

# **Orange County Power Authority**

## **COMMUNITY CHOICE AGGREGATION IMPLEMENTATION PLAN AND STATEMENT OF INTENT**

**December 28, 2020**

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# Chapter 1 – Introduction

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Orange County Power Authority (OCPA) is a public agency located within Orange County, formed for the purpose of implementing a community choice aggregation program (CCA). Member Agencies of the OCPA includes five (5) cities all of which are municipalities located within Orange County, and together the “Members” or “Member Agencies,” have elected to allow OCPA to provide electric generation service within their respective jurisdictions. Currently, the following Members Agencies comprise OCPA:

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

This Implementation Plan and Statement of Intent (“Implementation Plan”) describes OCPA’s plans to implement a CCA program for applicable electric customers within the jurisdictional boundaries of the County that currently take bundled electric service from Southern California Edison (“SCE”). The OCPA Program will provide electricity customers the opportunity to join together to procure electricity from competitive suppliers, with such electricity being delivered over SCE’s transmission and distribution system. The planned start date for the Program is April 1, 2022. All current SCE customers within OCPA’s service area will receive information describing the CCA Program and will have multiple opportunities to choose to remain full requirement (“bundled”) customers of SCE, in which case they will not be enrolled. Thus, participation in the OCPA 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 OCPA 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 services; promote economic development, reduce electric sector greenhouse gas emissions (“GHGs”) within the County; 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 determining which technologies are utilized to meet local electricity needs.

To ensure successful operation of the Program, OCPA will solicit energy suppliers and marketers through a competitive process and will negotiate with one or more qualified suppliers throughout the summer and fall of 2021. Final selection of OCPA’s initial energy supplier(s) will be made by

OCPA following administration of the aforementioned solicitation process and related contract negotiations. Information regarding the anticipated solicitation process for OCPA's initial energy services provider(s) is contained in Chapter 10.

The California Public Utilities Code provides the relevant legal authority for OCPA to become a Community Choice Aggregator and invests the California Public Utilities Commission ("CPUC" or "Commission") with the responsibility for establishing the cost recovery mechanism that must be in place before customers can begin receiving electrical service through the OCPA Program. The CPUC also has the responsibility for registering OCPA as a Community Choice Aggregator and ensuring 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 Commission in order for the Commission to determine the cost recovery mechanism to be paid by customers of the Program in order to prevent shifting of costs to bundled customers of the incumbent utility.

On December 22, 2020, at a duly noticed public hearing, the OCPA Board considered and adopted this Implementation Plan, through Resolution 2020-05. The Commission has established the methodology that will be used to determine the cost recovery mechanism, and SCE has approved tariffs for imposition of the cost recovery mechanism. Finally, each of OCPA's Members has adopted an ordinance to implement a CCA program through its participation in OCPA, and each of the Members has adopted a resolution permitting OCPA to provide service within its jurisdiction. With each of these milestones accomplished, OCPA submits this Implementation Plan to the CPUC. Following the CPUC's certification of its receipt of this Implementation Plan and resolution of any outstanding issues, OCPA will take the final steps needed to register as a CCA prior to initiating the customer notification and enrollment process.

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

The content of this Implementation Plan complies with the statutory requirements of AB 117. As required by Public Utilities Code Section 366.2(c)(3), this Implementation Plan details the process and consequences of aggregation and provides OCPA's statement of intent for implementing a CCA program that includes all of 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 Implementation Plan is organized as follows:

- Chapter 2: Aggregation Process
- Chapter 3: Organizational Structure
- Chapter 4: Startup 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 this Implementation Plan in the following table.

### 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: Startup 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 Implementation Plan 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 greenhouse gas 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. A technical feasibility study for a CCA Program serving the City was completed County in January 2020.

After nearly 11 months of collaborative work by representatives of the Member Agency city governments plus independent consultants, local experts and stakeholders, OCPA was formed in November 2020 for purposes of implementing the OCPA Program. Subsequently, OCPA approved this Implementation Plan through a duly noted public hearing, complying with the standards stated in California Public Utilities Code Section 366.2. OCPA is continuing discussions with additional Cities regarding membership in the JPA. This Implementation Plan will be updated if and when additional Cities become partners in OCPA.

The OCPA Program represents a culmination of planning efforts that are responsive to the expressed needs and priorities of the citizenry and business community within the Member Agencies. 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 large 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 Plan 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 supplier.

### 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 November 2021. 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 OCPA Program will continue to have their electric meters read and to be billed for electric service by the distribution utility (SCE). 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.

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 distribution utility (SCE). OCPA customers will be advised of these opportunities via the distribution of two additional enrollment notices provided within the first two months of 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 OCPA Program and to have agreed to the OCPA 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 set by OCPA and no longer pay the costs of SCE 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 distribution utility (SCE). OCPA will establish rates sufficient to recover all costs related to operation of the Program, and actual rates will be adopted by OCPA's Board.

Initial OCPA Program rates will be established following approval of OCPA's inaugural program 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 OCPA 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 that it will commence service, OCPA customers will generally not be responsible for costs associated with SCE's 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 SCE to CCA



customers through separate rate components, called the Cost Responsibility Surcharge and the New System Generation Charge. These charges are shown in SCE’s electric service tariffs, which can be accessed from the utility’s website, and the costs are included in charges paid by both SCE bundled customers as well as CCA and Direct Access customers.<sup>1</sup>

### **Local Economic Development Impacts**

The indirect effects of creating a OCPA includes the effects of increased commerce, and disposable income. The technical feasibility study completed for Orange County 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 their 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 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 resource plan includes procurement of renewable energy sufficient to meet California’s prevailing renewable energy procurement mandate for all enrolled customers. OCPA customers will also have the opportunity to participate in a 100 percent renewable supply option. To the extent that customers choose 100 percent renewable energy option, the 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.

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<sup>1</sup> For SCE 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 SCE’s tariffs as separate rates/charges paid by all customers (with limited exceptions).

### **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 distribution utility are not expected to change as a result of OCPA Program implementation. OCPA customers will continue to pay the public benefits surcharges to the distribution utility, which will fund energy efficiency programs for all customers, regardless of generation supplier.

The energy efficiency investments ultimately planned for the OCPA 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 jurisdiction. 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 OCPA 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 section provides an overview of the organizational structure of OCPA and its proposed implementation of the CCA 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 its Board of Directors to serve as its Governing Board. The Board is responsible for establishing OCPA Program policies and objectives and overseeing OCPA's operation. On December 16, 2020, the Board appointed an Interim Executive Director to manage the operation of OCPA in accordance with policies adopted by the Board. When OCPA receives CPUC certification, the Executive Director will proceed to appoint 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.

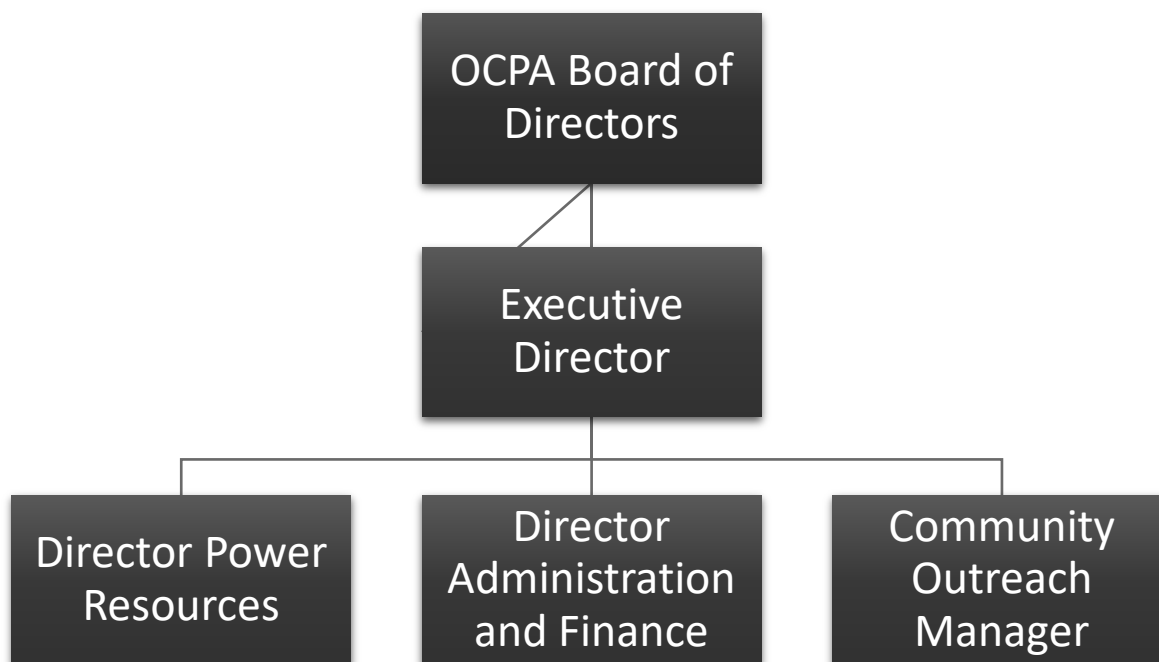
### **Governance**

The OCPA Program will be governed by OCPA's Board, which shall include two appointed designees from the City of Irvine (initially) and one appointed designee for each of the other Members. OCPA is a joint powers agency created on November 20, 2020 and formed under California law. The Members of OCPA include five (5) municipalities located within Orange County, all of which have elected to allow OCPA to provide electric generation service within their respective jurisdictions. OCPA's Board will be comprised of representatives appointed by each of the Members in accordance with the JPA agreement with the exception of the City of Irvine, who will appoint two directors until start-up funds are repaid. The OCPA Program will ultimately be operated under the direction of an executive director appointed by the Board, with legal and regulatory support provided by a Board appointed General Counsel.

The Board's primary duties are to establish program policies, approve rates and provide policy direction to the Executive Director, who has general responsibility for program operations, consistent with the policies established by the Board. The Board has elected a Chairman and Vice Chairman and may establish an Executive Committee, Finance Committee, and Community Advisory Committee. In the future, the Board may also establish other committees and sub-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 OCPA Board of Directors has appointed an Interim Executive Director, 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 Executive Director 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 proposed for OCPA.



Major functions of OCPA that will be managed by the Executive Director are summarized below. Some of these functions will, at least initially, be fulfilled by outside consultants.

### Administration

OCPA's Executive Director is responsible for managing the organization's human resources and administrative functions and will coordinate with the OCPA 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 issues.

### Finance

The Executive Director 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 bond 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 OCPA 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 OCPA 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 OCPA Program. Outgoing communications will also promote OCPA's customer 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 OCPA'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 with 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 OCPA Program, maintaining a current database of enrolled customers. This function coordinates the issuance of monthly bills through the distribution utility's billing process and tracks customer payments. Activities include the electronic exchange of usage, billing, and payments data with the distribution utility 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 OCPA.

The customer data management services function also manages billing-related communications with customers, customer call centers, and routine customer notices. OCPA will initially contract 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**

OCPA 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. OCPA'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 OCPA 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.

OCPA will develop integrated resource plans that meet program supply objectives and balance cost, risk and environmental considerations. Integrated resource plans are planning documents used by electric utilities to produce least cost resource planning by looking at both supply-side (solar, natural gas) and demand-side (energy efficiency) resources. Such integrated resource plans will also conform to applicable requirements imposed by the State of California. Integrated resource planning 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. Integrated resource plans will be updated and adopted by OCPA on an annual basis.

### **Electric Supply Operations**

Electric supply operations encompass the activities necessary for wholesale procurement of electricity to serve end use 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 CAISO.

OCPA will initially contract with one or more experienced and financially sound third-party energy services providers to perform all electric supply operations for the OCPA 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 OCPA 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 operations. The implementation of such programs will follow the identification of requisite funding sources.

OCPA will eventually 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 this organization 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.

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

The OCPA 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, the California Independent System Operator, the California legislature and, as necessary, the Federal Energy Regulatory Commission.

In coordination with the Executive Director and Board of Directors, OCPA has retained outside

legal counsel in the areas of general counsel and regulatory advice/engagement to support OCPA's administrative operations and governance, review contracts, monitor regulatory proceedings and provide overall legal support related to the various activities of OCPA.



## Chapter 4 – Startup 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 implementation. The start-up period is split into pre-launch and post-launch expenses. The pre-launch period is estimated to start January 1, 2021 and end 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 CCA Program implementation.

### Startup Activities

The initial program startup activities include the following:

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

Other costs related to starting up the OCPA Program will be the responsibility of the OCPA Program’s contractors (and are assumed to be covered 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 forming the new organization, managing contracts, and initiating customer outreach/marketing during the pre-operations period. During the startup period, minimal personnel requirements would include an Executive Director, a General Counsel, and other personnel needed to support regulatory, procurement, finance and communications activities.

For budgetary purposes, it is assumed that 5 to 10 full-time equivalents (staff or contracted professional services) supporting the above listed activities would be engaged during the initial start-up period. Following this period, 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 CCA Program will require capital for three major functions: (1) staffing and contractor costs; (2) deposits and reserves; and (3) working capital. Based on OCPA's anticipated start-up activities and phase-in schedule, a total need of \$15.5 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 startup and pre-startup activities, including direct costs related to public relations support, technical support, and customer communications. Requisite deposits and operating reserves of \$13 million 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 California Independent System Operator prior to commencing market operations; and 3) SCE financial security requirement (\$147,000). In addition, the CCA bond posted to the CPUC (\$100,000) is included in the total capital requirements of \$13 million.

Operating revenues from sales of electricity will be remitted to OCPA beginning approximately sixty days after the initial customer enrollments. This lag is due to the distribution utility'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, which is included in OCPA's initial capital requirements.

### **Financing Plan**

OCPA's initial capital requirement will be provided via a combination of cash contributions from the Member Agencies and loans from conventional financial institutes. These loans will be repaid by OCPA no later than June 30, 2027. OCPA will recover the principal and interest costs associated with the start-up funding via retail generation rates charged to OCPA customers.

## Chapter 5 – Program Phase-In

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

Phase 1. All Non-Residential Accounts (April 1, 2022)

Phase 2. Residential Accounts (October 1, 2022)

Phase 3. Net Energy Metering Accounts (Various)

This approach provides OCPA with the ability to initiate its program with sufficient economic scale before building to full program integration for an expected customer base of approximately 288,963 accounts, post customer opt-out. OCPA will offer service to all customers on a phased basis, which is expected to be completed within 24 months of initial service to Phase 1 customers.

The Program is targeted to begin on or about April 1, 2022, subject to a decision to proceed by OCPA. At start-up, OCPA anticipates serving approximately 35,742 larger customer accounts, comprised of all non-residential accounts within Member Agency jurisdictions. Depending on final wholesale power prices, the balance of the OCPA customers will be launched in October 2022. Net energy metering accounts will be phased into OCPA at the time of their annual true-up.

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

Cities can join OCPA at any time they decide to join. This leaves room for OCPA to expand its territory. On a regular basis, an updated Plan will be submitted to the CPUC, if any new members join the Program, however, load will not be served until the next year, in accordance with the Resource Adequacy Proceeding and Resolution E-4907. Prior to submitting an updated Plan, OCPA will work with SCE on the timeline to begin service and will provide notification to the CPUC staff that an update will be submitted.

### **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) during one billing cycle. However, if a customer moves into the OCPA region prior to April 1, enrollment, OCPA will begin to service the load-based timeline 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 OCPA customers using a diversified portfolio of electricity supplies. Several overarching policies govern the resource plan and the ensuing resource procurement activities that will be conducted in accordance with the plan. These key policies are as follows:

- OCPA will manage a diverse resource portfolio to increase control over energy costs and maintain competitive and stable electric rates.
- OCPA will likely 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.
- OCPA will likely apply for the administration of energy efficiency program funding to help customers reduce energy costs through administration of enhanced customer energy efficiency, distributed generation, and other demand reducing programs.
- OCPA will benefit the area's economy through lower electric bills and investment in local infrastructure, energy projects and energy programs.

OCPA's initial resource mix will include a proportion of renewable energy meeting California's prevailing RPS procurement mandate. As the OCPA Program moves forward, incremental renewable supply additions will be made based on resource availability as well as economic goals of the OCPA 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 experienced public power developers/operators and purchases of renewable energy from third party suppliers.

The plan described in this section would accomplish the following:

- Procure energy through one or more contracts with experienced, financially stable energy suppliers sufficient to offer three distinct generation rate tariffs: 1) 100 percent renewable energy; 2) 50 percent renewable energy; and 3) a program service option that includes a proportion of renewable energy meeting California's prevailing renewable energy procurement mandate.
- Member agencies will choose the default option into which their customers will be enrolled when service begins. After enrollment, customers will be allowed to participate in any of the three available energy supply options.
- Continue increasing renewable energy supplies over time to meet or exceed state mandates, subject to resource availability and economic viability.
- Actively pursue energy efficiency projects and programs using program revenues, 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.

OCPA will comply with regulatory rules applicable to California load serving entities. OCPA will arrange for the scheduling of sufficient electric supplies to meet the demands of its customers. OCPA 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, even if there were a need for the OCPA Program to cease operations and return customers to SCE. 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 (33 percent renewable energy by 2020, increasing to 60 percent by 2030). The OCPA resource plan will meet or exceed all of 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, OCPA’s resource plan includes a diverse mix of power purchases, renewable energy, distributed energy, new energy efficiency programs, demand response and distributed generation. A diversified resource 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 OCPA’s resource plan is to reduce electric sector GHG emissions while offering competitive generation rates to participating 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 OCPA Program demonstrates it can operate successfully, 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 OCPA’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, which will allow the OCPA Program to pass on cost savings to its customers through competitive generation rates. Any investment decisions will be made following thorough environmental reviews and in consultation with qualified financial and legal advisors.

As an alternative to direct investment, OCPA may consider partnering with an experienced power developer and could enter into a long-term (20-to-30 year) power purchase agreement that would support the development of new renewable generating capacity. Such an arrangement could be structured to reduce the OCPA 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 to OCPA as it works to achieve increasing levels of renewable energy supply and competitive rate levels for its customers.

OCPA's resource plan will integrate supply-side resources (solar, natural gas etc.) with programs that will help customers reduce their energy costs through improved energy efficiency and other demand-side measures. As part of its integrated resource plan, OCPA will actively pursue, promote and ultimately administer a variety of customer energy efficiency programs that can cost-effectively displace supply-side resources.

OCPA's indicative resource plan for the years 2022 through 2031 is summarized in the following table. Note that OCPA's projections reflect a portfolio mix of 36% renewable resources and 64% conventional resources. Subject to the availability of funds, a sizable percentage of the conventional resources reflected in the following table will be replaced with GHG-free resources.

**Table 1**  
**Orange County Power Authority**  
**Proposed Resource Plan (GWh)**

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>OCA Demand (GWh)</b>										
Retail Demand	2,399	4,124	4,150	4,175	4,201	4,228	4,254	4,280	4,307	4,334
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	134	231	232	234	235	237	238	240	241	243
<b>TOTAL DEMAND</b>	<b>2,533</b>	<b>4,355</b>	<b>4,382</b>	<b>4,409</b>	<b>4,437</b>	<b>4,464</b>	<b>4,492</b>	<b>4,520</b>	<b>4,548</b>	<b>4,576</b>
<b>OCA Supply (GWh)</b>										
Total Renewable Resources	864	1,608	1,660	1,879	2,101	2,198	2,340	2,483	2,584	2,600
Total Conventional Resources	1,670	2,746	2,722	2,530	2,336	2,266	2,152	2,037	1,964	1,976
<b>TOTAL SUPPLY</b>	<b>2,533</b>	<b>4,355</b>	<b>4,382</b>	<b>4,409</b>	<b>4,437</b>	<b>4,464</b>	<b>4,492</b>	<b>4,520</b>	<b>4,548</b>	<b>4,576</b>
Energy Open Position	0	0	0	0	0	0	0	0	0	0

### Supply Requirements

OCPA power supply requirements are developed based on the customer and consumption data provided by SCE for the Member Agencies. Program participation rates are applied such that 95% of residential and 90% of non-residential customers are included in the load forecast. Hourly load profiles, developed by SCE, are applied to customer rate classes and summed up to develop OCPA system loads by month and hour. The electric sales forecast and load profile will be affected by OCPA’s plan to introduce the OCPA Program to customers in phases, and the degree to which customers choose to remain with SCE during the customer enrollment and opt-out periods. OCPA’s phased roll-out plan and assumptions regarding customer participation rates are discussed below.

### Customer Participation Rates

Customers will be automatically enrolled in the OCPA Program unless they opt-out during the customer notification process conducted during the 60-day period prior to enrollment and continuing through the 60-day period following commencement of service. For all phases, OCPA anticipates a 90-95% participation of SCE bundled service customers, based on reported opt-out rates for the Clean Power Alliance, Western Community Energy, Sonoma Clean Power and Lancaster Choice Energy CCA programs plus the increase in the cap on Direct Access service. It is assumed that new and existing non-residential Direct Access (DA) customers will continue to remain with their current electricity supplier.

The participation rate is not expected to vary significantly among customer classes, in part due to the fact that OCPA will offer three distinct rate 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. The assumed participation rates will be refined as OCPA’s public outreach and market research efforts continue to develop.

### 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. Approximately 700 service accounts per day will be switched over during the first month of service. The estimated number of accounts by rate class is shown in Table 2 below.

**Table 2**  
**Orange County Power Authority**  
**Eligible Retail Service Accounts**  
**Not Adjusted for Participation Rates**

OCPA Customers	Phase 1 Eligible Accounts	Phase 2 Eligible Accounts
Residential	--	271,260
Small Commercial	32,138	32,138
Medium Commercial	5,755	5,755
Large Commercial	461	461
Industrial	191	191
Street Lighting & Traffic	3,635	3,635
Agricultural & Pumping	397	397
<b>Total</b>	<b>42,576</b>	<b>313,836</b>

OCPA assumes that customer growth will generally offset customer attrition (opt-outs) over time, resulting in a relatively stable customer base (0.6% 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 Orange County and the potential for continuing customer opt-outs following mandatory customer notification periods. The forecast of service accounts (customers) served by OCPA for each of the next ten years is shown in the following table:



**Table 3**  
**Orange County Power Authority**  
**Retail Service Accounts (End of Year)**

OCPA Customers	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Residential	261,000	262,618	264,246	265,885	267,533	269,192	270,861	272,540	274,230	275,930
Small Commercial	29,000	29,180	29,361	29,543	29,726	29,910	30,096	30,282	30,470	30,659
Medium Commercial	5,000	5,031	5,062	5,094	5,125	5,157	5,189	5,221	5,253	5,286
Large Commercial	378	380	383	385	387	390	392	395	397	400
Industrial	159	160	161	162	163	164	165	166	167	168
Street Lighting & Traffic	3,000	3,019	3,037	3,056	3,075	3,094	3,113	3,133	3,152	3,172
Agricultural & Pumping	341	343	345	347	350	352	354	356	358	361
Total	298,878	300,731	302,596	304,472	306,359	308,259	310,170	312,093	314,028	315,975

### 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 4**  
**Orange County Power Authority**  
**Annual Energy Requirements (GWh) 2022 to 2031**

OCPA Energy Requirement (GWh)	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Retail Energy	2,399	4,124	4,150	4,175	4,201	4,228	4,254	4,280	4,307	4,334
Losses and UFE	134	231	232	234	235	237	238	240	241	243
Total Load Requirement	2,533	4,355	4,382	4,409	4,437	4,464	4,492	4,520	4,548	4,576

### Capacity Requirements

The CPUC’s resource adequacy standards applicable to the OCPA Program require a demonstration one year in advance that OCPA 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 OCPA’s capacity requirements must be procured locally, from the SCE area as defined by the CAISO. Local area resource needs will be defined by the CPUC annually based on the capacity study. A local resource for OCPA is likely to be located within the LA Basin area on the Figure below. Local resources ensure system reliability within areas that are not constrained by transmission capacity.



**Table 5**  
**Orange County Power Authority**  
**Forward Capacity and Reserve Requirements (MW)**  
**2021 to 2023**

Month	2022	2023	2024
January		641	645
February		565	549
March		590	594
April	384	565	568
May	417	613	617
June	425	625	629
July	484	748	752
August	485	777	782
September	404	683	688
October	663	667	671
November	555	558	562
December	624	628	632

OCPA’s plan ensures that sufficient reserves will be procured to meet its peak load at all times. OCPA’s projected annual capacity requirements are shown in the following table:

**Table 6**  
**Orange County Power Authority**  
**Capacity Requirements (MW)**  
**2022 to 2031**

Demand (MW)	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Retail Demand	628	736	740	745	750	754	759	763	768	772
Losses and UFE	35	41	41	42	42	42	42	43	43	43
Total Net Peak Demand	663	777	782	787	792	796	801	806	811	816
Reserve Requirement (%)	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%
Capacity Reserve Requirement	99	117	117	118	119	119	120	121	122	122
Capacity Requirement Including Reserve	762	894	899	905	910	916	921	927	932	938

Local capacity requirements are a function of the SCE area resource adequacy (RA) requirements and OCPA’s projected peak demand. OCPA will need to work with the CPUC’s Energy Division and staff at the California Energy Commission to obtain the data necessary to calculate its monthly local capacity requirement. A preliminary estimate of OCPA’s annual local capacity requirement for the ten-year planning period ranges from approximately 331 MW to 408 MW as

shown in the following table:

**Table 7**  
**Orange County Power Authority**  
**Estimated Local Capacity Requirements (MW)**  
**2022 to 2031**

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
OCPA Peak	663	777	782	787	792	796	801	806	811	816
Local Capacity Req. (% of Peak)	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
OCPA Local Capacity Req., Total	331	389	391	393	396	398	401	403	405	408

The CPUC assigns local capacity requirements during the year prior to the compliance period; thereafter, the CPUC provides local capacity requirement true-ups for the second half of each compliance year. Local capacity requirements apply to a three-year process where an LSE must show 100% local RA compliance for the first 2 years and 50% for the third year. The rules around RA requirements are being reviewed as part of the central procurement proceeding.

OCPA will coordinate with SCE and appropriate state agencies to manage the transition of responsibility for resource adequacy from SCE to OCPA during CCA program phase-in. For system resource adequacy requirements, OCPA 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 Standards Energy Requirements

### Basic RPS Requirements

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

California’s RPS requires OCPA purchase a minimum of 60% renewable energy by 2030. OCPA will also adopt an integrated resource plan 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, Governor Brown signed into law SB 100, which calls for all electricity supplies in the State to be “carbon-free” by 2045. The legislation is important for all LSEs in that it tightens the RPS targets even from SB 350. While the PCC categorization has not been determined, the overall targets in SB 100 are as follows:

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

Table 8 summarizes the various California targets.

**Table 8**  
**California Renewable Portfolio Standards and Greenhouse Gas Mandates**

<b>Target Date:</b>	<b>2017</b>	<b>2020</b>	<b>2026</b>	<b>2030</b>	<b>2045</b>
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% carbon free, 60% 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. Current RPS mandates are provided in the table below.

### **OCA’s Renewables Portfolio Standards Requirement**

OCA’s annual RPS procurement requirements, as specified under California’s RPS program, are shown in the table below. When reviewing this table, it is important to note that OCA 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 9  
Orange County Power Authority  
RPS Requirements (GWh)  
2022 to 2031**

	<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 Sales	2,399	4,124	4,150	4,175	4,201	4,228	4,254	4,280	4,307	4,334
Renewable Energy Purchase	864	1,608	1,660	1,879	2,101	2,198	2,340	2,483	2,584	2,600
% of Current Year Retail Sales	36%	39%	40%	45%	50%	52%	55%	58%	60%	60%
65% Long-Term Contracts	561	1,045	1,079	1,221	1,365	1,429	1,521	1,614	1,680	1,690

Table 10 illustrates additional details for renewable procurement and long-term procurement. The table does not include an estimate for the minimum margin of procurement (MMOP) at this time. The MMOP is the amount by which OCPA will over-acquire renewable resources to hedge against the risk of underperformance. OCPA plans to revise and adopt an MMOP through the IRP process and to include an estimate in its RPS procurement plan. OCPA notes that existing CCAs vary in their assessment of MMOP. Some CCAs do not adopt a specific MMOP since their base power portfolio exceeds the RPS requirement. Others assess an MMOP varying from 2% to 10%. MMOP will be established through OCPA power procurement and risk policies.

Orange County Power Authority Implementation Plan

**Table 10**  
**OCPA Renewable Procurement**

	<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>
Net Retail Sales (MWh)	2,399,094	4,124,068	4,149,699	4,175,490	4,201,442	4,227,554	4,253,829	4,280,268	4,306,870	4,333,638
Annual Procurement Target (MWh)	863,674	1,608,386	1,659,880	1,878,971	2,100,721	2,198,328	2,339,606	2,482,555	2,584,122	2,600,183
Minimum Margin of Procurement* (MWh)										
Annual L/T Procurement Target (MWh)	561,388	1,045,451	1,078,922	1,221,331	1,365,469	1,428,913	1,520,744	1,613,661	1,679,679	1,690,119
% of L-T Procurement Target	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%
Forecasted L-T Procurement (MWh)	561,388	1,045,451	1,078,922	1,221,331	1,365,469	1,428,913	1,520,744	1,613,661	1,679,679	1,690,119
% of L/T Procurement Forecasted	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%
Surplus of L-T Procurement (MWh)	0	0	0	0	0	0	0	0	0	0

\*At this time OCPA has not yet evaluated a minimum margin of procurement for renewable energy.

### **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 OCPA'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 future renewable energy solicitations administered by OCPA, unsolicited proposals or discussions with other agencies. Renewable projects that are located virtually anywhere in the Western Interconnection 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.

### **Energy Efficiency**

OCPA's energy efficiency goals will reflect a commitment to increasing energy efficiency within the County, expanding beyond the savings achieved by SCE's programs. To promote the achievement of this goal, OCPA will likely complete 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 OCPA Program phase-in 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 infrequently used 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. The 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. This resource plan will likely anticipate that OCPA's demand response programs would partially offset its local capacity requirements.

SCE offers several demand response programs to its customers, and OCPA 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 OCPA's demand response program 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. OCPA may utilize experienced third-party contractors to design, implement and administer its demand response programs.

### **Distributed Generation**

Consistent with OCPA's policies and the state's Energy Action Plan, clean distributed generation is a component of the integrated resource plan. OCPA 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, OCPA 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, OCPA 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 OCPA will adopt a program that would 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. 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 Orange County. 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 the County would increase.

## Chapter 7 – Financial Plan

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This Chapter examines the monthly cash flows expected during the startup and customer phase-in period of the OCPA Program and identifies the anticipated financing requirements. It includes estimates of program startup 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 resource 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 startup and phase-in period. The analysis focuses on the OCPA Program's monthly costs and revenues and specifically accounts for the phased enrollment of OCPA 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
- CCA Bond and Security Deposit
- Pre-Startup Cost
- Debt Service

### Revenues from CCA Program Operations

The cash flow analysis also 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 OCPA charges a standard, default electricity tariff similar in rate design as the generation rates of SCE for each customer class and an optional 100% renewable energy tariff, both at a premium reflective of incremental renewable power costs. More detail on OCPA Program rates can be found in Chapter 8. In general, CCA

generation rates are expected to be 20-30% lower than SCE generation rates to account for the PCIA rate charged to CCA customers.

### **Cash Flow Analysis Results**

The results of the cash flow analysis provide an estimate of the level of capital required for OCPA to move through the CCA startup 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, on a monthly basis, 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 startup and phase-in period, including working capital needs associated with all three phases of customer enrollments, was determined to be \$15.5 million. This \$15.5 million will be covered via \$2.5 million in cash outlay from the City of Irvine and roughly \$13 million from financial institutions.

### **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 CCA program during the phase-in period 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 CCA 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 debt service.

The results of the pro forma analysis are shown in the following tables. In particular, the summary of CCA program startup and phase-in addresses projected OCPA Program operations for the period beginning January 2021 through December 2031.<sup>4</sup> OCPA has also included a summary of Program reserves, which are expected to accrue over this same period of time.

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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

**Table 11**  
**OCPA 10-Year Pro Forma**

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>Revenues from Operations (\$)</b>											
Electric Sales Revenues for CCE	\$0	\$159,153,839	\$258,745,572	\$263,271,475	\$258,480,484	\$262,537,580	\$265,418,956	\$269,097,975	\$271,936,858	\$274,738,599	\$285,555,703
Less Uncollected Accounts	\$0	\$795,769	\$1,293,728	\$1,316,357	\$1,292,402	\$1,312,688	\$1,327,095	\$1,345,490	\$1,359,684	\$1,373,693	\$1,427,779
<b>Total Revenues for CCA</b>	\$0	\$158,358,070	\$257,451,844	\$261,955,118	\$257,188,082	\$261,224,892	\$264,091,862	\$267,752,485	\$270,577,174	\$273,364,906	\$284,127,924
<b>Cost of Operations (\$)</b>											
Block Energy Purchases		\$82,303,089	\$125,785,751	\$124,184,542	\$115,170,755	\$111,516,665	\$101,943,339	\$97,859,441	\$93,674,492	\$90,593,344	\$90,723,327
RPS Adders and Long-Term Energy		\$17,105,348	\$39,363,554	\$41,250,983	\$47,582,645	\$53,929,147	\$58,405,483	\$63,220,341	\$67,896,565	\$71,529,617	\$72,155,610
Resource Adequacy		\$25,315,557	\$45,047,355	\$47,505,682	\$50,283,976	\$53,126,324	\$56,129,338	\$59,302,100	\$62,654,206	\$66,195,793	\$69,937,571
Everything Else		\$12,122,663	\$20,895,425	\$21,614,984	\$22,539,900	\$23,263,758	\$25,253,021	\$26,937,643	\$28,635,523	\$30,342,289	\$31,960,530
<b>Total Cost of Power Supply</b>	\$0	<b>\$136,846,658</b>	<b>\$231,092,085</b>	<b>\$234,556,191</b>	<b>\$235,577,275</b>	<b>\$241,835,893</b>	<b>\$241,731,181</b>	<b>\$247,319,525</b>	<b>\$252,860,786</b>	<b>\$258,661,042</b>	<b>\$264,777,037</b>
<i>Operating &amp; Administrative</i>											
Data Management	\$0	\$867,484	\$3,834,572	\$3,935,573	\$4,047,890	\$4,154,510	\$4,263,937	\$4,376,247	\$4,491,515	\$4,609,819	\$4,731,239
Scheduling Coordinator	\$0	\$340,000	\$516,800	\$527,136	\$538,563	\$549,334	\$560,321	\$571,527	\$582,958	\$594,617	\$606,509
SCE Fees (includes billing)	\$0	\$8,338	\$36,193	\$36,418	\$36,663	\$36,891	\$37,120	\$37,351	\$37,583	\$37,817	\$38,052
Consulting Services	\$586,500	\$993,582	\$923,251	\$941,716	\$960,550	\$979,761	\$999,357	\$1,019,344	\$1,039,731	\$1,060,525	\$1,081,736
Staffing	\$656,370	\$1,248,010	\$2,103,498	\$2,166,460	\$2,213,406	\$2,257,674	\$2,302,828	\$2,348,884	\$2,395,862	\$2,443,779	\$2,492,655
General & Administrative expenses	\$24,480	\$302,548	\$207,682	\$244,446	\$249,743	\$254,738	\$259,833	\$265,029	\$270,330	\$275,737	\$281,251
Debt Service Payment on Financing	\$0	\$2,292,855	\$2,751,426	\$3,613,981	\$3,613,981	\$3,613,981	\$458,571	\$0	\$0	\$0	\$0
Total O&A Costs	\$1,267,350	\$6,052,817	\$10,373,421	\$11,465,730	\$11,660,797	\$11,846,889	\$8,881,966	\$8,618,383	\$8,817,978	\$9,022,294	\$9,231,442
<b>Total Cost of Operations</b>	\$1,267,350	\$142,899,475	\$241,465,506	\$246,021,921	\$247,238,072	\$253,682,783	\$250,613,147	\$255,937,908	\$261,678,764	\$267,683,336	\$274,008,479
<b>Net Income</b>	(\$1,267,350)	\$15,458,595	\$15,986,339	\$15,933,197	\$9,950,009	\$7,542,109	\$13,478,715	\$11,814,577	\$8,898,409	\$5,681,570	\$10,119,445
<b>Cash From Operations and Financing</b>											
Net Income From Operations	(\$1,267,350)	\$15,458,595	\$15,986,339	\$15,933,197	\$9,950,009	\$7,542,109	\$13,478,715	\$11,814,577	\$8,898,409	\$5,681,570	\$10,119,445
Cash from Financing	\$2,500,000	\$13,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Cash Available</b>	\$1,232,650	\$28,458,595	\$15,986,339	\$15,933,197	\$9,950,009	\$7,542,109	\$13,478,715	\$11,814,577	\$8,898,409	\$5,681,570	\$10,119,445
<b>Net Income Allocation</b>											
Reserve Fund Contribution	\$416,663	\$28,458,595	\$15,986,339	\$15,933,197	\$9,950,009	\$7,542,109	\$9,718,568	\$0	\$0	\$0	\$2,079,499
Money Available for Discretionary Programs	\$475,987	\$0	\$0	\$0	\$0	\$0	\$3,760,146	\$11,814,577	\$8,898,409	\$5,681,570	\$8,039,946
<b>Total Cash Outlays</b>	\$1,232,650	\$0	\$0	\$0	\$0	\$0	\$3,760,146	\$11,814,577	\$8,898,409	\$5,681,570	\$8,039,946
<b>Rate Stabilization Reserve Balance</b>	\$416,663	\$28,875,258	\$44,861,597	\$60,794,793	\$70,744,803	\$78,286,912	\$88,005,480	\$88,005,480	\$88,005,480	\$88,005,480	\$90,084,980
<b>Reserve Balance Target</b>	\$416,663	\$46,980,649	\$79,385,920	\$80,883,919	\$81,283,750	\$83,402,559	\$82,393,363	\$84,143,970	\$86,031,375	\$88,005,480	\$90,084,980
CCA Total Bill		\$485,278,313	\$876,756,236	\$900,502,297	\$915,604,019	\$940,253,495	\$964,455,280	\$990,212,406	\$1,015,918,138	\$1,042,407,959	\$1,070,562,853
SCE Total Bill		\$494,209,857	\$892,307,669	\$915,810,576	\$931,263,827	\$955,792,818	\$980,967,890	\$1,006,806,059	\$1,033,324,792	\$1,060,542,014	\$1,088,476,124
Difference		\$8,931,544	\$15,551,434	\$15,308,279	\$15,659,808	\$15,539,324	\$16,512,609	\$16,593,653	\$17,406,654	\$18,134,055	\$17,913,271
Total Bill Savings		2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
Generation Rate Discount		4%	4%	4%	4%	4%	4%	4%	4%	4%	4%

**Table 12  
Orange County Power Authority  
Reserves Summary**

	<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>Reserve Additions</b>										
Operating Reserve Contr.	\$28,875,258	\$44,444,934	\$31,919,535	\$25,883,206	\$17,492,119	\$17,260,678	\$9,718,568	\$0	\$0	\$2,079,499
Cash from Financing	\$15,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Additions</b>	<b>\$44,375,258</b>	<b>\$44,444,934</b>	<b>\$31,919,535</b>	<b>\$25,883,206</b>	<b>\$17,492,119</b>	<b>\$17,260,678</b>	<b>\$9,718,568</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,079,499</b>
<b>Reserves Outlays</b>										
Start-Up Funding Payments	\$0	\$0	\$862,555	\$862,555	\$862,555	\$0	\$0	\$0	\$0	\$0
Working Capital Repayment	\$2,292,855	\$2,751,426	\$2,751,426	\$2,751,426	\$2,751,426	\$458,571	\$0	\$0	\$0	\$0
New Programs	\$0	\$0	\$0	\$0	\$0	\$3,760,146	\$11,814,577	\$8,898,409	\$5,681,570	\$8,039,946
<b>Total Reserve Outlays</b>	<b>\$3,276,465</b>	<b>\$5,639,788</b>	<b>\$14,375,635</b>	<b>\$14,226,893</b>	<b>\$12,707,456</b>	<b>\$10,338,615</b>	<b>\$19,423,723</b>	<b>\$17,225,072</b>	<b>\$16,421,966</b>	<b>\$16,232,700</b>
<b>Rate Stabilization Reserve Balance</b>	<b>\$28,875,258</b>	<b>\$44,861,597</b>	<b>\$60,794,793</b>	<b>\$70,744,803</b>	<b>\$78,286,912</b>	<b>\$88,005,480</b>	<b>\$88,005,480</b>	<b>\$88,005,480</b>	<b>\$88,005,480</b>	<b>\$90,084,980</b>

The surpluses achieved during the phase-in period serve to build OCPA's net financial position and credit profile and to provide operating reserves for OCPA 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 increase renewable and GHG-free resources within OCPA's resource mix.

### **OCPA Financing**

It is anticipated that one or more rounds of financing, inclusive of prospective direct term loans between OCPA and its Member Agencies, will be necessary to support OCPA Program implementation. Subsequent capital requirements will be self-funded from OCPA'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 OCPA Program are \$15.5 million. This amount is dependent upon the electric load served by OCPA, actual energy prices, payment terms established with the third-party supplier and program rates. This figure would be refined during the startup period as these variables become known. Once the OCPA Program is up and running, these costs would be recovered from customers through retail rates.

The City of Irvine has provided \$2.5 million in initial funding for start-up costs. OCPA currently projects repaying this loan by 2027, subject to change based on final power prices. It is assumed that the remaining financing will be primarily secured via a short-term loan or letter of credit, which would allow OCPA to draw cash as required. Requisite financing would need to be arranged no later than the first quarter of 2021.

### **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 OCPA 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 five to ten years 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 bonds would be the revenue from sales to the retail customers of OCPA.

## 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 OCPA’s Board. OCPA would retain authority to modify program policies from time to time at its discretion.

### Rate Policies

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

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
- Allow individual member agencies 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 utility SCE. As planned, the value provided by the OCPA Program will also include options for a higher proportion of renewable energy and reduced GHG emissions relative to the incumbent utility, enhanced energy efficiency and customer programs, community focus, local investment and control. OCPA currently plans to offer customers rates that are lower than SCE’s bundled rates. Final rates for the launch phase will be subject to final power price bids.

As previously discussed, the OCPA Program will offer increased renewable energy supply to



program customers, relative to the incumbent utility, by offering three distinct rate tariffs. The initial renewable energy content provided under OCPA'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. OCPA will also offer its customers a 50% and 100% 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 SCE.

### **Rate Stability**

OCPA 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 SCE to ensure that OCPA Program rates are not drastically different from the competitive alternative.

### **Equity Among Customer Classes**

OCPA's initial rates will be set at a discount to the rates offered by SCE, subject to final power price bids. The level of the discount will depend upon the default product chosen by the Member Agency. Rate differences among customer classes will reflect the rates charged by the local distribution utility as well as differences in the costs of providing service to each class. Rate benefits may also vary among customers within the major customer class categories, depending upon the specific rate designs adopted by OCPA.

### **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 to the OCPA Program's customer service call center. 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**

OCPA Program rates must collect sufficient revenue from participating customers to fully fund OCPA'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 OCPA Program, subject to the disclosure and due process policies described later in this chapter. To ensure rate stability, funds available in OCPA's rate stabilization fund may be used from time to time to augment operating revenues.

### **Rate Design**

OCPA will generally match the rate structures from the utilities' standard rates to avoid the possibility that customers would see significantly different bill impacts as a result of changes in rate structures that would take effect following enrollment in the OCPA Program. In October 2020, SCE began to move bundled residential customers toward default time-of-use rates. OCPA anticipates that rates implemented at launch will be based on default SCE TOU rates. OCPA will review SCE rate structure changes and finalize the OCPA rate structures 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 under the incumbent utility and potentially reduce the cost of power for these customers. OCPA may provide large energy users with custom pricing options to help these customers gain greater control over their energy costs. 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 SCE 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. The objective is that OCPA's net energy metering tariff will apply to the generation component of the bill, and the SCE net energy metering tariff will apply to the utility's portion of the bill. OCPA plans to pay customers for excess power produced from net energy metered generation systems in accordance with the rate designs adopted by OCPA.

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

Initial program rates will be adopted by OCPA 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 to the Board of Directors and ample time will be given to affected customers to provide comment on the proposed rate changes.

After proposing a rate adjustment, OCPA 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 OCPA Program 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 OCPA Board from time to time.

By adopting this Implementation Plan, 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's 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 OCPA Program's designated telephone-based or internet opt-out processing service. Should customers choose to initiate an opt-out request by contacting SCE, they would be transferred to the OCPA 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 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 OCPA 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 OCPA 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 OCPA 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 OCPA'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 OCPA Program can elect to transfer back to the incumbent utility 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 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 OCPA.

If adopted, the Termination Fee would be clearly disclosed in the four 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 SCE 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 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 OCPA 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, SCE has the right to shut off electricity to customers for failure to pay electricity bills, and SCE Electric Rule 23 mandates that partial payments are to be allocated pro rata between SCE 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. SCE would attempt to collect any outstanding balance from customers in accordance with Rule 23 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, Rule 23, 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 OCPA Program. A deposit would be required for an applicant who previously had been a customer of SCE or OCPA and whose electric service has been discontinued by SCE 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 as defined in SCE Electric Rule 11 (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 SCE.

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<sup>5</sup> A customer whose service is discontinued by OCPA is returned to SCE 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 OCPA Program. By adopting this Implementation Plan, 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 OCPA 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 will solicit the services of a certified Scheduling Coordinator to schedule loads and resources to meet OCPA customer demand. OCPA may designate the primary supplier to be responsible for day-to-day energy supply operations of the OCPA Program and for managing the predominant supply risks for the term of the contract. The primary supplier will ensure OCPA meets renewable energy mandates as well as resource-specific mandates such as the storage requirement.<sup>6</sup> Finally, the primary supplier may be responsible for ensuring OCPA's compliance with all applicable

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

resource adequacy and regulatory requirements imposed by the CPUC or FERC.

OCPA will be commencing the requisite competitive solicitation process to identify its initial energy supplier(s). OCPA anticipates executing the electric supply contract for Phase 1 loads in late 2021. The contracts for Phase 2 loads will be executed shortly thereafter. Resource adequacy may be acquired prior to the rest of power supply in order to meet CPUC requirements.

### **Data Management Contract**

A data manager will provide the retail customer services of billing and other customer account services (electronic data interchange or EDI with SCE, billing, remittance processing and account management). Recognizing that some qualified wholesale energy suppliers do not typically conduct retail customer services whereas others (i.e., direct access providers) do, the data management contract may be separate from the electric supply contract. It is anticipated that a single contractor will be selected to perform all of the data management functions.<sup>7</sup>

The data manager is responsible for the following services:

- Data exchange with SCE
- 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. Such systems can impose significant information technology costs and take significant time to deploy. Separation of the data management contract from the energy supply contract gives OCPA greater flexibility to change energy suppliers, if desired, without facing an expensive data migration issue.

OCPA will be commencing the requisite competitive solicitation process to identify its data management services provider. It is anticipated that OCPA will execute a contract for data management services by January 31, 2021.

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<sup>7</sup> The contractor providing data management may also be the same entity as the contractor supplying electricity for the program.



### **Electric Supply Procurement Process**

In the latter half of 2021, OCPA plans to solicit proposals for shaped energy, renewable energy, carbon free energy and resource adequacy capacity from a highly qualified pool of suppliers. OCPA will also solicit proposals for scheduling coordinator services from a separate bidder. Contract negotiations will commence immediately following proposal evaluation. It is anticipated that selection of the final suppliers will be made by OCPA in early 2022.

## Chapter 11 – Contingency Plan for Program Termination

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### Introduction

This chapter describes the process to be followed in the case of OCPA Program termination. By adopting the original Implementation Plan, 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 OCPA Program and return its customers to SCE service, the proposed process is designed to minimize the impacts on its customers and on SCE. The proposed termination plan follows the requirements set forth in SCE’s tariff Rule 23 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 Member Agencies 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, OCPA’s 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 SCE. 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.

At least one year of advance notice would be provided to SCE 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 (CCASRs). 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**

The JPA Agreement defines the terms and conditions under which Members may terminate their participation in the program.

## **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.f 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<sup>1</sup> 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:

[Signature]  
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

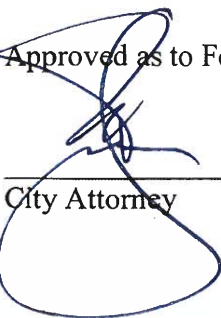
Approved as to Form:

\_\_\_\_\_  
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

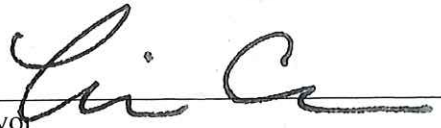
**CITY OF FULLERTON**



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

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

**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.