

JOINT POWERS AGREEMENT

This Joint Powers Agreement (“**Agreement**”), effective as of [_____] [___], 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 the City of Irvine, and the City of _____, (individually, “**Founding Party**” and collectively “**Founding Parties**”). This agreement further allows and provides for the inclusion of additional incorporated municipalities, counties, or other public agencies as parties to this agreement after the Effective Date (individually, “**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 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**”).

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 three 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 three 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. Notwithstanding the foregoing, until the Capital Loan is fully repaid, no meeting of the Board shall occur, and no action of the Board shall be taken, without the attendance of both of the Irvine Directors (or their respective alternate Directors).

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 may establish an executive committee consisting of a smaller number of Directors. The initial members of the executive committee shall be the Directors of the Founding Members. The composition of the executive committee shall not change until the Capital Loan (as defined in Section 5.5, below) is fully repaid, unless such change in composition is otherwise consented to by both of the Irvine Directors and the City Council of the City of Irvine.

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. 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 Per Capita Vote. Each Director shall have one vote. 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, except when a supermajority vote or vote of the Irvine Directors is expressly required by this Agreement (“**Per Capita Vote**”).

3.9.2 Voting Shares Vote. Immediately after (and during the same Board Meeting as) an affirmative or tie Per Capita 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 Per Capita Vote. A “yes” vote on the Voting Shares Vote shall be a vote to reverse and reject the Per Capita Vote; a “no” vote on the Voting Shares Vote shall be a vote to affirm the Per Capita 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 votes 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; (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, 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; and

3.9.4.4 Additional Voting Requirement During Period of Capital Loan. In addition to the foregoing special voting requirements, until the Capital Loan (defined in subsection 5.5., below) is repaid, all special voting items under this subsection 3.9.4 shall require an affirmative vote of both of the Irvine Directors.

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 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. 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. Unless infeasible, the Treasurer of the Authority shall be the Treasurer of one of the Parties. 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 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 interested incorporated municipality 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 Additional Party approving the Agreement, and requesting participation and an intent to join the Authority;

4.1.2 Adoption by an affirmative vote of two-thirds of the Board of a resolution authorizing participation of the 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 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 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, operating rules, 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 Treasury of the Party whose Treasurer is 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 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 through the Agreement, 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 operationa. 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, no 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 shall 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 with the Authority 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. 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.

6.4 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. 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 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 this Agreement. 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 or involuntary termination of a Party, 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. 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.

6.6 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.

6.7 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 members board 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.

7.5 Assignment. The rights and duties of the Parties 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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.

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

MEMBER AGENCY:

CITY OF IRVINE

By: _____

Name:

Title:

Dated: _____, 2020

[_____]

By: _____

Name:

Title:

Dated: _____, 2020

EXHIBIT A

List of Parties

City of Irvine
City of _____
County of _____

**EXHIBIT B TO JOINT POWERS AUTHORITY
ANNUAL ENERGY USAGE BY JURISDICTION**

[to be calculated]

EXHIBIT C TO JOINT POWERS AUTHORITY

PARTY VOTING SHARES

[to be calculated]

EXHIBIT D

CAPITAL LOAN AGREEMENT