



**BUENA PARK CITY COUNCIL
SPECIAL MEETING
TUESDAY, DECEMBER 15, 2020
9:00 A.M.**

COUNCIL CHAMBER
6650 BEACH BOULEVARD
BUENA PARK, CALIFORNIA

SPECIAL NOTICE REGARDING COVID-19

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of COVID-19. The Governor issued Executive Order N-25-20, which allows Council Members to attend City Council meetings telephonically. Please be advised that some, or all, of the City of Buena Park Council Members and staff may attend this meeting telephonically.

This meeting will allow public attendance in person with the following precautions in place to ensure the health and safety of the public:

- Attendees must submit to a verbal health screening and temperature check before entering the Council Chamber.
- Attendees will be required to wear a face covering at all times while in the Council Chamber or City Hall.
- Social distancing of 6 feet is required at all times. Designated seating has been identified for public use.

Members of the public may also submit their comments and questions in writing, for City Council consideration, by sending them to the City Clerk at comments@buenapark.com. **Please submit all comments and questions by 8:00 a.m., on Tuesday, December 15, 2020.** All comments and questions will be read during the meeting.

All regular meetings of the City Council are available on the City's website at www.buenapark.com and the City's Cable Channel BPTV Channel 3/99. Please contact the City Clerk's Office at (714) 562-3750, for any questions.

Our core values are excellence, communication, teamwork, commitment, respect, and integrity.

Please turn off all cell phones when the meeting is in session.

CALL TO ORDER**9:00 A.M.****ROLL CALL****COUNCIL MEMBER ARTHUR C. BROWN
COUNCIL MEMBER SUSAN SONNE
COUNCIL MEMBER ELIZABETH A. SWIFT
MAYOR PRO TEM SUNNY YOUNGSUN PARK
MAYOR CONNOR TRAUT****ORAL COMMUNICATIONS ON SPECIAL MEETING ITEMS**

This is the portion of the meeting set aside to invite public comments regarding any item on the Special Meeting Agenda only. Public comments are limited to no more than three minutes each. Those wishing to speak are asked to complete a speaker identification form located at the council chamber entrance and place it in the box near the speaker's lectern.

NEW BUSINESS (1)**1. CONSIDERATION OF AN ORDINANCE AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM, A RESOLUTION APPROVING A JOINT POWERS AGREEMENT (JPA) TO JOIN THE ORANGE COUNTY POWER AUTHORITY (OCPA), AND VARIOUS ACTIONS RELATED THERETO**

Presented by Public Works

Purpose: Allow the City Council to consider joining the OCPA and implementation of a "community choice energy" program in Buena Park. The City may choose to withdrawal from the OCPA without liability or cost, and for any reason, before March 1, 2021.

Recommendation: That the City Council discuss and consider: 1) Adopting an Ordinance authorizing the implementation of a community choice aggregation program within the City of Buena Park; 2) Adopting a Resolution approving a Joint Powers Agreement ("JPA") to join the Orange County Power Authority ("OCPA") for the implementation of a community choice energy program; 3) Authorizing the City Manager and the City Clerk to execute the JPA in substantially the form attached, subject to non-monetary changes approved by the City Manager and City Attorney; and 4) Appointing one regular Board Member and one alternate to serve on the OCPA Governing Board on behalf of the City of Buena Park.

ADJOURNMENT

This agenda contains a brief general description of each item to be considered. Supporting documents are available for review and copying at City Hall or at www.buenapark.com. Video streaming of the meeting is available on the City's website. This governing body is prohibited from discussing or taking action on any item which is not included in this agenda; however, may ask clarifying questions, ask staff to follow-up, or provide other direction. The order of business as it appears on this agenda may be modified by the governing body.



In compliance with the Americans with Disabilities Act, if you need accommodations to participate in this meeting, contact the City Clerk's Office at (714) 562-3750 or the California Relay Service at 711. Notification at least 48 hours prior to the meeting will enable the City to make arrangements to assure accessibility.



If you would like to participate in any matter of business on the agenda and would like translation in Chinese, Korean, Spanish, Tagalog, or Vietnamese, please contact the **City Clerk's Office at (714) 562-3750 48-hours prior to the meeting**. Residents requiring translation during Oral Communications are encouraged to bring interpreters.

시의제 목록에 있는 정식 안건에 대해 의견을 발표하고 싶으신 경우, 중국어, 한국어, 스페인어, 타갈로에 대한 통역사가 필요하시면 시미팅 48시간전 시서기 오피스로 (714-562-3750) 연락하시면 됩니다. 정식안건이 아닌 주민 발언시간에 발표하실 경우, 본인의 통역사를 직접 모시고 오시면 감사하겠습니다.

Si le gustaría participar en audiencia pública o cualquier asunto de negocios programado en la agenda y necesita traducción en chino, coreano, español, tagalo o vietnamita, comuníquese con la Oficina del Secretario de la Ciudad, 48 horas antes de la reunión al (714) 562-3750. Para participar en los comentarios públicos sobre cualquier otro asunto dentro de la jurisdicción del ayuntamiento, se les recomienda que traiga un intérprete.

如果您想参与议程上的任何事务，并希望翻译成中文，韩文，西班牙文，他加禄文或越南文，请联系市政文员办公室，网址为（714）562-3750在会议开始前48小时。鼓励在口头交流中需要翻译的居民带同传译员。

Kung nais ninyong lumahok sa anumang usapin ng negosyo sa agenda at kailangan ang pagsasalin sa wikang Tsino, Koreano, Espanyol, Tagalog, o Vietnamese, mangyaring makipag-ugnay sa Opisina ng Clerk ng Lungsod sa (714) 562-3750 48-oras bago ang pulong. Ang mga residente na nangangailangan ng pagsasalin sa Oral Communications ay hinikayat na magdala ng mga tagasalin.

Nếu bạn muốn tham gia vào bất kỳ vấn đề kinh doanh nào trong chương trình nghị sự và muốn dịch sang tiếng Trung, tiếng Hàn, tiếng Tây Ban Nha, tiếng Tagalog hoặc tiếng Việt, vui lòng liên hệ với Văn phòng Thư ký Thành phố tại (714) 562-3750 48 giờ trước cuộc họp. Cư dân yêu cầu dịch thuật trong Giao tiếp bằng miệng được khuyến khích mang theo thông dịch viên.

I, Adria M. Jimenez, MMC, City of Buena Park, do hereby certify, under penalty of perjury under the laws of the State of California that a full and correct copy of this agenda was posted pursuant to Government Code Section 54950 et. seq., at the following locations: Buena Park City Hall, 6650 Beach Blvd., the Buena Park Library, 7510 La Palma Avenue, and uploaded to the City of Buena Park website www.buenapark.com.

Date Posted: December 10, 2020

Adria M. Jimenez, MMC, City Clerk



Agenda Report to City Council

MEETING DATE: December 15, 2020

TO: The Mayor and City Council

TITLE: **CONSIDERATION OF AN ORDINANCE AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM, A RESOLUTION APPROVING A JOINT POWERS AGREEMENT (JPA) TO JOIN THE ORANGE COUNTY POWER AUTHORITY (OCPA), AND VARIOUS ACTIONS RELATED THERETO**

RECOMMENDED ACTION:

That the City Council discuss and consider: 1) Adopting an Ordinance authorizing the implementation of a community choice aggregation program within the City of Buena Park; 2) Adopting a Resolution approving a Joint Powers Agreement ("JPA") to join the Orange County Power Authority ("OCPA") for the implementation of a community choice energy program; 3) Authorizing the City Manager and the City Clerk to execute the JPA in substantially the form attached, subject to non-monetary changes approved by the City Manager and City Attorney; and 4) Appointing one regular Board Member and one alternate to serve on the OCPA Governing Board on behalf of the City of Buena Park.

PURPOSE:

Allow the City Council to consider joining the OCPA and implementation of a "community choice energy" program in Buena Park. The City may choose to withdrawal from the OCPA without liability or cost, and for any reason, before March 1, 2021.

PREVIOUS COUNCIL/COMMISSION/COMMITTEE ACTION:

None. This item was requested by Mayor Traut at the regular City Council meeting held on December 8, 2020.

DISCUSSION:

Community Choice Energy (CCE) is a model that allows communities to purchase power to meet their electricity needs and thereby offers customer choice in the retail energy market. CCEs can provide the communities they serve with competitively-priced clean energy choices, while reinvesting revenues into projects and programs, thus supporting the local economy. A CCE can also offer rate discounts and/or rate stability programs to residents and local businesses. While CCEs enable communities to have local control when it comes to the procurement and pricing of energy, as with any endeavor, CCEs come with risk.

In the late 1990s, California deregulated the electric industry, allowing customers to choose their wholesale power suppliers. But in 2000 and 2001, the new electric system collapsed, saddling customers with high costs and rolling outages due to market manipulation. The California Legislature reset the large regulated utilities as the dominant

providers of electric service thereby the investor-owned utilities sold off generation assets, while continuing to provide retail distribution and transmission services procuring energy resources through long-term power purchase agreements.

The industry is seeing customers depart from the utilities as the providers of their electricity, which is projected to be 85% of the state by 2025. They are instead sourcing power from rooftop solar panels, local agencies called Community Choice Aggregators or private electric re-sellers called Direct Access providers. Large industrial customers are buying power directly from renewable generators, sometimes serving several locations from a distant wind farm or a solar array. Fewer and fewer customers are getting power from the traditional large regional utilities and the central decision making that we use for keeping the grid reliable, safe, and affordable is splintering, and has become the task of dozens of decision makers. There are now 21 CCE programs throughout the State of California serving more than 10 million customers and this movement is growing.

On September 25, 2018, the Irvine City Council approved a feasibility study to determine the pros and cons of implementing a CCE program within its jurisdiction, including the potential economic benefits for the community. The completed feasibility study indicated there could be a savings of \$7.7 million per year in citywide electricity cost for Irvine residents and businesses and \$112,000 per year savings for the City itself in municipal energy costs; as well as additional local economic development benefits such as new jobs and \$10 million in annual economic output.

On July 14, 2020, the Irvine City Council directed staff to move forward and work with other cities to form a Community Choice Energy Joint Power Authority, prepare necessary JPA documentation, and file the Implementation Plan with the California Public Utility Commission (CPUC) by its deadline of December 31, 2020. Failure to meet this deadline means launch of the OCPA would be postponed to 2023.

The City of Fullerton subsequently approved the JPA on these same terms and jointed OCPA on November 2, 2020.

The City of Irvine continues to seek partnerships with other cities within Orange County, and this opportunity has been extended to the City of Buena Park. In discussions with consultants in the CCE field, it is estimated that participants in the JPA could see a 3 to 5% savings on the generation side. For this reason, among others, these programs have become increasingly popular across among municipalities in the State

Should the Buena Park City Council desire to join Irvine and Fullerton in implementing a community choice energy program, the City Council may: 1) adopt the attached Ordinance authorizing the implementation of a community choice aggregation program in Buena Park; 2) adopt the attached Resolution approving a Joint Powers Agreement for the Orange County Power Authority Joint Powers Authority; and 3) authorize the City Manager to execute the JPA on the City's behalf. If the City Council takes these actions, it should take further action to appoint one regular Member and one alternate to serve on the OCPA Governing Board on behalf of Buena Park..

Importantly, if Buena Park joins the JPA prior to December 31, 2020, the City will be included on the Executive Board and may begin purchasing electricity through the JPA in Spring 2022. However, if Buena Park joins after January 1, 2021, Buena Park would not be permitted to join until Spring 2023. As referenced above, Buena Park may withdrawal

its participation and exit the JPA should it the City decide, prior to March 1, 2021, that the program does not serve the best interests of the City or its local residents/businesses.

BUDGET IMPACT:

All costs associated with the formation of the JPA will be initially borne by the City of Irvine. These costs will be repaid to Irvine by the ratepayers within the jurisdictional boundaries of the JPA over time. There are no upfront costs for the City of Buena Park to join the JPA. Based on the experience of other jurisdictions, it is anticipated that the City would realize savings in the cost of electrical energy over time by participating in the JPA, but confirming this would require additional study and analysis.

Prepared by: Nabil S. Henein, P.E., Director of Public Works/City Engineer

Approved by: Aaron France, City Manager

Presented by: Public Works Department

ATTACHMENTS

- 1) Ordinance
- 2) Resolution
- 3) Joint Powers Authority Agreement

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BUENA PARK,
CALIFORNIA, AUTHORIZING THE IMPLEMENTATION
OF A COMMUNITY CHOICE AGGREGATION PROGRAM
WITHIN THE CITY'S JURISDICTION

A. Recitals.

(i) The City of Buena Park has been actively investigating options to provide electric services to constituents within its service area with the intent of achieving greater local involvement over the provisions of electric services and promoting competitive retail choice.

(ii) Assembly Bill 117 (Stat. 2002, ch. 838; see California Public Utilities Code § 366.2 *et seq.*; hereinafter referred to as the "Act") authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation ("CCA")

(iii) The Act expressly authorizes participation in a CCA program through a joint powers agency, and to this end, the City of Irvine has been evaluating a countywide CCA program.

(iv) Through Docket No. R.03-10-003, the California Public Utilities Commission ("Commission") has issued various decisions and rulings addressing the implementation of CCA programs, including establishing a procedure by which the Commission will review implementation plans, which are required to be submitted under the Act as the means of describing the CCA program and ensuring compliance with the Act.

(v) The City has elected to form a joint powers authority that would specify the terms and conditions by which participants may participate as a group in energy programs, including, but not limited to, the implementation of a CCA program with the following benefits:

- a. Providing customers a choice of power providers;
- b. Increasing local control over energy rates and other energy-related matters;
- c. Providing electric rates that are competitive with those provided by the incumbent utility;
- d. Improving the local economy by increasing local and regional renewable generation capacity and energy conservation and efficiency projects and programs;
- e. Increasing regional energy self-sufficiency; and
- f. Reducing greenhouse gas emissions arising from electricity use in the City.

(vi) The Joint Powers Agreement creating the Authority will govern and operate the CCA program on behalf of its member jurisdictions. The City may participate in the Authority by approving the execution of the Joint Powers Agreement and adoption of a CCA ordinance required by Public Utilities Code § 366.2(c)(12). The City's participation in the Authority will include membership on the Board of Directors of the Authority as provided in the Joint Powers Agreement.

(vii) The Authority will enter into agreements with electric power suppliers and other services providers and, based on these agreements, the Authority plans to provide power to residents and businesses at rates that are competitive with those of the incumbent utility. Once the Commission approves the implementation plan prepared by the Authority, the Authority may provide service to customers within the City and those cities that choose to participate in the Authority.

(viii) Under Public Utilities Code § 366.2, customers have the right to opt-out of a CCA program and continue to receive service from the incumbent utility. Customers who desire to continue to receive service from the incumbent utility will be able to do so at any time.

(ix) On December 15, 2020, the City Council held a public meeting at which time interested persons had an opportunity to testify either in support or in opposition to implementation of the CCA program within the City.

(x) This ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment because it is merely the formation of an organization. 14 Cal. Code Regs. § 15378(a). The ordinance is also exempt from CEQA because it is an organizational or administrative activity of governments that will not result in direct or indirect physical change in the environment. 14 Cal. Code Regs. § 15378(b)(5). The ordinance is also exempt from CEQA because it is merely a change in organization of local agencies. 14 Cal. Code Regs. § 15320. Further, the ordinance is exempt from CEQA because there is no possibility that the ordinance or its implementation, which would only result in the formation of a governmental organization, would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3). The [INSERT TITLE OF CITY OFFICIAL] shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

(xi) All legal prerequisites to the adoption of this Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUENA PARK DOES ORDAIN AS FOLLOWS:

Section 1: RECITALS. The facts set forth in the Recitals, Part A, of this Ordinance are true and correct.

Section 2: AUTHORIZATION TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM. Based upon the foregoing, and in order to provide businesses and residents within the City with a choice of power providers, the City hereby elects to implement a community choice aggregation program within the jurisdiction of the City by participating in the CCA program of the Authority, as described in the Joint Powers Agreement approved by Resolution adopted contemporaneously herewith.

Section 3: SEVERABILITY. The City Council declares that, should any provision, section; paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

Section 4: This Ordinance shall take effect thirty (30) days after its adoption

Section 5: The City Clerk of the City of Buena Park shall certify to the passage of the Ordinance and shall cause the same to be posted in the manner required by law.

PASSED AND ADOPTED this _____ day of _____ 2020, by the following called vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

Mayor

ORDINANCE NO. _____

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ATTEST:

City Clerk

I, Adria M. Jimenez, MMC, City Clerk of the City of Buena Park, California, do hereby certify that the foregoing ordinance was introduced and passed at a regular meeting of the City Council of the City of Buena Park held on the ____ day of _____ 2020.

City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUENA PARK, CALIFORNIA, APPROVING THE ORANGE COUNTY POWER AUTHORITY JOINT POWERS AGREEMENT AND AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM IN THE CITY OF BUENA PARK

WHEREAS, the City of Buena Park has been actively investigating options to provide electric services to constituents within its service area with the intent of providing rate savings and consumer choice, encouraging adoption of renewable energy, reducing energy consumption, fostering local control, and providing Buena Park residents and businesses with alternatives to Southern California Edison Company ("SCE");

WHEREAS, on September 24, 2002, the Governor signed into law Assembly Bill 117 (Migden, 2002; codified at California Public Utilities Code § 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, or cities or counties through a joint powers authority, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation (CCA);

WHEREAS, on November 20, 2020, the Orange County Power Authority ("Authority") was established as a joint powers authority pursuant to that certain document entitled *Orange County Power Authority Joint Powers Agreement*, as amended from time to time ("Agreement");

WHEREAS, the City of Buena Park is committed to the purposes of the Orange County Power Authority;

WHEREAS, electricity in Buena Park is currently generated and provided by SCE and there is not presently an alternative provider in the City;

WHEREAS, the City finds it important that its customers – residents, businesses, and public facilities – have alternative choices to energy procurement;

WHEREAS, based on the information presented to it, finds and declares that participation in the Authority furthers the public health, safety, and welfare of the Buena Park community; and

WHEREAS, in order to become a member of the Authority, the Agreement requires the City to adopt a resolution approving the Agreement and electing to implement a Community Choice Aggregation program within its jurisdiction by and through its participation in the Authority.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUENA PARK, CALIFORNIA, DOES HEREBY DECLARE, FIND, AND RESOLVE AS FOLLOWS:

Section 1. Based upon the foregoing recitals, the City of Buena Park City Council elects to implement a Community Choice Aggregation program within the City of Buena Park's jurisdiction by and through the City of Buena Park's participation in the Authority. The City Council hereby approves the Agreement in the form substantially presented herewith, and the

City Manager is hereby authorized to execute the Agreement on the City's behalf, subject to non-monetary changes approved by the City Manager and City Attorney.

Section 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Resolution for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have adopted this Resolution, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 3. This resolution shall take effect immediately upon approval by the Buena Park City Council, and the City Clerk shall certify to the adoption hereof.

PASSED AND ADOPTED this _____ day of _____ 2020 by the following called vote:

- AYES: COUNCILMEMBERS:
- NOES: COUNCILMEMBERS:
- ABSENT: COUNCILMEMBERS:
- ABSTAIN: COUNCILMEMBERS:

Mayor

ATTEST:

City Clerk

I, Adria M. Jimenez, MMC, City Clerk of the City of Buena Park, California, hereby certify that the foregoing resolution was duly and regularly passed and adopted at a regular meeting of the City Council of the City of Buena Park, held this _____ day of _____ 2020.

City Clerk

ORANGE COUNTY POWER AUTHORITY JOINT POWERS AGREEMENT

This Joint Powers Agreement (“**Agreement**”), effective as of the date specified in Section 1.2, below, which is November __, 2020 (“**Effective Date**”) is made and entered into pursuant to the Joint Exercise of Powers Act (California Government Code § 6500 *et seq.*) relating to the joint exercise of powers among the parties set forth in Exhibit A. All parties that execute this Agreement prior to December 31, 2020 shall be designated individually as “**Founding Party**” and collectively as “**Founding Parties**”. All cities, counties, or other public agencies added as parties to this agreement after December 31, 2020 shall be designated individually as “**Additional Party**” and collectively “**Additional Parties**”. The term “**Party**” refers individually to any Founding Party or Additional Party, and the term “**Parties**” refers collectively to the Founding Parties and the Additional Parties.

RECITALS

A. In 2002, Assembly Bill 117 (Stat. 2002, Ch. 838, codified at Public Utilities Code Sections 218.3, 366, 394, 394.25, 331.1 366.2, and 381.1) was signed into law allowing customers to aggregate their electrical loads as members of their local community with public agencies designated as community choice aggregators, and allowing such public agencies to aggregate the electrical load of interested consumers within their jurisdictional boundaries and purchase electricity on behalf of those consumers.

B. In 2006, Assembly Bill 32 (Stat. 2006, Ch. 488, codified at Health and Safety Code Sections 38500 *et seq.*), known as the Global Warming Solutions Act, was signed into law, mandating a reduction in greenhouse gas emissions to 1990 levels by 2020.

C. In 2015, Senate Bill 350 (Stat. 2015, Ch. 547, codified at Health and Safety Code Section 44258.5; Labor Code Section 1720; Public Resources Code Sections 25302.2, 25310, 25327 and 25943; and Public Utilities Code Sections 237.5, 337, 352, 359, 365.2, 366.3, 399.4, 399.11, 399.12, 399.13, 399.15, 399.16, 399.18, 399.21, 399.30, 454.51, 454.52, 454.55, 454.56, 701.1, 740.8, 740.12, 9505, 9620, 9621, 9622, and Article 17 (commencing with Public Utilities Code Section 400)) was signed into law, mandating a reduction in greenhouse gas emissions to 40 percent below 1990 levels by 2030 and to 80 percent below 1990 levels by 2050.

D. In 2018, Senate Bill 10 (Stat. 2018, Ch. 312, codified at Public Utilities Code sections 399.11, 399.15, 399.30, and 454.53) was signed into law, directing that the Renewables Portfolio Standard to be increased to 60 percent renewables by 2030 and establishing a policy for eligible renewable energy resources and zero-carbon resources to supply 100 percent of electricity retail sales to California end-use customers by 2045.

E. The Parties each hold various powers under California law, including, but not limited to, the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions in accordance with Public Utilities Code Sections 333.1 and 366.2; they are therefore properly empowered to enter into this Agreement under the Joint Exercise of Powers Act (Government Code Section 6500 *et seq.*, the “**Act**”).

F. The purposes for entering into this Agreement are more fully specified in subsection 1.4 below, but principally consist of the study, promotion, development, funding, financing, purchasing, conduct, operation, and management of energy, energy efficiency and conservation, and other energy-related and community choice aggregation programs (the “**CCA Program**”), through which the following objectives may be advanced: (a) reducing greenhouse gas emissions related to the use of power throughout the Parties’ jurisdictions and neighboring regions; (b) providing electric power and other forms of energy to customers at a competitive cost; (c) carrying out programs for ratepayers of all income levels to reduce energy consumption; (d) stimulating and sustaining the local economy by developing local jobs in renewable and conventional energy; and (e) promoting long-term electric rate stability, energy security and reliability for residents through local control of electric generation resources.

G. The Founding Parties desire to establish a separate public agency, known as the Orange County Power Authority (“**Authority**”), under the Act and consistent with Assembly Bill 117, in order to collectively implement the CCA Program, and to exercise any powers common to the Authority’s members to further these purposes.

H. The Parties have each adopted an ordinance electing to participate as a group in a community choice aggregation program through the Authority, as authorized by California Public Utilities Code § 366.2(a)(12)(B).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

SECTION 1. FORMATION OF AUTHORITY

1.1 Creation of Agency. Pursuant to the Act there is hereby created a public entity to be known as The Orange County Power Authority. Pursuant to Section 6507 of the Act, the Authority is a public agency separate from the Parties. The jurisdiction of the Authority shall be all territory within the geographic boundaries of the Parties; however, the Authority may, as authorized under applicable law, undertake any action outside such geographic boundaries as is necessary to accomplish its purpose.

1.2 Effective Date and Term. This Agreement shall become effective and the Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Parties. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with this Agreement, subject to the rights of a Party to withdraw from the Authority.

1.3 Parties. The names, particular capacities, and addresses of the Parties are shown on Exhibit A, as it may be amended from time to time.

1.4 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to implement the CCA Program, and to

exercise all other powers necessary and incidental to accomplishing this purpose. This Agreement authorizes the Authority to provide opportunities by which the Parties can work cooperatively to create economies of scale and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, provide consumer choice and cost savings, and advance the use of clean, efficient, and renewable resources in the region for the benefit of all the Parties and their constituents, including, but not limited to, establishing and operating a CCA Program (collectively, the “**Purpose**”). The Parties intend for this Agreement to be used as a contractual mechanism by which they are authorized to participate in the CCA Program and achieve the Purpose. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any energy programs approved by the Authority.

SECTION 2. POWERS OF AUTHORITY

2.1 Powers. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its Purpose, including, but not limited to, each of the following powers:

2.1.1 Serve as a forum for the consideration, study, and recommendation of energy services for the CCA Program;

2.1.2 To make and enter into any and all contracts to effectuate the purpose of this Agreement, including, but not limited to, those relating to the purchase or sale of electrical energy or attributes thereof, and related service agreements;

2.1.3 To employ agents and employees, including, but not limited to, engineers, attorneys, planners, financial consultants, and separate and apart therefrom to employ such other persons, as it deems necessary;

2.1.4 To acquire, contract, manage, maintain, and operate any buildings, works, or improvements, including, but not limited to, electric generation resources;

2.1.5 To acquire property by eminent domain, or otherwise, except as limited by Section 6508 of the Act, and to hold or dispose of property;

2.1.6 To lease or license any property;

2.1.7 To sue and be sued in its own name;

2.1.8 To incur debts, liabilities, and obligations, including, but not limited to, loans from private lending sources pursuant to its temporary borrowing powers, such as California Government Code § 53850 *et seq.* and authority under the Act;

2.1.9 To form subsidiary or independent corporations or entities, if appropriate, to carry out energy supply and energy conservation programs, or to take advantage of legislative or regulatory changes;

2.1.10 To issue revenue bonds and other forms of indebtedness;

2.1.11 To apply for, accept, and receive all licenses, permits, grants, loans, or other assistance from any federal, state, or local agency;

2.1.12 To submit documentation and notices, register, and comply with orders, tariffs, and agreements for the establishment and implementation of the CCA Program and other energy and climate change programs;

2.1.13 To adopt rules, regulations, policies, bylaws, and procedures governing the operation of the Authority;

2.1.14 To receive loans, gifts, contributions, and donations of property, funds, services, and other forms of financial assistance from persons, firms, corporations, and any governmental entity;

2.1.15 To make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services;

2.1.16 To receive revenues from sale of electricity and other energy-related programs;

2.1.17 To partner or otherwise work cooperatively with other CCAs on the acquisition of electric resources, joint programs, advocacy and other efforts in the interests of the Authority; and

2.1.18 To the extent not specifically provided in this Agreement, to exercise any powers authorized by the member agencies to achieve the Authority's objectives and such further powers not specifically mentioned herein, but common to Parties, and authorized by the California Government Code.

2.2 Additional Powers to be Exercised. In addition to those powers common to each of the Parties, the Authority shall have those powers that may be conferred upon it by law and by subsequently enacted legislation.

2.3 Manner of Exercising Powers. The powers specified in subsections 2.1 and 2.2 shall be exercised by the Board (as defined in subsection 3.1, below), unless otherwise delegated to a committee of the Board or the Chief Executive Officer of the Authority in accordance with a Board adopted policy or action. All such powers shall be exercised in the manner set forth in this Agreement.

2.4 Limitation on Exercise of Powers: The powers of the Authority are subject to the restrictions upon the manner of exercising power possessed by the City of Irvine, California and

any other restrictions on exercising the powers of the Authority that may be adopted by the Authority's Board of Directors.

SECTION 3: GOVERNANCE

3.1 General Governance; Board of Directors. The governing body of the Authority shall be a Board of Directors (“**Board**”) consisting of one director for each Party appointed in accordance with subsection 3.2, except the City of Irvine whose governing body shall appoint two directors (the “**Irvine Directors**”). Notwithstanding the foregoing, the governing body of the City of Irvine shall appoint one director upon the full satisfaction and repayment of the Capital Loan, as defined in subsection 5.5.

3.2 Appointment of Directors. The governing body of each Party shall appoint and designate in writing the Director(s) who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party shall also appoint and designate in writing an alternate Director(s) who may vote in matters when the regular Director is absent from a Board meeting. The governing bodies of the Founding Parties may, in their sole discretion, elect to appoint their respective Director(s) prior to the Effective Date, in which case such appointment(s) to the Board shall take effect on the Effective Date. The persons appointed and designated as the regular Director and the alternate Director shall be a member of the governing body of the Party when appointed.

3.3 Terms of Office. Each regular and alternate Director shall serve a term of four years. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the governing body to fill the position of the previous Director within ninety (90) days of the date that such position becomes vacant. Replacement Directors shall serve until the scheduled expiration of the four year term of the Board member that they replace.

3.4 Quorum. A majority of the Directors of the entire Board shall constitute, and is necessary to constitute, a quorum, except that less than a quorum may adjourn a meeting from time to time in accordance with law.

3.5 Powers of the Board of Directors. The Board may exercise all the powers enumerated in this Agreement and shall conduct all business and activities of the Authority consistent with this Agreement and any bylaws, operating procedures, and applicable law.

3.6 Executive Committee. The Board shall establish an executive committee consisting of a smaller number of Directors upon the Authority's membership consisting of nine or more members. The initial members of the executive committee shall be the Directors of the Founding Members with the chair of the Board serving as chair of the Executive Committee.

3.7 Committees. The Board may establish committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the purposes of this Agreement. In accordance with subsection 2.3, the Board may delegate to any committees that consist solely of Board members any of the powers specified in subsection 2.1, except for the power to acquire property by eminent domain specified in subsection 2.1.5. Committees that include or consist of non-Board members shall be advisory only.

3.8 Director Compensation. The Board shall adopt policies establishing compensation attendance at Board and Committee meetings and work performed by each Director on behalf of the Authority as well as policies for the reimbursement of expenses incurred by each Director; provided that in no instance shall the per meeting or per day compensation be less than the compensation provided to directors of the Orange County Sanitation District.

3.9 Voting by the Board of Directors.

3.9.1 Equal Vote. Each Director or participating alternate shall have one vote. Except as provided for in Sections 3.9.2, 3.9.3 and 3.9.4, action of the Board on all matters shall require an affirmative vote of a majority of all Directors who are present at the subject meeting (“**Equal Vote**”).

3.9.2 Voting Shares Vote. Immediately after (and during the same Board Meeting as) an affirmative or tie Equal Vote, two or more Directors shall have the right to request and conduct a Voting Shares Vote (defined below) to reconsider that action approved by the Equal Vote. In the event of a Voting Shares Vote where the City of Irvine appoints two Directors to the Board and one or more Irvine Directors requests a Voting Shares Vote, a Party other than the City of Irvine must constitute the second Director for purposes of having the right to request and conduct a Voting Shares Vote. A “yes” vote on the Voting Shares Vote shall be a vote to reverse and reject the Equal Vote; a “no” vote on the Voting Shares Vote shall be a vote to affirm the Equal Vote. For Voting Shares Votes, votes shall be weighted as described in subsection 3.9.3. A “yes” vote on a Voting Shares Vote shall require (i) for votes requiring a majority under subsection 3.9.1, more than fifty percent (50%) of the voting shares of all Directors voting; (ii) for votes requiring a supermajority of two-thirds under this Agreement, sixty-seven percent (67%) or more of the voting shares of all Directors voting; and (iii) for votes requiring a supermajority of three quarters under this Agreement more than seventy-five percent (75%) of the voting shares of all Directors voting. All votes taken pursuant to this subsection 3.9.2 shall be referred to as a “**Voting Shares Vote**.” If a Voting Shares Vote yields a “no” vote, the legal effect is to affirm the Equal Vote with respect to which the Voting Shares Vote was taken. If the Voting Shares Vote succeeds, the legal effect is to nullify the Equal Vote with respect to which the Voting Shares Vote was taken. If the underlying Equal Vote was a tie, the Voting Shares Vote replaces that tie vote. No action may be taken solely by a Voting Shares Vote without first having taken an Equal Vote.

3.9.3 Voting Shares Formula. When a Voting Shares Vote is requested by two or more Directors, voting shares of each Director shall be determined by the following formula:

$$(\text{Annual Energy Use}/\text{Total Annual Energy}) \times 100$$

For purposes of this formula (a) “**Annual Energy Use**” means (i) for the first two years following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“**kWh**”), within the jurisdiction of the Party appointing the Director(s) and (ii) following the second anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within the jurisdiction of the Party appointing the Director(s) that are served by the Authority, and (b) “**Total Annual Energy**” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy

use are designated in Exhibit B and the initial voting shares are designated in Exhibit C. Both Exhibit B and Exhibit C shall be adjusted annually as soon as reasonably practicable after January 1 of each year, but no later than March 1 of each year, subject to the approval of the Board. Voting shares attributable to Irvine shall be divided equally between the Irvine Directors.

3.9.4 Special Voting.

3.9.4.1 Two-Thirds Supermajority Votes. An affirmative vote of two-thirds of the Directors of the entire Board shall be required to take any action on the following (i) issuing or repayment of bonds loans or other forms of debt; (ii) adding or removing Parties on or after January 1, 2021; (iii) amending or terminating this Agreement or adopting or amending the bylaws of the Authority; and (iv) terminating the CCA Program.

3.9.4.2 Three-Fourths Supermajority Votes. An affirmative vote of three-fourths of the Directors of the Board shall be required to initiate any action for eminent domain and no eminent domain action shall be approved within the jurisdiction of a Party without the affirmative vote of such Party's Director (or both Irvine Directors, if applicable, in the case of eminent domain action within the City of Irvine).

3.9.4.3 Advance Notice of Special Voting. At least thirty (30) days advance written notice to the Parties shall be provided for all special voting items under subsection 3.9.4.1 and/or subsection 3.9.4.2. Such notice shall include a copy of all substantive documents necessary to meaningfully deliberate and consider the proposed vote (e.g., any proposed amendment to this Agreement or the bylaws of the Authority). The Authority shall also provide prompt written notice to all Parties of the action taken, which shall include any resolution, ordinance, rule, policy, agreement, filing or other operative document (if any) adopted or approved by the Board.

3.10 Officers.

3.10.1 Chair and Vice Chair. The Directors shall select from among themselves a Chair and a Vice-Chair. The Chair shall be the presiding officer of all Board meetings. The Vice-Chair shall serve in the absence of the Chair. The term of office of the Chair and Vice-Chair shall continue until the expiration of the office of the Directors serving in such positions. There shall be no limit on the number of terms held by the Chair and the Vice-Chair. The office of either the Chair or Vice-Chair shall be declared vacant and a new selection shall be made if: (i) the person serving dies, resigns, or becomes legally unable to fulfill his or her duties, or (b) the Party that appointed the Chair or Vice-Chair withdraws from the Authority pursuant to the provisions of this Agreement.

3.10.2 Secretary. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

3.10.3 Treasurer/Auditor. In accordance with California Government Code § 6505.5, the Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom need be members of the Board. The Treasurer

and the Auditor shall possess the powers of, and shall perform those functions required of them by California Government Code §§ 6505, 6505.5, and 6505.6, and by all other applicable laws and regulations and amendments thereto.

3.11 Meetings. The Board shall provide for its regular meetings, the date, hour, and place of which shall be fixed by resolution of the Board. Regular, adjourned, and special meetings shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code § 54950 *et seq.*

3.12 Chief Executive Officer. The Board shall appoint a Chief Executive Officer. The Chief Executive Officer shall be the chief administrative officer of the Authority, and shall be Secretary of the Board. The powers and duties of the Chief Executive Officer shall be those delegated and/or assigned to the Chief Executive Officer by duly adopted action of the Board.

3.13 Additional Officers and Employees. The Board shall have the power to authorize such additional officers and assistants as may be necessary and appropriate, including retaining one or more administrative service providers for planning, implementing, and administering the CCA Program. Such officers and employees may also be, but are not required to be, officers and employees of the Parties.

3.14 Bonding Requirement. The officers or persons who have charge of, handle, or have access to any property of the Authority shall be the members of the Board, the Treasurer, the Executive Director, and any such officers or persons to be designated or empowered by the Board. Each such officer or person shall be required to file an official bond with the Authority in an amount which shall be established by the Board. Should the existing bond or bonds of any such officer be extended to cover the obligations provided herein, said bond shall be the official bond required herein. The premiums on any such bond attributable to the coverage required herein shall be the appropriate expenses of the Authority.

3.15 Audit. The records and accounts of the Authority shall be audited annually by an independent certified public accountant with the final audit completed within six months of the fiscal year end, and copies of such audit report shall be filed with the State Controller, and each Party no later than fifteen (15) days after receipt of said audit by the Board.

3.16 Privileges and Immunities from Liability. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions shall apply to the officers, agents, or employees of the Authority to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents, or employees under this Agreement. None of the officers, agents, or employees directly employed by the Authority shall be deemed, by reason of such employment to be employed by the Parties (or any of them).

SECTION 4: ADDITIONAL PARTIES AND IMPLEMENTATION OF CCA PROGRAM

4.1 Additional Parties. An incorporated city or county, or other public agency as authorized by California Public Utilities Code § 331.1, may become a member of the Authority and a Party to this Agreement upon satisfaction of the following:

4.1.1 Adoption of a resolution by the governing body of the proposed additional party approving the Agreement, and requesting participation and an intent to join the Authority;

4.1.2 Adoption by the Board of a resolution authorizing participation of the proposed additional party;

4.1.3 Satisfaction of any additional conditions as established by the Board or applicable laws or regulations; and

4.1.4 Execution of the Agreement by the proposed additional party.

4.2 Continuing Participation. The Parties acknowledge that participation in the CCA Program may change by the addition or withdrawal or termination of a Party. The Parties agree to participate in good faith with additional members as may later be added. The Parties also agree that the withdrawal or termination of a Party shall not affect the enforceability of this Agreement as to the remaining Parties, or the remaining Parties' continuing obligations under this Agreement.

4.3 Implementation of CCA Program. The Authority shall cause to be prepared an implementation plan meeting the requirements of California Public Utilities Code § 366.2 ("**Implementation Plan**") and any applicable regulations of the California Public Utilities Commission ("**CPUC**"). The Board shall approve the Implementation Plan prior to it being filed with the CPUC. The Authority, acting by and through the Board, shall take all such steps as are necessary and appropriate to implement the Implementation Plan and the CCA Program in a manner consistent with this Agreement.

4.4 Power Supply. The Board will establish power supply options for the Authority. The Authority's power supply options will include, but not be limited to, renewable and GHG-free base product that is equivalent to the minimum required by law. Each Party may select its power supply base product for the ratepayers in its jurisdiction. Each Party shall also have the flexibility to achieve its climate goals without impeding any other Party from doing the same.

4.4 Authority Documents. The Parties acknowledge and agree that the operations of the Authority will be implemented through various program documents and regulatory filings duly adopted by the Board, including, but not limited to, bylaws, an annual budget, and plans and policies related to the CCA Program. The Parties agree to abide by and comply with the terms and conditions of all such Authority documents that may be approved or adopted by the Board.

4.5 Termination of CCA Program. Nothing contained in this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of

the CCA Program at any time, so long as such termination is in accordance with any applicable requirements of state law and the voting procedures specified in subsection 3.9.4.1, above.

SECTION 5: FINANCIAL PROVISIONS

5.1 Fiscal Year. The Authority's fiscal year shall be twelve (12) months commencing July 1 of each year and ending June 30 of the succeeding year.

5.2 Treasurer. The Treasurer for the Authority shall be the depository for the Authority. The Treasurer of the Authority shall have custody of all funds and shall provide for strict accountability thereof in accordance with California Government Code § 6505.5 and other applicable laws. The Treasurer shall perform all of the duties required in California Government Code § 6505 *et seq.* and all other such duties as may be prescribed by the Board.

5.3 Depository & Accounting. All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with the funds of any Party or any other person or entity. Disbursement of such funds during the term of this Agreement shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to California Government Code § 6505 *et seq.* and other applicable laws. There shall be a strict accountability of all funds. All revenues and expenditures shall be reported regularly to the Board. The books and records of the Authority shall be promptly open to inspection by the Parties at all reasonable times.

5.4 Budget. The Board shall establish the budget for the Authority, and may from time to time amend the budget to incorporate additional income and disbursements that might become available to the Authority for its purposes during a fiscal year.

5.5 City of Irvine Initial Funding of Authority. The Authority shall, concurrent with the execution of this Agreement, enter into an agreement that covers repayment to the City of Irvine of (i) funding and collateral provided by the City of Irvine to the Authority to facilitate start-up and launch costs for the Authority and the CCA Program, and (ii) costs incurred by the City (including staff, consultant, and legal expenses, and associated allocated overhead and administrative expenses) in connection with the study and analysis of the CCA, the formation of the Authority, and the creation of the Implementation Plan (the "**Capital Loan Agreement**" or the "**Capital Loan**"). The Capital Loan shall be repaid from customer charges for electrical services to the extent permitted by law when the CCA Program becomes operational. The form of the Capital Loan Agreement is attached hereto as Exhibit D. The Authority shall enter into the Capital Loan Agreement so long as its final form is substantially consistent with the form attached as Exhibit D.

5.6 No Requirement for Contributions or Payments. Except as otherwise specified herein, the Parties are not required under this Agreement to make any financial contributions or payments to the Authority, and the Authority shall have no right to require such a contribution or payment.

5.6.1 Notwithstanding subsection 5.6, the Board may adopt a membership fee to be paid by Additional Parties upon entering into the Agreement, which

membership fee shall be established (if at all) by the Board and may cover a reasonable estimate of the transactional and other costs incurred by the Authority in processing the addition of the Additional Party to the Authority.

5.6.2 Notwithstanding subsection 5.6, the Authority and a Party may mutually and voluntarily enter into an agreement to provide the following: (i) contributions of public funds for the purposes set forth in this Agreement; (ii) advances of public funds for the purposes set forth in this Agreement, such advances to be repaid as provided by such written agreement; or (iii) its personnel, equipment or property.

5.6.3 For the avoidance of doubt, nothing in this Agreement requires, nor shall the Authority for any reason ever require, that any Party adopt any local tax, assessment, fee or charge for the benefit of the Authority.

5.7 Obligations of the Authority. Unless otherwise agreed by the Parties, the debts, liabilities, and obligations of the agency shall not be the debts, liabilities, and obligations, either jointly or severally, of the members of the agency. A Party may, in its sole discretion, agree to assume one or more of the debts, liabilities, and obligations of the Authority if, and only if, such Party, with the approval of its governing body, agrees in writing to assume any such debts, liabilities, or obligation of the Authority.

SECTION 6: WITHDRAWAL AND TERMINATION

6.1 Right to Withdraw.

6.1.1 Right to Withdraw Prior to March 1, 2021. Except for the City of Irvine, a Party may withdraw from the Authority for any reason and without liability or cost prior to March 1, 2021 upon providing the Authority fifteen (15) days advance written notice.

6.1.2 Right to Withdraw After March 1, 2021. Except for the withdrawal provided for in Section 6.1.1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than one hundred eighty (180) days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board. A Party that withdraws from the Authority pursuant to this subsection may be subject to certain continuing liabilities as described in this Agreement. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further actions as may be reasonably necessary to effectuate the orderly withdrawal of such Party.

6.2 Involuntary Termination. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement upon a two-thirds vote of the entire Board (excluding the vote of the Party subject to possible termination) taken in accordance with subsection 3.9.4.1. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered

to the Party whose termination is proposed at least thirty (30) days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement that the Party has allegedly violated with supporting documentation. The Party subject to possible termination shall have the opportunity at the next regular Board meeting following the expiration of the thirty-day (30) day notice period to respond to any reasons and allegations that may be cited as a basis for termination. The Party's response shall be evaluated at a public meeting prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in subsection 6.3. If the Board votes to terminate a Party's membership in the Authority, the effective date of the termination shall be scheduled by the Board, in its reasonable discretion, to ensure adequate time for the transition of the terminated Party's CCA Program customers to another electricity provider. The Parties expressly intend, agree and acknowledge that a Board action to terminate a Party's membership in the Authority shall be upheld so long as it is not arbitrary and capricious, and is supported by substantial evidence.

6.3 Continuing Liability; Refund. Upon a withdrawal of a Party under subsection 6.1.2 or involuntary termination of a Party under subsection 6.2, the Party shall be responsible for any claims, demands, damages, or liabilities attributable to the Party through the effective date of its withdrawal or involuntary termination. Such Party also shall be responsible liable to the Authority for (a) any damages, losses, or costs incurred by the Authority which result directly from the Party's withdrawal or termination, including, but not limited to, costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party's load, and removal of customers from the CCA Program resulting from the withdrawal or termination of the Party; and (b) any costs or obligations associated with the Party's participation in any program in accordance with the program's terms, provided such costs or obligations were incurred prior to the withdrawal of the Party. Except as otherwise specified, such Party shall not be responsible for any claims, demands, damages, or liabilities commencing or arising after the effective date of the Party's withdrawal or involuntary termination. From and after the date a Party provides notice of its withdrawal or is terminated, the Authority shall reasonably and in good faith seek to mitigate any costs and obligations to be incurred by the withdrawing or terminated Party under this subsection through measures reasonable under the circumstances; provided, however, that this obligation to mitigate does not impose any obligation on the Authority to transfer any cost or obligation directly attributable to the membership and withdrawal or termination of the withdrawing or terminated Party to the ratepayers of the remaining Parties. Further the liability of the withdrawing or terminated Party shall be based on actual costs or damages incurred by the Authority and shall not include any penalties or punitive charges imposed by the Authority. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. The withdrawing or terminated Party agrees to pay any such deposit determined by the Authority in consultation with a third party audit firm. Any amount of the withdrawing or terminated Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to that Party. In the implementation of this subsection 6.3, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the

service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself. The liability of a withdrawing Party under this subsection shall be only to the Authority and not to any other Party.

6.4 Termination of Agreement. This Agreement may be terminated by vote of the Board in accordance with subsection 3.9.4.1, or by mutual agreement of all the Parties approved by majority votes of their respective governing bodies. provided, however, that this subsection shall not be construed as limiting the rights of a Party to withdraw in accordance with Section 6.

6.5 Disposition of Authority Assets Upon Termination of Agreement. Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred by the Authority, shall be returned to the then-existing Parties in proportion to the contributions made by each.

SECTION 7: MISCELLANEOUS PROVISIONS

7.1 Dispute Resolution. The Parties and Authority shall make efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or Parties and the Authority shall engage in nonbinding mediation in the manner agreed to by the Party or Parties and the Authority. In the event that nonbinding mediation does not resolve a dispute within one hundred twenty (120) days after the demand for mediation is made, any Party or the Authority may pursue any all remedies provided by law.

7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify, and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by California Government Code § 995 *et seq.* Nothing in this subsection shall be construed to limit the defenses available under the law to the Parties, the Authority, or its Directors, officers, or employees.

7.3 Indemnification. The Authority shall acquire such insurance coverage as the Board deems necessary to protect the interests of the Authority, the Parties, and the Authority's ratepayers. The Authority shall indemnify, defend, and hold harmless the Parties and each of their respective board members or council members, officers, agents, and employees, from any and all claims, losses, damages, costs, injuries, and liabilities of every kind to the extent arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

7.4 Assignment. The rights and duties of a Party may not be assigned or delegated without the advance written consent of all other Parties. Any attempt to assign or delegate such rights or duties without express written consent of all other Parties shall be null and void. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties. This subsection does not prohibit a Party from entering into an independent agreement

with another entity regarding the financing of that Party's contributions to the Authority (if any), or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

7.5 Severability. If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

7.6 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effectuate the purposes of this Agreement.

7.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

7.8 Notices. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service to the addresses specified on Exhibit A. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

[Signature to Follow on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as evidenced by the signatures below

MEMBER AGENCY:

CITY OF IRVINE

By: Marianna Marysheva
Name: Marianna Marysheva
Title: Interim City Manager
Dated: 11/20/2020, 2020

Approved as to Form:

Jeffrey Melching
City Attorney

Approved as to Form:

Ryan Baron
Special Counsel

CITY OF BUENA PARK

By: _____
Name: _____
Title: _____
Dated: _____, 2020

Approved as to Form:

City Attorney

CITY OF FULLERTON

By: _____
Name: _____
Title: _____
Dated: _____, 2020

Approved as to Form:

City Attorney

**EXHIBIT A
LIST OF PARTIES**

Founding Members:

City of Irvine
1 Civic Center Plaza
Irvine, CA 92606

City of Fullerton
303 W. Commonwealth Ave.
Fullerton, CA 92832

EXHIBIT B

ANNUAL ENERGY USAGE BY JURISDICTION

[to be calculated and finalized upon obtaining SCE load data and execution of JPA agreement]

EXHIBIT B
ANNUAL ENERGY USAGE BY JURISDICTION

	2019 Annual Load GWh¹
City of Buena Park ²	450
City of Fullerton	676
City of Huntington Beach	1,046
City of Irvine	1,937
City of Lake Forest	459
Total	4,569

1. Annual energy usage is preliminary data and has not been validated by Southern California Edison (SCE) at the time of execution of the Agreement. This Exhibit will be updated without requiring an amendment of the Agreement upon SCE validation of the data.
2. City's 2019 annual load is an estimated value that may change pending preliminary and validated data from SCE.

EXHIBIT C

PARTY VOTING SHARES

[to be calculated and finalized upon obtaining SCE load data and execution of JPA agreement]

**EXHIBIT C
PARTY VOTING SHARES**

	Estimated Voting Share¹
City of Buena Park	9.8%
City of Fullerton	14.8%
City of Huntington Beach	22.9%
City of Irvine	42.4%
City of Lake Forest	10.0%
Total	100.0%

1. Estimated Voting Share is based on Exhibit B (Annual Energy Usage by Jurisdiction). Annual energy usage is preliminary data and has not been validated by Southern California Edison (SCE) at the time of execution of the Agreement. This Exhibit will be updated without requiring an amendment of the Agreement upon SCE validation of the data.

EXHIBIT D
FORM OF CAPITAL LOAN AGREEMENT

**AGREEMENT BETWEEN THE CITY OF IRVINE AND THE ORANGE COUNTY
POWER AUTHORITY FOR THE ADVANCE OF FUNDS FOR IMPLEMENTATION
OF A COMMUNITY CHOICE ENERGY PROGRAM**

This Agreement, effective _____ (“**Effective Date**”), is by and between the CITY OF IRVINE, a municipal corporation and charter city (“**City**”), and the ORANGE COUNTY POWER AUTHORITY, a California joint powers authority (“**Authority**”), for the purpose of stating the terms for an advance of funds from the City to be repaid to City by the Authority as provided herein. City and Authority shall be referred to individually as a “**Party**” collectively as the “**Parties**.”

RECITALS

A. On _____, the Authority was formed by participating Orange County cities, including the City, to administer a community choice aggregation (“**CCA**”) program within the jurisdictional boundaries of its members in Orange County.

B. Prior to formation of the Authority, the City funded a feasibility study, peer review, and other activities necessary to evaluate the feasibility and implementation of a CCA program. The City also funded certain costs to form the Authority and implement the CCA program for itself and the Authority’s founding members.

C. As expressly stated in that certain document entitled, *Orange County Power Authority Joint Powers Agreement*, at Section 5.5, which is incorporated herein by this reference, it was agreed upon by the parties thereto that the City would be reimbursed by the Authority for all costs regarding the feasibility and implementation of the CCA program, contingent upon the Authority’s launch of the CCA program.

D. The City estimates that its costs to study, form and implement the Authority are \$250,000, which include, but are not limited to, costs for its feasibility study, peer review, City staffing, legal costs, member and stakeholder outreach, and formation of the Authority (“**Formation Costs**”).

E. The City estimates that the Authority will need approximately \$2,500,000 for working capital to pay for implementation costs through a projected launch of the CCA program in 2022 (“**Pre-Launch Costs**”).

F. The City further estimates that the Authority will need up to an additional \$8,000,000 to \$20,000,000 in the form of a credit facility for operational support and power procurement as well as other cash flow needs, and that any such credit facility may require cash collateral from an Authority member between \$2,000,000 to \$5,000,000 (“**Launch Costs**”).

G. The Parties desire to enter into this Agreement to document the Authority's repayment obligations to the City for all such funds expended on behalf of, or in support of, the formation of the Authority and implementation of the CCA program.

AGREEMENT

NOW THEREFORE, in consideration of their mutual promises and obligations, the Parties hereby agree as follows:

1. City Loan to the Authority.

1.1. Formation Costs. The Authority acknowledges that the City has expended certain City funds toward Formation Costs and agrees to reimburse the City for such costs in an amount not to exceed \$250,000 dollars, subject to the repayment provisions herein.

1.2. Pre-Launch Costs. The City agrees to loan the Authority Pre-Launch Costs in the amount of \$2,500,000 by January 1, 2021, which shall be used by the Authority for working capital costs associated with the Authority's launch, anticipated in 2022.

1.3. Launch Costs. The City agrees to post the necessary cash collateral, not to exceed \$5,000,000, in order for the Authority to secure a credit facility for its Launch Costs for additional working capital associated with power procurement and operational support ("**Credit Agreement**"). The City will also provide a loan for Launch Costs if needed by the Authority should a Credit Agreement be unavailable or insufficient to cover the Authority's working capital needs. The terms and conditions of any City loan to the Authority for Launch Costs (excluding the cash collateral requirement above) shall be negotiated and agreed upon in an amendment to this Agreement, subject to the reasonable approval of the Parties. The Authority shall provide the City with the Authority's *pro forma* demonstrating the amount needed for the aforementioned City loan.

1.4. City Loan Amount. Formation Costs, Pre-Launch Costs, and Launch Costs shall be collectively referred to herein as "**City Loan Amount.**"

2. Repayment; Interest.

2.1. Repayment Date. The Authority shall repay the City Loan Amount to City, plus interest, no later than the repayment date, which shall be January 1, 2027. The Parties acknowledge that they may modify the Repayment Date for the Launch Costs in an amendment to this Agreement depending on the terms and conditions of the Credit Agreement.

2.2. Interest Rate. In accordance with subsection 2.3, interest shall be paid on all outstanding portions of the City Loan Amount that bear interest. The interest rate on any outstanding amount shall be calculated according to the sum of the following calculation of each respective quarter:

Principal x Quarterly Interest Rate x (No. of Days in Quarter/No. of Days in Year)

Where “**Principal**” is the relevant funding of the City Loan Amount as described herein; “**Quarterly Interest Rate**” is the gross earnings for the respective quarter as reported in the City of Irvine Treasurer’s monthly investment report found on the Treasurer’s website <https://www.cityofirvine.org/administrative-services-department/investment-policies-and-reports> “**No. of Days in Quarter**” is the sum of days of each month that make up each respective quarter; and “**No. of Days in Year**” is 365, except in leap years, in which the number of days in the year shall be 366.

The City Loan Amount shall bear interest as follows:

- a. Formation Costs shall bear no interest whatsoever and shall be repaid to City as reimbursement for out-of-pocket expenses by the Repayment Date.
- b. Pre-Launch Costs shall bear interest beginning January 1, 2021 through the Repayment Date as estimated and set forth on Exhibit A, attached hereto.
- c. Launch Costs for the City’s collateral associated with the Credit Agreement shall bear interest beginning on the effective date of the Credit Agreement. Launch Costs for amendment to this Agreement, as set forth in subsection 1.3, through the Repayment Date.

In the event the City Loan Amount, along with any and all interest owed pursuant to this Section 2, are not repaid by the Repayment Date, any such amounts that remain outstanding shall accrue interest at the rate specified by law for prejudgment interest.

3. City Liability; Hold Harmless; Indemnification.

3.1 City Liability. The Authority acknowledges and agrees that by lending said funds to the Authority, the City does not assume any debt, liability, obligation, or duty whatsoever with respect to the Authority’s operations, liabilities, business, or transactions.

3.2. Hold Harmless/Indemnification. The Authority shall hold harmless, indemnify and defend the City, its elected officials, officers, employees, and agents from and against any and all claims, suits or actions of every kind which arise out of the performance or nonperformance of the Authority’s covenants, responsibilities, and obligations under this Agreement, and which result from the negligent or wrongful acts of the Authority or its board members, officers, employees, or agents. City shall hold harmless, indemnify and defend the Authority, its board members, officers, employees and agents from and against any and all claims, suits or actions of any kind which arise out of the performance or non-performance of the City’s covenants, responsibilities and obligations under this Agreement and which result from the negligent or wrongful acts of the City or its elected officials, officers, employees or agents. In the event of concurrent negligence of the City, its officer or employees, and the Authority, its officers and employees, the liability for any and all claims for injuries or damages to persons

and/or property or any other loss or costs which arise out of the terms, conditions, covenants or responsibilities of this Agreement shall be apportioned according to the California theory of comparative negligence.

4. General Provisions.

4.1. Audit. Prior to January 1, 2023, the City may audit the Authority's expenditure of Pre-Launch Costs to confirm that such expenditures have been made consistent with the purposes of this Agreement.

4.2. Waiver. The waiver by City or Authority of any term, covenant, or condition herein contained shall not be deemed to a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained.

4.2. Successors and Assigns/Assignment. The terms of this Agreement shall apply and bind the heirs, successors, executors, administrators and assigns of the Parties. No Party may assign this Agreement without the express written consent of the other Party, which shall not be unreasonably withheld.

4.3. Entirety/Amendment. This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described herein. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties or their respective successors in interest. This Agreement shall not be effective or binding until fully executed by both Parties.

4.4. Venue & Choice of Law. This Agreement shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

4.5. Independent Entities. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, joint employer, or association.

4.6. Authority to Execute Agreement. The Parties each warrant that they have the authority to execute this Agreement and that all actions have occurred, and all necessary approvals or consents have been obtained to allow each party to enter into this Agreement.

4.7. Notices. All notices provided for herein shall be in writing and shall be delivered to the appropriate parties as provided below:

For City: Attn: City Manager
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606

For Authority: TBD

IN WITNESS WHEREOF, Authority and City have executed this Agreement on the date set forth below.

CITY OF IRVINE

Date: 11/20/2020

By: Marianna Marysheva

Title: Interim City Manager

Approved as to Form:

Jeffrey Melching
City Attorney

ORANGE COUNTY POWER AUTHORITY

Date: _____

By: _____

Title: _____

Approved as to Form:

General Counsel

EXHIBIT A
PRE-LAUNCH COSTS INTEREST SCHEDULE

Loan Borrower	Orange County Power Authority	
Loan Amount/Pre-Launch	\$2,500,000	
Loan Start Date	1/1/2021	
Loan Maturity Date	1/1/2027	
Estimated Interest Rate	1.75%	See Note on Interest Rate

	Period Interest	Cumulative Interest
3/31/2021	10,787.67	\$10,787.67
6/30/2021	10,907.53	21,695.21
9/30/2021	11,027.40	32,722.60
12/31/2021	11,027.40	43,750.00
3/31/2022	10,787.67	54,537.67
6/30/2022	10,907.53	65,445.21
9/30/2022	11,027.40	76,472.60
12/31/2022	11,027.40	87,500.00
3/31/2023	10,787.67	98,287.67
6/30/2023	10,907.53	109,195.21
9/30/2023	11,027.40	120,222.60
12/31/2023	11,027.40	131,250.00
3/31/2024	10,877.73	142,127.73
6/30/2024	10,877.73	153,005.46
9/30/2024	10,997.27	164,002.73
12/31/2024	10,997.27	175,000.00
3/31/2025	10,787.67	185,787.67
6/30/2025	10,907.53	196,695.21
9/30/2025	11,027.40	207,722.60
12/31/2025	11,027.40	218,750.00
3/31/2026	10,787.67	229,537.67
6/30/2026	10,907.53	240,445.21
9/30/2026	11,027.40	251,472.60
12/31/2026	11,027.40	\$262,500.00
	Pre-Launch Loan	\$2,500,000.00
	Total Due 1/1/2027	\$2,762,500.00

Note: Interest Rate is based on the average of last six months of interest earned on the City's investment portfolio.