

# LOS ANGELES COMMUNITY CHOICE ENERGY AUTHORITY

## JOINT POWERS AGREEMENT

This Joint Powers Agreement (the "Agreement"), effective as of June 27, 2017, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the public agencies set forth in Exhibit A.

### RECITALS

1. The Parties are public agencies sharing various powers under California laws, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.
3. The purposes for the Initial Participants (as such term is defined in Section 2.3 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability; energy efficiencies and local economic benefits, such as jobs creation, community energy programs; and local power development. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.
4. The Parties desire to establish a separate public agency, known as the Los Angeles Community Choice Energy Authority ("Authority"), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
5. The Initial Participants have each adopted an ordinance electing to implement through the Authority a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2 ("CCA Program"). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.
6. By establishing the Authority, the Parties seek to:
  - (a) Develop an electric supply portfolio with overall lower greenhouse gas intensity and lower greenhouse gas (GHG) emissions than Southern California Edison ("SCE"), and one that supports the achievement of the parties' greenhouse gas reduction goals and the comparable goals of all participating jurisdictions;
  - (b) Establish an energy portfolio that encourages the use and development of cost-effective local renewable and distributed energy resources and that discourages the use unbundled renewable energy credits;
  - (c) Promote an energy portfolio that incorporates energy efficiency and demand response programs and pursues ambitious energy consumption reduction goals;

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(d) Provide electricity rates that are lower or at worst competitive with those offered by SCE for similar products;

(e) Offer differentiated energy options (e.g. 33% or 50% qualified renewable) for default service, and a 100% renewable content option in which customers may "opt-up" and voluntarily participate;

(f) Achieve quantifiable economic benefits to the region;

(g) Recognize the value of current workers in existing jobs that support the energy infrastructure of Los Angeles County and Southern California (e.g. union and prevailing wage jobs, local workforce development, apprenticeship programs, and local hire). The Authority, as a leader in the shift to clean energy, commits to ensuring it will take steps to minimize any adverse impacts to these workers to ensure a "just transition" to the new clean energy economy;

(h) Support a stable, skilled workforce through such mechanisms as project labor agreements, collective bargaining agreements, or community benefit agreements, or other workforce programs that are designed to avoid work stoppages, ensure quality, and benefit local residents by delivering cost-effective clean energy programs and projects (e.g. new energy programs and increased local energy investments);

(i) Promote supplier and workforce diversity, including returning veterans and those from disadvantaged and under-represented communities, to better reflect the diversity of the region;

(j) Promote personal and community ownership of renewable resources, spurring equitable economic development and increased resilience, especially in low income communities;

(k) Provide and manage its energy portfolio and products in a manner that provides cost savings to customers and promotes public health in areas impacted by energy production;

(l) Ensure that low-income households and communities are provided with affordable and flexible energy options, including the provision of energy discounted rates to eligible low-income households;

(m) Recognize and address the importance of healthy communities, including those disproportionately affected by air pollution and climate change;

(n) Use program revenues to provide energy-related programs and services; and

(o) Create an administering Authority that is financially sustainable, responsive to regional priorities, well-managed, and a leader in fair and equitable treatment of employees.

### **1. DEFINITIONS**

1.1 "AB 117" means Assembly Bill 117 (Stat. 2002, Ch. 838, codified at Public Utilities Code Section 366.2), which created Community Choice Aggregation.

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- 1.2 "Act" means the Joint Exercise of Powers Act of the State of California (Chapter 5, Division 7, Title 1 of the Government Code commencing with Section 6500).
- 1.3 "Agreement" means this Joint Powers Agreement.
- 1.4 "Authority" means Los Angeles Community Choice Energy Authority.
- 1.5 "Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Policies and Procedures, the annual budget, and plans and policies.
- 1.6 "Board" means the Board of Directors of the Authority.
- 1.7 "Community Choice Aggregation" or "CCA" means an electric service option available to cities, counties, and other public agencies pursuant to Public Utilities Code Section 366.2.
- 1.8 "CCA Program" means the Authority's program relating to CCA that is principally described in Section 2.4 (Purpose) of this Agreement.
- 1.9 "Days" shall mean calendar days unless otherwise specified by this Agreement.
- 1.10 "Director" means a member of the Board representing a Party, including up to two alternate Directors appointed in accordance with Sections 4.1 (Board of Directors) and 4.2 (Appointment and Removal of Directors) of this Agreement.
- 1.11 "Effective Date" means the date on which the Agreement shall become effective and the Authority shall exist as a separate public agency, as further described in Section 2.1 (Effective Date and Term) of this Agreement.
- 1.12 "Initial Costs" means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of the executive, technical, and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority's initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements. The Board shall determine the termination date for the Initial Costs.
- 1.13 "Initial Participants" means, for purpose of this Agreement, the County of Los Angeles, and the cities of Calabasas, Rolling Hills Estates, and any other Parties joining in accordance with Section 2.3 (Initial Participants) of this Agreement.
- 1.14 "Operating Policies and Procedures" means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.
- 1.15 "Parties" means, collectively, the signatories to this Agreement that have satisfied the conditions in Section 2.3 (Initial Participants) or Section 2.5 (Addition

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of Parties) of this Agreement, such that they are considered members of the Authority.

- 1.16 "Party" means, singularly, a signatory to this Agreement that has satisfied the conditions in Section 2.3 (Initial Participants) or Section 2.5 (Addition of Parties) of this Agreement, such that it is considered a member of the Authority.
- 1.17 "Public Agency" as defined in the Act includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, a county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to the Act.

### **2. FORMATION OF LOS ANGELES COMMUNITY CHOICE ENERGY AUTHORITY**

- 2.1 **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 the County of Los Angeles and at least one other public agency after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until the Agreement is terminated in accordance with Section 8.3 (Mutual Termination) of this Agreement, subject to the rights of the Parties to withdraw from the Authority.
- 2.2 **Formation of the Authority.** Under the Act, the Parties hereby create a separate joint exercise of power agency which is named Los Angeles Community Choice Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing body of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. 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 and incidental to the accomplishment of its purpose.
- 2.3 **Initial Participants.** In addition to Parties executing this Agreement on or prior to the Effective Date, any incorporated municipality, county, or other eligible public agency may become a Party and recognized as an Initial Participant provided during the first 180 days after the Effective Date it executes this Agreement and delivers an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(12) to the Authority. All Initial Participants to this Agreement shall be required to commence electric service as soon as practicable, as determined by the Board.
- 2.4 **Purpose.** The purpose and objectives of this Agreement are to establish the Authority, to provide for its governance and administration, and to define the rights and obligations of the Parties. This Agreement authorizes the Authority to

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provide a means by which the Parties can more effectively develop and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources in the region for the benefit of the Parties and their constituents, including, but not limited to, establishing and operating a Community Choice Aggregation program.

2.5 **Addition of Parties.** After 180 days from the Effective Date any incorporated municipality, county, or other public agency may become a Party to this Agreement if all of the following conditions are met:

2.5.1 The adoption of a resolution of the Board admitting the public agency to the Authority;

2.5.2 The adoption by an affirmative vote of the Board satisfying the requirements described in Section 4.10 (Board Voting) of this Agreement, of a resolution authorizing membership into the Authority and establishing its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership;

2.5.3 The adoption by the public agency of an ordinance required by Public Utilities Code Section 366.2(c)(12) and approval and execution of this Agreement and other necessary program agreements by the public agency;

2.5.4 Payment of the membership payment, if any; and

2.5.5 Satisfaction of any reasonable conditions established by the Board.

Pursuant to this Section 2.5 (Addition of Parties), all parties shall be required to commence electric service as soon as is practicable, as determined by the Board, as a condition to becoming a Party to this Agreement.

2.6 **Continuing Participation.** The Parties acknowledge that membership in the Authority may change by the addition, withdrawal and/or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 2.5 (Addition of Parties) of this Agreement. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

### **3. POWERS**

3.1 **General Powers.** The Authority shall have the powers common to the Parties and which are necessary or convenient to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 3.4 (Limitation on Powers) of this Agreement. As provided in the Act, the Authority shall be a public agency separate and apart from the Parties.

3.2 **Specific 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

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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 purposes, including, but not limited to, each of the following:

- 3.2.1 make and enter into contracts;
- 3.2.2 employ agents and employees, including but not limited to an Executive Director;
- 3.2.3 acquire, contract, manage, maintain, and operate any buildings, works or improvements;
- 3.2.4 acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
- 3.2.5 lease any property;
- 3.2.6 sue and be sued in its own name;
- 3.2.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers authorized by law pursuant to Government Code Section 53850 et seq. and authority under the Act;
- 3.2.8 issue revenue bonds and other forms of indebtedness;
- 3.2.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;
- 3.2.10 form independent corporations or entities, if necessary to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;
- 3.2.11 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
- 3.2.12 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority ("Operating Policies and Procedures"); and
- 3.2.13 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.

- 3.3 **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 as a matter of law and by subsequently enacted legislation.

- 3.4 **Limitation on Powers.** As required by Section 6509 of the Act, the powers of the Authority are subject to the restrictions upon the manner of exercising power possessed by the County of Los Angeles.
- 3.5 **Obligations of the Authority.** The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of the Parties unless the governing body of a Party agrees in writing to assume any of the debts, liabilities, and obligations of the Authority. In addition, pursuant to the Act, no Director shall be personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance of bonds.
- 3.6 **Compliance with the Political Reform Act and Government Code Section 1090.** The Authority and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 et seq.) and Government Code Section 1090 et seq. The Board shall adopt a Conflict of Interest Code pursuant to Government Code Section 87300. The Board may adopt additional conflict of interest regulations in the Operating Policies and Procedures.

#### 4. GOVERNANCE

- 4.1 **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 Section 4.2 (Appointment and Removal of Directors) of this Agreement. The Board, in consultation with the Executive Director, may determine at any time to consider options to reduce the size of the Board if it determines that the efficient functioning and operation of the Board would be improved by having a smaller number of Directors. Any such change to the size of the Board would require amendment of this Joint Powers Agreement in accordance with Section 4.11 (Special Voting).
- 4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:
- 4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director 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 appoint and designate in writing up to two alternate Directors who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the regular Director shall be an elected or appointed member of the governing body of the Party. The persons appointed and designated as the alternate Directors may be an elected or appointed member of the governing body of the Party, an appointed member of an advisory body of the Party, a staff member of the Party or a member of the public who meets the criteria below. All Directors and alternates shall be subject to the Board's adopted Conflict of Interest Code.
- (a) Any alternate Director that is a member of the public must have demonstrated knowledge in energy-related matters through

significant experience in either: 1) an electric utility or company, agency, or nonprofit providing services to a utility, 2) a regulatory agency or local government body overseeing an electric utility or a company, agency, or nonprofit providing services to such an agency, 3) an academic or nonprofit organization engaged in research and/or advocacy related to the electric sector.

- 4.2.2 The Operating Policies and Procedures, to be developed and approved by the Board in accordance with Section 3.2.12 (Specific Powers), shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Directors have been removed may appoint a replacement.
- 4.3 **Terms of Office.** Each regular and alternate Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body at any time. If at any time a vacancy occurs on the Board, the affected Party shall appoint to fill the position of the previous Director within 90 days of the date that such position becomes vacant.
- 4.4 **Purpose of Board.** The general purpose of the Board is to:
  - 4.4.1 Provide structure for administrative and fiscal oversight;
  - 4.4.2 Retain an Executive Director to oversee day-to-day operations;
  - 4.4.3 Retain legal counsel;
  - 4.4.4 Identify and pursue funding sources;
  - 4.4.5 Set policy;
  - 4.4.6 Maximize the utilization of available resources; and
  - 4.4.7 Oversee all Committee activities.
- 4.5 **Specific Responsibilities of the Board.** The specific responsibilities of the Board shall be as follows:
  - 4.5.1 Identify Party needs and requirements;
  - 4.5.2 Formulate and adopt the budget prior to the commencement of the fiscal year;
  - 4.5.3 Develop and implement a financing and/or funding plan for ongoing Authority operations;
  - 4.5.4 Retain necessary and sufficient staff and adopt personnel and compensation policies, rules and regulations;



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- 4.5.5 Adopt rules for procuring supplies, equipment, and services;
  - 4.5.6 Adopt rules for the disposal of surplus property;
  - 4.5.7 Establish standing and ad hoc committees as necessary to ensure that the interests and concerns of each Party are represented and to ensure operational, technical, and financial issues are thoroughly researched and analyzed;
  - 4.5.8 The setting of retail rates for power sold by the Authority and the setting of charges for any other category of retail service provided by the Authority;
  - 4.5.9 Termination of the CCA Program;
  - 4.5.10 Address any concerns of consumers and customers;
  - 4.5.11 Conduct and oversee Authority audits at intervals not to exceed three years;
  - 4.5.12 Arrange for an annual independent fiscal audit;
  - 4.5.13 Adopt such bylaws, rules and regulations as are necessary or desirable for the purposes hereof; provided that nothing in the bylaws, rules and regulations shall be inconsistent with this Agreement;
  - 4.5.14 Exercise the Specific Powers identified in Sections 3.2 and 4.6 except as the Board may elect to delegate to the Executive Director; and
  - 4.5.15 Discharge other duties as appropriate or required by statute.
- 4.6 **Startup Responsibilities.** The Authority shall have the duty to do the following within one year of the Effective Date of the Agreement:
- 4.6.1 To adopt an implementation plan prepared by the County of Los Angeles, pursuant to Public Utilities Code Section 366.2(c)(3), for electrical load aggregation;
  - 4.6.2 To prepare a statement of intent, pursuant to Public Utilities Code Section 366.2(c)(4), for electrical load aggregation;
  - 4.6.3 To encourage other qualified public agencies to participate in the Authority;
  - 4.6.4 To obtain financing and/or funding as is necessary or desirable;
  - 4.6.5 To evaluate the need for, acquire, and maintain insurance.
- 4.7 **Meetings and Special Meetings of the Board.** The Board shall hold at least one regular meeting per year but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular

meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law.

4.8 **Brown Act Applicable.** All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.).

4.9 **Quorum; Approvals.** A majority of the Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law. The affirmative votes of a majority of the Directors who are present at the subject meeting shall be required to take any action by the Board.

4.10 **Board Voting.**

4.10.1 **Percentage Vote.** Each Director shall have one vote. Action of the Board on all matters shall require an affirmative vote of a majority of all Directors who are present at the subject meeting, except when a supermajority vote is expressly required by this Agreement. When a supermajority vote is required under Section 4.11 (Special Voting), action of the Board shall require an affirmative vote of the specified supermajority of all Directors who are present at the subject meeting. All votes taken pursuant to this Section 4.10.1 shall be referred to as a percentage vote. Notwithstanding the foregoing, in the event of a tie in a percentage vote, the Board can break the tie and act upon an affirmative voting shares vote as described in section 4.10.2 (Voting Shares Vote).

4.10.2 **Voting Shares Vote.** In addition to and immediately after an affirmative percentage vote three or more Directors may request that a vote of the voting shares shall be held. In such event, the corresponding voting shares, as described in section 4.10.3, of all Directors voting in order to take an action shall exceed 50%, or such other higher voting shares percentage expressly required by this Agreement or the Operating Policies and Procedures of all Directors who are present at the subject meeting. All votes taken pursuant to this Section 4.10.2 shall be referred to as a voting shares vote. In the event that any one Director has a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter. When a voting shares vote is held, action by the Board requires both an affirmative percentage vote and an affirmative voting shares vote.

4.10.3 **Voting Shares Formula.** When a voting shares vote is requested by three or more Directors, voting shares of the Directors shall be determined by the following formula:

(Annual Energy Use/Total Annual Energy) multiplied by 100, where (a) "Annual Energy Use" means (i) with respect to the first two years

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following the Effective Date, the annual electricity usage, expressed in kilowatt hours ("kWh"), within the Party's respective jurisdiction and (ii) with respect to the period after the second anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within a Party's respective jurisdiction that are served by the Authority and (b) "Total Annual Energy" means the sum of all Parties' Annual Energy Use.

### 4.11 **Special Voting.**

4.11.1 Except as provided below, matters that require Special Voting as described in this Section shall require 72 hours prior notice to any Brown Act meeting or special meeting. Two-thirds vote (or such greater vote as required by state law) of the appointed Directors shall be required to take any action on the following:

- (a) Change the designation of Treasurer or Auditor of the Authority;
- (b) Issue bonds or other forms of debt;
- (c) Exercise the power of eminent domain, subject to prior approval by the passage of an authorizing ordinance or other legally sufficient action by the affected Party; and
- (d) Amend this Agreement or adopt or amend the bylaws of the Authority. At least 30 days advance notice shall be provided for such actions. The Authority shall also provide prompt written notice to all Parties of the action taken and enclose the adopted or modified documents.

## 5. **INTERNAL ORGANIZATION**

5.1 **Chair and Vice Chair.** For each fiscal year, the Board shall elect a Chair and Vice Chair from among the Directors. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. The Chair shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Board. In the absence of the Chair, the Vice-Chair shall sign contracts and perform all of the Chair's duties. The office of the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board, or (b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement. Upon a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter. Succeeding officers shall perform the duties normal to said offices.