

AGENDA

ORANGE COUNTY POWER AUTHORITY MEETING OF THE BOARD OF DIRECTORS

Tuesday, January 12, 2021
Conference and Training Center
One Civic Center Plaza
Irvine, CA 92606

Closed Session 10:00 a.m.
Public Session 10:30 a.m.

Due to the public health orders and guidelines in California and in accordance with the Governor's Executive Orders N-25-20 and N-29-20, there will be no location for in-person attendance. The Orange County Power Authority is providing alternatives to in-person attendance for viewing and participating in the meeting. Further details are below.

Note: Any member of the public may provide comments to the Orange County Power Authority Board of Directors on any agenda item or on a matter not appearing on the agenda, but within the jurisdiction of the Board. Please indicate whether your comment is on a specific agenda item or a non-agenda item when requesting to speak. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in the following manner:

Requests to Speak. In-person public attendance will not be provided. Members of the public who have requested to speak will be recognized at the appropriate time during the Zoom meeting and may speak through Zoom or telephonically. To allow the Chair to call on you, please provide the following minimum information with your request to speak: your name (if attending by videoconference) or telephone number (if attending by phone).

Comments shall be limited to three minutes when speaking. If you have anything that you wish to be distributed to the Board, please provide it via environmentalprograms@cityofirvine.org, who will distribute the information to the Members.

The public may participate using the following remote options:

ZOOM MEETING

Please click the link below to join the webinar:

<https://zoom.us/j/91860976712?pwd=bTA2UzZnWXlhSlo2RmNpVzU4dDJDZz09>

Passcode: 639783

Or iPhone one-tap:
US: +16699006833,,91860976712#,,,,*639783# or
+12532158782,,91860976712#,,,,*639783#

Or Telephone:
Dial (for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 312 626 6799 or
+1 929 436 2866 or +1 301 715 8592

Webinar ID: 918 6097 6712
Passcode: 639783

International numbers available: <https://zoom.us/j/91860976712>

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

I. CLOSED SESSION

1. PUBLIC EMPLOYMENT

Pursuant to Government Code § 54957

Titles: Chief Executive Officer/Chief Operating Officer

2. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code § 54957.6

Agency Designated Representative(s): Ryan Baron, General Counsel

Unrepresented Employees: Chief Executive Officer/Chief Operating Officer

II. CLOSED SESSION REPORT

III. REGULAR CALENDAR

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

1. APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND CHIEF OPERATING OFFICER AND APPROVAL OF EMPLOYMENT AGREEMENTS

Recommendations:

1. Appoint Chief Executive Officer and Chief Operating Officer.
2. Approve employment agreements for Chief Executive Officer and Chief Operating Officer and delegate authority to execute agreements to Chair and/or Vice Chair.

2. MINUTES FOR DECEMBER 22, 2020 BOARD OF DIRECTORS' SPECIAL MEETING

Recommendation: Approve as submitted.

3. CHIEF EXECUTIVE OFFICER AND CHIEF OPERATING OFFICER JOB DESCRIPTIONS AND INTERIM ORGANIZATIONAL CHART

Recommendations:

1. Approve Chief Executive Officer and Chief Operating Officer job descriptions.
2. Approve interim Authority organizational chart subject to changes proposed by the Chief Executive Officer and approved by the Board of Directors.

4. ADMINISTRATIVE POLICIES OVERVIEW

Recommendation: Discuss and provide direction, if necessary.

5. IMPLEMENTATION TIMELINE OVERVIEW

Recommendation: Receive and file.

6. COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT WITH CITY OF IRVINE

Recommendation: Approve Cooperation and Administrative Services Agreement with City of Irvine for City reimbursement of Authority staffing costs.

IV. PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board.

V. DIRECTOR COMMENTS

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to Authority business. There is to be no discussion or action taken on comments made by Board Members unless authorized by law.

VI. REPORT BY GENERAL COUNSEL

General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

VII. ADJOURNMENT

Compliance with the Americans with Disabilities Act

Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact 949-724-6205. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at www.cityofirvine.org/energy/ocpaboard-meetings. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Board prior to or during the Board meeting are available for public review as required by law. Until the Authority obtains offices, those public records are available for inspection at the City of Irvine, located at 1 Civic Center Plaza, Irvine CA 92612. The documents may also be posted at the above website. Late-arriving documents received during the meeting are available for review by making a verbal request to the Board Secretary in the meeting room.

**ORANGE COUNTY POWER AUTHORITY
Staff Report – Item III.1**

To: Orange County Power Authority Board of Directors

From: Power Authority Staff

Subject: APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND CHIEF
OPERATING OFFICER AND APPROVAL OF EMPLOYMENT
AGREEMENTS

Date: January 12, 2021

RECOMMENDATIONS

1. Appoint Chief Executive Officer and Chief Operating Officer.
2. Approve employment agreements for Chief Executive Officer and Chief Operating Officer and delegate authority to execute agreements to Chair and/or Vice Chair.

BACKGROUND

During its December 22, 2020 closed session meeting, the Board of Directors discussed appointments of a Chief Executive Officer and Chief Operating Officer and identified preferred candidates. These individuals may be announced following the closed session portion of the January 12, 2021 Board of Directors meeting. If the Board makes such a decision, it will consider the approval of employment agreements for Chief Executive Officer and Chief Operating Officer.

ANALYSIS AND DISCUSSION

The proposed CEO and COO Employment Agreements were developed after evaluation of similar contracts and a review of salaries for municipal, CCA, and public power executives in Southern California area and the state. Based on the decisions made by the Board in closed session, information on salaries and benefits will be summarized verbally at the meeting in compliance with the Brown Act.

FISCAL IMPACT

The salaries for the CEO and COO will be included in the Authority's Fiscal Year 2020-2021 Budget.

ATTACHMENTS

1. Chief Executive Officer Employment Agreement.
2. Chief Operating Officer Employment Agreement.

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Item III.1

Attachment 1

Chief Executive Officer Employment Agreement

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**ORANGE COUNTY POWER AUTHORITY
EMPLOYMENT AGREEMENT
(Chief Executive Officer)**

This Employment Agreement (“**Agreement**”) dated as of _____ (“**Effective Date**”), is entered into by and between Orange County Power Authority, a California joint powers authority (“**Authority**” or “**Employer**”) and _____ (“**Employee**”). Authority and Employee may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**” Authority and Employee agree to the following terms and conditions of employment.

1. **TERM.** Employer shall employ Employee from the Effective Date of this Agreement until the employment is terminated in accordance with Section 4 of this Agreement.

2. **POSITION AND RESPONSIBILITIES.**

(a) **Position and Duties.** Employee accepts employment with Employer as Chief Executive Officer (“**CEO**”) and shall perform all services appropriate to that position pursuant to Authority’s Joint Powers Agreement; any resolutions, bylaws, policies, procedures, rules, or other enactments of the Authority Board of Directors; any directions of the Authority Board of Directors; and as otherwise provided by applicable law or regulation. The CEO’s duties include, but are not limited to, those set forth in the position description which appears as Exhibit A, attached hereto. Employee shall devote Employee’s best efforts and full-time attention to the performance of Employee’s duties. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to Authority. Employee shall receive formal direction as to matters of Authority business only from the Board of Directors.

(b) **Hours of Work.** Employee is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the CEO position. Employee does not have set hours of work as Employee is expected to be available at all times. It is recognized that Employee must devote a great deal of time to the business of the Authority outside of the Authority’s customary office hours, and to that end Employee’s schedule of work each day and week may vary in accordance with the work required to be performed and in accordance with any specific direction provided by the Authority Board of Directors.

(c) **Outside Activities.**

(i) Employee agrees to devote Employee’s full time and attention to the discharge of Employee’s duties as Chief Executive Officer, except that this provision shall be construed so as to permit Employee to participate in community service, public service, or non-profit activities which, in the opinion of the Board of Directors, do not constitute a conflict of interest and do not unreasonably interfere with the performance of the Employee’s duties as Chief Executive Officer, Authority operations, or Authority’s reputation in the community.

(ii) Except upon the prior written consent of the Board of Directors or as stated above in Section 2(c)(i), Employee (during the term of this Agreement) shall not: (A) accept any other employment; or (B) engage, directly or indirectly, in any other business, commercial, or professional activity (whether or not pursued for pecuniary advantage) that is or may be competitive with Authority that might create a conflict of interest with Authority or that

otherwise might interfere with the business and operations of Authority. So that Authority may be aware of the extent of any other demands upon Employee's time and attention, Employee shall disclose in confidence to the Board of Directors the nature and scope of any other business activity in which Employee is or may become engaged during the term of this Agreement (provided, however, that such activity may be subject to public disclosure as required by law or Authority's Conflict of Interest Code). This section shall not be deemed to prohibit passive personal investments.

(iii) Authority acknowledges and consents that Employee is a _____ and an employee of the _____.

(d) **Work Product.** Employee agrees that all documents and writings of any type produced in the performance of this Agreement shall be the sole property of Authority including all rights therein of whatever kind and whether arising from common or civil law or equity. Upon termination of this Agreement for any reason all such documents and writings produced in the performance of this Agreement shall be transferred to and become the property of Authority upon its request without additional compensation.

3. **COMPENSATION AND BENEFITS.**

(a) **Compensation.**

(i) Base Annual Salary. In consideration of the services to be rendered under this Agreement, Authority shall pay Employee, as base annual salary, _____ per year. This amount shall be paid on a pro rata basis pursuant to the procedures regularly established and as they may be amended by Authority in its sole discretion.

(ii) Merit Adjustments. Upon one (1) year of employment, Employee may be eligible for a merit increase in Employee's base annual salary based upon the results of a performance evaluation and at the exercise of the sole and exclusive discretion by the Board of Directors.

(b) **Benefits.** Employee shall be entitled to receive the same type and level of benefits afforded by Authority to other executive staff employees as established from time to time by Authority's Board of Directors, which may include, but not be limited to, health insurance benefits (medical, vision, and dental), retirement benefits, leaves, disability coverage, term life insurance and/or other benefits as they may be modified or amended from time to time. No statement concerning benefits or compensation to which Employee is entitled shall alter in any way the term of this Agreement, any renewal thereof, or its termination.

(i) Paid Leave Accrual. Notwithstanding the above, Employee shall begin his or her employment with a paid time off accrual rate of ____ hours per year and shall be credited with ____ hours of the annual total upon the Effective Date, with the balance accrued over the subsequent twelve (12) month period. In addition to the paid leave accrual, Employee shall receive ____ hours per year of annual executive leave.

(ii) Interim Stipend for Medical Insurance. Until Authority is able to provide comprehensive medical insurance benefits to Employee, Employee shall receive an in-

lieu stipend in the amount of _____ per month, pro-rated by day. Such stipend will terminate upon availability of medical insurance benefits to Employee.

(iii) Interim Stipend for Retirement Contributions. Until Authority is able to join a public retirement system or provide contributions to an employer-sponsored retirement account for the benefit of Employee (in any form as solely determined by Authority), Employee shall receive an in-lieu stipend in the amount of not less than _____ of Employee's annual base salary, pro-rated by day. Such stipend will terminate upon Authority's initial contribution to an employer-sponsored retirement account for the benefit of Employee.

(iv) Automobile Allowance. Employee shall receive a gross monthly vehicle allowance of _____ per month. The Parties intend for this taxable allowance to be in lieu of reimbursement on an itemized basis for mileage, gas, maintenance of a vehicle, etc. Employee shall not be separately reimbursed for mileage driven in his or her personal vehicle.

(v) Technology Allowance. The Authority does not currently have a permanent place of business and employees are subject to California stay-at-home orders due to COVID-19. Until the Authority obtains a place of business and requires employees to work from the place of business, Employee shall receive either an Authority-owned mobile phone and (accompanying Authority-paid plan) or a _____ monthly taxable technology allowance to use towards his or her personal discretionary technological purchases and expenses in furtherance of employment.

4. NATURE AND TERMINATION OF EMPLOYMENT.

(a) **At-Will Employment; Termination.** Authority and Employee expressly agree that the employment relationship created by this Agreement is "at-will," that Employee serves at the will and pleasure of the Board of Directors, and Employee may be terminated at any time, with or without cause. Nothing in this Agreement or any statute, ordinance, or rule shall prevent, limit or otherwise interfere with the right of Authority to terminate, without cause or right of appeal or grievance, the services of the Employee at any time. The provisions below apply to termination:

(i) Termination by Authority for Cause. At any time, Authority may immediately terminate this Agreement for cause by providing written notification to the Employee with the basis for the cause. All compensation and benefits shall immediately terminate upon the effective date of any notice of for-cause termination. For the purposes of this Agreement, "cause" shall include, but not be limited to, bribery, theft, embezzlement, conviction of any criminal act involving fraud, malfeasance, or an act of misfeasance, unlawful discrimination, commission of a felony, material dishonesty related to Employee's duties or the Authority, material violation of the Authority's personnel policies or procedures as discussed in Section 5 herein, or other gross misconduct in the performance of his or her job. Employee shall not be entitled to any severance under this Agreement, as described below in paragraph (ii), if terminated for cause.

(ii) Termination by Authority Without Cause. At any time, Authority may terminate this Agreement without cause, severance pay equal to _____ months' salary ("**Severance Pay**"). Severance Pay shall be computed based upon Employee's base monthly salary in effect at the time of termination. In exchange for the Severance Pay mentioned above, Employee hereby expressly waives any right he or she may have under any applicable law,

Authority policy or otherwise to appeal or grieve the termination. Employee further agrees that payment of Severance Pay is contingent on execution of a severance agreement by Employee including a general waiver of claims consistent with this paragraph. The Parties expressly acknowledge and agree that these Severance Pay provisions have been independently negotiated. Acceptance at the time of termination by Employee of the Severance Pay shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which Employee may have, or have had, at any time, in the past or in the future, arising out of Employee's employment by Authority including, but not limited to, claims for wrongful termination with the exception of any claims for worker's compensation benefits or any other claims which cannot be waived under applicable law. If Employee wishes to retain any such rights, Employee must decline to accept the Severance Pay provided by this paragraph. This section is intended to comply with the provisions of California Government Code §§ 53260 and 53261, *et seq.*, and in no event shall Employee be entitled to severance benefits greater than provided for therein.

(b) **Resignation.** In the event that Employee voluntarily resigns Employee's position with Authority, Employee shall provide a minimum of thirty (30) days' notice unless the parties agree otherwise.

5. **AUTHORITY POLICIES AND PROCEDURES.** In addition to the terms and conditions of this Agreement, the terms and conditions of Employee's employment, including additional employment benefits of Employee not specifically provided for in this Agreement, shall be governed by Authority's personnel policies and procedures to the extent not inconsistent with the provisions of the Agreement. In the event of any conflict with an express provision of this Agreement, this Agreement shall control.

6. **STATUTORY REQUIREMENTS.** This Agreement shall be deemed to incorporate by reference the provisions of California Government Code § 53243 *et seq.*, as it may be amended or renumbered.

7. **PAYMENT OF EXPENSES OF EMPLOYMENT.** Authority shall pay the following usual and customary employment expenses:

(a) **Job-Related Expenses.** Reimbursement for ordinary and necessary job-related expenses incurred on behalf of Authority in accordance with Authority policy and applicable law. Employee shall not receive mileage for travel to and from Authority office to Employee's residence. Subject to the limitations of applicable law and Authority policy, Authority shall pay or otherwise reimburse Employee for the costs of necessary meetings and functions Employee attends on Authority's behalf, including transportation, registration, meals and hotel accommodations. Employee shall provide appropriate receipts to Authority for any expense reimbursements.

(b) **Fidelity Bonds.** The cost of any fidelity or other bonds required by law for Employee.

(c) **Defense and Indemnity.** Subject to Section 6 of this Agreement, the cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government Code § 810 *et seq.*) or otherwise. Notwithstanding the foregoing,

Authority's obligation to defend and indemnify Employee shall extend only to the entry of a final judgment by the trial court, and shall not extend to providing defense or indemnity in connection with an appeal of the judgment, unless otherwise specifically provided by law. Authority will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

8. **NOTICES.** Any notice or other communication under this Agreement must be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to Authority or to Employee at the address described below. Employee shall be obligated to notify Authority in writing of any change in address.

(a) Notice to Authority shall be made to the attention of the Chair of Authority's Board of Directors at Authority's then-current principal place of business as identified in a resolution or other enactment of Authority's Board of Directors, as may be amended from time to time.

(b) Notice to Employee shall be made to Employee's then-current address on file with Authority Human Resources.

9. **INTEGRATION.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of Employee's employment by Authority. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Employee, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of Authority, now or in the future, apply to Employee and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

10. **AMENDMENTS; WAIVERS.** This Agreement may not be amended except by an instrument in writing, signed by each of the parties. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

11. **SEVERABILITY.** If any provision of this Agreement, or its application to any person, place, or circumstance is held by an arbitrator or a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

12. **ATTORNEYS' FEES.** In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

13. **GOVERNING LAW; VENUE.** This Agreement shall be governed by and construed in accordance with the law of the State of California. Employee and Employer agree that venue for any dispute shall be in Orange County, California.

14. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, including via facsimile or electronically-transmitted signature, each of which shall be deemed an original, but all of which together shall constitute one-in-the-same document.

15. **EMPLOYEE ACKNOWLEDGMENT.** Employee acknowledges that Employee has had the opportunity to consult legal counsel in regard to this Agreement, that Employee has read and understands this Agreement, that Employee is fully aware of its legal effect, and that Employee has entered into it freely and voluntarily and based on Employee's own judgment and not on any representations or promises other than those contained in this Agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have duly executed this Employment Agreement between Orange County Power Authority and _____ as of the date first written above.

Dated: _____

[INSERT NAME]

Dated: _____

Chair
Orange County Power Authority
Board of Directors

Dated: _____

Vice Chair
Orange County Power Authority

Approve to Form:

Dated: _____

General Counsel

EXHIBIT A
(Job Description - Chief Executive Officer)

The Chief Executive Officer is responsible for the day-to-day operation and management of the Orange County Power Authority (“Authority”) and its community choice aggregation (CCA) program. The Chief Executive Officer may exercise all powers of the Authority except those powers specifically reserved to the Board under the Authority’s Joint Powers Agreement, the Authority’s bylaws, or other enactments or directions of the Board. Responsibilities of the Chief Executive Officer include:

- **Authority Direction and Supervision.** Oversee all functions of the Authority, including administration, finance, staffing, marketing, public affairs, power planning and procurement, supply operations, local energy programs, and legislative and regulatory affairs; provide administrative direction and supervision to employees, including assigning projects and objectives; conducting performance evaluations; developing, motivating, and training; and, hiring, terminating and disciplining.
- **Board Relations; Implementation of Policies.** Foster and maintain a strong relationship with the Board; approve agendas for presentation to the Board; present briefings, policies, reports, and recommendations to the Board; administer and implement Board-adopted ordinances, resolutions, bylaws, policies, procedures, and other enactments.
- **Contracting.** Enter into and execute contracts, including power purchase agreements and other agreements, in accordance with criteria and policies established by the Board.
- **Internal Leadership.** Provide direction and assistance to staff members, including management team building and training.
- **Customer and Stakeholder Relations.** Interact with Authority customers and stakeholders regarding a variety of issues; interact with the media presenting appropriate information on programs, services, and events.
- **Inter-Agency Relations.** Foster and maintain strong relationships with external agencies, including the Authority member agencies, other local, state, and federal governments, the California Public Utilities Commission, and other key agencies and stakeholders.
- **Strategies.** Develop and implement Authority strategies in conjunction with other the Authority management staff; approve strategies and communicate to staff.
- **Reports and Correspondence.** Prepare, review, and approve a variety of reports and correspondence.
- **Other.** Perform other duties of a similar nature or level.

Item III.1

Attachment 2

Chief Operating Officer Employment Agreement

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**ORANGE COUNTY POWER AUTHORITY
EMPLOYMENT AGREEMENT
(Chief Operating Officer)**

This Employment Agreement (“**Agreement**”) dated as of _____, 2021 (“**Effective Date**”), is entered into by and between Orange County Power Authority, a California joint powers authority (“**Authority**” or “**Employer**”) and _____ (“**Employee**”). Authority and Employee may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**” Authority and Employee agree to the following terms and conditions of employment.

1. **TERM.** Employer shall employ Employee from the Effective Date of this Agreement, or as such date as may be decided by the Authority and Employee, but no later than ninety (90) days from the Effective Date, until the employment is terminated in accordance with Section 4 of this Agreement.

2. **POSITION AND RESPONSIBILITIES.**

(a) **Position and Duties.** Employee accepts employment with Employer as Chief Operating Officer (“**COO**”) and shall perform all services appropriate to that position pursuant to Authority’s Joint Powers Agreement; any resolutions, bylaws, policies, procedures, rules, or other enactments of the Authority Board of Directors; any directions of the Authority Board of Directors; and as otherwise provided by applicable law or regulation. The COO’s duties include, but are not limited to, those set forth in the position description which appears as Exhibit A, attached hereto. Employee shall devote Employee’s best efforts and full-time attention to the performance of Employee’s duties. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to Authority. Employee shall receive formal direction as to matters of Authority business only from the Board of Directors.

(b) **Hours of Work.** Employee is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the COO position. Employee does not have set hours of work as Employee is expected to be available at all times. It is recognized that Employee must devote a great deal of time to the business of the Authority outside of the Authority’s customary office hours, and to that end Employee’s schedule of work each day and week may vary in accordance with the work required to be performed and in accordance with any specific direction provided by the Authority Board of Directors.

(c) **Outside Activities.**

(i) Employee agrees to devote Employee’s full time and attention to the discharge of Employee’s duties as Chief Operating Officer, except that this provision shall be construed so as to permit Employee to participate in community service, public service, or non-profit activities which, in the opinion of the Board of Directors, do not constitute a conflict of interest and do not unreasonably interfere with the performance of the Employee’s duties as COO, Authority operations, or Authority’s reputation in the community.

(ii) Except upon the prior written consent of the Board of Directors or as stated above in Section 2(c)(i), Employee (during the term of this Agreement) shall not: (A) accept any other employment; or (B) engage, directly or indirectly, in any other business,

commercial, or professional activity (whether or not pursued for pecuniary advantage) that is or may be competitive with Authority that might create a conflict of interest with Authority or that otherwise might interfere with the business and operations of Authority. So that Authority may be aware of the extent of any other demands upon Employee's time and attention, Employee shall disclose in confidence to the Board of Directors the nature and scope of any other business activity in which Employee is or may become engaged during the term of this Agreement (provided, however, that such activity may be subject to public disclosure as required by law or Authority's Conflict of Interest Code). This section shall not be deemed to prohibit passive personal investments.

(iii) The Authority acknowledges and consents that Employee is an employee of _____ as an instructor.

(d) **Work Product.** Employee agrees that all documents and writings of any type produced in the performance of this Agreement shall be the sole property of Authority including all rights therein of whatever kind and whether arising from common or civil law or equity. Upon termination of this Agreement for any reason all such documents and writings produced in the performance of this Agreement shall be transferred to and become the property of Authority upon its request without additional compensation.

3. **COMPENSATION AND BENEFITS.**

(a) **Compensation.**

(i) Base Annual Salary. In consideration of the services to be rendered under this Agreement, Authority shall pay Employee, as base annual salary, _____ per year. This amount shall be paid on a pro rata basis pursuant to the procedures regularly established and as they may be amended by Authority in its sole discretion.

(ii) Merit Adjustments. Upon one (1) year of employment, Employee may be eligible for a merit increase in Employee's base annual salary based upon the results of a performance evaluation and at the exercise of the sole and exclusive discretion by the Board of Directors. The Board, in conjunction with the Chief Executive Officer, may set mutually-agreed upon objectives for each year under this Agreement in order to determine eligibility for a merit increase as part of any performance evaluation.

(b) **Benefits.** Employee shall be entitled to receive the same type and level of benefits afforded by Authority to other Operating staff employees as established from time to time by Authority's Board of Directors, which may include, but not be limited to, health insurance benefits (medical, vision, and dental), retirement benefits, leaves, disability coverage, term life insurance and/or other benefits as they may be modified or amended from time to time. No statement concerning benefits or compensation to which Employee is entitled shall alter in any way the term of this Agreement, any renewal thereof, or its termination.

(i) Paid Leave Accrual. Notwithstanding the above, Employee shall begin his or her employment with a paid time off accrual rate of ___ hours per year and shall be credited with ___ hours of the annual total upon the Effective Date, with the balance accrued over the subsequent twelve (12) month period. In addition to the paid leave accrual, Employee shall receive ___ hours per year of annual executive leave.

(ii) Interim Stipend for Medical Insurance. Until Authority is able to provide comprehensive medical insurance benefits to Employee, Employee shall receive an in-lieu stipend in the amount of _____ per month, pro-rated by day. Such stipend will terminate upon availability of medical insurance benefits to Employee.

(iii) Interim Stipend for Retirement Contributions. Until Authority is able to join a public retirement system or provide contributions to an employer-sponsored retirement account for the benefit of Employee (in any form as solely determined by Authority), Employee shall receive an in-lieu stipend in the amount of not less than _____ of Employee's annual base salary, pro-rated by day. Such stipend will terminate upon Authority's initial contribution to an employer-sponsored retirement account for the benefit of Employee.

(iv) Automobile Allowance. Employee shall receive a gross monthly vehicle allowance of _____ per month. The Parties intend for this taxable allowance to be in lieu of reimbursement on an itemized basis for mileage, gas, maintenance of a vehicle, etc. Employee shall not be separately reimbursed for mileage driven in his or her personal vehicle.

(v) Technology Allowance. The Authority does not currently have a permanent place of business and employees are subject to California stay-at-home orders due to COVID-19. Until the Authority obtains a place of business and requires employees to work from the place of business, Employee shall receive either an Authority-owned mobile phone and (accompanying Authority-paid plan) or a _____ monthly taxable technology allowance to use towards his or her personal discretionary technological purchases and expenses in furtherance of employment.

4. NATURE AND TERMINATION OF EMPLOYMENT.

(a) **At-Will Employment; Termination.** Authority and Employee expressly agree that the employment relationship created by this Agreement is "at-will," that Employee serves at the will and pleasure of the Board of Directors, and Employee may be terminated at any time, with or without cause. Nothing in this Agreement or any statute, ordinance, or rule shall prevent, limit or otherwise interfere with the right of Authority to terminate, without cause or right of appeal or grievance, the services of the Employee at any time. The provisions below apply to termination:

(I) Termination by Authority for Cause. At any time, Authority may immediately terminate this Agreement for cause by providing written notification to the Employee with the basis for the cause. All compensation and benefits shall immediately terminate upon the effective date of any notice of for-cause termination. For the purposes of this Agreement, "cause" shall include, but not be limited to, bribery, theft, embezzlement, conviction of any criminal act involving fraud, malfeasance, or an act of misfeasance, unlawful discrimination, commission of a felony, material dishonesty related to Employee's duties or the Authority, material violation of the Authority's personnel policies or procedures as discussed in Section 5 herein, or other gross misconduct in the performance of his or her job. Employee shall not be entitled to any severance under this Agreement, as described below in paragraph (ii), if terminated for cause.

(ii) Termination by Authority Without Cause. At any time, Authority may terminate this Agreement without cause, severance pay equal to _____ salary ("**Severance Pay**"). Severance Pay shall be computed based upon Employee's base monthly salary in effect

at the time of termination. In exchange for the Severance Pay mentioned above, Employee hereby expressly waives any right he or she may have under any applicable law, Authority policy or otherwise to appeal or grieve the termination. Employee further agrees that payment of Severance Pay is contingent on execution of a severance agreement by Employee including a general waiver of claims consistent with this paragraph. The Parties expressly acknowledge and agree that these Severance Pay provisions have been independently negotiated. Acceptance at the time of termination by Employee of the Severance Pay shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which Employee may have, or have had, at any time, in the past or in the future, arising out of Employee's employment by Authority including, but not limited to, claims for wrongful termination with the exception of any claims for worker's compensation benefits or any other claims which cannot be waived under applicable law. If Employee wishes to retain any such rights, Employee must decline to accept the Severance Pay provided by this paragraph. This section is intended to comply with the provisions of California Government Code §§ 53260 and 53261, *et seq.*, and in no event shall Employee be entitled to severance benefits greater than provided for therein.

(b) **Resignation.** In the event that Employee voluntarily resigns Employee's position with Authority, Employee shall provide a minimum of thirty (30) days' notice unless the parties agree otherwise.

5. **AUTHORITY POLICIES AND PROCEDURES.** In addition to the terms and conditions of this Agreement, the terms and conditions of Employee's employment, including additional employment benefits of Employee not specifically provided for in this Agreement, shall be governed by Authority's personnel policies and procedures to the extent not inconsistent with the provisions of the Agreement. In the event of any conflict with an express provision of this Agreement, this Agreement shall control.

6. **STATUTORY REQUIREMENTS.** This Agreement shall be deemed to incorporate by reference the provisions of California Government Code § 53243 *et seq.*, as it may be amended or renumbered.

7. **PAYMENT OF EXPENSES OF EMPLOYMENT.** Authority shall pay the following usual and customary employment expenses:

(a) **Job-Related Expenses.** Reimbursement for ordinary and necessary job-related expenses incurred on behalf of Authority in accordance with Authority policy and applicable law. Employee shall not receive mileage for travel to and from Authority office to Employee's residence. Subject to the limitations of applicable law and Authority policy, Authority shall pay or otherwise reimburse Employee for the costs of necessary meetings and functions Employee attends on Authority's behalf, including transportation, registration, meals and hotel accommodations. Employee shall provide appropriate receipts to Authority for any expense reimbursements.

(b) **Fidelity Bonds.** The cost of any fidelity or other bonds required by law for Employee.

(c) **Defense and Indemnity.** Subject to Section 6 of this Agreement, the cost to defend and indemnify Employee to the full extent of the law as provided by the California Government

Claims Act (Government Code § 810 *et seq.*) or otherwise. Notwithstanding the foregoing, Authority's obligation to defend and indemnify Employee shall extend only to the entry of a final judgment by the trial court, and shall not extend to providing defense or indemnity in connection with an appeal of the judgment, unless otherwise specifically provided by law. Authority will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

8. **NOTICES.** Any notice or other communication under this Agreement must be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to Authority or to Employee at the address described below. Employee shall be obligated to notify Authority in writing of any change in address.

(a) Notice to Authority shall be made to the attention of the Chair of Authority's Board of Directors at Authority's then-current principal place of business as identified in a resolution or other enactment of Authority's Board of Directors, as may be amended from time to time.

(b) Notice to Employee shall be made to Employee's then-current address on file with Authority Human Resources.

9. **INTEGRATION.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of Employee's employment by Authority. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Employee, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of Authority, now or in the future, apply to Employee and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

10. **AMENDMENTS; WAIVERS.** This Agreement may not be amended except by an instrument in writing, signed by each of the parties. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

11. **SEVERABILITY.** If any provision of this Agreement, or its application to any person, place, or circumstance is held by an arbitrator or a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

12. **ATTORNEYS' FEES.** In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

13. **GOVERNING LAW; VENUE.** This Agreement shall be governed by and construed in accordance with the law of the State of California. Employee and Employer agree that venue for any dispute shall be in Orange County, California.

14. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, including via facsimile or electronically-transmitted signature, each of which shall be deemed an original, but all of which together shall constitute one-in-the-same document.

15. **EMPLOYEE ACKNOWLEDGMENT.** Employee acknowledges that Employee has had the opportunity to consult legal counsel in regard to this Agreement, that Employee has read and understands this Agreement, that Employee is fully aware of its legal effect, and that Employee has entered into it freely and voluntarily and based on Employee's own judgment and not on any representations or promises other than those contained in this Agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have duly executed this Employment Agreement between Orange County Power Authority and _____ as of the date first written above.

Dated: _____
_____ [Insert Name]

Dated: _____
_____ Chair
Orange County Power Authority
Board of Directors

Dated: _____
_____ Vice Chair
Orange County Power Authority

Approve to Form:

Dated: _____
_____ General Counsel

EXHIBIT A
(Job Description - Chief Operating Officer)

Responsibilities of the Chief Operating Officer include, but are not limited to, the following:

- Provide input and top decision making authority, collaboratively and in support of the Chief Executive Officer (“CEO”).
 - Provide key executive input into all operational areas of the Authority ranging from strategic planning and direction to budget and hiring.
 - Participate as a part of the Executive Management Team in all aspects of OCPA business.
- Report directly to the Board of Directors and is the Acting CEO in the CEO’s absence, unless otherwise determined by the Board.
- Specific areas of responsibility and authority:
 - **Regulatory and government affairs.** Provide management oversight of regulatory and government affairs, including staffing recommendations and consultant activities.
 - **Marketing, data management, customer affairs.** Manage the day-to-day operations data management, billing and call center operations.
 - **Programs.** Recommend, implement and manage customer energy programs, including energy efficiency, net energy metering, feed-in-tariff, and other demand-side management programs. Oversee development and manages implementation of a Local Development Business Plan.
 - **Public, committee, and board engagement.** As a member of the Executive Management Team, interact with the Board of Directors and committees. Coordinate the activities of the Community Advisory Committee. Create and maintain productive relationships with the community, business groups, industry participants, and regulatory agencies.
 - **General administration.** Provide input on the administration and operations portion of the strategic plan, including mission and vision.
 - **Day-to-day operational oversight.** Manage the day-to-day operations of the Authority, including recruitment process and culture. Recommend appropriate staffing levels for the administrative and operations staff.
 - **Executive management responsibilities** – Participate as member of Executive Management Team with regard to power procurement, budget, and forecasting.

**ORANGE COUNTY POWER AUTHORITY
BOARD OF DIRECTORS**
City of Irvine Civic Center
Conference and Training Center
1 Civic Center Plaza
Irvine, CA 92606

MINUTES

December 22, 2020

This meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic.

The Board minutes are prepared and ordered to correspond to the Board Agenda. Agenda Items can be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

CALL TO ORDER

Chair Carroll called the Orange County Power Authority Board of Directors meeting to order at 10:10 a.m.

PLEDGE OF ALLEGIANCE

Board member Khan led the Pledge of Allegiance.

ROLL CALL

PRESENT: 6 Boardmember Susan Sonne (Buena Park)
Vice Chair Fred Jung (Fullerton)
Boardmember Mike Posey (Huntington Beach)
Boardmember Farrah Khan (Irvine)
Chair Mike Carroll (Irvine)
Boardmember Scott Voigts (Lake Forest)

*Also Present: Ryan Baron, Best Best and Krieger LLP
Mark Steuer, Director of Public Works and Transportation (Irvine)
Sona Coffee, Environmental Programs Administrator (Irvine)*

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

Boardmember Posey requested clarification on the swearing in of alternate Boardmembers. Ryan Baron, General Counsel, confirmed that alternates may be sworn in by any Notary Public and those arrangements will be made outside of the regular meeting.

REGULAR CALENDAR

1. APPROVAL OF THE MEETING MINUTES FOR DECEMBER 16, 2020 BOARD OF DIRECTORS MEETING

There was no discussion or public comment received on the item.

ACTION: Motioned by Boardmember Posey, seconded by Boardmember Sonne to approve the minutes.

Vote: 5-0-1

Yes: Boardmember Sonne, Vice Chair Jung, Boardmember Posey, Boardmember Khan, and Chair Carroll
No: None
Abstained: None
Absent: Boardmember Voigts

2. ADOPT RESOLUTION ESTABLISHING REGULAR MEETING SCHEDULE FOR 2021

Ryan Baron, General Counsel, explained the resolution will be updated to reflect the regular meeting schedule for the second and fourth Tuesday through February 2021, and once a month thereafter including the following dates in 2021: March 23, April 13, May 11, June 22, July 13, August 10, September 14, October 12, November 9, and December 4. He also noted the board can cancel due to lack of business as needed.

There was no discussion or public comment received on the item.

ACTION: Motioned by Boardmember Posey, seconded by Boardmember Sonne to adopt a resolution establishing regular meeting schedule of the Orange County Power Authority Board of Directors for the 2021 calendar year.

Vote: 5-0-1

Yes: Boardmembers Sonne, Vice Chair Jung, Boardmember Posey,
Boardmember Khan, and Chair Carroll
No: None
Abstained: None
Absent: Boardmember Voigts

**3. APPROVE AGREEMENT WITH MAHER CPA FOR TREASURER SERVICES
AND DIRECT STAFF TO OPEN A DEPOSITORY**

Ryan Baron, General Counsel, explained the Joint Powers Authority (JPA) and state law contemplates the board appointing a treasurer from one of the member agencies or a third party. Maher CPA is being recommended by staff because of their experience with Community Choice Aggregation (CCA). Funds from Irvine, in the amount of \$2.5 million, will need to be transferred to a depository on or around January 1. Maher CPA can perform this function as well as basic accounting services. This practice is consistent with other CCAs.

Mr. Maher explained that Maher CPA is familiar with CCAs throughout California and financial accounting requirements unique to government entities and CCAs. They have assisted other CCAs from pre-launch through launch.

There was no public comment on this item.

ACTION: Motioned by Boardmember Posey, seconded by Boardmember Sonne to 1) Approve Professional Services Agreement with Maher CPA for Orange County Power Authority treasurer functions and delegate authority to the Chair to execute agreement; and 2) Direct staff to open a depository for Orange County Power Authority funds and delegate authority to the Chair to execute all related bank agreements.

Vote: 5-0-1

Yes: Boardmembers Sonne, Vice Chair Jung, Boardmember Posey,
Boardmember Khan, and Chair Carroll
No: None
Abstained: None
Absent: Boardmember Voigts

Boardmember Voigts joined the meeting via Zoom.

4. APPROVE AGREEMENT WITH PUBLIC FINANCIAL MANAGEMENT, INC. FOR FINANCIAL ADVISORY SERVICES

Ryan Baron, General Counsel, explained the services with Public Financial Management, Inc. (PFM) includes drafting the banking and credit services request for proposals which will be sent to potential banks and lenders to fund the remaining money, which EES has estimated between \$8 to \$20 million. This is a short-term contract to manage the lending process and bring a recommendation to staff and the Authority. Mike Berwanger was available from PFM for any questions.

Mike Berwanger explained PFM has worked with other CCAs, one recently achieved an “A” investment grade credit rating. The shortest amount of time an agency can achieve that would be two to three years.

ACTION: Motioned by Boardmember Posey, seconded by Vice Chair Jung to approve Professional Services Agreement with Public Financial Management, Inc., for energy financial services not to exceed \$25,000.

Public Comment

- Jose Trinidad Castaneda spoke in support of the Authority’s forward thinking.
- Doug Mangione, IBEW, shared some recommendations regarding inclusion of a skilled workforce and not buying renewable energy credits from out-of-state.
- Ayn Craciun expressed appreciation for the oversight of the Authority on the financial responsibilities.

Vote: 6-0

Yes: Boardmembers Sonne, Vice Chair Jung, Boardmember Posey, Boardmember Khan, Chair Carroll, and Boardmember Voigts

No: None

Abstained: None

Absent: None

5. CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION APPROVING IMPLEMENTATION PLAN AND STATEMENT OF INTENT

Mark Steuer, City of Irvine Director of Public Works and Transportation, introduced Gary Saleba from EES, now GDS Associates. Barbara Spoonhour, and Howard Choi were also introduced as consultants for GDS on the implementation plan.

Gary Saleba presented, joined by Amber Nyquist who is the primary author of the implementation plan. The board packet includes the implementation plan which is a business plan that includes goals and general direction for the Authority. This plan will be filed with the Public Utility Commission (PUC) by December 31, 2020. Filing

by this date allows for Orange County Power Authority (OCPA) to be a load serving entity by January 1, 2022.

The following are components of the framework: 1) customer rates mirroring Southern California Edison (SCE) with a discount applied equally across customer classes/jurisdiction; 2) the JPA agreement; and 3) for the financial plan a phased approach is recommended including a non-residential launch in April 2022 and a residential launch in October 2022.

Public Comment

- Jose Trinidad Castaneda requested clarification on the load forecast and resource plan. Gary Saleba clarified this forecast is for the total CCA, the source of the power will be a function of what is brought back from the request for offers.
- Maria Minney spoke in support of the Authority, mentioned she has difficulty hearing members present on-site for the meetings but can hear those calling in with ease, and thanks the Authority for continuing to communicate the progress in a digestible way for the community at large.
- Dr. Kathleen Treseder asks that a Community Advisory Committee be formed and is advocating for the 100% renewable energy option be the default option for Irvine.
- Andrea Alexander asks if the PUC confirmed SCE's rate increase. Gary Saleba confirmed there is a new generation rate and Power Charge Indifference Adjustment for 2021, but the retail rate increase is not final, possibly around 14%. Ms. Alexander asked for clarification regarding paying the Authority for the commodity, and paying SCE. Gary clarified that customers will continue to pay SCE who maintains control over the wiring, and the CCA will receive payment for procurement of the energy product. She also commented on the audio challenges from the meeting.

General Counsel Baron requested permission for staff to make any necessary changes to the Implementation Plan prior to filing. The Boardmembers agreed.

ACTION: Motioned by Boardmember Posey, seconded by Boardmember Khan to adopt a resolution approving the Community Choice Aggregation Implementation Plan and Statement of Intent, including any minor changes by staff, as required by California Public Utilities Code Section 366.2.

Vote: 6-0

Yes: Boardmembers Sonne, Vice Chair Jung, Boardmember Posey,
Boardmember Khan, Chair Carroll, and Boardmember Voigts
No: None
Abstained: None
Absent: None

6. UPDATE REGARDING MEMBER WITHDRAWAL FROM ORANGE COUNTY POWER AUTHORITY PRIOR TO MARCH 1, 2021

Ryan Baron explains two options regarding the withdrawal date. One option is to not enforce the date. The second option is to bring back a formal amendment to the Authority which would require a 30-day notice documenting the change, and then the Board can take action by a super majority (two-thirds) vote.

Board questions and comments ensued. There was no public comment on this item.

ACTION: Motioned by Boardmember Sonne, seconded by Boardmember Posey to direct staff to amend the Joint Power Agreement amendment to change member withdrawal date from March 1 to April 1, and provide 30 days' notice to Founding Members.

Boardmember Voigts unavailable for vote on Item 6.

Vote: 5-0-1

Yes: Boardmembers Sonne, Vice Chair Jung, Boardmember Posey,
Boardmember Khan, and Chair Carroll
No: None
Abstained: None
Absent: Boardmember Voigts

DIRECTOR COMMENTS

Boardmember Posey will provide a report to City of Huntington Beach City Council after every OCPA Board meeting. Boardmember Sonne proposes to amend the consideration of joining Cal CCA and forming a Community Advisory Committee. Boardmember Posey requests staff to provide options for the formation of a Community Advisory Committee.

Chair Carroll commented there will be a lot of interest from stakeholders in serving on committees, and the Authority should leverage the experience from other CCAs. Boardmember Khan asked about the process for other cities to join the Authority in 2021, and whether or not these cities could serve on the Board even though their cities won't be receiving service for another year.

General Counsel Baron explained that the Board can set the timeframe to allow new Boardmembers to join, and that typically occurs between July-October. The Board will also need to decide if there will be a membership fee, or if the Authority will take on the costs of setting up the new cities.

PUBLIC COMMENTS

None.

REPORT BY ACTING GENERAL COUNSEL

None.

CLOSED SESSION

Ryan Baron, General Counsel, announced the Closed Session Items.

7. PUBLIC EMPLOYMENT

8. CONFERENCE WITH LABOR NEGOTIATORS

There were no public comments.

REPORT FROM CLOSED SESSION

Ryan Baron, General Counsel, reports all Boardmembers unanimously approved to direct General Counsel to negotiate employment agreements with two unnamed individuals for the Chief Executive Officer and Chief Operating Officer positions. Motion by Vice Chair Jung and second by Boardmember Sonne.

ADJOURNMENT

Chair Carroll adjourned the meeting at 2:01 p.m.

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**ORANGE COUNTY POWER AUTHORITY
Staff Report – Item III.3**

To: Orange County Power Authority Board of Directors

From: Power Authority Staff

Subject: CHIEF EXECUTIVE OFFICER AND CHIEF OPERATING OFFICER JOB DESCRIPTIONS AND INTERIM ORGANIZATIONAL CHART

Date: January 12, 2021

RECOMMENDATIONS

1. Approve Chief Executive Officer and Chief Operating Officer job descriptions.
2. Approve interim Authority organizational chart subject to changes proposed by the Chief Executive Officer and approved by the Board of Directors.

BACKGROUND

This item is related to another item on the agenda, consideration to appoint a Chief Executive Officer (CEO) and Chief Operating Officer (COO) and approve execution of Employment Agreements with these candidates. In connection with that item, the General Counsel recommends that the Board adopt formal job descriptions for the CEO and COO positions and adopt an initial Authority organizational chart to assist the CEO in performing initial hiring for Authority. It is also envisioned that there will be a need for a Chief Financial Officer (CFO) in the future and at that time, a job description would be developed.

ANALYSIS AND DISCUSSION

Job Descriptions

Consistent with Authority's Joint Powers Agreement, the proposed job description provides that the CEO's responsibilities will include, but not be limited to, responsibility for the Authority direction and supervision, Board relations, contracting, internal leadership, customer and stakeholder relations, inter-agency relations, strategies, and reports and correspondence. The proposed duties of the CEO would include hiring other Authority staff, including other management staff, who will have specific responsibilities over the operational, administrative, and financial activities of Authority, as determined by the CEO.

The proposed job description provides that the COO's responsibilities will include, but are not limited to, oversight of regulatory and government affairs, marketing, data management, customer affairs, programs, public, committee, and board engagement, general administration, day-to-day operational oversight, and executive management responsibilities.

Organizational Chart

Staff conducted a review of the management structure of other large CCA JPAs in California (in particular San Diego Community Power, Clean Power Alliance and Central Coast Community Energy) and prepared a draft organizational chart for the Board's review and approval. The organization chart would help guide the CEO in performing initial hiring for Authority.

The proposed organizational chart envisions two positions which would report directly to the CEO: a Chief Operating Officer and a future Chief Financial Officer. For purposes of the Organizational Chart, the Chief Financial Officer is a placeholder and would be filled, if and when the CEO determines there is a need.

The recommended Board action would allow the CEO to make changes to the chart, consistent with the CEO's authority over Authority hiring and day-to-day management, subject to subsequent notice to the Board at a regular Board meeting.

FISCAL IMPACT

None.

ATTACHMENTS

1. Proposed Chief Executive Officer Job Description.
2. Proposed Chief Operating Officer Job Description.
3. Proposed Authority Organizational Chart.

Item III.3

Attachment 1 Proposed Chief Executive Officer Job Description

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Chief Executive Officer Job Description

The Chief Executive Officer is responsible for the day-to-day operation and management of the Orange County Power Authority (“Authority”) and its community choice aggregation (CCA) program. The Chief Executive Officer may exercise all powers of the Authority except those powers specifically reserved to the Board under the Authority’s Joint Powers Agreement, the Authority’s bylaws, or other enactments or directions of the Board. Responsibilities of the Chief Executive Officer include:

- **Authority Direction and Supervision.** Oversee all functions of the Authority, including administration, finance, staffing, marketing, public affairs, power planning and procurement, supply operations, local energy programs, and legislative and regulatory affairs; provide administrative direction and supervision to employees, including assigning projects and objectives; conducting performance evaluations; developing, motivating, and training; and, hiring, terminating and disciplining.
- **Board Relations; Implementation of Policies.** Foster and maintain a strong relationship with the Board; approve agendas for presentation to the Board; present briefings, policies, reports, and recommendations to the Board; administer and implement Board-adopted ordinances, resolutions, bylaws, policies, procedures, and other enactments.
- **Contracting.** Enter into and execute contracts, including power purchase agreements and other agreements, in accordance with criteria and policies established by the Board.
- **Internal Leadership.** Provide direction and assistance to staff members, including management team building and training.
- **Customer and Stakeholder Relations.** Interact with Authority customers and stakeholders regarding a variety of issues; interact with the media presenting appropriate information on programs, services, and events.
- **Inter-Agency Relations.** Foster and maintain strong relationships with external agencies, including the Authority member agencies, other local, state, and federal governments, the California Public Utilities Commission, and other key agencies and stakeholders.
- **Strategies.** Develop and implement Authority strategies in conjunction with other the Authority management staff; approve strategies and communicate to staff.
- **Reports and Correspondence.** Prepare, review, and approve a variety of reports and correspondence.
- **Other.** Perform other duties of a similar nature or level.

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Item III.3

Attachment 2 Proposed Chief Operating Officer Job Description

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Chief Operating Officer Job Description

The Chief Operating Officer is responsible for the day-to-day operation the Orange County Power Authority (“Authority”). Responsibilities of the Chief Operating Officer include, but are not limited to, the following:

- Provide input and top decision-making authority, collaboratively and in support of the Chief Executive Officer (“CEO”).
 - Provide key executive input into all operational areas of the Authority ranging from strategic planning and direction to budget and hiring.
 - Participate as a part of the Executive Management Team in all aspects of SDCP business.
 - Report directly to the Board of Directors and is the Acting CEO in the CEO’s absence, unless otherwise determined by the Board.

- Specific areas of responsibility and authority:
 - **Regulatory and government affairs.** Provide management oversight of regulatory and government affairs, including staffing recommendations and consultant activities.
 - **Marketing, data management, customer affairs.** Manage the day-to-day operations data management, billing and call center operations.
 - **Programs.** Recommend, implement and manage customer energy programs, including energy efficiency, net energy metering, feed-in-tariff, and other demand-side management programs. Oversee development and manages implementation of a Local Development Business Plan.
 - **Public, committee, and board engagement.** As a member of the Executive Management Team, interact with the Board of Directors and committees. Coordinate the activities of the Community Advisory Committee. Create and maintain productive relationships with the community, business groups, industry participants, and regulatory agencies.
 - **General administration.** Provide input on the administration and operations portion of the strategic plan, including mission and vision.
 - **Day-to-day operational oversight.** Manage the day-to-day operations of the Authority, including recruitment process and culture. Recommend appropriate staffing levels for the administrative and operations staff.
 - **Executive management responsibilities.** Participate as member of Executive Management Team with regard to power procurement, budget, and forecasting
 - **Other.** Perform other duties of a similar nature or level.

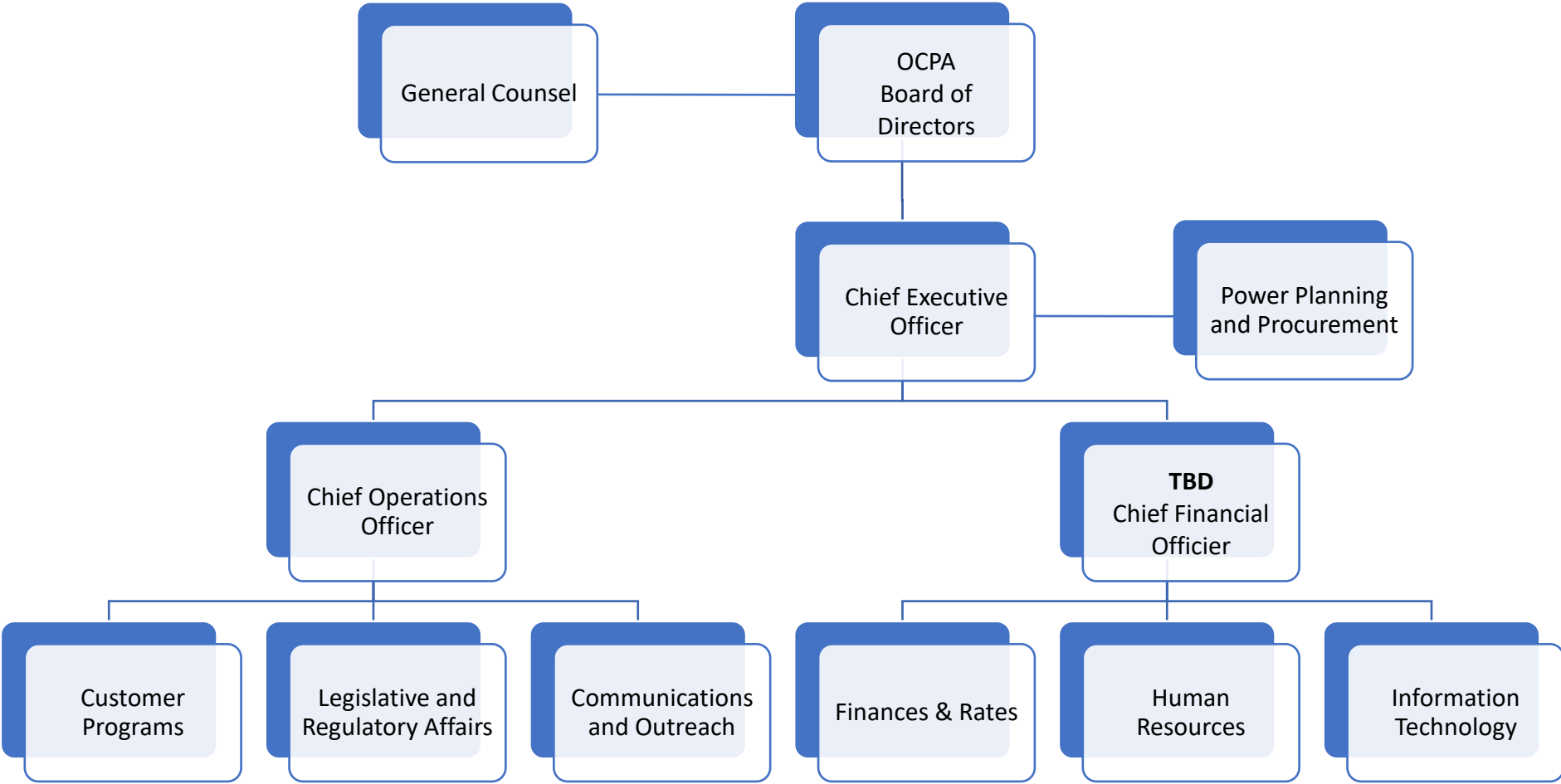
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Item III.3

Attachment 3 Proposed Authority Organizational Chart

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Orange County Power Authority
Organizational Chart
2021



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**ORANGE COUNTY POWER AUTHORITY
Staff Report – Item III.4**

To: Orange County Power Authority Board of Directors
From: Power Authority Staff
Subject: ADMINISTRATIVE POLICIES OVERVIEW
Date: January 12, 2021

RECOMMENDATION

Discuss and provide direction, if necessary.

BACKGROUND

With the establishment of Orange County Power Authority (OCPA), there will be a number of administrative policies and procedures that the Board of Directors will need to formally adopt. Staff has identified the following policies with an estimated timeline for adoption. The timeline has been developed to take into consideration regulatory compliance, launch dates, as well as, when additional consultants will be brought on board to procure power.

- | | | |
|-----|--|--------------------------|
| 1. | Budget and Accounting Policy | January 26, 2021 |
| 2. | Guidelines for Access to Public Records | January 26, 2021 |
| 3. | Records Retention Policy and Schedule | January 26, 2021 |
| 4. | Customer Information Confidentiality Policy | February 9, 2021 |
| 5. | Prohibition of Disseminating Untrue or Misleading Information Policy | February 9, 2021 |
| 6. | Board of Directors Stipends | February 9, 2021 |
| 7. | OCPA Policies and Procedures (HR) | March 9, 2021 |
| 8. | Social Media Policy | March 9, 2021 |
| 9. | Time-sensitive Legislative and Regulatory Policy | March 9, 2021 |
| 10. | Conflict of Interest Code | April 13, 2021 |
| 11. | Information Technology Security | April 13, 2021 |
| 12. | Energy Risk Management Policy | June 8 and July 13, 2021 |
| 13. | Debt Management Policy | September 14, 2021 |
| 14. | Delinquent Account, Collections, and Bad Debt Policy | September 14, 2021 |
| 15. | Investment Policy | September 14, 2021 |
| 16. | Reserve Policy | September 14, 2021 |
| 17. | Net Energy Metering Program Policy | October 12, 2021 |

The aforementioned policies are not exclusive, and is meant to provide the Directors with an overview of what actions will be needed in the future. As OCPA matures and develops specific Programs, there will be need to develop additional policies.

FISCAL IMPACT

None.

ATTACHMENT

1. None.

**ORANGE COUNTY POWER AUTHORITY
Staff Report – Item III.5**

To: Orange County Power Authority Board of Directors
From: Power Authority Staff
Subject: IMPLEMENTATION TIMELINE OVERVIEW
Date: January 12, 2021

RECOMMENDATION

Receive and file.

BACKGROUND

With the establishment of Orange County Power Authority (OCPA), there will be a number of milestones that need to be achieved, as well as, a number of items that the Directors have identified as a priority to undertake over the next few months. This staff report outlines the Implementation Tasks and provides an overview of items for the next two (2) Board meetings.

Implementation Tasks: Staff has identified the key actions and estimated timeline in the attachment to this staff report. The timeline has been developed to take into consideration regulatory compliance, launch dates, as well as, when additional consultants will be brought on board.

Upcoming Board of Director Meetings: The following is a high overview of upcoming agenda items for the next two (2) Board meetings. Please notify staff if there are additional items that the Directors would like added to the upcoming 2 Board meetings.

January 26, 2021: Addition of new members
Citizen's Advisory Committee development
Insurance needs
Request for Proposal Update on Data Management,
Portfolio Manager, and Scheduling Coordinator

February 9, 2021: Authority's Fiscal Year 2020-2021 Budget
Adoption of by-laws
Southern California Edison Service Agreement

FISCAL IMPACT

None.

ATTACHMENT

1. Implementation Timeline.

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Item III.5

Attachment 1 Implementation Timeline

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**ORANGE COUNTY POWER AUTHORITY
Staff Report – Item III.6**

To: Orange County Power Authority Board of Directors

From: Power Authority Staff

Subject: COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT
WITH CITY OF IRVINE

Date: January 12, 2021

RECOMMENDATION

Approve the Cooperation and Administrative Services Agreement with City of Irvine (City) providing certain services to Orange County Power Authority (OCPA) by the City and reimbursement to the City of these services.

BACKGROUND

Since 2018, the City of Irvine has been actively investigating the feasibility of commencing a Community Choice Aggregation Program. On November 20, 2020, the Orange County Power Authority (Authority) Joint Powers Agreement (Agreement) was formally signed by the cities of Irvine and Fullerton and thus formally created the JPA. On December 16, 2020 the Cities of Buena Park, Huntington Beach, and Lake Forest formally joined the Authority.

Launching OCPA includes the following activities:

1. Creation of a Joint Powers Authority composed of participating municipalities;
2. Retention of experts to assist with energy and technical services, including development of an Implementation Plan, calculating the precise energy needs of OCPA according to its own policy, regulatory affairs, community outreach, assisting with contracts to bring energy service providers on board, and numerous other tasks;
3. City staff support for all administrative services and coordination among the various consultant teams being hired.

For items 1-3, the Joint Powers Agreement outlined the reimbursement to the City of Irvine for these services.

ANALYSIS

The proposed Cooperation and Administrative Services formalizes the ongoing relationship between City of Irvine and OCPA, provided that the City will provide –

through officers, employees, consultants, or contractors – a variety of services to OCPA, including but not limited to the following:

1. Staff support and administrative support at meetings.

This list is non-exhaustive and additional services may be provided at the direction of the OCPA Board.

The Cooperation and Administrative Services Agreement does not require the City to budget any additional funds for OCPA beyond Fiscal Year 2020, or to provide any services or advance any funds; rather, it allows the City to continue to provide such services and provides for reimbursement of City expenditures.

The City will maintain records of all services undertaken and invoice OCPA on a quarterly basis. Pursuant to this Agreement, OCPA agrees to reimburse the City for all costs incurred for the services outlined in the Agreement and any other expenditures made in order to implement the CCA Program.

These amounts shall be repaid by OCPA to the City with 2% interest per annum.

Staff is recommending that the Board approve the Cooperation and Administrative Services Agreement, which would then be presented to the City Council of Irvine for approval and final execution.

FISCAL IMPACT

\$10,000 to \$30,000 depending on Authority needs.

ATTACHMENT

1. Cooperation and Administrative Services Agreement between the City of Irvine and Orange County Power Authority.

Item III.6

Attachment 1

**Cooperative and
Administrative Services
Agreement between the
City of Irvine and Orange
County Power Authority**

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COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

THIS COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT (“**Agreement**”) is entered into as of _____, 2021, by and between the ORANGE COUNTY POWER Authority, a California joint powers authority (“**Authority**”) and the CITY OF IRVINE, a charter city (“**City**”) and shall become effective upon the terms set forth herein. Authority and the City are sometimes referred to in this Agreement individually as a “**Party**,” or collectively as “**Parties**.”

RECITALS

A. The City of Irvine and the City of Fullerton entered into a joint powers agreement (“**JPA Agreement**”) on November 20, 2020, forming a joint powers authority to implement a community choice energy program (“**CCE Program**”) to be operated by the Authority pursuant to California Public Utilities Code § 366.2(c)(12).

B. Subsequent to formation of the Authority, the City of Huntington Beach, City of Buena Park and the City of Lake Forest voted to approve the JPA Agreement and become members of the Authority, which membership was approved by the Authority Board of Directors on December 16, 2020.

C. Prior to the formation of the Authority, City expended resources in furtherance of the initiation of the CCE Program and the creation of the Authority. These expenses and resources included, but were not limited to, staff time and consultant and legal expenses (“**Formation Costs**”)

D. Authority has minimal staffing and is in need of certain municipal services from one or more of its member agencies in order to carry out the CCE Program until the Authority can hire permanent staff.

E. The Authority and City desire to enter into this Agreement for the following purposes: (1) to set forth activities and services that the City has rendered, i.e., the Formation Costs, and will make available to the Authority in furtherance of the JPA Agreement and the CCE Program; and (2) provide that the Authority shall reimburse the City for the Formation Costs, all additional costs incurred between the date of formation of the Authority and the date of this Agreement, and all and future actions undertaken, and costs and expenses incurred by the City for and on behalf of the Authority (collectively, “**Authority Obligation**”).

AGREEMENT

1. The City agrees to provide staff support at meetings for the Authority to carry out its functions under the JPA Agreement and in furtherance of the CCA Program. Such assistance and services shall include clerking services for Authority Board meetings. The City may also provide other staff support as mutually agreed to by the Parties, including, but not limited to, human resources and accounting support.

2. The City will keep records of activities and services that comprise the Authority Obligation, so that an accurate determination of the Authority's liability to the City can be made. The City shall provide as needed reports to the Authority providing a breakdown of the Authority Obligation, together with reasonable documentation to substantiate the City's calculation of the Authority Obligation. Such statement of the Authority Obligation may include, but is not limited to, the City's administrative, overhead, and salary expenses attributable to services of City employees rendered for the Authority, together with consultant and legal fees incurred in furtherance of the study and initiation of the CCE Program, the drafting and negotiation of the JPA Agreement, and the creation of the Authority.

3. The Authority agrees to reimburse the City for the full amount of the Authority Obligation as soon as funds are available to the Authority from charges to CCE customers receiving electric services from the Authority, seed funding received as part of its credit package, and/or from revenues from grants or other third-party sources (and no later than within the timeframes set forth in the following paragraph); provided, however, that Authority shall have the sole and exclusive right to pledge any such sources of funds to the repayment of other indebtedness incurred by the Authority in implementing the CCE Program.

Although the Parties recognize that payment of the Authority Obligation by the Authority to the City may not occur for a few years and that repayment may also occur over a period of time, the Parties nevertheless expressly agree that (i) the City shall be entitled to repayment of the Authority Obligation plus interest accrued at the rate specified in Section 11, below,, consistent with the Authority's financial ability, in order to make the City whole as soon as practically possible and, (ii) in no event shall repayment of the Authority Obligation occur later than the earlier of (a) five (5) years after Authority formation date or (b) two (2) years after initial loans/lines of credit are repaid.

4. The Authority may enter into similar Cooperation and Administrative Services Agreements with one or more Founding Members, as defined in the JPA Agreement, which provides for reimbursement to the Founding Member for any costs and funds advanced to or on behalf of the Authority by the Founding Member ("**Subsequent C&AS Agreements**"); provided, however, that repayment of any obligations incurred under any and all Subsequent C&AS Agreements shall occur after repayment of the Authority Obligation under this Agreement

5. The City agrees to perform all services required by this Agreement in a manner commensurate with the standards of a reasonable professional having knowledge and expertise in the services provided under this Agreement.

6. Under no circumstances shall the employees of City be considered employees of the Authority, nor shall employees of the Authority be considered employees of the City. The City shall be solely responsible and liable for paying all compensation and benefits owed to its employees for the service provided by the City under this Agreement.

7. The Authority is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Cal. Gov't Code § 6500 *et seq.*) pursuant to the JPA Agreement, and is a public entity separate from its constituent members. The Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this

Agreement. The City shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the Authority's constituent members in connection with this Agreement.

8. The Authority shall defend, indemnify and hold harmless the City (including its officers, employees and agents) against any claim, loss or liability arising out of the performance of this Agreement. Nothing contained herein shall be construed as a waiver of any immunities or defenses that a Party may have under applicable provisions of the law, including the provisions of the California Tort Claims Act (Cal. Gov't Code § 801 *et seq.*). Without limiting the scope of the foregoing obligation, the Parties expressly acknowledge and agree that the Authority shall be solely responsible for any claim, loss or liability arising out of a City employee's performance of any of the services provided to the Authority under this Agreement, and that the Authority shall defend, indemnify and hold harmless the City (including its officers, employees and agents) from any such claim, loss or liability. The City shall make all documentation and records concerning the Authority Obligation to the Authority for inspection and copying at any reasonable time. The City shall maintain such records for a period of three (3) years following completion of work hereunder.

9. Either Party may terminate this Agreement by providing no less than thirty calendar (30) days written notice to the other Party. The Authority shall pay the City for services performed up to the effective date of termination; provided, however, that the terms and conditions set forth in Sections 4 and 5 of this Agreement shall continue in effect following such termination until all amounts due and owing the City hereunder have been repaid in full. In the event of termination, the City, within thirty calendar (30) days following the date of termination, shall deliver to the authority all records and work products generated by the City under this Agreement.

10. This Agreement and obligations of the Parties hereunder are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successor of those authorities). Any suits brought pursuant to this Agreement shall be filed in the Superior Court of the County of Orange, State of California. A waiver by any Party of any breach of any term, covenant, or conditions contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or conditions contained herein, whether of the same or a different character.

11. The obligations of the City hereunder shall constitute a contribution and use of personnel, equipment and property as authorized under California Government Code § 6504 to be repaid to the City by the Authority as authorized under California Government Code § 6512.1, plus two percent (2%) per annum.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date first written above.

**ORANGE COUNTY POWER
AUTHORITY**

CITY OF IRVINE

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

General Counsel

City Attorney