquisition of the Facility or an ownership interest therein pursuant to the terms of the Power Purchase and Security Agreements or under or pursuant to any consents, assignments or any agreements relating thereto, including any purchase of rights or interests under or pursuant to the Facility Credit Agreements. SCPPA's services in connection with any such purchase obligation or purchase option may include but is not limited to determining the advisability of such purchase, preparing such agreements, documents or instruments as may be necessary to facilitate such purchase, and carrying forth any diurnal, barometric or meteorological reporting, prepare any facility efficiency reports, economic, modeling or appraisal studies as may be desirable to facilitate any proposed transaction and to obtain any necessary or appropriate information in connection with any such potential purchase or acquisition of the Facility or an ownership interest therein.

9.5 Balancing Agent and Dynamic Scheduling. Upon the request of Purchaser, SCPPA shall either (i) retain an agent to maintain and balance Purchaser's hourly Energy schedules in accordance with WECC protocols ("Balancing Agent"), including the provision or absorption of imbalance energy to accommodate intra-hour fluctuations of SCPPA Facility Output as compared to Purchaser's Energy schedule and maintaining a balancing account of accumulated imbalance energy to be settled by adjusting future Purchaser Energy schedules, (ii) arrange for Dynamic Scheduling from Purchaser's Designated Point of Delivery to Purchaser's control area or electric system, including the procurement and installation of scheduling hardware, software, and communications equipment necessary to effectuate Dynamic Scheduling (if such a scheduling methodology is deemed appropriate, applicable and/ or otherwise feasible), (iii) procure, contract for or otherwise arrange for any available energy balancing, firming, shaping or integration services to address any of the above referenced imbalances, fluctuations, variability, intermittency, or like conditions or (iv) address the costs, charges or consequences of such imbalances, fluctuations, variability, intermittency, or like conditions through other mechanisms or methodologies which are mutually agreeable to the Purchaser and SCPPA. Any such arrangements (other than arrangements with another Project Participant or other SCPPA members) entered into by SCPPA at the request of Purchaser shall be with third parties and negotiated in arms' length transactions, to the extent applicable.

9.6 Transfer of Environmental Attributes to Project Participants. SCPPA shall transfer all Environmental Attributes received by SCPPA either under the Power Purchase Agreement or with respect to SCPPA Facility Output following its purchase or acquisition of the Facility to Purchaser and the other Project Participants in accordance with their respective Output Entitlement Shares in the same manner by which SCPPA receives Environmental Attributes.

10. FEDERAL TAX LAW REQUIREMENTS.

10.1 Purchaser to Provide Information Relevant to Compliance with Federal Tax Law Requirements. At such times and through such means as prescribed by the rules, procedures and protocols promulgated by SCPPA to address compliance with the applicable Federal Tax Law Requirements with respect to any Bonds, or pursuant to any request by SCPPA, Purchaser shall provide SCPPA with a tax certificate relating to such Bonds, and such additional information and representations as necessary to establish Purchaser's compliance with the Federal Tax Law Requirements, including, to the extent applicable, information and representations concerning the disposition or use of electric energy provided under this Agreement or the disposition or use of any assets acquired with the proceeds of such Bonds.

10.2 Compliance with Federal Tax Law Requirements. With respect to any Bonds, Purchaser agrees that it will promptly act in accordance with written instructions which SCPPA may reasonably require from time to time in connection with the Federal Tax Law Requirements, and in addition Purchaser will not at any time take any action, or fail to take any action, if such action or failure to take action would result in or cause non-compliance with Federal Tax Law Requirements. The Purchaser agrees to execute new or revised tax certificates or provide such information or other assurance respecting past and future compliance with the Federal Tax Law Requirements applicable to any Bonds as may be reasonably requested by SCPPA. In connection therewith, Purchaser shall cooperate with and provide to SCPPA such other information, representations and certifications as necessary for Bond Counsel or Tax Counsel to render an opinion or advise to the effect that any applicable Federal Tax Law Requirements are met.

10.3 SCPPA to Issue Rules, Procedures and Protocols. SCPPA shall develop and promulgate such rules, procedures and protocols, together with amendments thereto, as necessary, in consultation with Bond Counsel or Tax Counsel, to ensure compliance with any applicable Federal Tax Law Requirements, including to establish expectations regarding future compliance under applicable laws and regulations existing from time to time with respect to any Bonds, and shall include, without limitation, the

appropriate reporting, documentation and certifications to establish and maintain compliance with the provisions of this Section 10.

11. PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANT RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.

11.1 Rights and Obligations under the Project Agreements. Notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to deliver Purchaser's Output Entitlement Share of SCPPA Facility Output hereunder during the Delivery Term of the Power Purchase Agreement is limited to the SCPPA Facility Output which SCPPA receives from the Facility (or the Power Purchase Provider, as applicable) at Purchaser's Designated Point of Delivery for redelivery to Purchaser hereunder during such time; (ii) the obligation of SCPPA (or the Power Purchaser Provider) to deliver Purchaser's Output Entitlement Share of Replacement Energy hereunder during the Delivery Term of the Power Purchase Agreement is limited to the Replacement Energy which SCPPA receives at Purchaser's Designated Point of Delivery under the Power Purchase Agreement, (iii) the obligation of SCPPA to pay any amount to Purchaser hereunder or to give credits against amounts due from Purchaser hereunder is limited to amounts SCPPA receives in connection with the transaction to which the payment or credit relates (or is otherwise available to SCPPA in connection with this Agreement for which such payment or credit relates); (iv) any purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which SCPPA is responsible under the Project Agreements shall be considered purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by SCPPA and payable by Purchaser and the other Project Participants as provided in this Agreement; and (v) any Force Majeure under the Power Purchase Agreement or other event of force majeure affecting the delivery of energy pursuant to applicable provisions of the Project Agreements shall be considered an event caused by Uncontrollable Forces affecting SCPPA with respect to the delivery of energy and/or environmental attributes hereunder and SCPPA forwarding to Purchaser notices and information from the Power Purchase Provider concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a notice that Uncontrollable Forces have occurred pursuant to Section 16.3 of this Agreement.

11.2 Acquisition of the Facility by SCPPA. The Parties mutually acknowledge and agree that SCPPA may, under certain circumstances, acquire ownership of the Facility or an ownership interest therein, and succeed to the rights and obligations associated with such ownership with respect to the Facility pursuant to the provisions of the Power Purchase and Security Agreements, including the purchase of rights and interests under the

Facility Credit Agreements or pursuant to any security interest in the Project held by any third party, or through foreclosure action (or a deed in-lieu-of foreclosure) or under and pursuant to any of the Security Instruments, or purchase at foreclosure sale, including, but not limited to, the rights and obligations under operating agreements and the ownership interests with respect to the leasehold estates, rights-of-way and other real property interests upon which the Facility is situated, at such time and under such terms as provided in the Power Purchase and Security Agreements or on such other terms as may be agreed upon between SCPPA and the Power Purchase Provider, or otherwise. The Parties also anticipate that any such Acquisition of the Facility, or an ownership interest therein may be carried out with SCPPA financing. If, pursuant to the recommendation of the Coordinating Committee and approval of the Board of Directors, SCPPA should enter into any arrangement to purchase or acquire the Facility, or any ownership interest therein, pursuant to the Power Purchase and Security Agreements or, subject to the recommendation of the Coordinating Committee and approval of the Board of Directors, SCPPA exercises any option to purchase or acquire the Facility or any ownership interest therein as provided in the Power Purchase and Security Agreements or to purchase rights and interests under the Facility Credit Agreements, or otherwise acquires the Facility or an ownership interest therein, pursuant to any of the Security Instruments or any of the foregoing, SCPPA may finance the associated Cost of Acquisition through the issuance of Bonds.

11.3 Special Payment Obligations in Advance of the Issuance of Bonds. In the event the Board of Directors anticipates that SCPPA will be obligated to make a substantial payment under a Project Agreement which may be reimbursed from the proceeds of Bonds (a "Special Obligation") and it is anticipated that there will not be time to issue Bonds, or that it is otherwise impracticable to issue Bonds, to cover such Special Obligation, and the amounts available through other cost payment mechanisms under this Agreement are not sufficient to timely pay such Special Obligation at the time it may come due, the Board of Directors may take action by resolution in advance of the time anticipated for payment of such Special Obligation to impose upon Purchaser the obligation to make such payment. Purchaser shall pay its share of such costs within seven (7) days of receiving an invoice therefor (a "Special Obligation Billing Statement") from SCPPA which Special Obligation Billing Statement shall describe the Special Obligation. In case any portion of any Special Obligation Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Special Obligation Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on

any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth (5th) Business Day following the receipt by SCPPA of the disputed overpayment. In the event such Special Obligation Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within thirty (30) days following receipt of written notification from Purchaser of such dispute. Should Purchaser satisfy such a Special Obligation through its own resources, at the request of Purchaser SCPPA will endeavor to reimburse such payments from the proceeds of future financings to the extent, if applicable, permitted by the Federal Tax Law Requirements.

12. PLEDGE OF PAYMENTS. All or any portion of the payments required to be made by Purchaser in accordance with or pursuant to any provision of this Agreement may be pledged by SCPPA to secure the payment of the Bonds, and interest thereon, subject to the application thereof to such purposes and on such terms as provided in the Indenture, and as required by the Act. SCPPA may assign, among other rights and security, to the Project Trustee or Lender its rights to receive from Purchaser all or any portion of the payments to be made by Purchaser pursuant to this Agreement. SCPPA may direct Purchaser to make all or any portion of such payments directly to the Project Trustee or Lender for application by the Project Trustee or Lender under the Indenture. Notwithstanding the foregoing or any other provision of this Agreement, SCPPA shall not acquire the Facility unless there shall be compliance with the applicable provisions of Section 10 and with the provisions of the Indenture applicable to the acquisition of the Facility.

13. ISSUANCE OF BONDS.

13.1 Issuance of Bonds. Bonds will be issued by SCPPA in accordance with this Agreement, the provisions of the Indenture and the Act for the purpose of financing the Cost of Acquisition, which may entail, among other things, the acquisition resulting from the exercise of the purchase option in the Power Purchase Agreement, and, if applicable, the purchase or acquisition of the Facility or an ownership interest therein and all or any portion of associated assets, rights and interests under or pursuant to the Power Purchase and Security Agreements, and any other Acquisitions and any Capital Improvements.

13.2 Additional Bonds. Additional Bonds may be issued by SCPPA in accordance with this Agreement, the provisions of the Indenture and the Act at any time and from time to time in the event funds are required for further development or completion of the Project or for the purpose of financing any further Cost of Acquisition or other Acquisitions or Capital Improvements, including without limitation the cost of acquiring the Facility or an ownership interest therein or the rights and interests otherwise described in Section 11.2, and upon the recommendation of the

Coordinating Committee and approval of the Board of Directors, SCPPA shall use its best efforts to issue such additional Bonds.

13.3 Refunding Bonds. In the event that Monthly Costs may be reduced by the refunding of any of the Bonds or in the event it shall otherwise, for one or more of the Project Participants, be advantageous, in the opinion of SCPPA, to refund any Bonds, SCPPA may issue and sell refunding Bonds in accordance with the Indenture and the Act.

13.4 Opinions of Counsel. In connection with the issuance of Bonds, additional Bonds or refunding Bonds for the purposes described in this Section 13, Purchaser shall provide an opinion of an attorney or firm of attorneys, or the equivalent thereof, in substantially the form as attached hereto as Appendix D as may be reasonably necessary to facilitate the issuance of such Bonds.

13.5 Redemption or Payment of Bonds. SCPPA may issue such bonds, notes, certificates of participation, commercial paper, other evidences of indebtedness or other instruments, in accordance with the Indenture and the Act, as it may deem appropriate to facilitate the redemption or payment of Bonds.

13.6 Bond-Related Documents. Purchaser agrees to supply SCPPA, upon written request, with such additional information and documentation as SCPPA shall reasonably determine to be necessary or desirable to facilitate the issuance of Bonds, additional Bonds or refunding Bonds for the purposes described in this Section 13 and to comply with Federal Tax Law Requirements and continuing disclosure requirements including, but not limited to, requirements under the United States Securities and Exchange Commission Rule 15c2-12.

14. **EXCESS BOND PROCEEDS.** In the event the proceeds derived from the sale of any Bonds exceed the aggregate amount required for the purposes for which such Bonds were issued, the amount of such excess shall be used, after prior consultation with Bond Counsel or Tax Counsel, to make up any deficiency existing in any Funds under the Indenture in the manner therein provided, and any balance shall (i) be used to retire, by purchase or redemption, Bonds in advance of maturity, (ii) be deposited in any applicable account established in accordance with Section 7.8 hereof, (iii) reduce the payments by the applicable Project Participants required pursuant to Section 7 hereof, and in such event SCPPA will reduce the monthly Billing Statements of such Project Participants as are necessary and appropriate, or (iv) be used for other lawful Project expenses or purposes.

15. NONPERFORMANCE AND PAYMENT DEFAULT.

15.1 Nonperformance by Purchaser. If Purchaser shall fail to perform any covenant, agreement or obligation under this Agreement or shall cause SCPPA to be in default with respect to any undertaking entered into for the Project or to be in default under the Power Purchase Agreement, or any other Project Agreement, as applicable, or cause a default to occur pursuant to such agreements, SCPPA may, in the event the performance of any such obligation remains unsatisfied after 30 days' prior written notice thereof to the Purchaser and a demand to so perform; take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or (unless SCPPA has already taken action pursuant to the immediately following sentence) bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform. In addition to any other rights SCPPA may have under this Agreement as a result of nonpayment by the Purchaser, if the Purchaser fails to pay its share of Debt Service in accordance with this Agreement and the result is that SCPPA defaults on the payment of principal of or interest on any Bond or other obligations payable from the Debt Service Fund under the Indenture, SCPPA may, immediately and without delay, take any action permitted by law to enforce its rights under this Agreement and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform.

15.2 Notice of Payment Default. On or promptly following the Initial Payment Default Date by Purchaser, SCPPA shall issue a Default Invoice and shall provide written notice to Purchaser that as a result of a Payment Default it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that Purchaser's Project Rights are subject to discontinuance, termination and disposal in accordance with Sections 15.4 and 15.5 of this Agreement. Notice of such Payment Default shall be provided promptly by SCPPA to the other Project Participants and to the Project Trustee or Lender. In addition to the foregoing, the Notice of Payment Default shall specify that five days after the issuance of the written notice of Payment Default by SCPPA, deliveries of SCPPA Facility Output to the Purchaser pursuant to this Agreement shall be thereafter suspended until such time as Purchaser is in Compliance. SCPPA may take any action through or in conjunction with the Power Purchase Provider or any other counterparty under a Project Agreement or with the Project Manager, if applicable, to expeditiously carry forth the provisions of this Section 15.

15.3 Cured Payment Default. Except for a Payment Default which causes SCPPA to default on the payment of principal of or interest on Bonds or other obligations payable from the Debt Service Fund under the Indenture, which shall be subject to and addressed as provided in Section 15.4 and the other applicable sections of this Agreement, and except as provided in Section 15.14, if after a Payment Default, Purchaser cures such Payment Default within 30 days (the Cure Period) its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 15.4 and 15.5 of this Agreement as a result of any Payment Default associated with such Cured Payment Default.

15.4 Failure to Cure Payment Default. If at any time 30 days after an uncured Payment Default by Purchaser, Purchaser fails to be in Compliance, or if at any time SCPPA defaults on the payment of principal of or interest on any Bond, or other obligations payable from the Debt Service Fund under the Indenture, due to the failure of the Defaulting Project Participant to pay its share of Debt Service in a timely manner in accordance with this Agreement, Purchaser's Project Rights shall immediately be discontinued and terminated and its Project Rights and Obligations shall be disposed of by SCPPA in accordance with Section 15.5 of the Defaulting Project Participant's Power Sales Agreement; provided, however, the Defaulting Project Participant's obligation to make payments under its Power Sales Agreement shall not be eliminated or reduced except to the extent provided in Section 15.6. SCPPA shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations under its Power Sales Agreement. SCPPA shall immediately notify the Project Manager (if other than SCPPA), the other Project Participants and the Project Trustee or Lender, and such others as SCPPA deems appropriate, of such discontinuance and termination of a Defaulting Project Participant's Project Rights.

15.5 Treatment of the Defaulting Project Participant's Project Rights and Obligations upon Payment Default of Defaulting Project Participant. In the event Defaulting Project Participant's Project Rights are discontinued and terminated pursuant to Section 15.4 of its Power Sales Agreement, SCPPA shall undertake or cause to be undertaken the following actions in the order indicated:

15.5.1 SCPPA shall offer to convey, transfer and assign to all non-Defaulting Project Participants, on a temporary or permanent basis as determined by SCPPA, the Project Rights and Obligations of Defaulting Project Participant, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting non-Defaulting Project Participants the amount of Project Rights and Obligations requested if the aggregate of such requests does not exceed the amount of the Project Rights and Obligations of the Defaulting Project

Participant, or (ii) all requesting non-Defaulting Project Participants on a pro-rata basis (based upon the amount requested) if the aggregate of such requests exceeds the amount of the Project Rights and Obligations of the Defaulting Project Participant; provided, however, that SCPPA shall not offer or permit the conveyance, transfer or assignment of Defaulting Project Participant's Project Rights and Obligations in such a manner or in such an amount as, in the opinion of Bond Counsel or Tax Counsel, would violate any provision of the Indenture or result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds. Each such requesting non-Defaulting Project Participant shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA.

- 15.5.2 If all of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned to non-Defaulting Project Participants as provided in Section 15.5.1 of its Power Sales Agreement, SCPPA shall, to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remaining (or all, if applicable) of Defaulting Project Participant's Project Rights and Obligations to third parties, all in accordance with applicable law; provided, however, that SCPPA shall not offer or permit the conveyance, transfer or assignment of Defaulting Project Participant's Project Rights and Obligations in such a manner or in such an amount as would, in the opinion of Bond Counsel or Tax Counsel, violate any provision of the Indenture or result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds. Each such requesting third party shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA.
- 15.5.3 If, at any time or from time to time, any of the Project Rights and Obligations of a Defaulting Project Participant are not conveyed, transferred and assigned as provided in Sections 15.5.1 or 15.5.2 of its Power Sales Agreement, SCPPA shall use its best efforts, to the extent reasonably possible and economically beneficial, to offer all non-Defaulting Project Participants and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output associated with such Project Rights and Obligations or to remarket or resell such SCPPA Facility Output, or cause the same to be remarketed or resold; provided, however, that SCPPA shall not offer or permit the sale or remarketing of such SCPPA Facility Output associated with Defaulting Project Participant's Project Rights in

such a manner or in such an amount as would, in the opinion of Bond Counsel or Tax Counsel, violate any provision of the Indenture or result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds; and provided further, however, that without eliminating Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement), including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the remarketing or sale of SCPPA Facility Output associated with Defaulting Project Participant's Project Rights. If at the time of any Coordinating Committee meeting, any of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned as provided in Sections 15.5.1 or 15.5.2, the associated voting rights with respect to Defaulting Project Participant's Project Rights and Obligations shall be redistributed pro rata among the non-Defaulting Project Participants, based upon each non-Defaulting Project Participant's Output Entitlement Share, so that the total voting rights remain at 100%.

Except as provided in this Section 15.5 or otherwise in this Agreement, SCPPA may not convey, transfer or assign any Project Participant's Rights and Obligations without the prior written consent of the Project Participant.

15.6 Elimination or Reduction of Payment Obligations. Upon termination of Defaulting Project Participant's Project Rights pursuant to Section 15.5 and conveyance, transfer or assignment of Defaulting Project Participant's Project Rights and Obligations pursuant to Sections 15.5.1 or 15.5.2, Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement) shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of Defaulting Project Participant's Project Rights and Obligations, less SCPPA's related costs and expenses; provided, however, such payment obligations for Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, if and to the extent any costs incurred by SCPPA have been fully paid, and (a) no Bonds are outstanding or adequate provision for the payment thereof has been made in accordance with the applicable provisions of the Indenture and (b) the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.

15.7 Use of Operating Reserve Account. With respect to a Payment Default by Purchaser, funds in the operating reserve account, if any, under the Indenture may be used, to the extent necessary and to the extent available and consistent with the Indenture, to cover any deficiency with respect to any payment due by SCPPA attributable to Purchaser's participation in the Project under the Indenture during the period prior to the Operating Reserve Depletion Date. Any replenishing of the operating reserve account under the Indenture shall be in accordance with the Indenture.

15.8 Use and Replenishment of Debt Service Reserve Fund(s). SCPPA may maintain Debt Service Reserve Fund(s) which shall be funded and maintained in the amount(s) specified in the Indenture. With respect to a Payment Default by Purchaser, funds (or any surety bond, credit facility or similar instrument) in the Debt Service Reserve Fund(s) under the Indenture shall be used, to the extent necessary and to the extent available, to cover any shortfall in the Debt Service account(s) relating to the Indenture to pay for Debt Service (but, unless otherwise provided in the Indenture, not the payment of other obligations payable from amounts deposited in the Debt Service Fund). The replenishment of the Debt Service Reserve Fund(s) shall be in accordance with the Indenture.

15.9 Step-Up Invoices. Step-Up Invoices shall be issued in accordance with the provisions set forth below.

15.9.1 In the event of a Payment Default by one or more Project Participants, SCPPA shall provide by the fifth day of the month following such Payment Default(s) a separate Step-Up Invoice to each non-Defaulting Project Participant that specifies the non-Defaulting Project Participant's pro rata share, based upon the Indenture Cost Shares of all non-Defaulting Project Participants, of the amount of the Payment Defaults with respect to the Indenture cost component (described in Section 4.9.5 hereof) set forth in the Billing Statement(s) for the Defaulting Project Participant(s). Notwithstanding the previous sentence, (i) the amount of a Step-Up Invoice provided to a non-Defaulting Project Participant under this Section 15.9.1 shall not exceed 100% of the amount that such non-Defaulting Project Participant was billed for the Indenture cost component (described in Section 4.9.5 hereof) in its Billing Statement for the Month preceding such monthly Step-Up Invoice and (ii) following the Operating Reserve Depletion Date, the provisions of Section 15.9.2 hereof shall apply and no additional Step-Up Invoices shall be issued pursuant to this Section 15.9.1 with respect to such Payment Default.

15.9.2 In the event of a Payment Default by one or more Defaulting Project Participants, which is in existence following the Operating Reserve Depletion Date, SCPPA shall provide by the fifth day of the Month following such Operating Reserve Depletion Date, a separate Step-Up Invoice to each non-Defaulting Project Participant that includes a charge equal to the non-Defaulting Project Participant's pro rata share, based upon the Project Cost Shares of all non-Defaulting Project Participants, of the amount of Total Monthly Costs reflected in the unpaid Billing Statements for the previous Month for such Defaulting Project Participant(s). Notwithstanding the foregoing, the amount of each monthly Step-Up Invoice provided to a non-Defaulting Project Participant shall not exceed 100% of the aggregate amount that such non-Defaulting Project Participant was billed with respect to Total Monthly Costs in its Billing Statement for the Month preceding such monthly Step-Up Invoice.

15.9.3 Step Up Invoices shall be due and payable within 20 days of the receipt thereof, and payments to SCPPA with respect to Step-Up Invoices shall be separate from any other payments due under each Project Participant's Power Sales Agreement, including but not limited to monthly Billing Statement payments.

15.10 Application of Moneys Received from Step-Up Invoices Relating to the Project. Moneys received by or on behalf of SCPPA from the payment of Step-Up Invoices relating to a Payment Default of a Project Participant shall be applied in the following manner:

15.10.1 Moneys received from Project Participants with respect to the Indenture cost component (described in Section 4.9.5 hereof), as set forth in the Step-Up Invoices, to the extent such moneys relate to Debt Service, shall be forwarded to the Project Trustee or Lender for deposit directly into the Debt Service Fund under the Indenture, and to the extent such moneys relate to any other portion of the Indenture cost component, shall be forwarded to the Project Trustee or Lender for deposit into such other Funds as are appropriate under the Indenture.

15.10.2 Moneys received from the Project Participants with respect to the amount of Total Monthly Costs (described in Section 4.8 or Section 4.9 hereof, other than Section 4.9.5) as set forth in the Step-Up Invoices, shall be forwarded to the Project Trustee or Lender for deposit into the Revenue Fund under the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture.

15.10.3 In the event a Project Participant pays less than the total amount of its Step-Up Invoice, such Project Participant shall be a Defaulting Project Participant and its partial payment shall be allocated in the following order: (i) all Total Monthly Costs (described in Section 4.8 or Section 4.9 hereof) except the Indenture cost component described in Section 4.9.5 hereof, and (ii) the Indenture cost component (described in Section 4.9.5 hereof).

15.11 Application of Moneys Received from Default Invoices. Moneys received by or on behalf of SCPPA from the payment of Default Invoices shall be forwarded by SCPPA to the Project Trustee or Lender for deposit into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture. SCPPA shall credit on each non-Defaulting Project Participant's next monthly Billing Statement or Billing Statements an amount equal to the aggregate amount such non-Defaulting Project Participant paid as a result of Step-Up Invoices with respect to such Default Invoice, plus a pro rata share, based upon the Project Cost Shares of the non-Defaulting Project Participants, of the amount SCPPA received regarding late payment interest charges. In the event a Defaulting Project Participant pays less than the full amount of its Default Invoice, the credit to each non-Defaulting Project Participant shall be adjusted proportionately.

15.12 Application of Moneys Received from Compliance Payments. Moneys received by or on behalf of SCPPA from a Defaulting Project Participant that makes payments to remain in Compliance with respect to a Payment Default shall be applied in the following manner:

15.12.1 With respect to a Defaulting Project Participant's first payment to remain in Compliance, SCPPA shall forward or cause to be forwarded the moneys received to the Project Trustee or Lender to be deposited into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture. SCPPA shall provide a credit on each non-Defaulting Project Participant's next monthly Billing Statement(s) an amount equal to the aggregate amount such non-Defaulting Project Participant paid as a result of Step-Up Invoices with respect to such Compliance payment, plus a pro rata share, based upon the Project Cost Shares of the non-Defaulting Project Participants, of the amount SCPPA received regarding late payment interest charges.

15.12.2 With respect to a Defaulting Project Participant's payments to remain in Compliance other than the first payment (as provided in Section 15.12.1 hereof), SCPPA shall forward or cause to be forwarded the moneys received to the Project Trustee or Lender

for deposit into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture.

15.13 Application of Moneys Received from Sale of SCPPA Facility Output. Moneys received by or on behalf of SCPPA from the sale of SCPPA Facility Output related to a Defaulting Project Participant's Project Rights and Obligations, as provided in Section 15.5.3 hereof, shall be applied in the following manner in order:

15.13.1 SCPPA shall credit on each non-Defaulting Project Participant's next monthly Billing Statement(s) an amount up to, but not in excess of, the aggregate amount paid to SCPPA by such non-Defaulting Project Participant with respect to each such non-Defaulting Project Participants Step-Up Invoices.

15.13.2 SCPPA shall forward or caused to be forwarded to the applicable Project Trustee or Lender for deposit into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture, the applicable portion of such moneys.

15.13.3 Following consultation with the non-Defaulting Project Participants, SCPPA shall determine the disposition of any moneys received that are in excess of the aggregate amount of related Step-Up Invoices paid by non-Defaulting Project Participants. Unless the Coordinating Committee determines otherwise, or except as otherwise required by law, the Defaulting Project Participant shall have no claim or right to any such monies.

15.14 Limitation on Cure Period. Notwithstanding anything to the contrary in this Agreement, there shall be no Cure Period with respect to Purchaser's failure to pay those costs constituting its share of Debt Service in a timely manner in accordance with this Agreement, and any such Debt Service not paid by the Purchaser when due shall be immediately due and payable to SCPPA.

16. CHARACTER, CONTINUITY OF SERVICE.

16.1 Outages, Interruptions and Curtailment of Energy Deliveries. Under certain conditions set forth in Project Agreements or in the case of emergencies or abnormal conditions with respect to the Facility or in order to take the Facility out of service for repairs, maintenance work, replacements, equipment installation or inspections, or in the event of a failure by a Project Participant to receive or accept SCPPA Facility Output or Replacement Energy delivered to SCPPA at a Point of Delivery, the

Power Purchase Provider or, if SCPPA shall acquire the Facility or an ownership interest therein, SCPPA, its agent or the Project Manager, as the case may be, may temporarily interrupt or curtail deliveries of SCPPA Facility Output (or in the case of the Power Purchase Provider, the Replacement Energy) to Project Participants. In the event of the occurrence of any such interruption or curtailment, including any associated Facility outage, which shall cause a reduction in deliveries of SCPPA Facility Output, any incurrence by SCPPA of additional costs, or a receipt by SCPPA of payments or credits under any Project Agreement, certain of the rights, entitlements and obligations of the affected Project Participants under their respective Power Sales Agreements shall be subject to adjustment as follows:

- 16.1.1 In the case of such an interruption, curtailment or outage affecting the deliveries of SCPPA Facility Output at or to the Point of Interconnection, (i) the resulting reduction in SCPPA Facility Output at the Point of Interconnection shall be shared by the Project Participants pro rata in accordance with their respective Point of Interconnection Allocable Shares, and (ii) any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated among the Project Participants in accordance with their respective Project Cost Shares.
- 16.1.2 In the case of such an interruption or curtailment that affects deliveries of SCPPA Facility Output from the Point of Interconnection to any Point of Delivery, and as a result thereof SCPPA shall receive any payment or credit, each affected Project Participant shall in turn receive a credit on its monthly Billing Statement (i) during the term of the Power Purchase Agreement, in the amount of its Delivery Point Output Cost Share of such payment or credit received by SCPPA, and (ii) commencing upon an Acquisition by SCPPA of the Facility or an ownership interest therein, the amount of its Transmission Services Cost Share of such payment or credit received by SCPPA.
- 16.1.3 In the case where a Project Participant fails to accept or receive at its Designated Point of Delivery all or any portion of its Output Entitlement Share of SCPPA Facility Output or Replacement Energy delivered to such Point of Delivery, such Project Participant shall be responsible for any cost incurred by SCPPA which is attributable to such failure and the amount of such cost shall be added to such Project Participant's monthly Billing Statement.
- 16.1.4 No such interruption or curtailment of deliveries of SCPPA Facility Output, including any interruption or curtailment due to a Facility outage, shall relieve any of the Project Participants of their

obligations to make payments under their respective Power Sales Agreements.

16.1.5 SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise the affected Project Participants of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.

16.1.6 After informing the affected Project Participants regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of the Project Participants.

16.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide, SCPPA Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of SCPPA, the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable SCPPA or the Power Purchase Provider, as applicable, to acquire, administer or operate the Project; provided, however, that Purchaser and the other Project Participants shall not thereby be relieved of their obligations to make payments under their respective Power Sales Agreements except to the extent SCPPA is so relieved pursuant to the Indenture and/or other applicable Project Agreements.

17. SEVERAL OBLIGATION; LIABILITY.

17.1 Project Participants' Obligations Several. Purchaser and the other Project Participants shall be severally responsible and liable for performance under their respective Power Sales Agreements, and for any respective arrangements which are not part of the Project. The obligation of Purchaser to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants under the other Power Sales Agreement to which such Project Participants are parties.

17.2 No Liability of SCPPA, Directors, Officers, Etc.; SCPPA Directors, Officers, Employees, Project Manager Not Individually Liable. Purchaser agrees that neither SCPPA, the Project Manager, nor any of their directors, officers, or employees shall be liable to Purchaser for any and all claims, including loss of profits, direct or consequential loss, or damage suffered by Purchaser as a result of (i) the performance or non-performance by the Power Purchase Provider or the Project Manager or any of its directors,

officers, and employees under this Agreement or any Project Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct) or (ii) the performance or non-performance of SCPPA, the Project Manager, or any of their directors, officers, or employees under this Agreement or any Project Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct). Purchaser releases SCPPA and its directors, officers, and employees and the Project Manager from any claim or liability that Purchaser may have cause to assert as a result of any actions or inactions of SCPPA under this Agreement or the performance or non-performance by the Project Manager under this Agreement or any Project Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct). No such performance or non-performance by the Project Manager, the Power Purchase Provider, or SCPPA shall relieve Purchaser from its obligations under this Agreement, including its obligation to make payments required under this Agreement. The provisions of this Section 17.2 shall not be construed so as to relieve the Project Manager or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement, the Power Purchase and Security Agreements or any other applicable Project Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, the Project Manager, nor their officers or employees or member of SCPPA in its capacity as a member of SCPPA, shall be individually liable in respect of any undertakings by SCPPA under this Agreement or any Project Agreement.

- 17.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 17.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, Purchaser may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA, and Purchaser shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by Purchaser in accordance with Section 7.4 hereof.
- 17.4 Determination or Enforcement of Rights. Notwithstanding Section 17.2 and 17.3 hereof, Purchaser or SCPPA may determine, protect and enforce its rights under this Agreement or any Project Agreement by a suit(s) in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 17.5 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 17, the provisions of this Section 17 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.

17.6 No General Liability of SCPPA. The undertakings under this Agreement by SCPPA, or the Project Manager in its capacity as such, shall never constitute a debt or indebtedness of SCPPA or the Project Manager within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.

18. RESTRICTIONS ON DISPOSITION.

18.1 Limitations Concerning Private Use. Purchaser recognizes that certain Federal Tax Law Requirements, if applicable, limit the arrangements permitted with respect to the purchase, sale, assignment or other disposition of Purchaser's Project Rights and Obligations. Purchaser shall comply with the rules, procedures and protocols promulgated by SCPPA pursuant to Section 10.3 with respect to compliance with the Federal Tax Law Requirements, applicable, to any Bonds. Except as provided in Section 6.2.9 or Section 15 hereof, no sale, assignment or other disposition of all or any portion of Purchaser's Project Rights and Obligations, including the Purchaser's Output Entitlement Share with respect to the Project, shall be effective until (i) Purchaser shall have given prior written notice thereof to SCPPA, and (ii) unless waived by the Board of Directors after consultation with Bond Counsel or Tax Counsel, Bond Counsel or Tax Counsel shall have rendered an opinion that such sale, assignment or other disposition will not result in or cause non-compliance with any applicable Federal Tax Law Requirements and will not be inconsistent with the Power Sales Agreements. Notwithstanding the immediately preceding sentence, Purchaser may (without giving such notice or obtaining such opinion) contract to provide or otherwise sell or dispose of the SCPPA Facility Output to which it is entitled hereunder in a transaction which complies with guidelines established by SCPPA and approved by SCPPA's Bond Counsel or Tax Counsel from time to time. In addition to the forgoing, no such sale, assignment or disposition shall cause SCPPA to be in default of any term or condition of the Power Purchase Agreement.

18.2 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of Purchaser's Project Rights and Obligations to any Person ("Assignee") that occurs when any Bonds are outstanding shall release Purchaser from its payment obligations under this Agreement; provided, however, such payment obligations may be eliminated or reduced if no Bonds are outstanding or adequate provisions for the payment thereof have been made in accordance with the provisions of the Indenture if (i) such Assignee shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, (ii) unless otherwise provided by resolution of the Board of Directors, such Assignee shall have a corporate or long-term senior unsecured credit rating not less than Standard & Poors A- or Moody's A3, and (iii) the

Board of Directors; by resolution, determines in its sole discretion to eliminate or reduce such payment obligations. For avoidance of doubt, notwithstanding the forgoing, no such sale, assignment or disposition shall cause SCPPA to be in default of any term or condition of the Power Purchase Agreement or of any Project Agreement.

18.3. Restrictions on Disposition of Purchaser's Entire System. Purchaser shall not sell, lease or otherwise dispose of all or substantially all of its electric system to any Person ("Acquiring Entity") unless the following conditions shall be met: (A) in the event that Bonds are outstanding then (i) Purchaser shall assign its Project Rights and Obligations hereunder to such Acquiring Entity and such Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, (ii) such sale, lease or other disposition shall not, in and of itself, cause the rating of any Bonds to be downgraded, suspended or withdrawn (which fact shall be evidenced by letters of the rating agencies then rating the Bonds), and (iii) such sale, lease or other disposition will not adversely affect the value of this Agreement as security for the payment of the Indenture cost component; (B) in the event that no Bonds are outstanding or adequate provisions for the payment thereof have been made in accordance with the provisions of the Indenture then (i) such Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, and (ii) such Acquiring Entity shall have a corporate or long-term senior unsecured credit rating not less than investment grade; and (C) in all cases, unless waived by SCPPA after consultation with Bond Counsel or Tax Counsel, Bond Counsel or Tax Counsel shall have rendered an opinion that such sale, lease or other disposition will not result in or cause non-compliance with any applicable Federal Tax Law Requirements with respect to any Bonds.

18.4. Successors and Assigns. Subject in all respects to Sections 15 and 18 hereof, the Project Rights and Obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement.

19. **REIMBURSEMENT OF PROJECT DEVELOPMENT COSTS.** Within 90 days after the issuance of the first Bonds all of the following project development costs and expenses and other applicable costs for Development Work, paid by Purchaser prior to the date of such issuance, to the extent reimbursable under applicable tax law and regulations, shall be reimbursed to Purchaser by SCPPA from the proceeds of the Bonds (in an amount determined by the Coordinating Committee or Board of Directors, as appropriate): costs of planning and development of the Project; costs relating to any acquisition of the Project; costs of investigation and feasibility studies; technical, legal and financing expenses; legal costs including but not limited to the costs of Bond Counsel, Tax Counsel, electric utility counsel, secured transaction and real estate specialists, solar energy counsel, environmental counsel, bankruptcy counsel, and counsel

experienced in securing and facilitating this transaction under California, Arizona, and Federal law, costs of obtaining permits, clearances, licenses, entitlements and approvals or other governmental authorizations, options or rights therein; costs of preparing agreements or other documents; and other costs relating to the Project in amounts determined by the Coordinating Committee.

20. EFFECTIVE DATE, TERM AND EXPIRATION.

- 20.1 Effective Date; Execution in Counterparts. This Agreement shall become effective on the first day when all of the following shall have occurred: (i) this Agreement shall have been duly executed and delivered by SCPPA and Purchaser, (ii) the Power Purchase Agreement shall have been duly executed and delivered by SCPPA and the Power Purchase Provider, and (iii) the Power Sales Agreement between SCPPA and the other Project Participants shall have been duly executed and delivered by the parties thereto. Once the Power Purchase Agreement has been executed and delivered as set forth above, SCPPA shall deliver a copy of the same to Purchaser. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.
- 20.2 Termination Conditions. This Agreement shall be effective upon satisfaction of the conditions set forth in Section 20.1 and shall extend for the term specified in Section 20.3 unless earlier terminated pursuant to an express provision of this Agreement, or by operation of the Indenture or of law; provided, however, that (i) any obligation to make payments to SCPPA or any outstanding liability of Purchaser hereunder which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction carried forth under this Agreement, shall survive such termination and (ii) any obligation of SCPPA or Purchaser hereunder to comply with the Federal Tax Law Requirements shall continue until such time as provided in Section 23.3.
- 20.3 Expiration. The term of this Agreement shall begin on the day this Agreement becomes effective pursuant to Section 20.1 hereof. Unless terminated earlier pursuant to Sections 20.4 or 20.5 and subject to Section 23 hereof, the term of this Agreement shall expire on the later of: (i) the date SCPPA's Joint Powers Agreement (including any extensions thereof) expires or (ii) the date on which all Bonds and the interest thereon shall have been paid in full or adequate provision for such payment shall have been made and the Bonds are no longer outstanding; provided, however, that in no event shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.
- 20.4 Transfer of SCPPA Interest. Except as provided in Section 20.5 hereof, and subject to any applicable provisions of any associated operating agreements, upon the expiration of the term of this Agreement pursuant to

Section 20.3 hereof, in the event SCPPA shall have purchased or acquired the Facility or an ownership interest therein, SCPPA shall transfer to the Project Participants and each Project Participant shall assume its pro rata share of any right, title and interest in the Facility or such ownership interest therein, as applicable, (including all rights and obligations of SCPPA under any Project Agreement) as evidenced by a participation agreement developed by SCPPA and the Project Participants, unless otherwise agreed to by SCPPA and all of the Project Participants. The purchase price and consideration to be paid to SCPPA by Purchaser for such transfer shall consist of the payments made by Purchaser pursuant to this Agreement prior to the date of such transfer plus any remaining costs or obligations incurred by SCPPA in connection with the Project.

20.5 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 20.3 hereof, this Agreement shall terminate, subject to Section 23 hereof, on the date, if any, by which each and all of the following have occurred:

- 20.5.1 All Bonds and the interest thereon shall have been paid in full or adequate provision for such payment shall have been made and the Bonds are no longer outstanding under the Indenture;
- 20.5.2 SCPPA notifies Purchaser that all Power Sales Agreements are superseded as a result of each Project Participant having (i) succeeded to SCPPA's rights through another agreement or agreements, (ii) entered into a replacement power sales agreement or other agreement with SCPPA or (iii) entered into a replacement power sales agreement or other agreement with one or more Project Participants which have become Project Participants in the Project under another agreement. The purchase price and consideration to be paid to SCPPA by Purchaser with respect to any such superseding arrangement shall consist of the payments and satisfaction of all obligations by Purchaser under and pursuant to this Agreement prior to the effective date of the superseding arrangement plus any remaining costs or obligations incurred by SCPPA in connection with the Facility or an ownership interest therein, as applicable; and
- 20.5.3 The Power Purchase Agreement shall no longer be of any force or effect.

21. REVISION OF APPENDICES B AND C.

21.1 Revision of Appendices B and C. The Parties acknowledge that under the terms of the Power Purchase Agreement SCPPA may hereafter increase its SCPPA Facility Capacity Share of the Facility Capacity and may hereafter enter into additional power sales agreements for the purchase of SCPPA

Facility Output by LADWP and other of its members which would then become additional Project Participants. In such event Appendix B and Appendix C may be revised, as applicable, so as to add Project Participants and to adjust the Capacity Amounts, Output Entitlement Shares, any of the Cost Shares, the Point of Interconnection Allocable Shares and the Points of Delivery (collectively, the "Appendix A and B Designations") as set forth in Appendix B and Appendix C, as shall be necessary to provide for any such increase in the SCPPA Facility Capacity Share of the Facility Capacity or the addition of Project Participants; provided that (i) any such adjustments in Appendix B and Appendix C shall be approved by a resolution adopted by the Coordinating Committee (which shall include the affirmative vote of Purchaser's representative on the Coordinating Committee if any of the Purchaser's Appendix A and B Designations shall be so adjusted), and shall be approved by a corresponding resolution adopted by SCPPA's Board of Directors, (ii) such adjustments shall not result in an increase or a decrease of more than fifty percent (50%) of the then existing Capacity Amount, Output Entitlement Share, any Cost Share, or the Point of Interconnection Allocable Share of Purchaser, and (iii) such adjustments shall be in compliance with this Agreement and from and after the Acquisition by SCPPA of the Facility or an ownership interest therein shall be subject to and shall comply with the applicable provisions of the Indenture. The Parties further agree that any such adjustments in Appendix B or Appendix C shall be made pursuant to the terms of this Agreement as entered into by the Parties and shall be treated as an element of administration and not an amendment of this Agreement. The revised Appendix B and Appendix C upon receipt of the approvals as provided above and upon compliance with the other requirements set forth in this Section 21.1 shall become Appendix B and Appendix C, respectively, to this Agreement in replacement of the prior Appendix B and Appendix C hereof.

21.2 Agreement Subject to the Indenture. It is recognized by the Parties hereto that SCPPA, in undertaking the planning and financing, development, acquisition, operation and maintenance of the Project, must comply with the requirements of the Indenture and all conditions, permits and approvals or other governmental authorizations necessary for such planning, financing, development, acquisition, operation and maintenance and it is therefore agreed that this Agreement is made subject to the provisions of the Indenture and all such conditions, permits, approvals and governmental authorizations

21.3 Comply With the Indenture. SCPPA covenants and agrees for the benefit of Purchaser to comply in all material respects with all terms, conditions and covenants of the Indenture and all conditions, permits, approvals and governmental authorizations relating to the Project, provided that SCPPA shall not be prevented from contesting the validity or applicability of any

such conditions, permits, approvals and governmental authorizations in good faith by appropriate proceedings.

22. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

23. **CONDITIONS TO TERMINATION OR AMENDMENT.**

23.1 **No Adverse Effect.** So long as any of the Bonds are outstanding under the Indenture, this Agreement shall not be terminated, amended, modified or otherwise altered in such a manner (i) as will materially reduce the payments pledged as security for the Bonds or extend the time of such payments provided herein, (ii) as will materially impair or materially adversely affect the rights of the owners from time to time of any Bonds, or (iii) as would be prohibited by any applicable provision of the Indenture.

23.2 **Rights Among Project Participants.** None of the Power Sales Agreements may be terminated as to any one or more of the Project Participants, or be amended as to any one or more of the Project Participants so as to provide terms and conditions materially different from those contained therein except, subject to the provisions of Section 23.1 and consistent with the Indenture, upon written notice to and written consent or waiver by the other Project Participants, and upon similar amendment, if appropriate, being made to the Power Sales Agreement of the other Project Participants requesting such amendment after receipt by such Project Participant of written notice of such amendment.

23.3 **Continuing Compliance with Federal Tax Law Requirements.** Notwithstanding anything contained in the Power Sales Agreements to the contrary, all obligations of SCPPA and the Project Participants with respect to compliance with Federal Tax Law Requirements with respect to any Bonds shall survive any termination of the Power Sales Agreements until such time as all Bonds to which such Federal Tax Law Limitations shall apply shall have been fully paid or redeemed and discharged or such earlier time as SCPPA shall determine upon consultation with Bond Counsel or Tax Counsel, or Bond Counsel or Tax Counsel shall have rendered an opinion to the effect that such Federal Tax Law Requirements shall no longer be applicable.

24. **REPRESENTATION AND GOVERNING LAW.** The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement. This Agreement was made and entered into in the County of Los Angeles and shall be

governed by, interpreted and enforced in accordance with the laws of the State of California. All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

25. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Coordinating Committee or the Board of Directors is unable to resolve, the Parties may by mutual agreement submit the dispute to mediation or non-binding arbitration. With respect to any such dispute the Parties agree that each Party shall bear its own attorneys fees and costs. Notwithstanding the foregoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Sections 4 and 7 of this Agreement.
26. **PURCHASER'S CONTRACT ADMINISTRATOR.** Purchaser's contract administrator for this Agreement shall be the person so designated by the individual authorized to receive notices on behalf of Purchaser pursuant to Section 27 herein, and Purchaser's contract administrator shall have the authority to administer this Agreement on behalf of Purchaser.
27. **NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority
Attention: Executive Director
225 South Lake Avenue, Suite 1250
Pasadena, California 91101

City of Banning
Electric Utility Department
Attention: Fred Mason, Director
176 E. Lincoln Street
Banning, CA 92220

with a copy to:

City of Banning
Attention: Marie Calderon, City Clerk
99 E. Ramsey Street
Banning, CA 92220

28. **AMENDMENTS.** The Parties acknowledge and agree that any amendment to this Agreement shall be in writing and duly executed by the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalves by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
MARCIE L. EDWARDS
President

Attest: _____
BILL D. CARNAHAN
Assistant Secretary

CITY OF BANNING, CALIFORNIA

By: _____

Printed Name: _____

Title: _____

Attest: _____
Marie Calderon, City Clerk

APPENDIX A

DEFINITIONS

The following terms, whether in the singular or the plural, and initially capitalized, shall have the meanings specified below:

1. **Acquisition.** Acquisition shall entail the procurement of SCPPA's rights and obligations pursuant to the Power Purchase Agreement and applicable Project Agreements, the acquisition resulting from the exercise of the purchase option pursuant to the Power Purchase Agreement, any purchase of the Facility or an ownership interest therein, including the purchase of rights and interests under any of the Power Purchase and Security Agreements, SCPPA financing arrangements for the foregoing, and all rights and entitlements associated with the acquisition, development and implementation of the Project, including those resources, contracts, rights, benefits, entitlements and arrangements as may be necessary, desirable or appropriate to the Project to further SCPPA's and the Project Participants' goals and those associated structures and services procured, retained or acquired by and on behalf of the Project Participants as part of the Project and which have been approved by the Coordinating Committee and, where applicable, the Board of Directors. Acquisition also includes the rights and interests under any consents to assignment and related agreements, and taking foreclosure action (or a deed in-lieu-of foreclosure) under and pursuant to any of the Power Purchase and Security Agreements, or a purchase at foreclosure sale, and, if and as applicable, associated financing, and all rights and entitlements of SCPPA under the Power Purchase and Security Agreements or other Project Agreements associated with the development and implementation of the Project.
2. **Act.** All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time
3. **Additional Facility.** "Additional Facility" shall have the definition set forth in the Power Purchase Agreement
4. **Anaheim.** The City of Anaheim, a California municipality.
5. **Ancillary Documents.** "Ancillary Documents" shall have the definition set forth in the Power Purchase Agreement.
6. **Annual Budget.** The budget approved by the Coordinating Committee and adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than 30 days nor more than 60 days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of the Total Monthly Costs under the Power Sales Agreements and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.

7. Azusa. The City of Azusa, a California municipality.
8. Banning. The City of Banning, a California municipality.
9. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by a Project Participant in accordance with the provisions of Section 7 of its Power Sales Agreement.
10. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
11. Bond Counsel. Nationally recognized legal counsel having background and experience in the issuance of municipal bonds, including the Federal Tax Law Requirements relating thereto, and selected by SCPPA to evaluate and advise regarding the Bonds with respect to specified cases, transactions and matters from time to time.
12. Bonds. The bonds, notes, bond anticipation notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA and outstanding pursuant to the provisions of the Indenture to finance or refinance the Cost of Acquisition and any Capital Improvements, and, where applicable, the purchase of the Facility or any part, portion or component thereof, including purchase of the rights and interests under the Facility Credit Agreements or any consents or agreements relating to any assignment. Bonds shall include but not be limited to the taxable and/or tax-exempt bonds, notes, bond anticipation notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA to finance any purchase of the Facility or an ownership interest therein, including purchase of the rights and interests under the Facility Credit Agreements or other applicable Project Agreement, or bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness issued to redeem or refund such bonds, notes, certificates of participation, commercial paper or evidences of indebtedness, and any and all other obligations which SCPPA issues or incurs relating to the Project. Bonds shall also include any additional Bonds authorized by the Indenture or any supplement thereto and issued or incurred pursuant to the provisions of Section 13.2 of the Power Sales Agreements and any refunding of Bonds issued pursuant to the provisions of Sections 13.3 or 13.5 thereof. Bonds may constitute other categories of bonds eligible for certain tax benefits under the Internal Revenue Code, including but not limited to tax-exempt bonds, tax credit bonds, "build America bonds" or "qualified bonds" within the meaning of Section 54AA of the Internal Revenue Code, "new clean renewable energy bonds" within the meaning of Section 54C of the Internal Revenue Code or "qualified energy conservation bonds" within the meaning of Section 54D of the Internal Revenue Code.
13. Burbank. The City of Burbank, a California municipality.

14. **Capacity**. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
15. **Capacity Amount**. "Capacity Amount" means, with respect to a Project Participant, such Project Participant's Project Cost Share of the amount of the SCPPA Facility Capacity Share of the Facility Capacity.
16. **Capacity Rights**. "Capacity Rights" means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, of SCPPA to Capacity of the Facility, including resource adequacy, associated attributes and/or reserves or any of the foregoing purchased by SCPPA under the Power Purchase Agreement, or, if SCPPA acquires the Facility or an ownership interest therein, associated with the electric generating capability of the Facility or such ownership interest therein.
17. **Capital Improvements**. Any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the Board of Directors or (ii) required by any governmental agency having jurisdiction over the Project.
18. **Chairperson**. "Chairperson" is as defined in Section 6.1.
19. **Commercial Operation**. "Commercial Operation" shall have the definition set forth in the Power Purchase Agreement.
20. **Compliance**. Following a Payment Default, a Defaulting Project Participant shall be in compliance with its payment obligations under its Power Sales Agreement if it (i) no later than the last day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account, Debt Service reserves or other Reserve Fund as a result of any Payment Default.
21. **Consent Agreements**. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights of the Power Purchase Provider under the Power Purchase Agreement.
22. **Coordinating Committee**. The Coordinating Committee established in accordance with Section 6 of this Agreement.
23. **Cost of Acquisition**. "Cost of Acquisition" is defined in Section 4.4.
24. **Cost Share**. "Cost Share" means and includes, with respect to any Project Participant, the Project Cost Share, the Delivery Point Output Cost Share, the Transmission Services Cost

Share and the Indenture Cost Share, as applicable, with respect to such Project Participant.

25. **Cure Period.** That period of time beginning on the date of a Payment Default and concluding sixty (30) days thereafter.
26. **Cured Payment Default.** A Payment Default which has been cured in accordance with Section 15.3 of this Agreement. If at any time during the Cure Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
27. **Debt Service.** The debt service payable with respect to the Indenture pertaining to any category of Bonds, any Bonds issued pursuant to Section 13 of this Agreement, or other applicable series of Bonds, as determined by the context; provided that in the case of any Bonds, Debt Service may, to the extent provided in the Indenture, be reduced by the amount of any applicable cash grant or rebate payable by the Federal Government to SCPPA (or to the trustee under the Indenture) with respect to interest on such Bonds. Debt Service shall also include any payments required to be deposited into the Debt Service Fund under the Indenture to pay, for example, amounts due under any interest rate swap agreements or other derivative agreements.
28. **Debt Service Fund.** The Debt Service Fund or account, or similar fund or account, established by the Indenture to pay Debt Service. The Debt Service Fund shall not include the Debt Service Reserve Fund(s) under the Indenture.
29. **Default Invoice.** An invoice during the Payment Default Period and the Cure Period issued to a Defaulting Project Participant pursuant to Section 15 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
30. **Defaulting Project Participant.** A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not effected a Cured Payment Default.
31. **Delivery Point Output cost component.** “Delivery Point Output cost component” is defined in Section 4.8.1.
32. **Delivery Point Output Cost Share.** “Delivery Point Output Cost Share” is defined in Section 4.5.
33. **Delivery Term of the Power Purchase Agreement.** The time period for the delivery of energy pursuant to the Power Purchase Agreement as set forth therein.
34. **Designated Point of Delivery.** means, at any time and with respect to a particular Project Participant, the Point of Delivery designated by such Project Participant, as provided for

in this Agreement, at which such Project Participant is to receive SCPPA Facility Output or Replacement Energy.

35. **Development Work.** All work and activities in connection with the development of the Project, including, without limitation, all planning, designing, acquiring (by prepayment, purchase or otherwise), mitigating impacts, constructing, installing, investigating, cost monitoring and control activities, negotiating and administering contracts, purchasing, environmental monitoring, scheduling, protecting, erecting, supervising, expediting inspecting, testing and training activities, recruitment and training of technical, operational and administrative personnel, insuring, accounting, budgeting, public information services and activities, services of consultants and legal counsel, preparing of manuals and reports, and activities relating to securing requisite actions, permits, licenses, approvals and certificates from governmental agencies and authorities.
36. **Dynamic Scheduling.** "Dynamic Scheduling" shall mean the automated scheduling of Energy from the Designated Point of Delivery with respect to a Project Participant to such Project Participant's control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to such Designated Point of Delivery of the Project Participant from the Facility.
37. **Energy.** "Energy" shall have the definition set forth in the Power Purchase Agreement
38. **Energy Prices.** "Energy Prices" means the respective purchase prices, as provided in Appendix A to the Power Purchase Agreement, for SCPPA Facility Output and Replacement Energy, as applicable, delivered at the respective Points of Delivery.
39. **EnviroMission (USA) Inc.** EnviroMission (USA) Inc., a Delaware Corporation, or its successor.
40. **Environmental Attributes.** "Environmental Attributes" shall have the definition set forth in the Power Purchase Agreement.
41. **Facility.** "Facility" means all of the facilities including those resources described or defined as the Facility, the Site, the Lease, Purchased Assets, Permits and facilities referred to in the Power Purchase Agreement or such portions of these facilities, interests, assets and rights as are provided SCPPA by way of the Power Purchase Agreement and the other Power Purchase and Security Agreements and all of the Acquisitions, related assets and accompanying rights and obligations associated therewith and all rights, interests and obligations under the Ownership Participation and Related Agreements associated with such facilities, including the rights interests and obligations under agreements for Transmission Services and under any other of the Ancillary Documents. Facility shall also include all Capital Improvements.
42. **Facility Capacity.** "Facility Capacity" shall have the meaning provided in the Power Purchase Agreement.

43. Facility Energy. "Facility Energy" shall have the definition set forth in the Power Purchase Agreement.

44. Facility Credit Agreements. All agreements, assignments and security related documents associated with the financing of the Facility, or of the rights or interests held in connection with the Facility, by the Power Purchase Provider or any of its affiliates and any other agreements or documents providing for security for the performance of the obligations of the Power Purchase Provider.

45. Federal Tax Law Requirements. "Federal Tax Law Requirements" shall mean, with respect to the issuer of Bonds, any and all requirements and limitations to which any specified type or category of Bonds are subject under the Internal Revenue Code or related Treasury regulations in order that such specified Bonds initially qualify and maintain qualification as that type or category of Bonds.

46. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Coordinating Committee or Board of Directors.

47. Force Majeure. "Force Majeure" shall have the definition set forth in the Power Purchase Agreement.

48. Fund or Funds. Any fund or account created under the Indenture.

49. Guaranteed SCPPA Energy. "Guaranteed SCPPA Energy" shall have the meaning provided in the Power Purchase Agreement.

50. Glendale. The City of Glendale, a California municipality.

51. IID. The Imperial Irrigation District, a California Irrigation District.

52. Indenture. The indenture of trust, trust agreement, credit or loan agreement and other similar agreements with respect to the Bonds, between SCPPA and a Project Trustee or Lender, as from time to time amended and supplemented in conformity with its provisions and of this Agreement. Under such agreements, SCPPA may enter into, or authorize the entering into of, interest rate swap agreements, other derivative agreements, and such other agreements as are authorized or permitted under such agreements. Indenture shall include, but not be limited to, any and all indentures in connection with any bridge loans, bond anticipation notes or other notes, or draw down bonds or with respect to any other type of bonds, and the indentures of trust, trust agreements or other similar agreements entered into between SCPPA and the Project Trustee or Lender to effect the redemption or refunding of any bridge loans, bond anticipation notes or other notes, draw down bonds or other bonds, as from time to time amended and supplemented in conformity with their provisions and the provisions of this Power Sales Agreement.

53. Indenture cost component. "Indenture cost component" is defined in Section 4.9.5.

54. Indenture Cost Share. "Indenture Cost Share" is defined in Section 4.6.

55. Initial Payment Default Date. The earlier of (i) the end of the fifth day following the first Payment Default for which no remedy in payment has occurred and been received by SCPPA, or (ii) the last day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.

56. Interconnection Contracts. The contracts providing for the interconnections and associated facilities which interconnect the Facility with the transmission system and substations and provide for the delivery of SCPPA Facility Output.

57. Internal Revenue Code. The Internal Revenue Code of 1986, as amended.

58. Joint Powers Agreement. The "Southern California Public Power Authority Joint Powers Agreement" dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.

59. Lease. "Lease" shall have the meaning provided in the Power Purchase Agreement.

60. Major Contracts. The Project Agreements and, to the extent not finalized or effective on the effective date of an applicable project management agreement, any other contract or agreement so identified by the Coordinating Committee or the Board of Directors, as such contracts or agreements may be amended or supplemented from time to time.

61. Milestone. "Milestone" shall have the definition set forth in the Power Purchase Agreement.

62. Milestone Security. "Milestone Security" shall have the definition set forth in the Power Purchase Agreement.

63. Month. A calendar month.

64. Monthly Costs. "Monthly Costs" is defined in Section 7.1.

65. Mortgage. "Mortgage" shall have the meaning set forth in the Power Purchase Agreement.

66. New Facility. "New Facility" shall have the definition set forth in the Power Purchase Agreement.

67. Operating Budget. The operating budget approved by the Board of Directors, which shall show a detailed estimate of all Project operating costs, including all revenues, income or other funds to be applied to such operating costs, for and applicable to a Power Supply Year.

68. Operating cost component. "Operating cost component" is defined in Section 4.7.1.

69. Operating Reserve Depletion Date. The date that is two Months prior to the date on which SCPPA anticipates, assuming continued Payment Defaults by one or more Defaulting Project Participants, that the moneys in the operating reserve account of the

Indenture will be fully depleted; provided, however, if as of the date on which a Payment Default occurs SPPA determines that the moneys in the operating reserve account held by SPPA will be fully depleted in less than two Months (or currently are fully depleted), then the Operating Reserve Depletion Date shall be deemed to have occurred when such a Payment Default occurs.

70. **Operating Work.** All work and activities in connection with the administration, operation and maintenance of the Project, including without limitation, negotiating and administering contracts, planning, mitigating impacts, purchasing, repairing, inspecting, maintaining, investigating and monitoring all aspects of the Project, performing modeling functions, economic analysis, quality control, testing and evaluating, recruitment and training of operating entities and personnel, electric energy and environmental attribute procurement, regulatory efforts, tagging, interconnecting, transmission, dispatching, firming, balancing, exchanging and scheduling activities, supervising, expediting, budgeting, insuring, accounting, tracking, registering, protecting, operating and managing activities, public information services and services of consultants, operators, engineers, contractors and legal counsel, renewals, replacements, reconstruction, and improvements, and activities related to securing requisite permits, franchises, licenses, approvals, entitlements, credits and certificates from governmental agencies and authorities.
71. **Option Agreement.** "Option Agreement" shall have the meaning provided in the Power Purchase Agreement.
72. **Output Entitlement Share.** With respect to a particular Project Participant and during each Power Supply Year, the percentage entitlement, as set forth for such Project Participant in Appendix B of this Agreement, of the SPPA Facility Output or, if applicable, the Replacement Energy, delivered at such Project Participant's Designated Point of Delivery. The Output Entitlement Share of such Project Participant may be adjusted in connection with a revision of Appendix B as provided in Section 21.1.
73. **Ownership General and Administrative cost component.** "Ownership General and Administrative cost component" is defined in Section 4.9.3.
74. **Ownership Participation and Related Agreements.** Any participation, tenant-in-common or shared facilities agreements with respect to the Facility and the associated Facility operation and maintenance agreements, and any lease, leasehold interest, rights-of-way, deeds, conveyances, assignments, mortgages or other security instruments or any estate or other property interests or consents or collateral instruments with respect to the Acquisition or ownership of the Facility or an ownership interest therein by SPPA.
75. **Participants.** The Project Participants.
76. **Pasadena.** The City of Pasadena, a California municipality.
77. **Payment Default.** A failure by a Project Participant to pay when due all of its Billing Statement for any Month.
78. **Payment Default Period.** That period of time during which a Payment Default exists.

79. Performance Security. "Performance Security" shall have the definition set forth in the Power Purchase Agreement.

80. Permit. "Permit" shall have the definition set forth in the Power Purchase Agreement.

81. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

82. Point of Interconnection. Point of Interconnection shall have the definition set forth in the Power Purchase Agreement.

83. Point of Interconnection Allocable Share. With respect to a particular Project Participant, in the event that SCPPA shall acquire the Facility or an ownership interest therein and commencing with such acquisition, the percentage share, as set forth for such Project Participant in Appendix C hereof, of the SCPPA Facility Output at the Point of Interconnection. The Point of Interconnection Allocable Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.

84. Points of Delivery. The respective points at which SCPPA Facility Output or Replacement Energy is to be delivered to an individual Project Participant or to any combination of Project Participants, as set forth (or as designated by notice) pursuant to Appendix B hereof, or otherwise, pursuant to the Power Purchase Agreement and the Power Sales Agreements or, if SCPPA shall purchase or acquire the Facility or an ownership interest therein, the same respective Points of Delivery for the SCPPA Facility Output, as provided under the Power Purchase Agreement, or such other respective points of delivery as authorized and determined by the Coordinating Committee or the Board of Directors.

85. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and EnviroMission (USA), Inc., dated as of November 1, 2010, attached hereto in substantial form as Appendix F, as the same may be amended from time to time.

86. Power Purchase and Security Agreements. The Power Purchase Agreement, the Security Instruments, Consent Agreements, Facility Credit Agreements, and any other consent to assignment or other agreement with any financial institution or Person relating to the solar tower project or the Facility or any loan or other credit agreement associated with the solar tower project or the Facility, or the Option Agreement or any other agreement under which SCPPA might acquire or otherwise purchase or obtain the Facility or an ownership interest therein or related resources and assets or output of the Facility or carry forth any Acquisition all as and to the extent applicable to any particular Project matter or matters. The Power Purchase and Security Agreements shall also include any instrument or form of security which affords any opportunity for the purchase of the Facility or Acquisition, whether through foreclosure or otherwise, including the Mortgage or any other mortgage, deed or deed of trust, lease, assignment, beneficial interest, collateral

instrument or other device or mechanism providing for the ability to acquire the solar tower project or the Facility or an ownership interest therein.

87. Power Purchase Provider. EnviroMission (USA) Inc. as the counterparty to SCPPA under the Power Purchase Agreement, and the entity named under any applicable operating agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
88. Power Sales Agreements. The La Paz Solar Tower Project Power Sales Agreements, dated for convenience as of November 1, 2010, as the same may hereafter be amended from time to time, entered into by SCPPA and each of the Project Participants for, among other things, the acquisition of the Output Entitlement Shares.
89. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) 90 days before the scheduled date for issuance of the Bonds, (iv) the date of Commercial Operation of the Facility, or (v) the date of the first delivery of Energy to Purchaser pursuant to this Agreement.
90. PPA General and Administrative cost component. "PPA General and Administrative cost component" is defined in Section 4.8.2.
91. Project Cost Share. "Project Cost Share" is defined in Section 4.10.
92. Project or La Paz Solar Tower Project. The term "Project" or "La Paz Solar Tower Project" shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of SCPPA pursuant to the Power Purchase Agreement, the Power Purchase and Security Agreements and the other Project Agreements, including but not limited to the rights, liabilities, interests and obligations associated with the SCPPA Facility Output, or, upon purchase or acquisition by SCPPA, all rights, liabilities, interests and obligations associated with the Facility, or any ownership interest therein, as shall be purchased or acquired by SCPPA, and including all aspects of the operation and administration of the Facility or an ownership interest therein and the Project Agreements and the rights, liabilities, interests and obligations associated therewith. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the Energy of the Facility as specified in Section 9.
93. Project Agreements. Any project management agreement, the Indenture, the Power Sales Agreements, each of the Power Purchase and Security Agreements, any operation and management agreement, any agreement for the provision of Transmission Services, any Lease, any interconnection agreement, the Ancillary Documents, other contracts and leases, easements, rights of way and each of the Ownership Participation and Related Agreements, and other real property arrangements or agreements associated with the Facility or an ownership interest therein, if any, any other Acquisition agreement or agreement for the purchase, procurement, delivery or transmission of SCPPA Facility

Output, including all agreements connected or associated with any purchase of the Facility or an ownership interest therein or passing to SCPPA in connection with any purchase of the Facility or an ownership interest therein, and including the rights and interests under the Facility Credit Agreements or any other consents to assignments or agreements for assignment, any intercreditor agreement, any other operating agreements, maintenance agreements, warranty agreements, participation agreements, or any other agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of SCPPA Facility Output, any agreements relating to any Capital Improvements and agreements to which SCPPA is a party relating to the project design, development, administration, management or operation of the Project and for placing of the Project into operation or maintaining its operation.

94. **Project Manager.** SCPPA or a designee or designees appointed by SCPPA to assist SCPPA to carry out SCPPA's responsibilities under the Power Sales Agreements, among other things, and to assist SCPPA in carrying out SCPPA's responsibilities upon purchase of the Facility or any of its resources or upon any Acquisition.
95. **Project Participant(s).** Those entities executing Power Sales Agreements, together in each case with each entity's successors or assigns, identified as "Project Participants" in Appendix B of the Power Sales Agreements or Appendix C of the Power Sales Agreements and such additional entities executing Power Sales Agreements as may be added by way of a revision of Appendix B or Appendix C under the terms of this Agreement
96. **Project Purchase Option.** "Project Purchase Option" shall have the meaning provided in the Power Purchase Agreement.
97. **Project Rights.** All rights and privileges of a Project Participant under its Power Sales Agreement, including but not limited to its Output Entitlement Share, its right to receive SCPPA Facility Output from the Facility, and its right to vote on Coordinating Committee matters.
98. **Project Rights and Obligations.** Purchaser's Project Rights and obligations under the terms of this Agreement.
99. **Project Trustee or Lender.** Any bank or other financial firm or institution at any time serving as trustee under the Indenture or any bank or financial firm party to the Indenture as a lender or as agent for a lender or lenders thereunder.
100. **Prudent Utility Practices.** "Prudent Utility Practices" shall have the meaning provided in the Power Purchase Agreement
101. **Purchased Assets.** "Purchased Assets" shall have the meaning provided in the Power Purchase Agreement.
102. **Renewable Electric Energy Resource Project.** The aggregate of SCPPA's endeavors to acquire renewable energy and capacity and to facilitate acquisition of renewable electric

generation and the means to deliver such generation either by way of the development agreement for the Renewable Electric Resource Project as described in Section 2.6 herein

103. Replacement Energy. "Replacement Energy" shall have the meaning provided in the Power Purchase Agreement.
104. Reserve Fund cost component. "Reserve Fund cost component" is defined in Section 4.8.3 and Section 4.9.4.
105. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
106. Riverside. The City of Riverside, a California municipality.
107. SCPPA Facility Capacity Share. "SCPPA Facility Capacity Share" shall have the meaning provided in the Power Purchase Agreement.
108. SCPPA Facility Output. All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Facility Energy, Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement or derived from the Facility or an ownership interest therein by SCPPA as owner following SCPPA's purchase of the Facility or an ownership interest therein.
109. Security and Assignment Agreements. The agreements and instruments entered into by the Power Purchase Provider or any affiliate thereof and, where applicable, SCPPA, including the Milestone Security, the Performance Security, the Mortgage and the agreements and instruments referenced in the Power Purchase Agreement to, among other things, secure certain performance requirements.
110. Security Instruments. The Security and Assignment Agreements, the Mortgage, the Milestone Security, the Performance Security, the Facility Credit Agreements or other arrangement or agreement with the Facility Lender following a purchase of the rights and interests thereunder by SCPPA if applicable, and any and all instruments, agreements, assignments, mortgages, deeds of trusts or conveyances or other collateral arrangements entered into to secure the performance of the Power Purchase Provider or any affiliate thereof under the Power Purchase Agreement or any other of the Power Purchase and Security Agreements, or any lease or interest in real property used by or affecting the Facility, including without limitation any security interest conveyed by way of the Power Purchase Agreement or other agreement or instrument relating to the Project or any Project matter creating a security interest enforceable by SCPPA.
111. Site. "Site" shall have the meaning set forth in the Power Purchase Agreement

112. Special Obligation. “Special Obligation” shall have the meaning set forth in Section 11.3.

113. Special Obligation Billing Statement. “Special Obligation Billing Statement” shall have the meaning set forth in Section 11.3.

114. Step-Up Invoice. An invoice sent to a non-Defaulting Project Participant as a result of one or more Payment Defaults, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of one or more Defaulting Project Participants for, as the case may be, pursuant to Section 15.9.1 or 15.9.2 herein, either the Indenture cost component of the Defaulting Project Participant(s) unpaid monthly Billing Statement or the Total Monthly Costs reflected in the Defaulting Project Participant(s) unpaid monthly Billing Statement.

115. Study Project. “Study Project” has the meaning provided in the Joint Powers Agreement.

116. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of SCPPA Facility Output to be utilized by the Project Participants under the Power Sales Agreements, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the ownership and transfer of SCPPA Facility Output from the respective Points of Delivery to any other points or destinations, as determined by the Project Participants. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non simultaneous green energy exchanges.

117. Supplementary Services cost component. “Supplementary Services cost component” is defined in Section 4.8.4 and Section 4.9.6.

118. Tax Counsel. Nationally recognized legal counsel having background and experience in tax-exempt financing and selected by SCPPA to evaluate and advise regarding the Federal Tax Law Requirements with respect to specified cases, transactions and matters from time to time.

119. Total Monthly Costs. “Total Monthly Costs” has the meaning described in Section 4.7.

120. Transmission Services cost component. “Transmission Services cost component” is defined in Section 4.9.2.

121. Transmission Losses. “Transmission Losses” means the transformation and transmission losses associated with the delivery of SCPPA Facility Output from the Point of Interconnection to each respective Point of Delivery calculated in accordance with the Transmission Provider’s tariff applicable to the associated Transmission Services.

122. Transmission Provider. "Transmission Provider" means Western Area Power Administration of the United States Department of Energy or any other Person(s) providing Transmission Services.
123. Transmission Services. "Transmission Services" means the transmission and other related services required to transmit SCPPA Facility Output from the Point of Interconnection to each of the respective Points of Delivery.
124. Transmission Services Cost Share. "Transmission Services Cost Share" is defined in Section 4.11.
125. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of SCPPA to sell or issue its Bonds. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
126. WECC. The Western Electricity Coordinating Council, or its successor.
127. [Reserved].

APPENDIX B*

SCHEDULE OF PROJECT PARTICIPANTS
CAPACITY AMOUNTS
OUTPUT ENTITLEMENT SHARES
PROJECT COST SHARES
POINTS OF DELIVERY

<u>Project Participants</u>	<u>Capacity Amounts (MW)</u>	<u>Output Entitlement Shares (at Points of Delivery)</u>	<u>Project Cost Shares</u>	<u>Points of Delivery** (as Designated by Project Participants)</u>
Anaheim	10 MW	11.3636%	9.7087%	500 kV Bus at Marketplace Substation or, in the event designated in a notice to the Transmission Provider, the 500 kV Bus at McCullough Substation
Azusa	2 MW	2.2728%	1.9418%	500 kV Bus at Marketplace Substation or, in the event designated in a notice to the Transmission Provider, the 500 kV Bus at McCullough Substation
Banning	2 MW	2.2728%	1.9418%	500 kV Bus at Marketplace Substation or, in the event designated in a notice to the Transmission Provider, the 500 kV Bus at McCullough Substation
Burbank	27 MW	30.6818%	26.2136%	500 kV Bus at Marketplace Substation or, in the event designated in a notice to the Transmission Provider, the 500 kV Bus at McCullough Substation

Glendale	12 MW	13.6364%	11.6505%	500 kV Bus at Marketplace Substation or, in the event designated in a notice to the Transmission Provider, the 500 kV Bus at McCullough Substation
IID	15 MW	100.0000%	14.5631%	161 kV Bus at Blythe Substation or, in the event designated in a notice to the Transmission Provider, the 161 kV Bus at Knob Substation.
Pasadena	10 MW	11.3636%	9.7087%	500 kV Bus at Marketplace Substation or, in the event designated in a notice to the Transmission Provider, the 500 kV Bus at McCullough Substation
Riverside	25 MW	28.4090%	24.2718%	500 kV Bus at Marketplace Substation or, in the event designated in a notice to the Transmission Provider, the 500 kV Bus at McCullough Substation
Total	103 MW	100% at each discrete Point of Delivery	100%	

*Appendix B may be revised in accordance with the provisions of Section 21.1 of this Agreement.

**The notice to the Transmission Provider with respect to a change in the Designated Point of Delivery shall be provided by SCPPA upon a timely request by the Project Participant.

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APPENDIX C*

SCHEDULE OF PROJECT PARTICIPANTS
 DELIVERY POINT OUTPUT COST SHARES
 TRANSMISSION SERVICES COST SHARES
 POINT OF INTERCONNECTION ALLOCABLE SHARES
 INDENTURE COST SHARES

<u>Project Participants</u>	<u>Delivery Point Output Cost Shares</u>	<u>Transmission Services Cost Shares **</u>	<u>Point of Interconnection Allocable Shares</u>	<u>Indenture Cost Shares</u>
Anaheim	11.3636%	11.3636% **	9.7087%	9.7087%
Azusa	2.2728%	2.2728% **	1.9418%	1.9418%
Banning	2.2728%	2.2728%**	1.9418%	1.9418%
Burbank	30.6818%	30.6818% **	26.2136%	26.2136%
Glendale	13.6364%	13.6364%**	11.6505%	11.6505%
IID	100.0000%	100.0000% **	14.5631%	14.5631%
Pasadena	11.3636%	11.3636%**	9.7087%	9.7087%
Riverside	28.4090%	28.4090%**	24.2718%	24.2718%
Total	100% at each discrete Point of Delivery	100% at each discrete Point of Delivery **	100%	100%

*Appendix C may be revised in accordance with the provisions of Section 21.1 of this Agreement.

**Less applicable transmission losses.

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APPENDIX D
OPINION OF COUNSEL TO PROJECT PARTICIPANTS

[Date]

Southern California Public Power Authority
c/o Executive Director
225 South Lake Avenue, Suite 1250
Pasadena, California 91101

[Underwriters for the Bonds]

[Bond Insurer or credit enhancement entity]

Ladies and Gentlemen:

We have acted as counsel to the [City of Anaheim][City of Azusa][City of Banning][City of Burbank][City of Glendale][Imperial Irrigation District][the City of Pasadena][the City of Riverside] as Project Participant (the "Project Participant") under the La Paz Solar Tower Project Power Sales Agreement dated for convenience as of November 1, 2010 (the "Power Sales Agreement") between the Project Participant and Southern California Public Power Authority ("SCPPA").

We have examined originals or copies of those records and documents we considered appropriate for purposes of this opinion. As to relevant factual matters, we have relied upon, among other things, the Project Participant's factual representations.

We have assumed the genuineness of all signatures (other than the signatures of persons signing the Power Sales Agreement on behalf of Project Participant), the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies. To the extent the Project Participant's obligations depend on the enforceability of the Power Sales Agreement against SCPPA, we have assumed that the Power Sales Agreement is enforceable against SCPPA.

From such examination, on the basis of our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that:

1. The Project Participant is a municipal corporation organized and existing under the laws of the State of California and authorized under [the City Charter of the City of Anaheim][the laws of the State of California][the laws of the State of California][the City Charter of the City of Burbank][the laws of the State of California][the City Charter of the

City of Glendale][the laws of the State of California][the City Charter of the City of Pasadena][the City Charter of the City of Riverside] to furnish retail electricity within its service area.

2. The Project Participant is empowered under [the City Charter of the City of Anaheim][the laws of the State of California][the laws of the State of California][the City Charter of the City of Burbank][the laws of the State of California][the City Charter of the City of Glendale][the laws of the State of California][the City Charter of the City of Pasadena][the City Charter of the City of Riverside] to enter into the Power Sales Agreement and to perform its obligations thereunder.

3. The Power Sales Agreement has been duly authorized, executed and delivered by the Project Participant and, assuming due authorization, execution and delivery by SCPPA of such Power Sales Agreement, constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws affecting creditors' rights generally and to general principles of equity, to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against municipal corporations in the State of California.

Certain documents that are ancillary to the Power Sales Agreement provide that they are to be governed by the laws of the State of Arizona. We express no opinion as to those laws or their applicability to matters covered by this opinion.

Our opinion in paragraph 3 as to enforceability is subject to the unenforceability of provisions waiving a right to a jury trial. Also, a court may refuse to enforce a provision of the Power Sales Agreement if it deems that such provision is in violation of public policy.

We express no opinion with respect to your ability to collect attorneys' fees and costs in an action if you are not the prevailing party in that action (we call your attention to the effect of Section 1717 of the California Civil Code, which provides that where a contract permits one party thereto to recover attorneys' fees, the prevailing party in any action to enforce any provision of the contract shall be entitled to recover its reasonable attorneys' fees).

We express no opinion as to any provision requiring written amendments or waivers insofar as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon by the parties or that the doctrine of promissory estoppel might not apply.

It is our opinion that no person, other than SCPPA, has setoff rights against payments due from Project Participant. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, severability or waiver provisions contained in the Power Sales Agreement.

We express no opinion as to any agreement or document referred to in the Power Sales Agreement or incorporated into the Power Sales Agreement by reference, or any agreement other than the Power Sales Agreement itself, or the effect of any such agreement or document on the opinions herein stated.

The opinions expressed are matters of professional judgment and are not a guarantee of result. The law covered by this opinion is limited to the present law of the State of California. We express no opinion as to the laws of any other jurisdiction.

This opinion may only be relied upon only by the addressees hereto in connection with the issuance of the Bonds (as described in the Power Sales Agreement). It may not be used or relied upon for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent, except that this opinion may be included in the closing binder memorializing the Power Sales Agreement.

This opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters. This letter speaks only as of the date hereof and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances that arise after the date of this opinion and come to our attention, or any future changes in laws.

Very truly yours,

APPENDIX E
OPINION OF COUNSEL TO SCPPA

[Date]

[Project Participants]

[Underwriters of the Bonds]

[Bond Insurer or credit enhancement entity]

Ladies and Gentlemen:

I am acting as counsel to the Southern California Public Power Authority ("SCPPA") under each La Paz Solar Tower Project Power Sales Agreement dated for convenience as of November 1, 2009, between a Project Participant and SCPPA (collectively, the "Power Sales Agreements"), and I have acted as counsel to SCPPA in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of SCPPA, (ii) all necessary documentation of SCPPA relating to the authorization, execution and delivery of the Power Sales Agreements and (iii) the Power Sales Agreements.

Capitalized terms used herein not otherwise defined shall have the respective meanings ascribed thereto in the Power Sales Agreements.

I am of the opinion that:

1. SCPPA is a joint powers authority duly organized and validly existing under the Act, as amended, and the Joint Powers Agreement dated as of November 1, 1980, among SCPPA's members, as amended, and has full legal right, power and authority to execute and deliver, and to perform its obligations under, the Power Sales Agreements.

2. The Power Sales Agreements have been duly authorized, executed and delivered by SCPPA, and, assuming due authorization, execution and delivery by each of the parties thereto other than SCPPA, the Power Sales Agreements constitute the legal, valid and binding obligations of SCPPA, enforceable against SCPPA in accordance with their respective terms.

3. To the best of my knowledge, SCPPA is not in material breach of or default under, and the authorization, execution and delivery of the Power Sales Agreements and compliance with the provisions thereof, will not conflict with or constitute a breach of, or default under: (i) any instrument relating to the organization existence or operation of SCPPA; (ii) any loan agreement, lease agreement, indenture, bond, note, resolution, commitment, agreement or other instrument to which SCPPA is a party or by which it or its property or assets is bound or

affected, and no event has occurred and is occurring which with the passage of time or the giving of notice, or both, would constitute a material default or event of default under any such instrument, which breach or default would have a material adverse impact on the Power Sales Agreements or the ability of SCPPA to comply with its obligations under the Power Sales Agreements; or (iii) any applicable constitutional provision, law, ruling, administrative regulation, ordinance, judgment, order or decree to which SCPPA (or any of its officers in their respective capacities as such) is subject.

4. To the best of my knowledge, as of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of my knowledge, threatened against or affecting SCPPA or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the right, power or authority of SCPPA referred to in paragraph 2 above or the validity of the proceedings taken by SCPPA in connection with the authorization, execution or delivery of the Power Sales Agreements, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Power Sales Agreements, or which, in any way, would adversely affect the validity or enforceability of the Power Sales Agreements or the ability of SCPPA to comply with its obligations thereunder.

Insofar as the foregoing opinions relate to the legal, valid and binding effect, and the enforceability, of any instrument, such opinions are subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and are subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

The opinions expressed herein are based upon the law and other matters in effect on the date hereof. The opinions expressed are matters of professional judgment and are not a guarantee of result. I assume no obligation to revise or supplement this opinion should such law or other matters be changed by legislative action, judicial decision, or otherwise, or should any facts or other matters upon which I have relied change.

The opinions which are set forth or which are expressed herein are limited to the laws of the State of California.

This opinion is furnished exclusively for the benefit of the recipients to which it is addressed. This opinion may not be provided to, made available to, or relied upon any other party without prior written consent, except that this opinion may be included in the closing binder memorializing the transaction.

Very truly yours,

Richard M. Helgeson, Esq.
General Counsel
Southern California Public Power Authority

APPENDIX F

POWER PURCHASE AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

ENVIROMISSION (USA) INC.

DATED AS OF NOVEMBER 1, 2010

**(In the La Paz Solar Tower Project Power Sales
Agreement between Southern California Public Power
Authority (SCAPPA) and City of Banning
there is reference to a Power Purchase Agreement
Between SCAPPA and Enviromission (USA), Inc.
and these are on file in the City Clerk's Office
for review.)**