

BYLAWS FOR ORANGE COUNTY POWER AUTHORITY

PREAMBLE

The Orange County Power Authority (“**Authority**”) was established pursuant to that certain document entitled *Orange County Power Authority Joint Powers Agreement*, dated November 20, 2020, as amended from time to time (“**JPA Agreement**”). All parties that executed the JPA Agreement prior to December 31, 2020 are designated individually as a “**Founding Party**” or collectively as “**Founding Parties**.” All cities, counties or other public agencies added as parties to the JPA Agreement after December 31, 2020 are designated individually as an “**Additional Party**” or collectively as “**Additional Parties**.” The members of the Authority are referred to in these Bylaws individually as a “**Party**,” which includes a Founding Party or Additional Party, or collectively as “**Parties**,” which includes Founding Parties and Additional Parties.

ARTICLE I GENERAL PROVISIONS

Section 1. Authority Purpose.

The Authority is formed to create an independent public agency to exercise powers common to each Member Agency and to implement a community choice aggregation program and exercise all other powers necessary and incidental to accomplishing this purpose. The Authority will provide opportunities by which Member Agencies 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 Member Agencies and their constituents, including, but not limited to, establishing and operating a community choice aggregation program.

Section 2. Purpose of Bylaws.

The JPA Agreement authorizes the Board of Directors to adopt such bylaws, rules and regulations as are necessary or desirable to accomplish the purposes of the JPA Agreement; provided, however, that nothing in such bylaws, rules or regulations shall be inconsistent with the JPA Agreement. By approving these Bylaws, the Board intends to adopt additional procedures concerning the Authority’s basic governance, internal organization, Board committees, and other matters addressed in these Bylaws.

Section 3. Definitions.

Unless specifically defined in these Bylaws, all defined terms shall have the same meaning as ascribed to them in the JPA Agreement.

Section 4. Precedence

In the event of any conflict between these Bylaws and the JPA Agreement, the JPA Agreement shall control and these Bylaws shall be amended or clarified to eliminate such conflict.

ARTICLE II BOARD OF DIRECTORS

Section 1. Board of Directors.

The Authority shall be governed by a Board of Directors composed of one representative of each of the Member Agencies, except the City of Irvine, which shall appoint two representatives subject to Section 3.1 of the JPA Agreement. 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 person appointed and designated as the Director shall be a current elected member of the governing body of the Party. A Director shall serve a term of two (2) years or until a successor is appointed. A Director shall serve at the pleasure of the governing body of the Party that the Director represents and may be removed by such governing body at any time, with or without cause.

Section 2. Alternate Directors

The governing body of each Party shall also appoint and designate in writing an alternate Director(s) who may vote on matters when the regular Director is absent from an Authority meeting. The person appointed and designated as the alternate Director shall be a current elected member of the governing body of the Party. An alternate Director shall serve a term of two (2) years or until a successor is appointed. An alternate Director shall serve at the pleasure of the governing body of the Party that the alternate Director represents and may be removed by such governing body at any time, with or without cause. The alternate Director shall have all the rights and responsibilities of the regular Director when serving in his or her absence. When serving in the absence of the regular Director, an alternate Director may vote on matters in committee, chair committees, and fully participate in discussion and debate during Authority meetings.

Section 3. Vacancy

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 forty-five (45) days of the date that such position becomes vacant. A replacement Director shall serve until the scheduled expiration of the term of office the Director they replace.

Section 4. Resignation

A regular or alternate Director may resign at any time by giving written notice to the Board Secretary. The notice of resignation shall specify a date on which the resignation is effective.

Section 5. Compensation

In accordance with Section 3.8 of the JPA Agreement, 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.

ARTICLE III OFFICERS

Section 1. Officers

There shall be a Chair, a Vice-Chair, a Secretary and a Treasurer/Auditor.

- A. *Chair.* The Chair of the Authority shall be a Director. Duties of the Chair are to supervise the preparation of the business agenda, preside over Authority meetings, and sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board. The Directors shall select among themselves the Chair. Beginning at the first regular Board meeting in December 2022, the term of office of the Chair shall be one year with an election held annually. There shall be no limit on the number of terms held by the Chair. The office of the 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 (ii) the Party that appointed the Director serving as Chair withdraws from the Authority pursuant to the provisions of the JPA Agreement. Upon a vacancy in the office of Chair, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter. The succeeding Chair shall perform the duties normal to said office for the remainder of the term.

- B. *Vice-Chair.* The Vice-Chair of the Authority shall be a Director. The Vice-Chair shall perform the duties of the Chair in the absence of such officer. The Directors shall select among themselves the Vice-Chair. Beginning at the first regular Board meeting in December 2022, the term of office of the Vice-Chair shall be one year with an election held annually. There shall be no limit on the number of terms held by the Vice-Chair. The office of the 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 (ii) the Party that appointed the Director serving as Vice-Chair withdraws from the Authority pursuant to the provisions of the JPA Agreement. Upon a vacancy in the office of Vice Chair, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter. The succeeding Vice Chair shall perform the duties normal to said office for the remainder of the term.

- C. *Secretary.* The Board shall appoint a qualified person who is not on the Board to serve as Secretary. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

- D. *Treasurer and Auditor.* In accordance with Government Code section 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 positions of Treasurer and Auditor may be combined into one position. The Treasurer and the Auditor shall possess the powers of, and shall perform those functions required of them by Government Code sections 6505, 6505.5, and 6505.6, and by all other applicable laws and regulations and amendments thereto. The Treasurer shall have custody of all the money of the Authority. The Treasurer shall report directly to the Board and shall comply with the requirements of

treasurers of incorporated municipalities. The Board may transfer the responsibilities of the Treasurer and Auditor to any person or entity permitted by law.

ARTICLE IV MEETINGS

Section 1. Regular Meetings

The Board shall provide for its regular meetings, the date, hour and place of which shall be fixed by resolution of the Board.

Section 2. Special Meetings, Emergency Meetings, and Adjourned Meetings

Special meetings and emergency meetings may be called upon the request of a majority of the members of the Board or by the Chair, in accordance with the provisions of Government Code sections 54956 and 54956.5, respectively. The Board may adjourn any regular, adjourned regular, special, or adjourned special meeting pursuant to the provisions of the Ralph M. Brown Act (Government Code § 54950, *et seq.*).

Section 3. Open Meetings

The meetings of the Board, any Executive Committee, and any other legislative bodies established by the Board shall be governed by the provisions of the Ralph M. Brown Act (Government Code § 54950, *et seq.*). Directors may participate in meetings telephonically or remotely, with full voting rights, to the extent permitted by law and in accordance with any policies, rules, resolutions, or motions of the Board relating thereto.

Section 4. Attendance of Alternates in Closed Session

Pursuant to Government Code section 54956.96(a)(2), the Board hereby authorizes an alternate Director who is attending a properly noticed Board meeting in the absence of the regular Director to attend a closed session held during such meeting.

Section 5. Preparation of Agendas

The Chief Executive Officer, or designee, shall prepare the agenda for each Board meeting. Agenda items will be generated by the need to conduct Authority business in a timely manner. The Chief Executive Officer shall review with the Board Chair, or the Vice-Chair in the absence of the Chair, the agenda for Board meetings. The Chief Executive Officer shall cause the agenda for each meeting to be posted in accordance with the Ralph M. Brown Act (Government Code § 54950 *et seq.*).

The below steps shall be followed in finalizing the meeting agenda:

- A. The Chief Executive Officer will cause a draft of the meeting agenda to be created, including any timely received Director Initiated Agenda Items (discussed below).
- B. The Chief Executive Officer will submit the draft agenda to the General Counsel for legal review and verification of the necessary materials/documents. Any revisions will be given to the Chief Executive Officer.

- C. The Chief Executive Officer will revise the drafted agenda, if necessary, for the Board Chair's review.
- D. After approval of the Board Chair, the Chief Executive Officer will post agenda as required.

Section 6. Addition of Agenda Items Before a Meeting

Any Director may add a "Director Initiated Agenda Item" for consideration on an upcoming regular meeting agenda. Director Initiated Agenda Items are prepared by the requesting Director and require no staff time. Director Initiated Agenda Items must be submitted to the Chief Executive Officer at least five (5) calendar days prior to the next Board regular meeting. Items submitted less than five (5) calendar days before the scheduled regular meeting date may be postponed to a later meeting in order to allow sufficient time for consideration and research of the issue.

In addition, items may be added to a future Board meeting agenda in the following ways:

- A. The Chair provides express oral direction to the Chief Executive Officer during a Board meeting. If a Director disagrees with the Chair's direction, the Director may make a motion regarding the addition of the agenda item without discussion of the substance of the item.
- B. For agenda items requiring staff time, an agenda item shall be added by motion without discussion of the substance of the item.
- C. Requests from members of the public, after being authorized to speak, may be added to a future Board meeting agenda by a Director as a Director Initiated Agenda Item, as discussed above. If the item requires staff time, the item may be added only by an approved motion without discussion of the substance of the item.

The Chair or a majority of the Board may refer items to a committee for further review.

Section 7. Modification of Agenda Order; Addition of Items During a Meeting

The order of items on a Board meeting agenda may be modified by the Chair if there is no objection, or by a motion and majority vote of the Board. No action or discussion may be undertaken on any item not appearing on the posted agenda, except as allowed by the Ralph M. Brown Act (Government Code § 54950 *et seq.*).

Section 8. Consent Calendar

The consent calendar for a Board meeting shall consist of agenda items that are routine or ministerial in nature on which no Board discussion will be required. These items will be acted upon as one item. Before adopting the consent calendar, the Chair will ask Directors whether anyone desires to remove a matter from the consent calendar. Members of the public may also request that a Director remove a matter from the consent calendar. The Board will then proceed with consideration of the remaining consent calendar. The consent calendar will be acted upon in one motion without discussion. Items pulled from the consent calendar will be considered immediately following adoption of the remaining consent calendar, and oral staff reports will only be given if requested by the Director who pulled them.

Section 9. Public Comments

Agendas of regular Board meetings shall provide an opportunity for members of the public to address the Board on any item within the Authority's jurisdiction that is not on the agenda. Generally, speakers shall be limited to three (3) minutes each. The total time for non-agenda public comments shall not exceed thirty (30) minutes; provided, however, that if the number of speakers is estimated to exceed the 30-minute period, the Chair may, in his or her discretion, reduce the time allotted to each speaker, extend the period for non-agenda public comment, and/or continue the remaining comments to the end of the agenda.

For public comments on agenda items, speakers shall be limited to three (3) minutes each. The Chair may, in his or her discretion, reduce the time allotted to each speaker.

Section 10. Order and Procedure at Meetings

All meetings of the Board shall be conducted in an orderly manner designed to expedite the business of the Board in accordance with applicable law, the JPA Agreement and these Bylaws. Except as otherwise provided therein, Rosenberg's Rules of Order (League of California Cities, Rev. 2011) will be used as a guide to resolve questions of parliamentary procedures. The General Counsel shall serve as the Parliamentarian.

Section 11. Rules of Debate and Decorum

Debate upon all matters pending before the Board shall be under the supervision of the Chair and conducted in such a manner as to expedite the business of the Board. Every Director desiring to speak shall so indicate by using the "request to speak" button, if available, or otherwise address the Chair. Upon recognition by the Chair, the Director shall confine remarks to the item under consideration. A Director, once recognized, shall not be interrupted when speaking unless it is to call the Director to order. If a Director while speaking is called to order, the Director shall cease speaking until the question of order is determined.

ARTICLE V QUORUM & VOTING

Section 1. 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. No actions of the Board may be taken without a quorum of the Directors present.

Section 2. Equal Vote

In general, except when a Voting Shares Vote or Special Voting is expressly required by the JPA Agreement, 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**"). Notwithstanding the foregoing, an Equal Vote may be subject to a "Voting Shares Vote."

Section 3. 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 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 of the JPA Agreement. 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 JPA 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 JPA Agreement more than seventy-five percent (75%) of the voting shares of all Directors voting. 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.

The formula for a Voting Shares Vote shall be determined pursuant to Section 3.9.3 of the JPA Agreement.

Section 4. Special Voting

An affirmative vote of two-thirds of the Directors of the entire Board shall be required to take any action on the following:

- A. Issuing or repayment of bonds or other forms of debt;
- B. Adding or removing Parties on or after January 1, 2021;
- C. Amending or terminating the JPA Agreement or adopting or amending Authority Bylaws;
and
- D. Terminating the CCA program.

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).

Matters requiring Special Voting may be subject to a Voting Shares Vote.

Matters that require Special Voting shall require at least 30 days advance written notice to each Member Agency. 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 the JPA Agreement or the Bylaws. The Authority shall also provide prompt written notice to each Member

Agency 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.

ARTICLE VI
POLICY REGARDING CONFIDENTIAL INFORMATION
DISCLOSED DURING CLOSED SESSIONS

Information obtained during closed sessions of the Board shall be confidential. Notwithstanding, under certain circumstances, it may be necessary and appropriate for Directors to divulge certain confidential information obtained in closed sessions to representatives of their Member Agencies as authorized by law. Therefore, these Bylaws adopt the policy set forth in Government Code section 54956.96, which authorizes the disclosure of confidential closed session information that has direct financial or liability implications for that Member Agency as follows:

- A. A Director or alternate Director who is also a member of the governing body of a Member Agency may disclose information obtained in an Authority closed session that has direct financial or liability implications for that Member Agency to the following individuals:
 - 1. Legal counsel of that Member Agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member Agency; and
 - 2. Other members of the governing body of the Member Agency present in a closed session of that Member Agency.
- B. The governing body of the Member Agency may, upon the advice of its legal counsel, conduct a closed session to receive, discuss and take action concerning information obtained in a closed session of the Authority pursuant to this Article.

ARTICLE VII
BOARD COMMITTEES

Section 1. 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 the JPA Agreement. In accordance with the JPA Agreement, the Board may delegate to any committees that consist solely of Board members any of the powers specified in subsection 2.1 of the JPA Agreement, except for the power to acquire property by eminent domain. Committees that include or consist of non-Board members shall be advisory only. Committees established by the Board shall be either standing committees or temporary ad hoc advisory committees. Each duly established committee may establish any standing or ad hoc committees determined to be appropriate or necessary. The duties and authority of all committees shall be subject to the approval and direction of the Board.

Section 2. Executive Committee

Upon the Authority's membership consisting of nine or more members, the Board shall 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 with the Chair of the Board serving as chair of the Executive Committee.

Section 3. Appointment to Standing Committees

For standing committees, the Chair shall nominate committee members, subject to approval by a majority vote of the Board. If the Board fails to approve the Chair's nomination(s) to a standing committee, the Board may entertain a motion for the appointment of committee members.

The Executive Committee, if established, shall also be a Standing Committee. Other committees composed of Board members with continuing subject matter jurisdiction, or having a meeting schedule fixed by resolution or formal action of the Board, shall also be standing committees of the Board.

Section 4. Committee Voting

Action by a committee on all matters shall require an affirmative vote of a majority of the members of the committee who are present at the meeting. A Voting Shares Vote does not apply to committee voting.

Section 5. Alternate Directors in Standing Committees

In the event a member of a standing committee is a regular Director who is unavailable to attend a duly noticed meeting of that committee, the alternate Director representing the same Member Agency as the absent Director may attend and, if applicable, vote in the committee meeting in place of the regular Director. The alternate Director may also chair the committee and fully participate in discussion and debate during meetings. Notwithstanding the foregoing, this section shall not apply to the Executive Committee.

Section 6. Removal of Committee Members

The Board may remove a committee member from a committee, with or without cause, by a majority vote of the Board.

Section 7. Ad Hoc Committees

The Board may establish temporary ad hoc advisory committees that: (a) are composed of less than a quorum of the Board, (b) have no continuing subject matter jurisdiction, and (c) have no meeting schedule fixed by resolution or formal action of the Board. The Chair shall appoint the members of such ad hoc committees.

ARTICLE VIII
CHIEF EXECUTIVE OFFICER

Section 1. Duties.

The Chief Executive Officer shall be the chief administrative officer of the Authority responsible for the day-to-day operation and management of the Authority. 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.

Section 2. Contracts.

The Chief Executive Officer is authorized to contract and execute on behalf of the Authority all contracts in accordance with Authority procurement and risk management policies and other delegations of authority by the Board.

ARTICLE IX
DEBTS, LIABILITIES AND OBLIGATIONS

As provided in Section 5.7 of the JPA Agreement, and subject to the provisions of Section 6.3 of the JPA Agreement, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the individual Member Agencies unless the governing board of a Member Agency agrees in writing to assume any of the debts, liabilities, or obligations of the Authority.

ARTICLE X
AMENDMENTS

Section 1. General Requirements

In accordance with Sections 3.9.4.1 and 3.9.4.3 of the JPA Agreement, the Board may adopt amendments to the JPA Agreement and these Bylaws by a two-thirds vote following 30 days' advance written notice to the Member Agencies. This Article provides further procedures concerning the Authority's consideration and approval of amendments to the JPA Agreement and these Bylaws.

Section 2. Initial Consideration; Notice to Member Agencies

The Board shall consider proposed amendments to the JPA Agreement or these Bylaws at an open and public meeting of the Board. Following such consideration, the Board may, by majority vote, direct the Chief Executive Officer to provide written notice of the proposed amendment(s) to the Member Agencies in any manner permitted under the JPA Agreement.

Section 3. Adoption of Amendments

At a Board meeting held at least 30 days after such notices have been provided, the Board may consider adoption of the proposed amendment(s) to the JPA Agreement or these Bylaws, which shall require a two-thirds vote of the Board. The Authority shall provide prompt written notice to all Member Agencies of the action taken and enclose the adopted or modified document(s).