

# **Orange County Power Authority**

## **COMMUNITY CHOICE AGGREGATION IMPLEMENTATION PLAN AND STATEMENT OF INTENT – AMENDMENT No. 1**

**To address the addition of Orange County’s unincorporated  
area customers and departure of the City of Lake Forest**

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## Chapter 1 – Introduction

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Orange County Power Authority (OCPA) is a joint powers authority located within Orange County, formed on November 20, 2020 pursuant to the Joint Exercise of Powers Act (California Government Code § 6500 *et seq.*) for the purpose of implementing a community choice aggregation program (“CCA” or “Program”) under California Public Utilities Code §366.2. OCPA’s original Implementation Plan and Statement of Intent (“Implementation Plan”), filed on December 28, 2020, included the municipalities of:

- City of Buena Park
- City of Fullerton
- City of Huntington Beach
- City of Irvine
- City of Lake Forest

The CPUC certified the Implementation Plan on March 8, 2021. Subsequent to the filing of OCPA’s Implementation Plan, the City of Lake Forest withdrew from OCPA. The California Public Utilities Commission (CPUC) was notified of the City of Lake Forest’s withdrawal under cover of OCPA’s letter to CPUC Regulatory Analyst Dina Mackin, Energy Division, dated May 7, 2021.

Customers within the four municipalities will begin taking service in 2022. Subsequently, the County of Orange joined OCPA on December 7, 2021. Thus, the purpose of this Implementation Plan and Statement of Intent – Amendment No. 1 (“Amendment No. 1”) is to provide the CPUC with an update of the required operational, financial and governance elements of OCPA after the departure of Lake Forest and the addition of the County of Orange plus the remaining municipalities of Buena Park, Fullerton, Huntington Beach and Irvine (collectively, the “Members”).

The Program will provide retail electricity customers the opportunity to join together to procure electricity from competitive suppliers, with such electricity being delivered over Southern California Edison’s (“SCE”) and San Diego Gas & Electric’s (“SDG&E”) transmission and distribution system. The planned start date for the Program is April 1, 2022 for the four cities noted above to begin service in SCE territory. The County’s unincorporated area load is assumed to launch sometime after January 1, 2023 and will encompass both SCE and SDG&E territories. All current SCE and SDG&E customers within OCPA’s service area will receive information describing the Program and will have multiple opportunities to choose to remain full requirement (“bundled”) customers of SCE or SDG&E, as applicable, in which case they will not be enrolled. Thus, participation in the Program is completely voluntary; however, customers, as provided by law, will be automatically enrolled according to the anticipated phase-in schedule (later described in Chapter 5) unless they affirmatively elect to opt-out.

Implementation of the Program will enable customers within OCPA’s service area to take advantage of the opportunities granted by Assembly Bill 117 (“AB 117”), the Community Choice

Aggregation Law. OCPA’s primary objectives in implementing this Program are to provide cost competitive electric service, promote economic development, reduce electric sector greenhouse gas emissions (“GHG”) within the OCPA service territory, stimulate renewable energy development, implement distributed energy resources, promote energy efficiency and demand reduction programs, and sustain long-term rate stability for residents and businesses through local control. The prospective benefits to consumers include stable and competitive electric rates, increased renewable and other low GHG emitting energy supplies, and the opportunity for public participation in OCPA’s operations.

To ensure successful operation of the Program, OCPA will continue to solicit energy suppliers and marketers through a competitive process that began in the summer of 2021. Information regarding future solicitations is contained in Chapter 10.

California Public Utilities Code § 366.2 provides the relevant legal authority for OCPA to become a CCA and invests the CPUC with the responsibility for establishing the cost recovery mechanism that must be in place before customers can begin receiving electrical service through the Program. The CPUC has registered OCPA as a CCA and ensures compliance with basic consumer protection rules. The Public Utilities Code requires that an Implementation Plan be adopted at a duly noticed public hearing and that it be filed with the CPUC. OCPA will comply with all these directives.

On December 21, 2021, at a duly noticed public hearing, the OCPA Board considered and adopted this Amendment No. 1, through Resolution 2021-10. The CPUC has established the methodology that will be used to determine the cost recovery mechanism, and the incumbent utilities have approved tariffs for the cost recovery mechanism. Finally, the County of Orange has adopted an Ordinance to implement a CCA program through its participation in OCPA and has adopted a resolution adopting OCPA’s joint powers agreement. With each of these milestones accomplished, OCPA submits this Amendment No. 1 to the CPUC.

### **Organization of this Implementation Plan**

The content of this Amendment No. 1 complies with the statutory requirements of AB 117. As required by Public Utilities Code § 366.2(c)(3), Amendment No. 1 details the process and consequences of aggregation and provides OCPA’s statement of intent for implementing the Program that includes the following:

- Universal access;
- Reliability;
- Equitable treatment of all customer classes; and
- Any requirements established by State law or by the CPUC concerning aggregated service.

The remainder of this Amendment No. 1 is organized as follows:

- Chapter 2: Aggregation Process
- Chapter 3: Organizational Structure
- Chapter 4: Start-Up Plan & Funding
- Chapter 5: Program Phase-In
- Chapter 6: Load Forecast & Resource Plan
- Chapter 7: Financial Plan
- Chapter 8: Rate setting
- Chapter 9: Customer Rights and Responsibilities
- Chapter 10: Procurement Process
- Chapter 11: Contingency Plan for Program Termination
- Appendix: OCPA Joint Powers Agreement

The requirements of AB 117 are cross-referenced to Chapters of Amendment No. 1 in the following table.

**Table 1**  
**AB 117 Cross References**

AB 117 REQUIREMENT	IMPLEMENTATION PLAN CHAPTER
Statement of Intent	Chapter 1: Introduction
Process and consequences of aggregation	Chapter 2: Aggregation Process
Organizational structure of the program, its operations and funding	Chapter 3: Organizational Structure Chapter 4: Start-Up Plan & Funding Chapter 7: Financial Plan
Disclosure and due process in setting rates and allocating costs among participants	Chapter 8: Rate Setting
Rate setting and other costs to participants	Chapter 8: Rate Setting Chapter 9: Customer Rights and Responsibilities
Participant rights and responsibilities	Chapter 9: Customer Rights and Responsibilities
Methods for entering and terminating agreements with other entities	Chapter 10: Procurement Process
Description of third parties that will be supplying electricity under the program, including information about financial, technical and operational capabilities	Chapter 10: Procurement Process
Termination of the program	Chapter 11: Contingency Plan for Program Termination

## Chapter 2 - Aggregation Process

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### Introduction

This Chapter describes the background leading to the development of this Amendment No. 1, and describes the process and consequences of aggregation, consistent with the requirements of AB 117.

Beginning in 2018, the City of Irvine began investigating formation of a CCA, pursuant to California state law, with the following objectives: 1) provide cost-competitive electric services; 2) promote local economic development; 3) reduce GHG emissions related to the use of electric power within the County; and 4) increase the use of renewable energy resources relative to the incumbent utility (SCE). A technical feasibility study for a CCA Program serving the City of Irvine was completed in January 2020.

After nearly 11 months of collaborative work by representatives of the Members plus independent consultants, local experts and stakeholders, OCPA was formed on November 20, 2020 for purposes of implementing the Program. Subsequently, OCPA Board of Directors (Board) approved this Amendment No. 1 through a duly noted public hearing, complying with the standards stated in California Public Utilities Code § 366.2. In 2021, the CPUC certified the original OCPA Implementation Plan and OCPA completed its registration process to begin serving loads in 2022. The County of Orange joined OCPA on November 23, 2021 and adopted its ordinance on December 7, 2021, with an anticipated launch date after January 1, 2023. Businesses and residents within the unincorporated County of Orange are currently served by either SCE or SDG&E. OCPA is continuing discussions with additional jurisdictions regarding membership in the JPA. This Amendment No. 1 will be updated if and when additional members join OCPA.

The Program represents a culmination of planning efforts that are responsive to the expressed needs and priorities of the citizenry and business community within the OCPA Members. OCPA plans to offer choices to eligible customers through the creation of innovative programs for voluntary purchases of renewable energy, net energy metering to promote customer-owned renewable generation, energy efficiency, demand responsiveness to promote reductions in peak demand, distributed energy generation, customized pricing options for larger energy users, and support of local renewable energy projects through offering of a standardized power purchasing agreement or Feed-In Tariff. The analysis contained in this Amendment No. 1 does not include non-residential Direct Access customers as it is assumed that customers taking Direct Access service from a competitive electricity provider will continue to remain with their current provider.

### Process of Aggregation

Before they are enrolled in the Program, prospective OCPA customers will receive two written notices in the mail from OCPA that will provide information needed to understand the Program's terms and conditions of service, and explain how customers can opt-out of the Program, if desired. All customers that do not follow the opt-out process specified in the customer notices

will be automatically enrolled, and service will begin at their next regularly scheduled meter read date no later than thirty days following the date of automatic enrollment, subject to the service phase-in plan described in Chapter 5. Non-residential Direct Access and Standby customers will not be automatically enrolled. The initial enrollment notices will be provided to the first phase of customers in February 2022. Initial enrollment notices will be provided to subsequent customer phases consistent with statutory requirements and based on schedule(s) determined by OCPA. These notices will be sent to customers in subsequent phases twice within 60 days of automatic enrollment.

Customers enrolled in the Program will continue to have their electric meters read and to be billed for electric service by the both distribution utilities (SCE or SDG&E). The electric bill for Program customers will show separate charges for generation procured by OCPA as well as other charges related to electricity delivery and other utility charges assessed by SCE and SDG&E.

After service initiation, customers will have approximately 60 days (two billing cycles) to opt-out of the OCPA Program without penalty and return to the incumbent utility. OCPA customers will be advised of these opportunities via the distribution of two additional enrollment notices provided within the first two months of OCPA service. Customers that opt-out between the initial cutover date and the close of the post enrollment opt-out period will be responsible for Program charges for the time they were served by OCPA but will not otherwise be subject to any penalty for leaving the program. Customers that have not opted-out within thirty days of the fourth enrollment notice will be deemed to have elected to become a participant in the Program and to have agreed to the Program’s terms and conditions, including those pertaining to requests for termination of service, as further described in Chapter 9.

## **Consequences of Aggregation**

### **Rate Impacts**

OCPA customers will pay the generation charges incurred and set by OCPA and no longer pay the costs of SCE or SDG&E generation. Customers enrolled in the Program will be subject to the Program’s terms and conditions, including responsibility for payment of all Program charges as described in Chapter 9.

OCPA’s rate setting policies described in Chapter 8 establish a goal of providing rates that are competitive with the projected generation rates offered by the incumbent utility. OCPA will establish rates sufficient to recover all costs related to operation of the Program, and actual rates will be adopted and approved by the Board after public hearings and input.

Initial Program rates will be established following approval of OCPA’s annual budget, reflecting final costs from the OCPA Program’s energy supplier(s). OCPA’s rate policies and procedures are detailed in Chapter 8. Information regarding final Program rates will be disclosed along with other terms and conditions of service in the pre-enrollment and post-enrollment notices sent to potential customers.



Once OCPA gives definitive notice to SCE and SDG&E that it will commence service to County unincorporated area, OCPA customers will generally not be responsible for costs associated with the incumbent utilities’ future electricity procurement contracts or power plant investments. Certain pre-existing generation costs and new generation costs that are deemed to provide system-wide benefits will continue to be charged by the incumbent utilities to Program customers through separate rate components, such as the Cost Responsibility Surcharge and the New System Generation Charge. These charges are shown in the incumbent utilities’ electric service tariffs, which can be accessed from their websites, and the costs are included in charges paid by both SCE and SDG&E bundled customers as well as CCA and Direct Access customers.<sup>1</sup>

### **Local Economic Development Impacts**

The indirect effects of creating the Program include the effects of increased commerce, and disposable income. The technical feasibility study completed for OCPA included an input-output (“IO”) analysis that analyzed indirect effects of implementing a CCA. The IO model turns on the assumption that forming a CCA will lead to lower energy rates for customers. Three types of impacts are analyzed in the IO model. These are described below.

*Local Investment* – OCPA may choose to implement programs to incentivize investments in local distributed energy resources (“DER”). Participants in OCPA may pursue local clean DER. These resources can be behind the meter or community projects where several customers participate in a centrally located project (e.g., “community solar”). This demand for local renewable resources will lead to an increase in the manufacturing and installation of DER, and lead to an increase in employment in the related manufacturing and construction sectors.

*Increased Disposable Income* – OCPA retail rates may be lower than SCE and SDG&E rates creating more disposable income for individuals and greater revenues for businesses. These cost savings could then lead to more investment by individuals and businesses for personal or business purposes. This increase in spending could result in increased employment for multiple sectors such as retail, construction, and manufacturing.

*Environmental and Health Impacts* – With the creation of a CCA, such as OCPA, other non-commerce indirect effects will occur. These may be environmental, such as improved air quality or improved human health due to the CCA potentially utilizing more renewable energy sources versus continuing use of traditional energy sources which may have a greater GHG footprint.

### **Renewable Energy Impacts**

A second consequence of the Program will be a likely increase in the proportion of energy generated and supplied by renewable resources. The OCPA Resource Plan (“Plan”) includes procurement of renewable energy sufficient to meet California’s prevailing renewable energy procurement mandate for all enrolled customers. Program customers will also have the opportunity to participate in a 100 percent renewable supply option and a middle tier 70 percent option. To the extent that customers choose a 100 or 70 percent renewable energy option, the

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<sup>1</sup> For investor-owned utility (IOU) bundled service customers, the Power Charge Indifference Adjustment element of the Cost Responsibility Surcharge is contained within the tariffed Generation rate. Other elements of the Cost Responsibility Surcharge are set forth in the IOU’s tariffs as separate rates/charges paid by all customers (with limited exceptions).

renewable content of OCPA’s aggregate supply portfolio will further increase. Initially, requisite renewable energy supply will be sourced through one or more power purchase agreements. Over time, however, OCPA will likely consider independent development of new local renewable generation resources. OCPA seeks to establish a resource portfolio that encourages the use and development of cost-effective local renewable and distributed energy resources.

### **Energy Efficiency Impacts**

A third consequence of the Program will be an anticipated increase in energy efficiency program investments and activities. The existing energy efficiency programs administered by the incumbent utility are not expected to change as a result of OCPA Program implementation. OCPA customers will continue to pay the public benefits surcharges to SCE and SDG&E, as applicable, which will fund energy efficiency programs for all customers, regardless of generation supplier.

The energy efficiency investments ultimately planned for the Program, as described in Chapter 6, will follow OCPA’s successful application for and administration of requisite program funding (from the CPUC) to independently administer energy efficiency programs within its service territory. Such programs will be in addition to the level of investment that would continue in the absence of OCPA-administered energy efficiency programs. Thus, the Program has the potential for increased energy savings and a further reduction in emissions due to expanded energy efficiency programs.

## **Chapter 3 – Organizational Structure**

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This Chapter provides an overview of the organizational structure of OCPA and its proposed implementation of the Program. Specifically, the key agreements, governance, management, and organizational functions of OCPA are outlined and discussed below.

### **Organizational Overview**

On November 20, 2020, OCPA formed establishing a Board of Directors of elected officials appointed by the Members. The Board is responsible for establishing Program policies and objectives and overseeing OCPA’s operation. On January 12, 2021, the Board appointed a Chief Executive Officer (“CEO”) to manage the operation of OCPA in accordance with policies adopted by the Board. The CEO appoints staff and contractors to manage OCPA’s activities. These activities include support services (administration, finance and IT), marketing and public affairs (community outreach, key account management and customer advocacy), supply acquisition (energy trading, contract negotiation and system development), and legal and government affairs.

### **Governance**

The Program is governed by the Board, which includes two appointed designees from the City of Irvine (initially) and one appointed designee for each of the other Members. OCPA is a joint powers authority created on November 20, 2020 and formed under California law. The Members of OCPA include municipalities of Buena Park, Fullerton, Huntington Beach and Irvine, all located within Orange County and all of which have elected to allow OCPA to provide electric generation service within their respective jurisdictions. The County of Orange also recently joined OCPA.

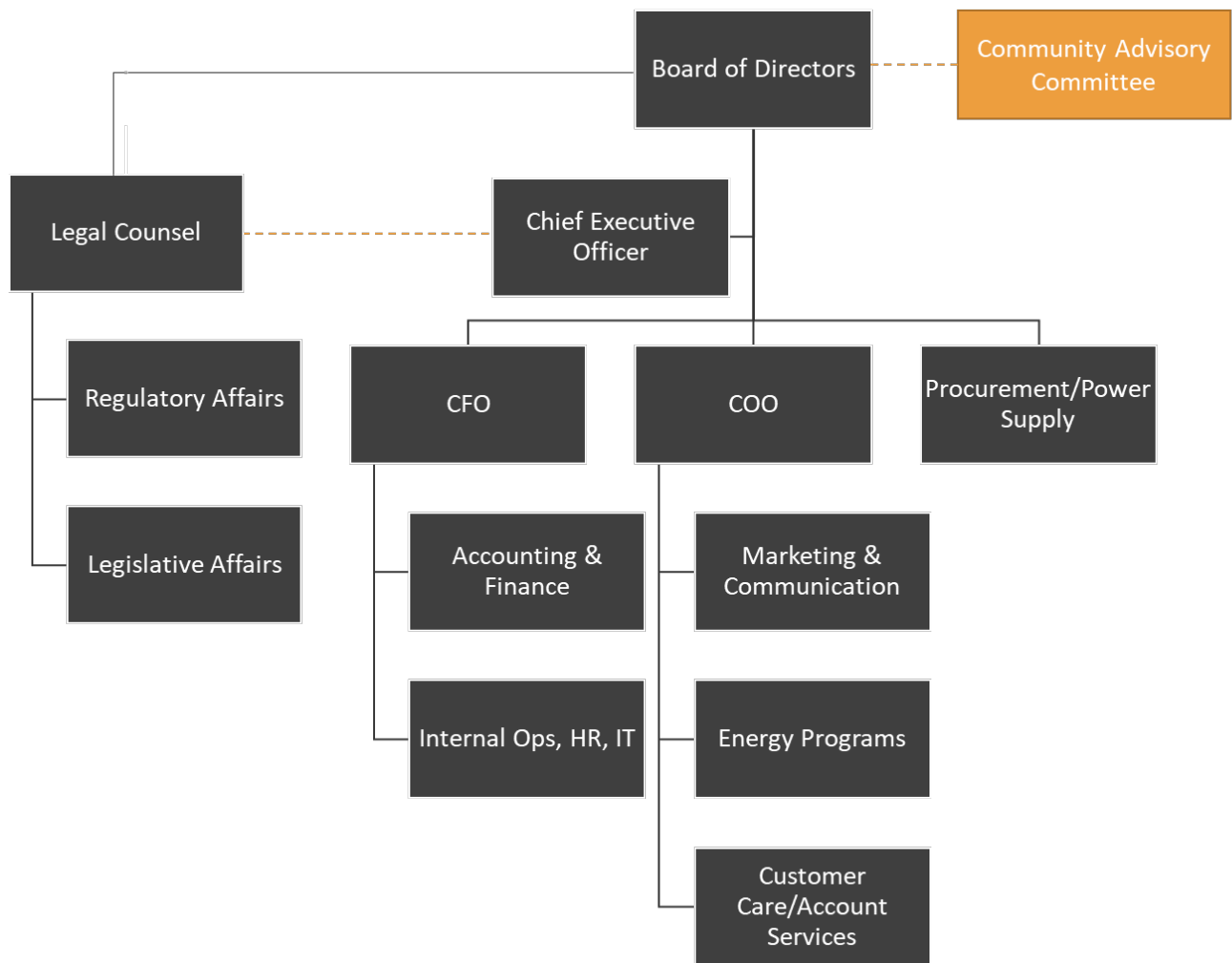
The Board’s primary duties are to establish program policies, approve rates and provide policy direction to the CEO, who has general responsibility for program operations, consistent with the policies established by the Board. The Board has elected a Chair and Vice Chair and has established a Community Advisory Committee. The Board may also establish an Executive Committee, Finance Committee or other committees, as needed, to address issues that require greater expertise in particular areas. OCPA may also form various standing and ad hoc committees, as appropriate, which would have responsibility for evaluating various issues that may affect OCPA and its customers, and would provide analytical support and recommendations to the Board in these regards.

### **Management**

The Board has appointed a CEO, who has management responsibilities over functional areas of Administration & Finance, Marketing & Public Affairs, Power Resources & Energy Programs, and Government Affairs as well as OCPA’s General Counsel. In performing the obligations to

OCPA, the CEO may utilize a combination of internal staff and/or contractors. Certain specialized functions needed for Program operations, namely the electric supply and customer account management functions described below, may be performed initially by third-party contractors. The organization chart below illustrates the management structure of OCPA.

**Table 2  
Organization Chart for OCPA**



Major functions of OCPA that will be managed by the CEO are summarized below.

**Administration**

OCPA’s CEO is responsible for managing the organization’s human resources and administrative functions and will coordinate with the Board, as necessary, with regard to these functions. The functional area of administration will include oversight of employee hiring and termination, compensation and benefits management, identification and procurement of requisite office space and various other administrative issues.

## **Finance**

The CEO is also responsible for managing the financial affairs of OCPA, including the development of an annual budget, revenue requirement and rates, managing and maintaining cash flow requirements, arranging potential bridge loans as necessary, and other financial tools.

Revenues via rates and other funding sources (such as a rate stabilization fund, when necessary) must, at a minimum, meet the annual budgetary revenue requirement, including recovery of all expenses and any reserves or coverage requirements set forth in loan covenants or other agreements. OCPA will have the flexibility to consider rate adjustments within certain ranges, administer a standardized set of electric rates, and may offer optional rates to encourage policy goals such as economic development or low-income support programs, provided that the overall revenue requirement is achieved.

OCPA may also offer customized pricing options such as dynamic pricing or contract-based pricing for energy intensive customers to help these customers gain greater control over their energy costs. This would provide such customers – mostly larger energy users within the commercial sector – with greater rate-related flexibility than what is currently available.

OCPA's finance function will be responsible for arranging financing necessary for any capital projects, preparing financial reports, and ensuring sufficient cash flow for successful operation of the Program. The finance function will play an important role in risk management by monitoring the credit of energy suppliers so that credit risk is properly understood and mitigated. In the event that changes in a supplier's financial condition and/or credit rating are identified, OCPA will be able to take appropriate action, as would be provided for in the electric supply agreement(s).

## **Marketing & Public Affairs**

The marketing and public affairs functions include general Program marketing and communications as well as direct customer interface ranging from management of key account relationships to call center and billing operations. OCPA will conduct Program marketing to raise consumer awareness of the Program and to establish the OCPA "brand" in the minds of the public, with the goal of retaining and attracting as many customers as possible into the Program. Outgoing communications will also promote the Programs. Additionally, OCPA will communicate with key policy makers at the state and local level, community business and opinion leaders, and the media.

In addition to general Program communications and marketing, a significant focus on customer service, particularly representation for key accounts, will enhance the Program's ability to differentiate itself as a highly customer-focused organization that is responsive to the needs

of the community. OCPA will also establish a customer call center designed to field customer inquiries and routine interaction regarding customer accounts.

The customer service function also encompasses management of customer data. Customer data management services include retail settlements/billing-related activities and management of a customer database. This function processes customer service requests, and administers customer enrollments and departures from the Program and maintaining a current database of enrolled customers. This function coordinates the issuance of monthly bills through the incumbent utility billing process and tracks customer payments. Activities include the electronic exchange of usage, billing, and payments data between SCE/SDG&E and OCPA, tracking of customer payments and accounts receivable, issuance of late payment and/or service termination notices (which would return affected customers to bundled service), and administration of customer deposits in accordance with credit policies of the Program.

The customer data management services function also manages billing-related communications with customers, customer call centers, and routine customer notices. The Program has initially contracted with a third-party that has demonstrated the necessary experience and administers an appropriate customer information system to perform the customer account and billing services functions.

### **Power Resources & Energy Programs**

The Program must plan for meeting the electricity needs of its customers utilizing resources consistent with its policy goals and objectives as well as applicable legislative or regulatory mandates. The Program’s long-term resource plans (addressing the 10 to 20-year planning horizon) will comply with California law and other pertinent requirements of California regulatory bodies. OCPA may develop and administer complementary energy programs that may be offered to Program customers, including green pricing, energy efficiency, net energy metering, feed-in-tariff or local resource portfolios, and various other programs that may be identified to support the overarching goals and objectives of OCPA.

The Program will develop Integrated Resource Plans (“IRP”) that meet program supply objectives and balances cost, risk and environmental considerations. IRPs are planning documents used by electric utilities to produce least cost resource planning by looking at both supply-side (solar, market) and demand-side (energy efficiency) resources. Such IRP’s will also conform to applicable requirements imposed by the State of California. IRP efforts by OCPA will make maximum use of demand side energy efficiency, distributed generation and demand response programs as well as traditional supply options which rely on structured wholesale transactions to meet customer energy requirements. The Program’s IRP will be updated and adopted by the Board on an annual basis.

### **Electric Supply Operations**

Electric supply operations encompass the activities necessary for wholesale procurement of electricity to serve the Program’s customers. These highly specialized activities include the following:

- *Electricity Procurement* – assemble a portfolio of electricity resources to supply the electric needs of Program customers.
- *Risk Management* – application of standard industry techniques to reduce exposure to the volatility of energy and credit markets, and insulate customer rates from sudden changes in wholesale market prices.
- *Load Forecasting* – develop load forecasts, both long-term for resource planning and short-term for the electricity purchases and sales needed to maintain a balance between hourly resources and loads.
- *Scheduling Coordination* – scheduling and settling electric supply transactions with the California Independent System Operator (“CAISO”).

OCPA has contracted with experienced and financially sound third-party energy services providers to perform all electric supply operations for the Program. These requirements include the procurement of energy, capacity and ancillary services, scheduling coordinator services, short-term load forecasting and day-ahead and real-time electricity trading.

### **Local Energy Programs**

A key focus of the Program will be the development and implementation of local energy programs, including energy efficiency programs, distributed generation programs (*i.e.*, behind the meter solar or community projects), and other energy programs responsive to community interests. These programs are likely to be phased in during the first several years of Program operations. The implementation of such programs will follow the attainment of requisite funding sources.

OCPA will administer energy efficiency, demand response and distributed generation programs that can be used as cost-effective alternatives to procurement of supply-resources. OCPA will attempt to consolidate existing demand-side programs into the Program and leverage the structure to expand energy efficiency offerings to customers throughout its service territory, including the CPUC application process for third party administration of energy efficiency programs and use of funds collected through the existing public benefits surcharges paid by OCPA customers. In 2021, OCPA began the process to obtain CPUC funds for energy efficiency programs.

### **Governmental Affairs & General Counsel**

The Program will require ongoing regulatory and legislative representation to manage various regulatory compliance filings related to resource plans, resource adequacy, compliance with

California’s Renewables Portfolio Standard (“RPS”), and overall representation on issues that will impact OCPA, its Members, and customers. OCPA will maintain an active role at the CPUC, the California Energy Commission, CAISO, the California Legislature and, as necessary, the Federal Energy Regulatory Commission.

In coordination with the CEO and Board, OCPA has retained outside legal assistance in the areas of general counsel and regulatory advice/engagement to support the Program’s administrative operations and governance, review contracts, monitor regulatory proceedings and provide overall legal support related to the various activities within the Program.



## Chapter 4 – Start-Up Plan & Funding

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This Chapter presents OCPA’s plans for the start-up period, including necessary expenses and capital outlays. The start-up period is defined as the period where OCPA requires financing for Program implementation. The start-up period is split into pre-launch and post-launch expenses. The pre-launch period began January 1, 2021 and ends on March 31, 2022 when OCPA plans to begin service to customers. Pre-launch expenses include overhead and notification for program implementation. Post launch financing includes working capital and annual debt repayment. As described in the previous Chapter, OCPA may utilize a mix of staff and contractors in its Program implementation.

### Start-Up Activities

OCPA has completed or is in process to complete most of the start-up activities needed to begin operation. The initial Program start-up activities include the following:

- Hire staff and/or contractors to manage implementation (partially complete)
- Identify qualified suppliers (of requisite energy products and related services) and negotiate supplier contracts (partially complete)
  - Electric supplier and scheduling coordinator
  - Data management provider (if separate from energy supply)
  - Define and execute communications plan
  - Customer research/information gathering
- Media campaign (ongoing)
  - Key customer/stakeholder outreach
  - Informational materials and customer notices
- Customer call center (ongoing)
- Post CCA bond and complete requisite registration requirements (complete)
- Pay utility service initiation, notification and switching fees (ongoing)
- Perform customer notification, opt-out and transfers (ongoing)
- Conduct load forecasting (complete and ongoing)
- Establish rates (in process)
- Legal and regulatory support (ongoing)
- Financial management and reporting (ongoing)

Other costs related to starting up the Program will be the responsibility of the Program’s contractors (and are assumed to be covered later by any fees/charges imposed by such contractors). These may include capital requirements needed for collateral/credit support for electric supply expenses, customer information system costs, electronic data exchange system costs, call center costs, and billing administration/settlements systems costs.

### **Staffing and Contract Services**

Personnel in the form of OCPA staff or contractors will be added incrementally to match workloads involved in implementing the Program, managing contracts, and initiating customer outreach/marketing. During the start-up period, personnel requirements would include the CEO, a General Counsel, Chief Financial Officer (“CFO”) and other personnel needed to support regulatory, procurement, finance, and communications activities.

For budgetary purposes, it is assumed that 5-10 full-time equivalents (staff or contracted professional services) will be supporting the above listed activities and would be engaged during the initial start-up period. OCPA has already hired two of these full-time positions. Additional staff and/or contractors may be retained, as needed, to support the roll-out of additional value-added services (*e.g.*, efficiency projects) and local generation projects and programs.

### **Capital Requirements**

The start-up of the Program will require capital for three major functions: (1) staffing and contractor costs; (2) deposits and reserves; and (3) working capital. Based on the Program’s anticipated start-up activities and phase-in schedule, a total need of \$42.75 million has been identified to support the aforementioned functions. The finance plan in Chapter 7 provides some additional detail regarding OCPA’s expected capital requirements and general Program finances.

Related to OCPA’s initial capital requirement, this amount is expected to cover staffing and contractor costs during start-up and pre-start-up activities, including direct costs related to public relations support, technical support, and customer communications. Requisite deposits and operating reserves are reflected in the initial capital requirement, including the following items: 1) operating reserves to address anticipated cash flow variations (as well as operating reserve deposits that will likely be required by OCPA’s power supplier(s)); 2) requisite deposit with the CAISO prior to commencing market operations; and 3) SCE/SDG&E financial security requirements.

Operating revenues from sales of electricity will be remitted to OCPA approximately sixty days after the initial customer launch. This lag is due to SCE’s/SDG&E’s standard meter reading cycle of 30 days and a 30-day payment/collections cycle. OCPA will need working capital to support electricity procurement and costs related to program management. This is included in OCPA’s initial capital requirements.

### **Financing Plan**

OCPA’s initial capital requirement has been provided via a combination of cash contributions from the City of Irvine and loans from a conventional financial institution. These loans will be repaid by OCPA no later than 2027. The Program will recover the principal and interest costs associated with the start-up funding via retail generation rates charged to Program customers.

## Chapter 5 – Program Phase-In

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OCPA will roll out its service offering to customers over the course of the following phases:

Phase 1 – Four Cities All Non-Residential Accounts (April 1, 2022)

Phase 2 – Four Cities Residential Accounts (October 1, 2022)

Phase 3 – County of Orange All Accounts (Sometime after January 1, 2023)

This approach provides the Program with the ability to initiate its activities with sufficient economic scale before building to full Program integration for an expected customer base of approximately 350,000 accounts. OCPA will offer service to all customers on a phased basis, which is expected to be completed within 18 months of initial service to Phase 1 customers.

The Program will begin on April 1, 2022. At start-up, OCPA anticipates serving approximately 33,000 larger commercial and industrial customers, comprised of all non-residential accounts within the four Cities. Net energy metering accounts will be phased into OCPA at the time of their annual true-up.

### **Additional Members Roll-Out**

Additional cities can join OCPA at any time they decide to join. This leaves room for OCPA to expand its territory. An updated Implementation Plan will be submitted to the CPUC, if any new members join the Program, however, load will not be served until the year following the filing, in accordance with the Resource Adequacy Proceeding and Resolution E-4907.

### **New Residential and Non-Residential Customers**

For any new customers moving into the OCPA service territory after it has begun servicing load, OCPA intends to provide service to all customer classes (*i.e.*, residential, commercial, and NEM customers) within one billing cycle. However, if a customer moves into the OCPA region prior to April 1 or October 1 launch, the Program will begin to service the load-based upon the timelines stated above.

## Chapter 6 – Load Forecast & Resource Plan

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### Introduction

This Chapter describes the planned mix of electric resources that will meet the energy demands of Program customers using a diversified portfolio of electricity supplies. Several overarching policies govern the Resource Plan (“Plan”) and the ensuing resource procurement activities that will be conducted in accordance with the Plan. These key polices are as follows:

- The Program will manage a diverse resource portfolio to increase control over energy costs and maintain competitive and stable electric rates.
- The Program will seek to increase use of renewable energy resources and distributed energy resources in order to reduce reliance on fossil-fueled electric generation for purposes of reducing electric sector GHG emissions.
- The Program will apply for the administration of energy efficiency program funding to help customers reduce energy costs through enhanced customer energy efficiency, distributed generation, and other demand reducing programs.
- The Program will benefit the area’s economy through lower electric bills and investment in local infrastructure, energy projects and energy programs.

The Program’s initial resource mix will include a proportion of renewable energy meeting California’s prevailing RPS procurement mandate. As the Program moves forward, incremental renewable supply additions will be made based on resource availability as well as economic goals of the Program to achieve increased renewable energy content over time.

OCPA’s commitment to renewable generation adoption may involve both direct investment in new renewable generating resources, partnerships with other public power developers/operators and purchases of renewable energy from third party suppliers.

The Plan described in this Chapter would accomplish the following:

- Procure energy through one or more contracts with experienced, financially stable energy suppliers sufficient to offer three distinct resource portfolio rate tariffs: 1) 100 percent renewable energy; 2) 70 percent renewable energy; and 3) renewable energy equal to the RPS requirement.
- Choose the default option into which customers will be enrolled when service begins. After enrollment, customers will be allowed to participate in any of the three available resource portfolio options.
- Continue increasing renewable energy supplies over time to meet or exceed RPS mandates, subject to resource availability and economic viability.
- Actively pursue energy efficiency projects and programs using Program revenues, and/or other third-party funding in collaboration with the other efficiency program administrators in the region. Additionally, if OCPA is successful in applying for administration of public funding to support locally administered efficiency programs, it will even more robustly work to reduce net electricity purchases within the region.

- Encourage distributed renewable generation in the local area through the offering of a net energy metering tariff, a possible standardized power purchase agreement or “Feed-In Tariff,” and other creative, customer-focused programs targeting increased access to local renewable energy sources.

The Program will comply with regulatory rules applicable to California load serving entities. The Program will arrange for the scheduling of sufficient electric supplies to meet the demands of its customers. The Program will adhere to capacity reserve requirements established by the CPUC and the CAISO designed to address uncertainty in load forecasts and potential supply disruptions caused by generator outages and/or transmission contingencies. These rules also ensure that physical generation capacity is in place to serve OCPA’s customers. In addition, OCPA will be responsible for ensuring that its resource mix contains sufficient production from renewable energy resources needed to comply with the statewide RPS (38.5 percent in 2022, increasing to 60 percent by 2030). The Program will meet or exceed all the applicable regulatory requirements related to resource adequacy and the RPS.

### **Resource Plan Overview**

To meet the aforementioned objectives and satisfy the applicable regulatory requirements pertaining to OCPA’s status as a California load serving entity, the Plan includes a diverse mix of power purchases, renewable energy, distributed energy, new energy efficiency programs, demand response and distributed generation. A diversified Plan minimizes risk and volatility that can occur from overreliance on a single resource type or fuel source, and thus increases the likelihood of rate stability. The ultimate goal of the Plan is to reduce electric sector GHG emissions while offering competitive generation rates to Program customers. The planned power supply is initially comprised of power purchases from third party electric suppliers and, in the longer-term, may also include renewable generation assets owned or controlled by OCPA.

Once the Program operations are fully functional, OCPA may begin evaluating opportunities for investment in renewable generating assets, subject to then-current market conditions, statutory requirements, financial constraints and regulatory considerations. Any renewable generation owned by OCPA or controlled under long-term power purchase agreement with a power developer, could provide a portion of the Program’s electricity requirements on a cost-of-service basis. A cost-of-service basis means that the cost of power is based on the variable cost to operate the generation asset. Depending upon market conditions and, importantly, the applicability of tax incentives for renewable energy development, electricity purchased under a cost-of-service arrangement can be more cost-effective than purchasing renewable energy from third-party developers. This option will allow the Program to pass on cost savings to its customers through more competitive generation rates. Any investment decisions will be made following thorough environmental reviews and in consultation with qualified financial and legal advisors and approval by the Board.

As an alternative to direct investment, OCPA may consider partnering with an experienced power developer and could enter into a long-term (10 years or more) power purchase agreement that

would support the development of new renewable generating capacity. Such an arrangement could be structured to reduce the Program’s operational risk associated with capacity ownership while providing its customers with all renewable energy generated by the facility under contract. This option may be attractive as it works to achieve increasing levels of renewable energy supply and competitive rate levels for its customers.

The Program will integrate conventional supply-side resources (solar, market, etc.) with programs that will help customers reduce their energy costs through improved energy efficiency and other demand-side measures. As part of its IRP, the Program will actively pursue, promote, and ultimately administer a variety of customer energy efficiency programs that can cost-effectively displace supply-side resources.

The Program’s indicative Plan for the years 2022 through 2031 is summarized in the following Table 3. Subject to the availability of funds, a sizable percentage of the conventional resources reflected in Table 3 may be displaced with GHG-free resources.

**Table 3**  
**Orange County Power Authority**  
**Proposed Resource Plan (GWh)**

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>OCPA Demand (GWh)</b>										
Retail Demand	1,897	4,461	4,483	4,506	4,528	4,551	4,574	4,597	4,620	4,643
Distributed Generation	0	0	0	0	0	0	0	0	0	0
Energy Efficiency	0	0	0	0	0	0	0	0	0	0
Losses and UFE	106	249	250	252	253	254	255	257	258	259
<b>TOTAL DEMAND</b>	<b>2,003</b>	<b>4,710</b>	<b>4,734</b>	<b>4,758</b>	<b>4,781</b>	<b>4,805</b>	<b>4,829</b>	<b>4,853</b>	<b>4,878</b>	<b>4,902</b>
<b>OCPA Supply (GWh)</b>										
Total Renewable Resources	745	1,908	2,035	2,164	2,290	2,421	2,554	2,683	2,818	2,909
Total Conventional Resources	1,258	2,802	2,698	2,593	2,491	2,384	2,276	2,170	2,060	1,993
<b>TOTAL SUPPLY</b>	<b>2,003</b>	<b>4,710</b>	<b>4,734</b>	<b>4,758</b>	<b>4,781</b>	<b>4,805</b>	<b>4,829</b>	<b>4,853</b>	<b>4,878</b>	<b>4,902</b>
Energy Open Position	0	0	0	0	0	0	0	0	0	0

**Load Forecast**

The Program’s load forecast is developed based on customer and consumption data provided by SCE and SDG&E. Program participation rates are assumed to be 95 percent for residential, lighting, and agricultural customers, and 90 percent for commercial and industrial customers. Hourly load profiles are applied to customer rate classes and summed up to develop Program system loads by month and hour. The electric sales forecast and load profile will be affected by customer phases in schedules. OCPA’s phase in schedule and assumptions regarding customer participation rates are discussed below.

### Customer Participation Rates

Customers will be automatically enrolled in the Program unless they opt-out during the customer notification process. The Program anticipates a 90-95 percent enrollment of SCE and SDG&E bundled service customers into the Program, based on reported opt-out rates for the other CCAs in California. It is assumed that new and existing non-residential Direct Access (“DA”) customers will continue to remain with their current electricity supplier.

The Program participation rate is not expected to vary significantly among customer classes, in part due to the fact that the Program will offer three distinct resource portfolio tariffs that will address the needs of cost-sensitive customers as well as the needs of both residential and business customers that prefer a highly renewable energy product.

### Customer Forecast

Once customers enroll in each phase, they will be switched over to service by OCPA on their regularly scheduled meter read date over an approximately thirty-day period. The estimated number of accounts by rate class is shown in Table 4 below.

**Table 4**  
**Orange County Power Authority**  
**Eligible Retail Service Accounts<sup>1</sup>**  
**Not Adjusted for Participation Rates**

OCA Customers	Phase 1 April 2022 Total Eligible Accounts	Phase 2 October 2022 Total Eligible Accounts	Phase 3 January 2023 Total Eligible Accounts
Residential	--	265,785	337,720
Small Commercial	29,468	29,468	39,203
Medium Commercial	5,203	5,203	6,905
Large Commercial	405	405	521
Industrial	164	164	231
Street Lighting & Traffic	3,455	3,455	4,503
Agricultural & Pumping	165	165	251
<b>Total</b>	<b>38,859</b>	<b>304,644</b>	<b>389,333</b>

1. Before assumed participation rates are applied.

OCPA assumes that customer growth will generally offset customer attrition (opt-outs) over time, resulting in a relatively stable customer base (0.5 percent annual growth) over the noted planning horizon. OCPA believes that its assumptions regarding the offsetting effects of growth and attrition are reasonable in consideration of the historical customer growth within OCPA’s service area and the potential for continuing customer opt-outs following mandatory customer notification periods. The forecast of service accounts (customers) served by the Program for each of the next ten years is shown in Table 5.

**Table 5  
Orange County Power Authority  
Retail Service Accounts (End of Year)<sup>1</sup>**

<b>OCA Customers</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>
Residential	253,100	321,500	323,100	324,700	326,300	327,900	329,600	331,200	332,900	334,600
Small Commercial	26,800	35,600	35,700	35,900	36,100	36,300	36,500	36,600	36,800	37,000
Medium Commercial	886	2,399	2,412	2,425	2,437	2,450	2,463	2,475	2,488	2,500
Large Commercial	4,730	4,855	4,879	4,904	4,929	4,953	4,978	5,002	5,027	5,053
Industrial	368	429	432	434	436	439	441	443	445	448
Street Lighting & Traffic	120	1,101	1,107	1,112	1,118	1,124	1,130	1,136	1,142	1,147
Agricultural & Pumping	24	105	105	106	106	106	107	107	108	108
<b>Total</b>	<b>286,028</b>	<b>365,989</b>	<b>367,735</b>	<b>369,581</b>	<b>371,426</b>	<b>373,272</b>	<b>375,219</b>	<b>376,963</b>	<b>378,910</b>	<b>380,856</b>

1. After assumed participation rates are applied.

### Sales Forecast

OCPA’s forecast of GWh sales reflects the roll-out and customer enrollment schedule shown above. Annual energy requirements are shown below in GWh.

**Table 6  
Orange County Power Authority  
Annual Energy Requirements (GWh) 2022 to 2031**

<b>OCPA Energy Requirement (GWh)</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>
Retail Energy	1,897	4,461	4,483	4,506	4,528	4,551	4,574	4,597	4,620	4,643
Losses and UFE	106	249	250	252	253	254	255	257	258	259
<b>Total Load Requirement</b>	<b>2,003</b>	<b>4,710</b>	<b>4,734</b>	<b>4,758</b>	<b>4,781</b>	<b>4,805</b>	<b>4,829</b>	<b>4,853</b>	<b>4,878</b>	<b>4,902</b>

### Capacity Requirements/Resource Adequacy

The CPUC’s Resource Adequacy standards applicable to the Program require a demonstration one year in advance that the Program has secured physical capacity for 90 percent of its projected peak loads for each of the five months May through September, plus a minimum 15 percent reserve margin. On a month-ahead basis, OCPA must demonstrate 100 percent of the peak load plus a minimum 15 percent reserve margin.

A portion of the Program’s capacity requirements must be procured locally from the SCE area as defined by the CAISO. Local resource adequacy needs will be defined by the CPUC annually based on their capacity study. A local resource for the Program is likely to be located within the LA Basin as noted on Table 7 below.



**Table 7  
CAISO Local Capacity Area Map<sup>2</sup>**



The local resource adequacy requirements are a percentage of the total (SCE/SDG&E service area) local capacity requirements adopted by the CPUC based on the Program’s forecasted peak load. For calendar year 2022, OCPA must be responsible for local resource compliance or request a waiver from the CPUC requirement as provided for in cases where local capacity is not available. As the Central Procurement Entity (“CPE”), begins operation in 2023, the CPE will be responsible for meeting the Program’s local resource adequacy requirements.

The Program is also required to demonstrate that a specified portion of its capacity meets certain operational flexibility requirements under the CPUC and CAISO’s flexible resource adequacy framework. The estimated forward resource adequacy requirements for 2022 through 2024 are shown in the following tables.<sup>3</sup>

<sup>2</sup> CAISO. 2021 Local Capacity Area Technical Study Draft. October 24, 2019.

<sup>3</sup> The figures shown are estimates. OCPA’s resource adequacy requirements will be subject to modification due to application of certain coincidence adjustments and resource allocations relating to utility demand response and energy efficiency programs, as well as generation capacity allocated through the Cost Allocation Mechanism. These adjustments are addressed through the CPUC’s resource adequacy compliance process.

**Table 8**  
**Orange County Power Authority**  
**Peak Demand Forecast (MW)**  
**2022 to 2024**

Month	2022	2023	2024
January		588	591
February		587	590
March		589	592
April	214	757	761
May	344	694	698
June	360	812	816
July	392	868	872
August	403	1,017	1,022
September	402	1,050	1,055
October	634	985	989
November	508	637	641
December	486	629	632

The Program will ensure that sufficient reserves will be procured to meet its peak load at all times. The Program’s projected annual resource adequacy or capacity requirements are shown in the following table.

**Table 9**  
**Orange County Power Authority**  
**Capacity Requirements (MW)**  
**2022 to 2031**

Demand (MW)	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Retail Demand	634	1,050	1,055	1,060	1,066	1,071	1,076	1,082	1,087	1,093
Losses and UFE	35	59	59	59	59	60	60	60	61	61
Total Net Peak Demand	669	1,108	1,114	1,120	1,125	1,131	1,136	1,142	1,148	1,154
Reserve Requirement (%)	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%
Capacity Reserve Requirement	100	166	167	168	169	170	170	171	172	173
Capacity Requirement Including Reserve	770	1,275	1,281	1,288	1,294	1,300	1,307	1,313	1,320	1,327

The Program will coordinate with SCE and SDG&E and appropriate state agencies to manage the transition of responsibility for resource adequacy from SCE and SDG&E to OCPA during the Program’s phase-in. For system resource adequacy requirements, the Program will make month-ahead showings for each month that OCPA plans to serve load, and load migration issues would be addressed through the CPUC’s approved procedures. OCPA will work with the California Energy Commission and CPUC prior to commencing service to customers to ensure it meets its local and system resource adequacy obligations through its agreement(s) with its chosen electric supplier(s).

## Renewables Portfolio Standard (“RPS”) Energy Requirements

### Basic RPS Requirements

As a CCA, OCPA will be required by law and CPUC regulations to procure a minimum percentage of its retail electricity sales from qualified renewable energy resources. For purposes of determining the Program’s renewable energy requirements, the same standards for RPS compliance that are applicable to all of utilities are assumed to apply to the Program.

California’s RPS requires the Program to purchase a minimum of 60 percent renewable energy by 2030. OCPA will also adopt an IRP in compliance with SB 350. OCPA understands that various details related to this planning requirement are continuing to be developed, and OCPA intends to monitor and participate, as appropriate, in pertinent proceedings to promote the preparation and submittal of a responsive planning document. Furthermore, OCPA will ensure that all long-term renewable energy contracting requirements, as imposed by SB 350, will be satisfied through appropriate transactions with qualified suppliers and will also reflect this intent in ongoing resource planning and procurement efforts.

In September of 2018, SB 100 was signed into law. This bill calls for all electricity supplies in the State to be “carbon-free” by 2045. The legislation is important for all load serving entities (“LSE”) in that it tightens the RPS targets even from SB 350. The overall targets in SB 100 are as follows:

- 50 percent eligible renewable energy by 2026
- 60 percent eligible renewable by 2030
- 100 percent carbon free by 2045 (note “carbon-free” vs. “renewable”).

Table 10 summarizes the various California targets.

**Table 10**  
**California Renewable Portfolio Standards and Greenhouse Gas Mandates**

Target Date:	2017	2020	2026	2030	2045
RPS Goal	20%	33%	50%	60%	100% <sup>1</sup>
Year Passed	2002 (SB 1078)	2011 (SB 21X)	2018 (SB 100)	2018 (SB 100)	2018 (SB 100)

<sup>1</sup> 100 percent carbon free, 60 percent renewable.

For the purposes of meeting the RPS, what qualifies a resource as renewable varies by the resource’s location and type of contract. Resources which have their first point of interconnection or are delivered directly to the California grid (Balancing Authorities within California) and are contracted for by the LSE as energy bundled with their renewable energy credits (“RECs”) qualify as Portfolio Content Category 1 (“PCC1”) resources. Resources which sell energy and RECs together but are not necessarily connected to the California grid and not delivered simultaneously (*i.e.*, the energy may be “shaped” into flat blocks of power) qualify as PCC2 resources. RECs sold independently of the energy produced qualify as PCC3 resources.

### OCPA’s Renewables Portfolio Standards Requirement

OCPA’s annual RPS procurement requirements, as specified under California’s RPS program, are shown in Table 11 below. When reviewing Table 11, it is important to note that OCPA projects increases in energy efficiency savings as well as increases in locally situated distributed generation capacity, resulting in only a slight upward trend in projected retail electricity sales.

**Table 11**  
**Orange County Power Authority**  
**Minimum RPS Requirements (GWh)<sup>1</sup>**  
**2022 to 2031**

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Retail Sales	1,897	4,461	4,483	4,506	4,528	4,551	4,574	4,597	4,620	4,643
Renewable Energy Purchase	730	1,840	1,973	2,103	2,234	2,367	2,500	2,635	2,772	2,786
% Current Year Retail Sales	38.5%	41.3%	44.0%	46.7%	49.3%	52.0%	54.7%	57.3%	60%	60%
65% Long-Term Contracts	475	1,196	1,282	1,367	1,452	1,538	1,625	1,713	1,802	1,811

1. This table shows the minimum RPS requirements for OCPA projected loads. Note that Table 3 values differ because those values are based on the planned renewable purchases which are greater than the state mandate.

### Purchased Power

Power purchased from power marketers, public agencies, generators, or utilities will be a significant source of supply during the first several years of OCPA Program operation. OCPA will initially contract to obtain all of its electricity from one or more third party electric providers under one or more power supply agreements, and the supplier(s) will be responsible for procuring the specified resource mix, including the Program’s desired quantities of renewable energy, to provide a stable and cost-effective resource portfolio for the Program.

### Renewable Resources

OCPA will initially secure necessary renewable power supply from its third-party electric supplier(s). OCPA may supplement the renewable energy provided under the initial power supply contract(s) with direct purchases of renewable energy from renewable energy facilities or from renewable generation developed and owned by OCPA. At this point in time, it is not possible to predict what projects might be proposed in response to the Program’s current renewable energy solicitations, unsolicited proposals, or discussions with other agencies. Renewable projects that are located virtually anywhere in the western U.S. can be considered as long as the electricity is deliverable to the CAISO control area, as required to meet the Commission’s RPS rules and any additional guidelines ultimately adopted by OCPA. The costs of transmission access and the risk of transmission congestion costs would need to be considered in the bid evaluation process if the delivery point is outside of OCPA’s load zone, as defined by the CAISO. OCPA is currently receiving proposals for renewable energy.

### **Energy Efficiency**

OCPA's energy efficiency goals will reflect a commitment to increasing energy efficiency within its service area, expanding beyond the savings achieved by the incumbent utilities' current programs. To promote the achievement of this goal, OCPA is in the process of completing the CPUC application process for third party administration of energy efficiency programs and use of funds collected through the existing public benefits surcharges paid by OCPA customers. To the extent that OCPA is successful in this application process, it will seek to maximize end-use customer energy efficiency by facilitating customer participation in existing utility programs as well as by forming new programs that will displace OCPA's need for traditional electric procurement activities. Additional details related to OCPA's energy efficiency plan will be developed once the Program is underway.

### **Demand Response**

Demand response programs provide incentives to customers to reduce demand upon request by the load serving entity (*i.e.*, OCPA), reducing the amount of generation capacity that must be maintained as reserves. Demand response programs can be cost effective alternatives to procured capacity that would otherwise be needed to comply with California's resource adequacy requirements. These programs also provide rate benefits to customers who have the flexibility to reduce or shift consumption for relatively short periods of time when generation capacity is most scarce. Like energy efficiency, demand response can be a win/win proposition, providing economic benefits to the electric supplier as well as customer service benefits.

In its ruling on local resource adequacy, the CPUC found that dispatchable demand response resources as well as distributed generation resources should be counted for local capacity requirements and partially offset its local capacity requirements.

SCE offers several demand response programs to its customers, and the Program intends to recruit those customers that have shown a willingness to participate in utility programs into similar programs offered by OCPA. OCPA may also adopt a demand response program that enables it to request customer demand reductions during times when capacity is in short supply or spot market energy costs are exceptionally high.

Appropriate limits on customer curtailments, both in terms of the length of individual curtailments and the total number of curtailment hours that can be called should be included in the Program's demand response design. It will also be important to establish a reasonable measurement protocol for customer performance of its curtailment obligations and deploy technology to automate customer notifications and responses. Performance measurement should include establishing a customer specific baseline of usage prior to the curtailment request from which demand reductions can be measured. The Program may utilize experienced third-party contractors to design, implement and administer its demand response programs.

### **Distributed Generation**

Consistent with the Program’s policies and the state’s Energy Action Plan, clean distributed generation is a component of the IRP. The Program will work to promote deployment of photovoltaic (“PV”) plus storage systems within OCPA’s service territory, with the goal of optimizing the use of the available incentives that are funded through current utility distribution rates and public benefits surcharges. OCPA also plans to implement a net energy metering program and possibly a feed-in-tariff to promote local investment in distributed generation.

There are clear environmental benefits and strong customer interest in distributed PV systems. To support such systems, the Program may provide direct financial incentives from revenues funded by customer rates to further support use of solar power or other renewable resources within the local area. Due to the increasing penetration of solar PV in California’s energy mix, the Program will also consider incentives for behind the meter solar plus storage projects.

With regard to OCPA’s prospective net energy metering program, it is anticipated that the Program will allow participating customers to sell excess energy produced by customer-sited renewable generating sources to OCPA. Such a program would be generally consistent with principles identified in Assembly Bill 920 (“AB 920”), which directed the CPUC to establish and implement a compensation methodology for surplus renewable generation produced by net energy metered facilities located within the service territories of California’s large investor-owned utilities, including SCE and SDG&E. However, OCPA may choose to offer enhanced compensation structures, relative to those implemented as a result of AB 920, as part of the direct incentives that may be established to promote distributed generation development within OCPA’s service area. To the extent that incentives offered by OCPA improve project economics for its customers, it is reasonable to assume that the penetration of distributed generation within OCPA’s service area would increase.

## Chapter 7 – Financial Plan

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This Chapter examines the cash flows expected during the start-up and customer phase-in period of the Program and identifies the anticipated financing requirements. It includes estimates of Program start-up costs, including necessary expenses and capital outlays. It also describes the requirements for working capital and long-term financing for the potential investment in renewable generation, consistent with the Plan contained in Chapter 6.

### Description of Cash Flow Analysis

OCPA’s cash flow analysis estimates the level of capital that will be required during the start-up and phase-in period. The analysis focuses on the Program’s costs and revenues and specifically accounts for the phased enrollment of Program customers described in Chapter 5.

### Cost of CCA Program Operations

The first category of the cash flow analysis is the Cost of CCA Program Operations. To estimate the overall costs associated with CCA Program Operations, the following components were taken into consideration:

- Electricity Procurement
- Ancillary Service Requirements
- Grid Management and other CAISO Charges
- Scheduling Coordination
- Exit Fees
- Staffing and Professional Services
- Data Management Costs
- Administrative Overhead
- Billing Costs
- SCE and SDG&E Financial Security Requirements (“FSR”)
- Pre-Start-Up Cost
- Debt Service

### Revenues from CCA Program Operations

The cash flow analysis provides estimates for revenues generated from CCA operations or from electricity sales to customers. In determining the level of revenues, the analysis assumes the customer phase-in schedule described herein, and assumes that the Program charges a standard, default electricity tariff similar in rate design as the generation rates of the incumbent utility for each customer class and optional 100 percent and 70 percent renewable energy tariff, both at a premium reflective of incremental renewable power costs. More detail on Program rates can be found in Chapter 8. Projected revenues assume no rate discount compared with the incumbent utilities’ generation rates.

## **Cash Flow Analysis Results**

The results of the cash flow analysis provide an estimate of the level of capital required for the Program to move through the start-up and phase-in periods. This estimated level of capital is determined by examining the monthly cumulative net cash flows (revenues from CCA operations minus cost of CCA operations) based on assumptions for payment of costs or other cash requirements (*e.g.*, deposits) by OCPA, along with estimates for when customer payments will be received. This identifies what level of cash flow is available in terms of a surplus or deficit.

The cash flow analysis identifies funding requirements in recognition of the potential lag between revenues received and payments made during the phase-in period. The estimated financing requirements for the start-up and phase-in period, including working capital needs associated with all three phases of customer enrollments, was determined to be \$42.75 million. This \$42.75 million will be covered via a loan from the City of Irvine and external financing already authorized with a commercial bank.

## **CCA Program Implementation Pro Forma**

In addition to developing a cash flow analysis which estimates the level of working capital required to move OCPA through full CCA phase-in, a summary pro forma analysis that evaluates the financial performance of the Program is shown below. The difference between the cash flow analysis and the CCA pro forma analysis is that the pro forma analysis does not include a lag associated with payment streams. In essence, costs and revenues are reflected in the month in which service is provided. All other items, such as costs associated with Program operations and rates charged to customers remain the same. Cash provided by financing activities are shown in the pro forma analysis as are the payments for associated debt service.

The results of the pro forma analysis are shown in the following tables. In particular, the summary of Program start-up and phase-in addresses projected Program operations for the period beginning January 2021 through December 2031.<sup>4</sup>

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<sup>4</sup> Costs projected for staffing & professional services and other administrative & general relate to energy procurement, administration of energy efficiency and other local programs, generation development, customer service, marketing, accounting, finance, legal and regulatory activities necessary for program operation.



Orange County Power Authority Implementation Plan and Statement of Intent – Amendment No. 1

<b>Table 12</b>										
<b>Orange County Power Authority</b>										
<b>10-Year Proforma, Thousands</b>										
	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>
<b>REVENUE AND OTHER SOURCES</b>										
Revenue - Electricity	\$183,115	\$416,482	\$418,036	\$419,595	\$427,346	\$435,237	\$443,292	\$451,532	\$459,923	\$468,470
Less: Uncollectible Accounts	-\$2,639	-\$5,206	-\$5,225	-\$5,245	-\$5,342	-\$5,440	-\$5,541	-\$5,644	-\$5,749	-\$5,856
Net Revenue - Electricity <sup>1</sup>	\$180,476	\$411,276	\$412,811	\$414,350	\$422,004	\$429,797	\$437,750	\$445,888	\$454,174	\$462,614
Investment and Miscellaneous Income	\$1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Net Revenue and Other Sources</b>	<b>\$180,478</b>	<b>\$411,276</b>	<b>\$412,811</b>	<b>\$414,350</b>	<b>\$422,004</b>	<b>\$429,797</b>	<b>\$437,750</b>	<b>\$445,888</b>	<b>\$454,174</b>	<b>\$462,614</b>
<b>EXPENDITURES</b>										
Power Supply	\$197,897	\$414,614	\$384,002	\$379,789	\$359,854	\$369,614	\$379,667	\$389,976	\$400,645	\$410,661
Non-Power O&M										
Data Manager	\$364	\$3,743	\$3,762	\$3,867	\$4,382	\$4,510	\$4,639	\$4,772	\$4,909	\$5,050
Utilities Service Fees	\$140	\$586	\$602	\$620	\$638	\$657	\$676	\$696	\$716	\$737
Staffing Costs	\$2,929	\$5,220	\$5,412	\$5,593	\$5,775	\$5,960	\$6,147	\$6,338	\$6,534	\$6,737
Contract Services	\$1,790	\$2,801	\$1,929	\$1,924	\$1,978	\$2,034	\$2,091	\$2,149	\$2,209	\$2,271
Legal Services	\$357	\$365	\$373	\$382	\$392	\$401	\$411	\$421	\$431	\$441
Marketing and Customer Enrollment	\$152	\$104	\$107	\$109	\$112	\$115	\$117	\$120	\$123	\$126
Other G&A	\$346	\$366	\$374	\$383	\$393	\$402	\$412	\$422	\$432	\$442
<b>Subtotal</b>	<b>\$203,974</b>	<b>\$427,798</b>	<b>\$396,562</b>	<b>\$392,668</b>	<b>\$373,523</b>	<b>\$383,693</b>	<b>\$394,161</b>	<b>\$404,894</b>	<b>\$416,000</b>	<b>\$426,465</b>
<b>DEBT SERVICE</b>										
Principal and Interest	\$455	\$532	\$10,297	\$10,297	\$10,296	\$2,833	\$70	\$70	\$70	\$0
<b>Total Expenditures and Other Uses</b>	<b>\$204,429</b>	<b>\$428,330</b>	<b>\$406,859</b>	<b>\$402,965</b>	<b>\$383,820</b>	<b>\$386,525</b>	<b>\$394,231</b>	<b>\$404,964</b>	<b>\$416,070</b>	<b>\$426,465</b>
Net Income	-\$23,951	-\$17,054	\$5,952	\$11,385	\$38,185	\$43,271	\$43,520	\$40,924	\$38,105	\$36,149
Debt Proceeds	\$23,951	\$6,049	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cumulative Net Income Available for Reserves	\$0	-\$11,005	-\$5,053	\$6,332	\$44,517	\$87,788	\$131,308	\$172,232	\$210,336	\$246,485

1. Assumes no OCPA rate discount.

The surpluses achieved during this period serve to build the Program’s net financial position and credit profile, and to provide operating reserves for the Program in the event that operating costs (such as power purchase costs) exceed collected revenues for short periods of time. In addition, financial surpluses could be used to provide a Program generation rate discount, increase renewable and GHG-free resource purchases, accumulate additional cash reserves and/or fund customer programs. The priority for using these surplus proceeds will be determined by the Board.

### **OCPA Financing**

The Program has already secured financing from the City of Irvine and a commercial bank. After start-up, subsequent capital requirements will be funded internally from the Program’s accrued financial reserves. The anticipated financing approach is described below.

### **CCA Program Start-up and Working Capital**

As previously discussed, the anticipated start-up and working capital requirements for the Program are \$42.75 million. This amount is dependent upon the electric load served by the Program, actual energy prices, payment terms established with the third-party supplier and Program rates. This \$42.75 million will be refined during the start-up period as these variables become known. Once the Program is up and running, all costs would be recovered from customers through retail rates.

### **Renewable Resource Project Financing**

OCPA may consider project financings for renewable resources, likely local wind, solar, biomass or geothermal as well as energy efficiency projects. These financings would only occur after a sustained period of successful Program operation, and after appropriate project opportunities are identified and subjected to appropriate environmental review. OCPA’s ability to directly finance projects will likely require a track record of successful Program operations demonstrating strong underlying credit to support the financing.

In the event that such financing occurs, funds would include any short-term financing for the renewable resource project development costs, and financing would likely extend over a 20- to 30-year term. The security for such financing would be the revenue from sales to the retail customers of the Program.

## Chapter 8 – Rate Setting, Program Terms and Conditions

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### Introduction

This Chapter describes the initial policies proposed for OCPA in setting its rates for electric aggregation services. These include policies regarding rate design, rate objectives and provision for due process in setting Program rates. Program rates are ultimately approved by the Board. OCPA would retain authority to modify Program policies from time to time at the Board’s discretion.

### Rate Policies

OCPA will establish rates sufficient to recover all costs related to operation of the Program, including any reserves that may be required as a condition of financing and other discretionary reserve funds that may be approved by the Board. As a general policy, rates will be uniform for all similarly situated customers enrolled in the Program throughout the service area.

The primary objectives of the rate setting plan are to set rates that achieve the following:

- Rate competitive tariff option including a proportionate quantity of renewable energy meeting California’s prevailing renewable energy procurement mandate
- 100 percent renewable energy supply option/70 percent renewable energy supply option
- Allow individual Members to choose the default energy supply option into which their customers will be enrolled
- Allow customers to participate in any of the three energy supply options after enrollment
- Rate stability
- Equity among customers in each tariff
- Customer understanding
- Revenue sufficiency

Each of these objectives is described below.

### Rate Competitiveness

OCPA’s primary goal is to offer its customers competitive rates for electric services relative to the incumbent utilities. As planned, the value provided by the Program will also include options for a higher proportion of renewable energy and reduced GHG emissions relative to the incumbent utilities, enhanced energy efficiency and customer programs, community focus, local investment and control. OCPA currently plans to offer customers rates that are competitive to SCE and SDG&E bundled rates. Final rates for the launch phase will be subject to final power price bids.

As previously discussed, the Program will offer increased renewable energy supply to program customers, relative to SCE and SDG&E, by offering three distinct rate tariffs. The initial renewable energy content provided under the Program’s base tariff will meet California’s prevailing renewable energy procurement mandate, and OCPA will endeavor to increase this percentage on a going forward basis, subject to operational and economic constraints. The Program will also offer its customers a 70 percent and 100 percent renewable energy tariff, which will supply participating customers with reflective renewable energy supply at rates equal to the procurement cost for those portfolios.

Participating qualified low- or fixed-income households, such as those currently enrolled in the California Alternate Rates for Energy (“CARE”) program, will be automatically enrolled in the standard tariff and will continue to receive related discounts on monthly electricity bills through the incumbent utility.

### **Rate Stability**

The Program will offer stable rates by hedging its supply costs over multiple time horizons and by including longer-term renewable energy supplies that exhibit stable costs. OCPA will attempt to maintain general rate design parity with the incumbent utilities, or less, to ensure that Program rates are not drastically different from the competitive alternative.

### **Equity Among Customer Classes**

The Program’s initial rates will be set based on the rates offered by the incumbent utilities, subject to final power price bids. The level of rates will depend upon the default product chosen by the Member. Rate differences among customer classes will reflect the rates charged by the incumbent utilities as well as differences in the costs of providing service to each class. Rates may also vary among customers within the major customer class categories, depending upon the specific rate designs adopted by the Board.

### **Customer Understanding**

The goal of customer understanding involves rate designs that are relatively straightforward so that customers can readily understand how their bills are calculated. This not only minimizes customer confusion and dissatisfaction but will also result in fewer billing inquiries. Customer understanding also requires rate structures to reflect rational rate design principles (*i.e.*, there should not be differences in rates that are not justified by costs or by other policies such as providing incentives for conservation).

### **Revenue Sufficiency**

Program rates must collect sufficient revenue from participating customers to fully fund the Program’s annual budget. Rates will be set to collect the adopted budget based on a forecast of electric sales for the budget year. Rates will be adjusted as necessary to maintain the ability to fully recover all of costs of the Program, subject to the disclosure and due process policies described

later in this Chapter. To ensure rate stability, funds available in the Program’s rate stabilization fund may be used from time to time to augment operating revenues.

### **Rate Design**

The Program will initially match the rate structures from SCE and SDG&E standard rates to avoid the possibility that customers would see significantly different bill impacts as a result of changes in rate structures. In 2018 and 2020 respectively, SDG&E and SCE began to move bundled residential customers toward default time-of-use (“TOU”) rates. The Program anticipates that rates implemented at launch will be based on default SCE TOU rates. OCPA will review SCE and SDG&E rate structure changes and finalize the Program rates closer to the proposed launch date.

### **Custom Pricing Options**

OCPA may work to develop specially-tailored rate and electric service products that meet the specific load characteristics or power market risk profiles of larger commercial and industrial customers. This will allow such customers to have access to a wider range of products than is currently available with the incumbent utilities and potentially reduce the cost of power for these customers. Some examples of potential custom pricing options are rates that are based on an observable market index (e.g., CAISO prices) or fixed priced contracts of various terms.

### **Net Energy Metering**

As planned, customers with on-site generation eligible for net metering from the incumbent utilities will be offered a net energy metering rate from OCPA. Net energy metering allows for customers with certain qualified solar or wind distributed generation to be billed on the basis of their net energy consumption. OCPA plans to pay customers for excess power produced from net energy metered generation systems in accordance with the rate designs adopted by the Board.

### **Disclosure and Due Process in Setting Rates and Allocating Costs among Participants**

Initial Program rates will be adopted by the Board following the establishment of the first year’s operating budget prior to initiating the customer notification process. Subsequently, OCPA will prepare an annual budget and corresponding customer rates. Any proposed rate adjustment will be made by the Board and ample time will be given to affected customers to provide comment on the proposed rate changes.

After proposing a rate adjustment, the Program will furnish affected customers with a notice of its intent to adjust rates. The notices may be issued via separate mail to affected customers, as part of the regular billing and/or placed on the various social media options. The notice will provide a summary of the proposed rate adjustment and will include a link to the Program’s website where information will be posted regarding the amount of the proposed adjustment, a brief statement of the reasons for the adjustment and the mailing address of OCPA to which any customer inquiries relative to the proposed adjustment, including a request by the customer to receive notice of the date, time and place of any hearing on the proposed adjustment, may be directed.

## **Chapter 9 – Customer Rights and Responsibilities**

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This Chapter discusses customer rights, including the right to opt-out of the OCPA Program and the right to privacy of customer usage information, as well as obligations customers undertake upon agreement to enroll in the CCA Program. All customers that do not opt out within 30 days of the fourth enrollment notice will have agreed to become full status program participants and must adhere to the obligations set forth below, as may be modified and expanded by the Board from time to time.

By adopting this Amendment No. 1, OCPA will have approved the customer rights and responsibilities policies contained herein to be effective at Program initiation. OCPA retains authority to modify program policies from time to time at its discretion.

### **Customer Notices**

At the initiation of the customer enrollment process, a total of four notices will be provided to customers describing the Program, informing them of their opt-out rights to remain with utility bundled generation service and containing a simple mechanism for exercising their opt-out rights. The first notice will be mailed to customers approximately sixty days prior to the date of automatic enrollment. A second notice will be sent approximately thirty days later. OCPA will likely use its own mailing service for requisite enrollment notices rather than including the notices in SCE and SDG&E monthly bills. This is intended to increase the likelihood that customers will read the enrollment notices, which may otherwise be ignored if included as a bill insert. Customers may opt out by notifying OCPA using the Program’s designated telephone-based or internet opt-out processing service. Should customers choose to initiate an opt-out request by contacting SCE or SDG&E, as applicable, they would be transferred to the Program’s call center to complete the opt-out request. Consistent with CPUC regulations, notices returned as undelivered mail would be treated as a failure to opt out, and the customer would be automatically enrolled.

Following automatic enrollment, at least two addressed notices will be mailed to customers within the first two billing cycles (approximately sixty days) after OCPA service commences. Opt-out requests made on or before the sixtieth day following start of Program service will result in customer transfer to bundled utility service with no penalty. Such customers will be obligated to pay charges associated with the electric services provided by OCPA during the time the customer took service from the Program, but they will otherwise not be subject to any penalty or transfer fee from OCPA.

Customers who establish new electric service accounts within the Program’s service area will be automatically enrolled in the Program and will have sixty days from the start of service to opt out if they so desire. Such customers will be provided with two enrollment notices within this sixty-day post enrollment period. Such customers will also receive a notice detailing the Program’s privacy policy regarding customer usage information. OCPA will have the authority to implement entry fees for customers that initially opt out of the Program, but later decide to participate.

## **Termination Fee**

Customers that are automatically enrolled in the Program can elect to transfer back to SCE or SDG&E without penalty within the first two months of service. After this free opt-out period, customers will be allowed to terminate their participation but may be subject to payment of a Termination Fee. Customers that relocate within OCPA's service territory would have OCPA service continued at their new address. If a customer relocating to an address within OCPA's service territory elected to cancel OCPA service, the Termination Fee could be applied. Program customers that move out of OCPA's service territory would not be subject to the Termination Fee. If deemed applicable by OCPA, SCE and SDG&E would collect the Termination Fee from returning customers as part of OCPA's final bill to the customer.

For illustrative purposes, OCPA Termination Fees could be set at \$5 per residential account and \$25 per non-residential account. Actual fee amounts and requirements to impose Termination Fees are subject to a final determination by the Board.

If adopted, the Termination Fee would be clearly disclosed in all enrollment notices sent to customers during the sixty-day period before automatic enrollment and following commencement of service. The fee could also be changed prospectively by OCPA subject to applicable customer noticing requirements.

Customers electing to terminate service after the initial notification period would be transferred to their respective incumbent utility on their next regularly scheduled meter read date if the termination notice is received a minimum of fifteen days prior to that date. Such customers would also be liable for the nominal reentry fees imposed by SCE and SDG&E and would be required to remain on bundled utility service for a period of one year, as described in the utility CCA tariffs.

## **Customer Confidentiality**

OCPA will establish policies covering confidentiality of customer data that are fully compliant with the required privacy protection rules for CCA customer energy usage information, as detailed within Decision 12-08-045. OCPA will maintain the confidentiality of individual customer data including service addresses, billing addresses, telephone numbers, account numbers and electricity consumption, except where reasonably necessary to conduct business of OCPA or to provide services to customers, including but not limited to where such disclosure is necessary to (a) comply with the law or regulations; (b) enable OCPA to provide service to its customers; (c) collect unpaid bills; (d) obtain and provide credit reporting information; or (e) resolve customer disputes or inquiries. OCPA will not disclose customer information for telemarketing, e-mail or direct mail solicitation. Aggregate data may be released at OCPA's discretion.

## **Responsibility for Payment**

Customers will be obligated to pay Program charges for service provided through the date of transfer including any applicable Termination Fees. Pursuant to current CPUC regulations, OCPA will not be able to direct that electricity service be shut off for failure to pay OCPA bills. However,

the incumbent utilities have the right to shut off electricity to customers for failure to pay electricity bills, and SCE Electric Rule 23 and SDG&E Electric Rule 27 mandate that partial payments are to be allocated pro rata between the respective incumbent utility and the CCA. In most circumstances, customers would be returned to utility service for failure to pay bills in full and customer deposits (if any) would be withheld in the case of unpaid bills. The incumbent utility would attempt to collect any outstanding balance from customers in accordance with their Electric Rules and the related CCA Service Agreement.

The proposed process is for two late payment notices to be provided to the customer within 30 days of the original bill due date. If payment is not received within 45 days from the original due date, service would be transferred to the utility on the next regular meter read date, unless alternative payment arrangements have been made. Consistent with the CCA tariffs, service cannot be discontinued to a residential customer for a disputed amount if that customer has filed a complaint with the CPUC and that customer has paid the disputed amount into an escrow account.

### **Customer Deposits**

Under certain circumstances, OCPA customers may be required to post a deposit equal to the estimated charges for two months of CCA service prior to obtaining service from the Program. A deposit would be required for an applicant who previously had been a customer of SCE/SDG&E or OCPA and whose electric service has been discontinued by an incumbent utility or OCPA during the last twelve months of that prior service arrangement as a result of bill nonpayment. Such customers may be required to reestablish credit by depositing the prescribed amount. Additionally, a customer who fails to pay bills before they become past due (Discontinuance and Restoration of Service), and who further fails to pay such bills within five days after presentation of a discontinuance of service notice for nonpayment of bills, may be required to pay said bills and reestablish credit by depositing the prescribed amount. This rule will apply regardless of whether or not service has been discontinued for such nonpayment.<sup>5</sup> Failure to post deposit, as required, would cause the account service transfer request to be rejected, and the account would remain with the incumbent utility.

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<sup>5</sup> A customer whose service is discontinued by OCPA is returned to the incumbent utility's generation service.



## Chapter 10 - Procurement Process

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### Introduction

This Chapter describes OCPA’s initial procurement policies and the key third party service agreements by which OCPA will obtain operational services for the Program. By adopting Amendment No. 1, OCPA will have approved the general procurement policies contained herein to be effective at Program initiation. OCPA retains authority to modify Program policies from time to time at its discretion.

### Procurement Methods

OCPA will enter into agreements for a variety of services needed to support program development, operation and management. It is anticipated that OCPA will generally utilize competitive procurement methods for services but may also utilize direct procurement or sole source procurement, depending on the nature of the services to be procured. Direct procurement is the purchase of goods or services without competition when multiple sources of supply are available. Sole source procurement is generally to be performed only in the case of emergency or when a competitive process would be an idle act.

OCPA will utilize a competitive solicitation process to enter into agreements with entities providing electrical services for the Program. Agreements with entities that provide professional legal or consulting services, and agreements pertaining to unique or time sensitive opportunities, may be entered into on a direct procurement or sole source basis at OCPA’s discretion. Authority for terminating agreements will generally mirror the authority for entering into such agreements.

### Key Contracts

#### Electric Supply Contract

OCPA will initiate service using supply contracts with one or more qualified providers to supply sufficient electric energy resources to meet the Program’s customer demand as well as applicable resource adequacy requirements, ancillary and other necessary services. OCPA may complete additional solicitations to supplement its energy supply and/or to replace contract volumes provided under the original contract. OCPA would begin such procurement sufficiently in advance of contract expiration so that the transition from the initial supply contract occurs smoothly, avoiding dependence on market conditions existing at any single point in time. OCPA is currently evaluating power supply offers and should be finalizing these offers in the next two months.

OCPA has contracted with a certified Scheduling Coordinator to schedule loads and resources to meet Program customer demand and a Power Management Coordinator to help with longer-term power supply needs. OCPA may designate the Schedule Coordinator and/or Power Management Coordinator to be responsible for day-to-day energy supply operations of the Program and for managing the predominant supply risks for the term of all power contracts. The Scheduling Coordinator and Power Management Coordinator will ensure OCPA meets renewable energy

mandates as well as resource-specific mandates such as the storage requirement.<sup>6</sup> Finally, the Schedule Coordinator and Power Management Coordinator may be responsible for ensuring OCPA’s compliance with all applicable resource adequacy and regulatory requirements imposed by the CPUC or FERC.

OCPA has commenced the requisite competitive solicitation process to identify its initial energy supplier(s). At the time of this filing, OCPA has not executed any final electric supply contract but will be concluding certain contract negotiations shortly.

### **Data Management Contract**

OCPA’s data manager will provide the retail customer services of billing and other customer account services (electronic data interchange or EDI with SCE/SDG&E, billing, remittance processing and account management). A single contractor has been selected to perform all of the data management functions.

The data manager is responsible for the following services:

- Data exchange with SCE and SDG&E
- Technical testing
- Customer information system
- Customer call center
- Billing administration/retail settlements
- Settlement quality meter data reporting
- Reporting and audits of utility billing

Utilizing a third party for account services eliminates a significant expense associated with implementing a customer information system.

OCPA has completed its competitive solicitation process and retained a data manager and customer call center services consultant.

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<sup>6</sup> Assembly Bill 2514 requires LSEs to procure energy storage targets by 2020

# Chapter 11 – Contingency Plan for Program Termination

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## Introduction

This Chapter describes the process to be followed in the case of Program termination. By adopting this Amendment No. 1, OCPA will have approved the general termination process contained herein to be effective at Program initiation. In the unexpected event that OCPA would terminate the Program and return its customers to the incumbent utilities' service, the proposed process is designed to minimize the impacts on its customers and the incumbent utilities. The proposed termination plan follows the requirements set forth in SCE and SDG&E's tariffs governing service to CCAs. OCPA retains authority to modify program policies from time to time at its discretion.

## Termination by OCPA

OCPA will offer services for the long term with no planned Program termination date. In the unanticipated event that OCPA decides to terminate the Program, each of its Members would be required to adopt a termination ordinance or resolution and provide adequate notice to OCPA consistent with the terms set forth in the JPA Agreement. Following such notice, the Board would vote on Program termination subject to voting provisions as described in the JPA Agreement. In the event that OCPA affirmatively votes to proceed with JPA termination, OCPA would disband under the provisions identified in its JPA Agreement.

After any applicable restrictions on such termination have been satisfied, notice would be provided to customers six months in advance that they will be transferred back to the incumbent utility. A second notice would be provided during the final sixty days in advance of the transfer. The notice would describe the applicable distribution utility bundled service requirements for returning customers then in effect, such as any transitional or bundled portfolio service rules.

It is anticipated that one year of advance notice would be provided to the incumbent utilities and the CPUC before transferring customers, and OCPA would coordinate the customer transfer process to minimize impacts on customers and ensure no disruption in service. Once the customer notice period is complete, customers would be transferred *en masse* on the date of their regularly scheduled meter read date.

OCPA will post a bond or maintain funds held in reserve to pay for potential transaction fees charged to the Program for switching customers back to distribution utility service. Reserves would be maintained against the fees imposed for processing customer transfers ("FSR"). The Public Utilities Code requires demonstration of insurance or posting of a bond sufficient to cover reentry fees imposed on customers that are involuntarily returned to distribution utility service under certain circumstances. The cost of re-entry fees is the responsibility of the energy services provider or the community choice aggregator, except in the case of a customer returned for default or because its contract has expired. OCPA will post financial security in the appropriate amount as

part of its registration materials and will maintain the financial security in the required amount, as necessary.

### **Termination by Members**

Pursuant to the OCPA JPA Agreement, a Party may withdraw its membership in OCPA, effective as of the beginning of OCPA's fiscal year, by giving no less than one hundred eighty (180) days advance written notice of its election to do so. Notice must be provided to OCPA and each member Party. Withdrawal of a Party requires an affirmative vote of the Party's governing board. A Party that withdraws from OCPA may be subject to certain continuing liabilities as described in the OCPA JPA Agreement. The withdrawing Party and OCPA must 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.

An OCPA member Party may be terminated for material non-compliance with provisions of the OCPA JPA upon a two-thirds vote of the entire Board (excluding the vote of the Party subject to possible termination). Prior to any vote to terminate 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 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The Party subject to termination shall have the opportunity at the next regular Board meeting following the expiration of the 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 OCPA terminated may be subject to certain continuing liabilities, as described in the OCPA JPA Agreement.

## **Appendix – OCPA Joint Powers Agreement**

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## 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 20, 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 FULLERTON**

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 2020

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF BUENA PARK**

By: Aaron France  
Name: Aaron France  
Title: Interim City Manager  
Dated: December 15, 2020

Approved as to Form:

Aaron France  
City Attorney

**ATTEST:**

Adria M. Jimenez, MMC  
ADRIA M. JIMENEZ, MMC  
CITY CLERK



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


Approved as to Form:

\_\_\_\_\_  
City Attorney

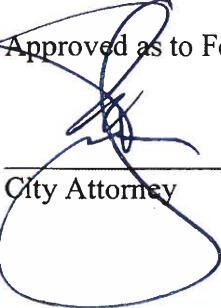
Approved as to Form:

\_\_\_\_\_  
Special Counsel

**CITY OF FULLERTON**

By:   
Name: Kenneth A. Dome  
Title: City Manager  
Dated: 11-20, 2020

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

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

Approved as to Form:

\_\_\_\_\_  
City Attorney

Approved as to Form:

\_\_\_\_\_  
Special Counsel

**CITY OF FULLERTON**

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 2020

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF HUNTINGTON BEACH**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk *12/11/2020*

REVIEWED AND APPROVED

\_\_\_\_\_  
City Manager

Approved as to Form

\_\_\_\_\_  
City Attorney *mv*


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

**CITY OF LAKE FOREST**

By:  \_\_\_\_\_  
Name: Neeki Moatazedi  
Title: Mayor  
Dated: December 15, 2020

**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

City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

City of Buena Park  
6650 Beach Blvd.  
Buena Park, CA 90622

City of Lake Forest  
25550 Commercentre Dr.  
Suite 100  
Lake Forest, CA 92630



**EXHIBIT B**  
**ANNUAL ENERGY USAGE BY JURISDICTION**

	<b>2019 Annual Load GWh<sup>1</sup></b>
City of Buena Park <sup>2</sup>	450
City of Fullerton	676
City of Huntington Beach	1,046
City of Irvine	1,937
City of Lake Forest	459
<b>Total</b>	<b>4,569</b>

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**

	<b>Estimated Voting Share<sup>1</sup></b>
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%
<b>Total</b>	<b>100.0%</b>

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.