

EXHIBIT “A”

JOINT EXERCISE OF POWERS AGREEMENT

**JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CALIFORNIA CLEAN ENERGY AUTHORITY**

THIS AGREEMENT, dated as of August 14 2012, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the "Members"):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the "Joint Exercise of Powers Act"), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a "public agency" as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, pursuant to Article XI, Local Government Section 9, of the California Constitution, a municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means, including through making grants, loans or providing other financial assistance to governmental and nonprofit organizations, and private retail customer within their jurisdiction; and

WHEREAS, each Member is also empowered by law to acquire and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, as specified in this Agreement and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute bonds, notes, commercial paper or any other evidences of indebtedness, including leases or installment sale agreements or certificates of participation therein (herein "Bonds"), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, pursuant to the Public Utilities Code, section 10002, any municipal corporation may acquire, construct, own, operate, or lease any public utility; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue Bonds pursuant to the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects of any nature, including, but not limited to, capital or working capital projects, insurance, liability or maintenance programs or facilitating Members use of existing or new financial instruments and mechanisms; and

WHEREAS, it is further the intention of the Members that the projects undertaken will result in significant public benefits to the inhabitants of the jurisdictions of the Members; and

WHEREAS, by this Agreement, each Member desires to create and establish the "California Clean Energy Authority" for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Purpose.

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of Bonds for any purpose or activity permitted under the Joint Exercise of Powers Act or any other applicable law. Such purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Bonds issued or caused to be issued by the Authority (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement or other instrument pursuant to which such Bonds are issued, or unless a successor to the Authority assumes all of the Authority's debts, liabilities and obligations.

Section 3. Authority.

A. CREATION AND POWERS OF AUTHORITY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Clean Energy Authority" (the "Authority"), and said Authority shall be a public entity separate and apart from the Members. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.

B. BOARD.

The Authority shall be administered by the City Council of the City of Lancaster, a municipal corporation and charter city as defined and created under the law of the State of California ("Lancaster"), with each member of Lancaster's City Council serving in his or her individual capacity as a member of the Board. The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein. The number of Board members, the appointment of Board members, alternates and successors, their respective terms of office, and all other provisions relating to the qualification and office of the Board shall be governed by Lancaster's Municipal Code.

All references in this Agreement to any Board member shall be deemed to refer to and include the applicable alternate Board member, if any, when so acting in place of a regularly appointed Board member.

Board members shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Board member.

The Lancaster's City Council may be removed as administering agent hereunder and replaced at any time by amendment of this Agreement approved as provided in Section 16; provided that a successor administering agent of this Agreement has been appointed and accepted its duties and responsibilities under this Agreement.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The officers of the Authority shall be the Chair and Vice-Chair, with Lancaster's Mayor serving as Chair, and an individual appointed by Lancaster's Mayor serving as Vice-Chair. The Board shall appoint one or more of its employees to serve as Executive Director, Treasurer, Auditor, and Controller of the Authority (the "Treasurer") pursuant to Section 6505.6 of the Joint Exercise of Power Act.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent and except as may otherwise be specified by resolution of the Board, the Treasurer is designated as the depository of the

Authority to have custody of all money of the Authority, from whatever source derived and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount specified by resolution of the Board but in no event less than \$1,000.

The Executive Director shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Board shall have the power, by resolution, to the extent permitted by the Joint Exercise of Power Act or any other applicable law, to delegate any of its functions to one or more of the Board Members, employees or agents of the Authority and to cause any of said Board Members, employees or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board or the Authority.

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors constituting a quorum, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Authority may adopt, from time to time, by resolution of the Board such rules and regulations for the conduct of its meetings and affairs as may be required.

Section 4. Powers.

The Authority shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for any purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Authority is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to make grants, loans or provide other financial assistance to governmental and nonprofit organizations, or private retail customers to accomplish any of its purposes; and generally to do any and all things necessary or convenient to accomplish its purposes.

Without limiting the generality of the foregoing, the Authority may issue or cause to be issued Bonds, and pledge any property or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law; provided, however, the Authority shall not issue Bonds with respect to any project located in the jurisdiction of one or more Members unless the governing body of any such Member, or its duly authorized representative, shall approve, conditionally or unconditionally, the project, including the issuance of Bonds therefor. Such approval may be evidenced by resolution, certificate, order, report or such other means of written approval of such project as may be selected by the Member (or its authorized representative) whose approval is required. No such approval shall be required in connection with Bonds that refund Bonds previously issued by the Authority and approved by the governing board of a Member.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California charter city could exercise such powers and perform such duties. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Section 5. Fiscal Year.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 2013.

Section 6. Disposition of Assets.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

Section 7. Bonds.

From time to time the Authority shall issue Bonds, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The expenses of the Board shall be paid from the proceeds of the Bonds or any other unencumbered funds of the Authority available for such purpose.

Section 8. Bonds Only Limited and Special Obligations of Authority.

The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or the Authority. The Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Bonds except from revenues and other funds pledged therefor. Neither the Members nor the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members nor the faith and credit of the Authority shall be pledged to the payment of the principal of, premium, if any, or interest on the Bonds nor shall the Members or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or related document shall be deemed to be a covenant or agreement of any Board Member, or any officer, employee or agent of the Authority in his or her individual capacity and neither the Board of the Authority nor any Board Member or officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

Section 9. Accounts and Reports.

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by each Member.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Authority may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Authority. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board which report shall describe the amount of money held by the Treasurer for the Authority, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provided regular reports covering such amounts).

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

In any Fiscal Year the Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

Section 10. Funds.

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to the

accounting procedures developed under Sections 3(E) and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

Section 11. Notices.

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided, however, that to the extent permitted by law, the Authority may, provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 12. Additional Members/Withdrawal of Members.

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such public agency with the Authority of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 13. Indemnification.

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Director or an officer, employee of other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Director or an officer, employee or other agent of the Authority, against expenses, including attorneys fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 14. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Authority while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

Section 15. Amendments.

Except as provided in Section 12 above, this Agreement shall not be amended, modified, or altered without (1) a 30 day notice being given to participating members, and (2) an affirmative majority vote of the Authority Board.

Section 16. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from both Lancaster and the City of San Jacinto (collectively, the "Initial Members") an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Initial Member approving this Agreement and the execution and delivery hereof.

Section 17. Partial Invalidity.

If anyone or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 18. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the other Members.

Section 19. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Initial Members have caused this Agreement to be executed and attested by its duly authorized representatives as of the date and year first set forth above.

Initial Member:

CITY OF LANCASTER

By

Name:

Title:



ATTEST:

CITY OF LANCASTER

By

Name

Title Executive Director

Mark V. Bozigian



Clerk

Initial Member:

CITY OF SAN JACINTO

By

Name:

Title:



Andrew F. Kotyuk

Mayor

ATTEST:



Richard Miller, City Clerk

EXHIBIT “B”

**FIRST AMENDMENT TO
THE JOINT EXERCISE OF POWERS AGREEMENT**

**FIRST AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CALIFORNIA CLEAN ENERGY AUTHORITY**

This first amendment to the JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA CLEAN ENERGY AUTHORITY ("Agreement") is dated as of March 28, 2017 ("First Amendment").

WHEREAS, the City of Lancaster, California and the City of San Jacinto, California previously entered into the Agreement dated as of August 14, 2012;

WHEREAS, the Agreement created and established, pursuant to the Joint Exercise of Powers Act, the "California Clean Energy Authority" ("Authority") for the purposes set forth therein and to exercise the powers provided therein;

WHEREAS, the Agreement authorizes the amendment, modification or alteration of the Agreement by (i) a 30 day notice being given to participating members, and (ii) an affirmative majority vote of the administrative body of the Authority ("Authority Board");

WHEREAS, the Authority Board desires to amend the Agreement in order to change the name of the Authority to the "California Choice Energy Authority";

WHEREAS, the Authority Board desires to amend the Agreement to ensure that no member may withdraw from the Agreement without first fully performing pursuant to all energy contract(s) and/or ensuring the prior termination of all energy contracts to which the Authority is a party on behalf of the withdrawing member;

WHEREAS, 30-day notice of this First Amendment has been given to participating members of the Authority; and

WHEREAS, this First Amendment was approved by an affirmative majority vote of the Authority Board via Resolution No. CCEA 02-17.

NOW, THEREFORE, the Agreement is amended as follows:

1. The title of the Agreement shall be deleted in its entirety and replaced as follows:

Joint Exercise of Powers Agreement Relating to the California
Choice Energy Authority

2. The final recital of the Agreement shall be deleted in its entirety and replaced as follows

WHEREAS, by this Agreement, each Member desires to create and establish the "California Choice Energy Authority" for the purposes set forth herein and to exercise the powers provided herein.

3. Section 3, subsection A, of the Agreement is hereby deleted in its entirety and replaced as follows:

A. CREATION AND POWERS OF AUTHORITY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Choice Energy Authority" (the "Authority"), and said Authority shall be a public entity separate and apart from the Members. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.

4. Section 12 of the Agreement is hereby deleted in its entirety and replaced as follows:

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such public agency with the Authority of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however no such withdrawal notice shall be effective until and unless: (a) such withdrawal will not result in the dissolution of the Authority so long as any Bonds remain outstanding; (b) all obligations of such Member under all of the Energy Contracts to which the Authority is a party on behalf of such Member have been fully performed by such Member, and (c) the date on which all of the Energy Contracts to which the Authority is a party on behalf of such Member have terminated in accordance with their respective terms. For purposes of the foregoing sentence, "Energy Contract" means an agreement for the purchase of energy, renewable energy or related products, including a power purchase agreement and/or confirmation letter thereto.

IN WITNESS WHEREOF, the Authority Board has caused this First Amendment to be executed and attested by its duly authorized representatives as of the date and year set forth above.

[SIGNATURE PAGE TO FOLLOW]


Dated: _____

By:  _____

Printed Name: Mark Bozigian

Title: Executive Director

ATTEST

By:  _____

Printed Name: Britt Avrit

Title: Secretary

EXHIBIT “C”

**FIRST AMENDED AND RESTATED BYLAWS OF
THE CALIFORNIA CHOICE ENERGY AUTHORITY**

First Amended and Restated Bylaws of
The California Choice Energy Authority

ARTICLE 1 THE AUTHORITY

Section 1.1 Name

The official name of the Authority shall be the "California Choice Energy Authority." The Authority was created pursuant to the Joint Exercise of Powers Agreement, dated August 14, 2012 (Agreement), between the City of Lancaster ("Lancaster") and the City of San Jacinto ("San Jacinto"). The Authority has and may add additional members per the terms of the Joint Exercise of Power Agreement.

Section 1.2 Authority Board Members

The Authority shall be administered by a governing Board of Directors (the "Board") as set forth in the Agreement.

Section 1.3 Principal Office

The principal office for the transaction of the business of the Authority shall be the Lancaster City Hall, located at 44933 Fern Avenue, Lancaster, California, or at such other place as may be designated by the Board by resolution.

Section 1.4 Compensation

Members of the Board shall receive no compensation for attendance at an Authority meeting. Authority Members may be reimbursed for any expenses actually incurred in connection with serving as a member of the Board.

Section 1.5 Conflicts of Interest

The Authority shall adopt a conflict of interest code pursuant to, and in accordance with, the Fair Political Practices Act.

ARTICLE 2 OFFICERS

Section 2.1 Officers

The Officers of the Authority shall be the Chair, Vice Chair, Executive Director, Secretary and Treasurer/Auditor-Controller.

Section 2.2 Chair

The Chair shall be the Mayor of Lancaster and shall preside at all meetings of the Authority, but shall have no authority greater than any other board member except as set forth in the Agreement and/or these By-laws.

Section 2.3 Vice Chair

The Vice Chair shall be appointed by the Chair with consent of the remainder of the Board, and shall perform the duties of the Chair in the absence or incapacity of the Chair, until such time as a new Chair is selected or appointed.

Section 2.4 Executive Director

The Board shall appoint an Executive Director who shall be the City Manager of Lancaster, or his or her designee, and shall be responsible for execution and supervision of the affairs of the Authority. Except as otherwise authorized by vote of the Board, the Executive Director or his or her designee shall sign all contracts, deeds and other instruments executed by the Authority. The Executive Director shall also perform other such functions and duties as may be delegated to him or her by vote of the Board.

Section 2.5 Secretary

The Board shall appoint a Clerk of the Board who shall be the City Clerk of Lancaster.

Section 2.6 Treasurer/Auditor-Controller

The Executive Director shall appoint a Treasurer/Auditor-Controller. Subject to the applicable provisions of any trust agreement, indenture or resolution providing for a trustee or other fiscal agent, the Treasurer/Auditor-Controller is designated as the public officer or person who has charge of, handles, or has access to any property of the authority, and shall file an official bond if so required by the Board in accordance with these By-laws and, as such, shall have the powers, duties and responsibilities specified in Section 6505.1 of the Joint Exercise of Powers Act (the "Act"), set forth at California Government Code Sections 6500 et seq., as amended. The Treasurer/Auditor-Controller shall perform all duties of a treasurer, as outlined in Section 6505.5 of the Act; however, the Board shall have the discretion to transfer this function to a certified public accountant, consistent with Section 6505.5.

Section 2.7 Confirmation of Officers

Confirmation of officers shall be the first order of business at the first meeting of the Authority, regular or special, held in each fiscal year.

Section 2.8 Authority to Bind Authority

No member, officer, agent or employee of the Authority shall have any power or authority to bind the Authority by any contract, to pledge its credit, or to render it liable for any purpose in any amount, except to the extent that such person has been granted or delegated prior specific or general authority by vote of the Board.

ARTICLE 3 EMPLOYEES AND AGENTS

Section 3.1 Appointment of Employees and Agents

The Authority, through the Executive Director, may from time to time request from the respective authority Members the services of such personnel, counsel or agents, permanent or temporary, as may be necessary to carry out the business and affairs of the Authority. The Board, or the Executive Director if so delegated by vote of the Board, may in addition employ or contract with temporary professional and technical personnel for the performance of Authority business and affairs, on such terms and at such rates of compensation as the Board, or Executive Director if so delegated by the Board, may determine; provided, however, that adequate sources of funds are identified for the payment of such temporary professional and technical services. Staff from Authority Members supporting the Authority shall be paid/reimbursed from the Authority for all applicable time billed at their fully-burdened hourly rate, as approved by the Executive Director of the Authority or as pursuant to a reimbursement agreement.

ARTICLE 4 MEETINGS

Section 4.1 Ralph M. Brown Act

The Ralph M. Brown Act (Cal. Gov't Code §54950 et seq.) (the "Brown Act") applies to all meetings of the Board.

Section 4.2 Regular Meetings

The Board shall hold regular meetings as specified by Board resolution, and the date, hour and place of the regular meetings shall be fixed by such Board resolution. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

Section 4.3 Special Meetings

A special meeting may be called at any time by the Chair or the Executive Director in accordance with the Brown Act.

Section 4.4 Closed Sessions

Nothing contained in these By-laws shall be construed to prevent the Board from holding closed sessions during a regular or special meeting concerning any matter permitted by law to be considered in a closed session. All closed sessions shall be held pursuant to and in accordance with the Brown Act.

Section 4.5 Public Hearings

All public hearings held by the Board shall be held during regular or special meetings of the Board.

Section 4.6 Quorum

A majority of the authorized number of Board members shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other official purposes, except that less than a quorum may adjourn from time to time until a quorum is obtained. Any action or decision of the Authority shall be on motion duly approved by a majority of a quorum of the Board at a lawfully held meeting.

Section 4.7 Adjourning Meetings and Continuing Public Hearings to Other Times or Places
The Board may adjourn any meeting to a time and place specific in the order of adjournment. If all Board members are absent from any regular meeting or adjourned regular meeting, the Secretary or acting Secretary of the Authority may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided for special meetings unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be noticed and conducted in accordance with the Brown Act. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specific for regular meetings.

Any public hearing being held, or any hearing noticed or ordered to be held at any meeting may by order or notice of continuance be continued or re-continued to any subsequent meeting and to the same extent set forth herein for the adjournment of the meetings; provided, that if the hearing is continued to a time less than twenty-four (24) hours after the time specific in the order or notice of hearing a copy of the order or notice of continuance shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Section 4.8 Order of Business.
The Executive Director shall prepare the agenda for all meetings of the Authority. Business shall be conducted according to the agenda, except when determined by the Board as permitted by law.

Section 4.9 Parliamentary Procedure
The presiding officer at the meeting shall determine the rules of conduct. The presiding officer may be guided by the rules of parliamentary procedure set forth in Robert's Rules of Order, but failure to follow Robert's Rules of Order shall not affect the validity of any action or motion duly taken or adopted by the board at any lawfully held meeting.

ARTICLE 5 ADDITION OF MEMBER AGENCY

Section 5.1 Adding Associate Member
The Board may decide to add an associate member by a majority vote and execution of the Associate Membership Agreement, attached hereto as Exhibit "A" and incorporated into these By-laws by reference.

Section 5.2 Associate Membership

Any local agency in the state of California may, with the approval of the Board, become an Associate Member of the Authority by delivering to the Authority an Associate Membership Agreement, substantially in the form attached as Exhibit "A," duly executed by the local agency's governing body. An Associate Member shall be entitled to participate in all programs and other undertakings of the Authority, including, without limitation, the construction and financing of any local public improvement, the establishment, implementation and operation of a Community Choice Aggregation (as defined in the Cal. Public Utilities Code), and/or any other Authority programs and undertakings.

An Associate Member shall not be entitled to representation on the Board of Directors or to vote on any matter coming before the Board. Upon the Board's approval of a local agency as a new Associate Member, the Chair, Vice Chair, Executive Director or other officer or staff member duly authorized by the Board for such purpose shall execute and deliver the applicable Associate Member Agreement to the new Associate Member.

ARTICLE 6 AMENDMENTS

Section 6.1 Amendment by the Board of Directors

The Board may, by resolution, adopt, amend or repeal the Authority's By-laws.

EXHIBIT "A"

ASSOCIATE MEMBERSHIP AGREEMENT

By and Between the California Choice Energy Authority and the

_____, **CALIFORNIA**

This ASSOCIATE MEMBERSHIP AGREEMENT, dated _____, 20____, by and between the California Choice Energy Authority (the "Authority") and the _____, a _____, duly organized and existing under the laws of the State of California (the "_____") (collectively, the "Parties");

WITNESSETH:

WHEREAS, certain cities of the State of California (collectively, the "Members") have entered into a Joint Powers Agreement creating the California Choice Energy Authority (the Agreement), establishing the Authority and prescribing its purposes and powers and providing, among other things, for associate members of the Authority (an "Associate Member"); and

WHEREAS, the Authority has been formed for the purpose, among others, of assisting its Members and Associate Members in the raising of capital to finance the capital improvement needs of its Members and Associate Members by providing for financing in connection with the improvement, construction, acquisition, leasing, creation, rehabilitation and preservation of solar energy facilities within the boundaries of the Members and Associate Members; by utilizing the professional, technical and other knowledge and expertise of Authority Members, their employees, contractors and/or consultants, in connection with the establishment, implementation and operation of a Community Choice Aggregation; and/or by providing financing in accordance with the provisions of applicable law in connection with other projects and programs that are in the public interest and which benefit Members or Associate Members; and

WHEREAS, _____ desires to become an Associate Member of the Authority; and

WHEREAS, the Board of Directors of the Authority has determined that _____ should become an Associate Member of the Authority;

NOW, THEREFORE, in consideration of the above and of the mutual promises contained herein, the Authority and _____ do hereby agree as follows:

Section 1. Associate Member Status. _____ is hereby made an Associate Member of the Authority for all purposes of the Agreement and the By-laws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by _____ and the Board of Directors of the Authority, _____ shall be and remain an Associate member of the Authority.

Section 2. Restrictions and Rights. _____ shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of

Directors or by the Authority. In addition, no officer, employee or representative of _____ shall have any right to become an officer or director of the Authority.

Section 3. Effect of Prior Authority Actions. _____ hereby agrees to be subject to and bound by all actions previously taken by the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

Section 4. No Obligations. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of _____.

Section 5. Execution of the Agreement. Execution of this Associate Membership Agreement shall satisfy the requirements of Section 12 of the Joint Powers Agreement and Section 5.2 of the By-laws of the Authority for participation by _____ in all programs and other undertakings of the Authority, including, without limitation, any undertaking to finance the acquisition, construction, installation and/or equipping of public capital improvements; utilizing the professional, technical and other knowledge and expertise of Authority Members, their employees, contractors and/or consultants, in connection with the establishment, implementation and/or operation of a Community Choice Aggregation, and/or providing or obtaining financing in connection with other projects and programs which are in the public interest and of benefit to the Authority, Members and/or Associate Members.

Section 6. Project Agreement. Any benefits and/or responsibilities of the Associate Member shall be determined in a project-specific development agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Associate Membership Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

_____,
CALIFORNIA,

a _____

By: _____

Title: _____

Attest:

Clerk

CALIFORNIA CHOICE ENERGY AUTHORITY

By: _____

Title: _____

Attest:

Secretary

CERTIFICATE OF SECRETARY

I certify that I am the duly appointed and acting Secretary of the California Choice Energy Authority, created in accordance with the provisions of the Joint Exercise of Powers Act (Cal. Gov't. Code §§6500 et seq.); that these By-laws and the Associate Membership Agreement form, attached hereto as Exhibit "A" and incorporated into these By-laws by reference, consisting of a total of eight (8) pages, constitute the By-laws of this Authority as adopted by the Board of Directors on 2-12-19; and that these By-laws have not been amended or modified since that date.

Executed on 2-13-19 at LANCASTER, California.



Secretary

EXHIBIT “D”

ADMINISTRATIVE SERVICES AGREEMENT

**ADMINISTRATIVE SERVICES AGREEMENT
(CITY OF POMONA),**

**Dated as of _____, 2019
between**

**CALIFORNIA CHOICE ENERGY AUTHORITY,
as Provider,**

and

**CITY OF POMONA,
as Customer**

**ADMINISTRATIVE SERVICES AGREEMENT
(CITY OF POMONA)**

This ADMINISTRATIVE SERVICES AGREEMENT (CITY OF POMONA) (this “**Agreement**”), dated as of _____, 2019 (the “**Effective Date**”), is between California Choice Energy Authority, a California joint powers authority (“**Provider**”), and City of Pomona, a municipal corporation and charter city organized and operating under the laws of the State of California (“**Customer**”). Provider and Customer are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

R E C I T A L S

WHEREAS, pursuant to California Public Utilities Code (the “**Code**”) Sections 366.1, *et seq.*, Customer has been registered as a “community choice aggregator” (“**CCA**”) (as defined in the Code), which has been established for the purpose of delivering community choice aggregation services to certain customers located within its boundaries;

WHEREAS, pursuant to Code Section 366.2, Customer submitted its implementation plan detailing the process and consequences of community choice aggregation, and its statement of intent to establish electrical load aggregation, to the California Public Utilities Commission (the “**CPUC**”);

WHEREAS, pursuant to Code Section 366.2, a community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services;

WHEREAS, Provider has also been registered as a CCA and has expertise and knowledge in the management and administration of community choice aggregation programs and maintains business relationships with multiple energy suppliers;

WHEREAS, due to Provider’s expertise and knowledge, Customer wishes to engage Provider as an independent contractor, during the Term of this Agreement, for the purpose of facilitating the purchase and sale of electricity and other related services on behalf of Customer and for performing certain other duties and services on the terms and conditions set forth herein;

WHEREAS, Provider is willing to perform such duties and services for Customer on the terms and conditions set forth herein for a fee;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Definitions.

As used in this Agreement, all capitalized terms shall have the respective meanings given to them in this Agreement and in Exhibit A (Schedule of Definitions).

1.2 Construction.

All references herein to an agreement shall be to this Agreement as amended, supplemented or modified from time to time. All references to a particular entity shall include a reference to such entity's successors and permitted assigns. The words "herein," "hereof" and "hereunder" and other words of similar import shall refer to this Agreement as a whole, including all appendices, annexes, exhibits and schedules, and not to any particular section or subsection of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words "includes" or "including" shall be deemed to be followed by the words "without limitation." All references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. All exhibits and schedules to this Agreement are hereby incorporated herein by reference, including the following:

- (i) Exhibit A – Schedule of Definitions
- (ii) Exhibit B – Scope of Work
- (iii) Exhibit C – Fixed Fee Rate, Reimbursable Expenses and Notice Address
- (iv) Exhibit D – Authorization Documents
- (v) Exhibit E – Customer Approval Procedures
- (vi) Exhibit F – Form of Authorized Officer Approval
- (vii) Exhibit G – Joint Exercise of Powers Agreement and Amendments Thereto

ARTICLE 2
ENGAGEMENT OF PROVIDER

2.1 Engagement of Provider.

Customer hereby engages Provider as an independent contractor to perform certain administration, energy procurement, contract negotiation, contract administration, and resource planning services (as such Services are described herein) on behalf of Customer in connection with Customer's CCA program, and to perform certain other duties, all as set forth in this Agreement. In consideration of the fees and cost reimbursements payable to Provider hereunder, Provider accepts such engagement and agrees to perform the Services in accordance with the terms and conditions hereof.

2.2 Relationship.

(a) Provider shall act as an independent contractor of Customer with respect to the performance of its obligations hereunder. Neither Provider nor its Affiliates, employees or Subcontractors (including Provider's legal counsel) or the employees of any such parties engaged in connection with the Services shall be deemed to be an agent, representative, employee, or servant of Customer. This Agreement is not intended to create, and shall not be construed to create, a relationship

of partnership or an association of profit between Customer and Provider. Provider is not admitted to practice law in any jurisdiction, and will not provide legal advice to Customer in connection with the performance of the Services. Provider is not licensed as a provider of accounting services, does not hold any certifications required to be held by those providing accounting services, and will not provide any services that require such licensing and certification. Provider is not licensed as a financial advisor, financial manager, insurance advisor, or insurance broker.

(b) In the unanticipated event that Provider or any employee, agent, or subcontractor of Provider providing Services hereunder claims, or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (“PERS”), to be eligible for enrollment in PERS as an employee of the Customer, Provider shall indemnify, defend, and hold harmless Customer for the payment of any employee and/or employer contributions for PERS benefits on behalf of Provider or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Customer.

(c) Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Provider and any of its employees, agents, and subcontractors providing Services hereunder shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by Customer, including but not limited to eligibility to enroll in PERS as an employee of Customer and entitlement to any contribution to be paid by Customer for employer contribution and/or employee contributions for PERS benefits.

2.3 Engagement of Third Parties.

Provider may, subject to the other provisions of this Agreement, engage such Persons as it deems reasonably necessary and appropriate for the purpose of performing or carrying out any of the Services or its obligations under this Agreement; provided, however, that no such engagement shall relieve Provider of any of its obligations or liabilities under this Agreement, including those set forth in Article 7; and provided further, that, except as provided herein, Provider’s use of such Persons shall not modify or increase the compensation payable to Provider pursuant to Article 5. Except as expressly set forth herein, nothing in this Agreement shall be construed to create any contractual relationship between any such Person (including Provider’s legal counsel) and Customer.

ARTICLE 3

TERM AND RENEWAL

3.1 Term.

(a) Unless earlier terminated in accordance with Article 8, the term of this Agreement shall commence on the Effective Date and shall continue for a period equal to the longer of (i) three (3) years from the Effective Date (as defined under the Original Agreement), or (ii) the longest term of any Energy Contract that Provider has entered into on behalf of Customer (the “**Base Term**”), and the performance of all obligations under such Energy Contract, (as such period may be extended pursuant to Section 3.1(b), the “**Term**”).

(b) Unless sooner terminated as set forth in Article 8, at the expiration of the Base Term, the term of this Agreement shall be automatically extended until such time as a Party provides written notice to the other Party that it elects to terminate this Agreement pursuant to Article 8 (such written notice, a “**Termination Notice**”). Following receipt by such other Party of a Termination Notice, this Agreement shall terminate as set forth in Section 8.4.

(c) For purposes of greater clarity, the definition of “Term” shall include the Base Term and the renewal term of this Agreement as set forth in Section 3.1(b).

ARTICLE 4 DUTIES OF PROVIDER

4.1 Services.

During the Term, Provider shall perform the administration, energy procurement, contract negotiation, contract administration, resource planning services and other services identified in the Scope of Work set forth in Exhibit B hereto or as otherwise agreed to by the Parties pursuant to the terms hereof (the “**Services**”). The Services shall be comprised of those services identified in the Scope of Work Exhibit as “Fixed Fee Services” (collectively, the “**Fixed Fee Services**”) and those services to be performed on behalf of Customer and identified in the Scope of Work Exhibit as “Reimbursable Services” (collectively, the “**Reimbursable Services**”).

4.2 General Operating Standards.

Provider shall perform the Services in a good, workmanlike, and commercially reasonable manner in accordance with the requirements of this Agreement and Applicable Laws. Provider shall use commercially reasonable efforts to cause the Services to be planned and performed in a timely and cost-effective manner. Provider shall fully cooperate with Customer with respect to the requirements relating to applicable provisions of the Authorization Documents that relate to the tasks to be completed by Customer on or before the date requested by Customer.

4.3 Personnel.

Provider’s administration personnel as a group, including any Persons engaged by Provider pursuant to Section 2.3, shall be qualified in administering services related to community choice aggregation programs, possess any certification(s) or license(s) necessary or required by law to perform the service, and experienced in the duties to which they are assigned.

ARTICLE 5 FEES AND COST REIMBURSEMENT

5.1 Fixed Fees.

(a) As compensation for performing the Fixed Fee Services, Customer shall pay Provider a monthly fee during the Term (the “**Fixed Fee**”). The “**Fixed Fee Rate**” identified on Exhibit C is the estimated initial amount of the Fixed Fee, which shall be adjusted based upon the actual number of enrollments and then adjusted thereafter pursuant to Section 5.1(b). The Fixed Fee shall reflect Customer’s share of the costs of the Fixed Fee Services, which shall be determined based on the pro-rata share of Customer’s Bundled Load compared to the aggregate Bundled Load for all Provider’s members, determined each fiscal year by Provider. The Fixed Fee is payable in accordance

with Section 5.3 and does not include amounts payable under Energy Contracts or the Security Documents.

(b) The Fixed Fee shall be adjusted automatically as follows:

(i) No later than July 1, 2021, Provider may, on a one time basis, update the Fixed Fee Services amount to reflect actual costs incurred or expected to be incurred in providing the Fixed Fee Services, subject to providing prior written notice and supporting written documentation to Customer and a cap of five percent (5%) on any increase to Customer's then current Fixed Fee;

(ii) Commencing on July 1, 2022, and every July 1 thereafter during the Term of this Agreement, Provider may increase the Fixed Fee to reflect reasonable cost increases incurred by Provider in providing the Fixed Fee Services up to, but not in excess of, three percent (3%) of the Fixed Fee amount applicable to the immediately preceding fiscal year, subject to providing prior written notice and supporting written documentation to Customer; and

(iii) Within ninety (90) days after a change in membership of Provider, Provider shall recalculate the Fixed Fee based on the then current amount of Fixed Fee Services and the recalculated Fixed Fee shall be applied and payable on a prospective basis.

Any requests to increase the Fixed Fee above the three percent (3%) amount allowed in 5.1(b)(ii) will be subject to the prior written approval of Customer, which the Customer may refuse to grant in its reasonable discretion. If Customer does not approve such a request, however, Provider reserves the right to review and adjust the scope of Services in a reasonable manner to compensate for any unapproved Fixed Fee increases.

5.2 Reimbursable Expenses. During the Term, Customer shall reimburse Provider for the expenses actually incurred by Provider in connection with the performance of the Reimbursable Services described in Paragraph B in the Scope of Work (the "**Reimbursable Expenses**").

(a) The Reimbursable Expenses shall be allocated to Customer as follows:

(i) Data management fees will be allocated to Customer on the basis of the Customer's total number of electric service accounts multiplied by the per account maintenance fee invoiced by the Data Management service provider.

(ii) Fees and costs for Professional Services and Legal Services incurred in performance of the Reimbursable Services for the benefit of Provider's members generally will be allocated among all Provider members (including Customer) on an equal basis.

(iii) Fees and costs for Professional Services, Legal Services, and Supplemental Procurement Services incurred solely on behalf of Customer will be directly assigned to and payable by Customer.

(b) The Reimbursable Expenses incurred by Provider shall be invoiced and payable as set forth in Section 5.3.

5.3 **Invoicing and Payment Procedures.**

(a) Except as required by Section 5.3(c) below, the Fixed Fee and the Reimbursable Expenses shall be payable for each month not later than thirty (30) days following receipt of a Payment Invoice (each such date, a “**Payment Date**”) and shall be prorated for any partial monthly period at the beginning and end of the Term, with such prorations based on a thirty (30) day calendar month. Invoiced amounts will be paid by wire transfer of immediately available funds to Provider at an account designated in writing by Provider. Notwithstanding the foregoing, the Parties may agree to a different payment due date for the Supplemental Procurement Services portion of the Reimbursable Expenses.

(b) Provider shall submit invoices to Customer at least ten (10) Business Days prior to the relevant Payment Date for the Fixed Fee and Reimbursable Expenses that are due and payable on such Payment Date. Invoices (“**Payment Invoice**”) by Provider shall be sent to Customer at the address(es) set out in Exhibit C.

(c) Once Customer has maintained a positive cash flow for three (3) consecutive months, Provider may submit invoices to Customer and to the collateral agent for payment from the lockbox account established pursuant to the Security Documents not less than ten (10) Business Days prior to the relevant Payment Date for the Fixed Fee and Reimbursable Expenses that are due and payable on such Payment Date. The terms and conditions for payment of any Payment Invoice to be paid from the lockbox account shall be governed by the Security Documents.

(d) Either Party may, in good faith, dispute the correctness of any invoice, bill, charge, or any adjustment to an invoice, rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, bill, charge, or adjustment to an invoice, was rendered. If a Payment Invoice or portion thereof, or any other claim or adjustment arising thereunder, is disputed, payment of the undisputed portion of the Payment Invoice shall be required to be made when due, with written notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount (the “**Disputed Payment**”) shall not be required until the dispute is resolved. The Parties shall use commercially reasonable efforts to resolve the Disputed Payment within ten (10) Business Days of receipt of the notice of the Disputed Payment. Once the Parties agree on a resolved payment amount (the “**Resolved Payment Amount**”), Provider shall cause the next monthly Payment Invoice to reflect a credit or charge, as appropriate, based on the resolution of the payment dispute, in the amount of the Resolved Payment Amount. In the event the Parties are unable to resolve a payment dispute within ten (10) Business Days, the lesser amount shall be deemed due payable unless and until a different amount is identified following conclusion of the dispute resolution provisions in Article 12, or a court of competent jurisdiction orders otherwise.

5.4 **Records and Audits.**

(a) Except as otherwise required by Applicable Laws, Provider shall keep books and records in accordance with generally accepted accounting principles with respect to Services performed for a period of three (3) years after the applicable creation date of such book or record; or any such longer period as may be required by law.

(b) Upon no less than seventy-two (72) hours’ notice to Provider, Provider shall make such books and records related to the Services available for inspection and audit by Customer or its designated agents at Customer’s expense during Regular Work Hours and at the office where such

books and records are kept; provided that Provider's company software, books and records not directly related to this Agreement shall not be subject to inspection or audit.

(c) If any such inspection or audit discloses that any error has occurred and that, as a result thereof, any overpayment or any underpayment has occurred, the amount thereof shall promptly be paid with interest at the rate set forth in Section 5.5 to the Party to whom it is owed by the other Party; provided that Provider or Customer, as applicable, shall only be liable for any amounts hereunder that relate to a period within twelve (12) months of the date of the inspection or audit conducted by Customer.

5.5 Past Due Amounts.

Any amounts due under this Agreement, if not timely paid by the Party from whom they are due, shall bear interest at the per annum rate equal to the Prime Rate (as published in The Wall Street Journal) plus one and one-half percent (1.5%), prorated on the basis of a 365-day year (or such lower rate as is the maximum rate permitted by Applicable Law) from the date that such amount was due and payable (taking into account any grace period herein provided) until the time that such amount is paid.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES; COVENANTS

6.1 General Representations and Warranties.

Each Party, for itself only, hereby represents and warrants to the other Party hereto, as of the date hereof, that:

(a) It is an entity duly organized, validly existing and in good standing under the applicable laws of the jurisdiction in which it was formed.

(b) It has the requisite power and authority to enter into this Agreement and to perform its obligations hereunder (including with respect to any indemnity obligations hereunder), and the execution, delivery and performance hereof do not and will not contravene any Applicable Law, or any order of any court or Governmental Authority or agency applicable to or binding on it or any of its properties, or contravene the provisions of, or constitute a default under, its organizational documents or any indenture, mortgage, contract or other agreement or instrument to which it is a party or by which it or any of its property is bound or affected.

(c) This Agreement has been duly authorized by all necessary actions on the part of such Party and the execution, delivery and performance by such Party of this Agreement do not require any approval not already obtained by it or any approval or consent not already obtained of any trustee or holders of indebtedness or obligations of such Party.

(d) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the due execution, delivery or performance by such Party of this Agreement.

(e) The execution, delivery and performance of this Agreement have been duly authorized by all requisite entity actions.

(f) The person signing this Agreement is authorized to execute this Agreement on behalf of, and to bind, the applicable Party.

(g) Assuming the due authorization, execution and delivery of this Agreement by the other Parties hereto, this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms, except to the extent such enforceability is limited by bankruptcy, insolvency, moratorium or similar laws affecting or relating to the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(h) There are no pending or, to such Party's knowledge, threatened actions or proceedings against such Party before any court or administrative agency which would materially adversely affect such Party's ability to perform its obligations hereunder.

6.2 Additional Customer Representations and Warranties.

(a) Delegation of Authority and Authorization Documents. Customer has taken and performed all acts necessary, and has received all necessary authorizations, approvals or other actions required by, and has made all necessary filings with, any Governmental Authority that is required for the (i) delegation of authority to Provider as contemplated hereby (ii) filing with Provider an executed counterpart of the JPA and (iii) adoption of a resolution of its governing body approving the JPA and the execution and delivery thereof. The Authorization Documents represent a true, complete and accurate list of all such necessary authorizations, approvals, actions and filings and Customer has provided true, complete and accurate copies of the Authorization Documents to Provider as of the Effective Date. Other than the Authorization Documents, there are no other authorizations, approvals, filings or other actions required for Customer to enter into this Agreement, perform its obligations hereunder and delegate authority to Provider to perform the Services.

(b) Security Documents and Ancillary Documents. Subject to Provider's compliance with the Customer Approval Procedures and, in connection with any Energy Contract entered into on behalf of Customer, Provider is authorized to (i) enter into Energy Contracts on behalf of Customer, (ii) grant to the counterparties to any such Energy Contracts a first priority security interest in any amounts received from the Utility, Customer or the end-users in Customer's territory pursuant to such Energy Contracts (as contemplated in the Security Documents), (iii) arrange for any funds received from the Utility, Customer or such end-users in connection with such Energy Contracts to be deposited into a lockbox account pledged to the counterparties to any such Energy Contract and be paid to any such counterparties in accordance with the terms and conditions of such Energy Contracts and the Security Documents, and (iv) enter into any needed ancillary documentation required in connection with the execution, performance or administration of the Energy Contracts, the Security Documents or in connection with the provision of the Services.

(c) Authorized Officer. Customer has designated the Authorized Officer to approve Provider's execution of Energy Contracts as set forth in and subject to the Customer Approval Procedures, on behalf of Customer, for the purchase of energy and renewable energy and Customer has authorized the Authorized Officer to provide any such approval in the form attached hereto as Exhibit F. Upon receipt of the Authorized Officer's approval of any Energy Contract or other action, Provider is authorized to enter into such Energy Contract or perform such action on behalf of Customer.

6.3 Customer Covenants. Customer covenants and agrees as follows:

(a) Authorizing Documents. Customer shall maintain the Authorization Documents in full force and effect throughout the Term and shall immediately inform Provider of any change to the identity of the Authorized Officer hereunder or to the Authorization Documents that may affect the ability of Provider to perform its obligations hereunder.

(b) Collateral Agent's Determinations. In performing the Services hereunder, Provider may rely upon the authorizations and instructions received from the Authorized Officer (if such authorization is required pursuant to the Customer Authorization Procedures) and may rely on the accuracy of the Customer Approval Procedures. Provider shall have no liability to Customer for actions taken in reliance on authorizations or instructions received by the Authorized Officer or in compliance with the Customer Approval Procedures. Until such time as Customer instructs Provider in writing that an individual is no longer an "Authorized Officer" hereunder, Provider shall have no duty to inquire as to the authority of such Authorized Officer to provide the authorizations or instructions in connection with the Services. In the event that Provider is at any time unsure as to the identity of the Authorized Officer hereunder, Provider may request written instructions from Customer as to the course of action to be adopted by Provider and Provider shall be entitled to conclusively rely upon such written instructions without liability to Customer or any other Person.

(c) Data Access. If requested by Provider, Customer shall assist Provider in obtaining information regarding Customer's end-users from the Utility, including the number of end-user customers that form part of Customer's community choice aggregation program, the energy consumption, load shapes and usage data of such end-users and the proportional share of such end-users in Customer's territory.

(d) Customer Rates. Customer shall establish and maintain end-user customer rates designed to generate revenues sufficient to satisfy the overall revenue requirement for Customer, including timely payment of all Customer's obligations under this Agreement, all Energy Contracts and the Security Documents.

6.4 Response Time.

(a) Customer Response Time.

(i) In all circumstances where Provider requests the approval, consent or cooperation of Customer to any action (or inaction) hereunder, Customer shall consider and respond to such request with reasonable promptness as is feasible under the circumstances.

(ii) Provider will exercise commercially reasonable efforts to provide as much advance notice of such request as is reasonable given the prevailing circumstances and the nature of the matters for which a response is requested.

(iii) If Provider is prevented from performing its obligations under this Agreement as the result of an unreasonable delay on the part of Customer to provide a required response required pursuant hereto, then Provider's obligations hereunder shall be excused until such time as Customer provides its required response.

(b) Provider Response Time.

(i) With respect to the provision of the Services, Provider shall promptly respond to any request or direction from or on behalf of Customer and to any event that requires action by Provider pursuant to this Agreement within the time frame by which such response is required hereunder.

ARTICLE 7

INDEMNIFICATION

7.1 Indemnification by Provider.

(a) Subject to Section 7.1(b), Provider shall defend, indemnify and hold harmless each Customer Indemnified Party from and against any and all Claims incurred or asserted against such Customer Indemnified Party arising out of or otherwise in connection with Provider's gross negligence, bad faith, recklessness or willful misconduct in connection with the performance of the Services hereunder, including any Claims relating to any liability resulting from any violation of or noncompliance with any Applicable Law to be complied with by Provider hereunder. Provider's obligations under this paragraph shall include all costs (including but not limited to attorneys fees) incurred in performing the same. Customer may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed because Provider does not assume control of the defense, Provider will bear the reasonable expenses of Customer's counsel.

(b) Notwithstanding anything to the contrary in the foregoing, Provider shall not be required to defend, indemnify or hold harmless any Customer Indemnified Party from and against, and no Customer Indemnified Party shall be exculpated from, any Claims to the extent such Claims (i) are caused by or arise from the breach of this Agreement by Customer or the gross negligence, bad faith, recklessness or willful misconduct of such Customer Indemnified Party; (ii) relate to changes to the market rate for electricity, including the fact that, from time to time, negotiated rates under Energy Contracts entered into by Provider on behalf of Customer may be higher than rates charged by the Utility, (iii) relate to defaults under the Energy Contracts that are not caused by Provider's gross negligence, bad faith, recklessness or willful misconduct, or (iv) are the result of a change in governmental regulation or a change in Applicable Law.

7.2 Indemnification by Customer.

(a) Subject to Section 7.2(b), Customer shall defend, indemnify and hold harmless each Provider Indemnified Party from and against any and all Claims incurred or asserted against such Provider Indemnified Party arising out of or otherwise in connection with this Agreement and/or Provider's entry into any Energy Contract on behalf of Customer or the end-users in Customer's territory, including any Claims resulting from (i) the failure of Customer (or the end-users in its territory) to make payments with respect to an Energy Contract, or (ii) a default by Provider under any Energy Contract entered into pursuant hereto that is the result of an act or omission of Customer. Customer's obligations under this paragraph shall include all costs (including but not limited to attorneys fees) incurred in performing the same. Provider may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed because Customer does not assume control of the defense, Customer will bear the reasonable expenses of Provider's counsel.

(b) Notwithstanding anything to the contrary in the foregoing, Customer shall not be required to defend, indemnify or hold harmless any Provider Indemnified Party from and against, and no Provider Indemnified Party shall be exculpated from, any Claims to the extent caused by or arising from the breach of this Agreement by Provider or the gross negligence, bad faith, recklessness or willful misconduct of such Provider Indemnified Party.

7.3 Indemnification Procedure.

(a) After receipt by an Indemnified Party of notice of the commencement of any Claim that is indemnifiable by Provider under Section 7.1 or Customer under Section 7.2 (as applicable, in such capacity, the “**Indemnifying Party**”), such Indemnified Party shall give prompt written notice to the relevant Indemnifying Party of the commencement thereof. The failure to promptly notify such Indemnifying Party shall not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party with respect to such action; provided that, to the extent that any such failure to provide prompt notice is responsible for an increase in the indemnity obligations of the Indemnifying Party, the Indemnifying Party shall not be responsible for any such increase.

(b) When required to indemnify an Indemnified Party in accordance with this Article 7, the relevant Indemnifying Party shall assume on behalf of such Indemnified Party and conduct with due diligence and in good faith the defense of any Claim against such Indemnified Party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense.

(c) The Indemnifying Party shall have charge and direction of the defense and settlement of such Claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party’s right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such Claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party, (ii) the Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such Claim (in which case the Indemnifying Party shall not have the right to control the defense or settlement of such Claim on behalf of such Indemnified Party) or (iii) the Indemnifying Party shall not have employed counsel to assume the defense of such Claim within a reasonable time after notice of the commencement thereof. In each of such cases the reasonable fees and expenses of counsel shall be at the expense of the Indemnifying Party.

(d) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) before entering into a settlement of or ceasing to defend such claim or action if, pursuant to or as a result of such settlement or cessation, injunctive or equitable relief or other non-monetary relief, remedy or arrangement will be imposed against the Indemnified Party or if the Indemnifying Party will not fully pay or satisfy all amounts payable with respect to such proceeding or settlement. In no event shall the Indemnifying Party be required to indemnify an Indemnified Party with respect to amounts paid in settlement of a claim unless such claim was settled with the consent of the Indemnifying Party.

7.4 Limitations of Liability.

(a) Total Limitation of Liability. Except for amounts payable as provided in Section 7.1 (Indemnification by Provider) and Section 2.2(b), and except for amounts payable as a result of any reckless, willful or criminal conduct by Provider or its Affiliates or any of their employees, agents, officials, Subcontractors or independent contractors, Provider's total liability under this Agreement to Customer Indemnified Parties on all Claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the Term of this Agreement shall with respect to any fiscal year in no case exceed one hundred percent (100%) of the value of the Fixed Fee payable in such fiscal year. Similarly, except for amounts payable as provided in Section 7.2 (Indemnification by Customer), Customer's total liability under this Agreement to Provider Indemnified Parties on all Claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the Term of this Agreement shall with respect to any fiscal year in no case exceed one hundred percent (100%) of the value of the Fixed Fee payable in such fiscal year.

(b) No Liability for Energy Contracts. Customer acknowledges that Provider will be entering into Energy Contracts on behalf of Customer and the end-users in Customer's territory. Customer acknowledges and agrees that neither Provider nor any member of Provider shall be liable for the amount of any shortfall between the payments due to the counterparty under such Energy Contracts and the amount received from such end-users unless such shortfall is the result of the gross negligence, willful misconduct, conversion, misappropriation or theft on the part of Provider.

(c) Waiver of Consequential Damages. Except in connection with indemnification for third-party Claims or Claims resulting from gross negligence or willful misconduct, in no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall a Party or its respective Affiliates be liable for special, incidental, exemplary, indirect or consequential damages.

7.5 Survival.

Notwithstanding any other provision of this Agreement, the provisions of this Article 7 are intended to and shall survive termination of this Agreement.

ARTICLE 8 TERMINATION

8.1 Termination by Customer.

(a) Termination for Cause.

(i) Without limiting any other rights or remedies it may have, Customer shall be entitled to terminate this Agreement for cause by delivery of a Termination Notice to Provider in connection with the occurrence of any of the following events:

(1) Provider fails to make any payment required to be made by Provider to Customer hereunder when such payment is due and owing under

this Agreement, and such failure shall continue for ten (10) calendar days after written notice thereof has been given to Provider.

(2) Provider has filed against it petitions under any insolvency or bankruptcy Law of any jurisdiction which are not dismissed within ninety (90) calendar days of the date filed, proposes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy under any provision of Applicable Law or consents to the filing of any bankruptcy or reorganization petition against it under any similar law, or if receivers, trustees, custodians or similar agents are appointed or take possession with respect to any property or business of Provider.

(3) Provider fails to comply (other than for Force Majeure reasons) in any material respect with any term, provision or covenant of this Agreement, other than the payment of sums to be paid hereunder, and such failure shall continue for thirty (30) calendar days after written notice thereof has been given to Provider; provided, however, that if such failure cannot reasonably be cured within said thirty (30) day period and Provider has diligently commenced the cure of such failure within said period, then Provider shall have a commercially reasonable additional period of time to cure such default not to exceed an additional one hundred eighty (180) days.

(4) Provider assigns this Agreement in violation of the provisions of Section 13.6.

(ii) Notwithstanding the foregoing, Customer shall not have the right to terminate this Agreement pursuant to this Section 8.1(a) if the occurrence of any of the events or conditions described in this Section 8.1(a) is the result of Customer's bad faith, willful misconduct or gross negligence.

(b) Termination for Convenience. Notwithstanding anything to the contrary in this Agreement, Customer shall be entitled to terminate this Agreement or any part of the Services for convenience, at Customer's sole discretion with or without cause, by delivery of a Termination Notice to Provider at any time after the expiration of the Base Term.

(c) Timing of Termination. If Customer delivers a Termination Notice to Provider pursuant to Section 8.1(a) or 8.1(b), this Agreement shall terminate as set forth in Section 8.4.

8.2 Termination by Provider.

(a) Termination for Cause.

(i) Without limiting any other rights or remedies it may have, Provider shall be entitled to terminate this Agreement for cause by delivery of a Termination Notice to Customer in connection with the occurrence of any of the following events:

(1) Customer has failed to make any undisputed payment required to be made to Provider under this Agreement and such failure is not remedied

within ten (10) calendar days after the date on which Customer has received notice of such failure to make such payment.

(2) Customer has filed against it petitions under any insolvency or bankruptcy law of any jurisdiction which are not dismissed within ninety (90) calendar days of the date filed, proposes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy under any provision of Applicable Law or consents to the filing of any bankruptcy or reorganization petition against it under any similar law, or if receivers, trustees, custodians or similar agents are appointed or take possession with respect to any property or business of Customer.

(3) Customer fails to establish or maintain end-user customer rates in compliance with Section 6.3(d), as reasonably determined by Provider, and fails to establish such rates within sixty (60) calendar days after written notice thereof has been given to Customer; provided, however, that if Customer has sent notice of a rate increase and is awaiting council action, then Customer shall have a commercially reasonable additional period of time to cure such default not to exceed an additional one hundred eighty (180) calendar days.

(4) Customer assigns this Agreement in violation of the provisions of Section 13.6.

(5) Customer fails to comply (other than for Force Majeure reasons) in any other material respect with any term, provision or covenant of this Agreement, other than the payment of sums to be paid hereunder, or as otherwise provided above, and such failure continues for sixty (60) calendar days after written notice thereof has been given to Customer; provided, however, that if such failure cannot reasonably be cured within said sixty (60) day period and Customer has diligently commenced the cure of such failure within said period, then Customer shall have a commercially reasonable additional period of time to cure such default not to exceed an additional ninety (90) calendar days.

(ii) Provider shall not have the right to terminate this Agreement pursuant to this Section 8.2(a) if the occurrence of any of the events or conditions described in this Section 8.2(a) is the result of Provider's bad faith, willful misconduct or gross negligence.

(b) Termination for Convenience. Notwithstanding anything to the contrary in this Agreement, Provider shall be entitled to terminate this Agreement or any part of the Services for convenience, at Provider's sole discretion with or without cause, by delivery of a Termination Notice to Customer at any time after the expiration of the Base Term; provided that no Termination Notice shall be effective for at least thirty (30) calendar days following Customer's receipt of the same, or any such longer period as may be indicated in the Termination Notice.

(c) Timing of Termination. If Provider delivers a Termination Notice to Customer pursuant to Section 8.2(a) or 8.2(b), this Agreement shall terminate as set forth in Section 8.4.

8.3 Cooperation Upon Termination.

In connection with any termination of this Agreement in accordance herewith, at the reasonable request of Customer, Provider shall cooperate with Customer to provide for the orderly transition of the performance of the Services to a replacement administrator, including the transfer of documentation and data access, in a manner that shall not prejudice Customer or hamper Customer's ability to receive the Services and the benefits thereof from a replacement administrator after a smooth and timely transition.

8.4 Effect of Termination; No Prejudice.

(a) Effect of Termination. Subject to Section 8.4(b) below, if Customer or Provider delivers a Termination Notice in accordance with, and as permitted by, this Agreement, then this Agreement shall terminate on the later to occur of (i) ninety (90) calendar days from the date of such Termination Notice and (ii) the date on which all of the Energy Contracts to which Provider is a party on behalf of Customer on the date of such Termination Notice have terminated in accordance with their respective terms.

(b) No Prejudice. Termination of this Agreement shall not affect any rights or obligations as between the Parties that may have accrued prior to such termination or that expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise. In addition, except as expressly provided for herein, termination of this Agreement for any reason shall be without prejudice to Provider's right to receive a proportional amount of the Fixed Fees or payment of any outstanding Reimbursable Expenses as of the date of termination. Except as otherwise set forth in this Agreement, remedies are cumulative and the exercise of, or failure to exercise, one or more remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies provided for under this Agreement by such Party. For breach of any provision of this Agreement for which an express remedy or measure of damages is herein provided, (i) such express remedy or measure of damages shall be the sole and exclusive remedy hereunder, (ii) the liability of the Party that has committed such breach shall be limited as set forth in such provision and (iii) the Parties hereby waive all other remedies or damages at law or in equity with respect to such breach. If no remedy or measure of damages is expressly provided herein with respect to a breach of any provision of this Agreement, the liability of the Party that has committed such breach shall be limited to direct actual damages only; provided that this limitation shall not apply to (A) Provider's obligation with respect to indemnifying and holding harmless each Customer Indemnified Party to the extent of any amount owed to a third party other than a Customer Indemnified Party, if any, or (B) Customer's obligation with respect to indemnifying and holding harmless each Provider Indemnified Party to the extent of any amount owed to a third party other than an Provider Indemnified Party.

ARTICLE 9
FORCE MAJEURE

9.1 Force Majeure.

(a) Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by any Force Majeure if and to the extent that such Party is prevented or delayed from performing by reason of the Force Majeure; provided, however, that:

(i) the suspension of performance shall be of no greater scope and of no longer duration than is necessarily caused by the Force Majeure and required by any remedial measures;

(ii) no obligations of any Party that arose before the occurrence of Force Majeure shall be excused as the result of the occurrence; and

(iii) each Party shall use commercially reasonable efforts to remedy its inability to perform; provided, further, that no Force Majeure shall excuse any payment obligations of either Provider or Customer otherwise due hereunder.

(b) If the performance by a Party of its obligations under this Agreement is affected by any Force Majeure, such Party shall as soon as practicable notify the other Parties of the nature and extent thereof.

ARTICLE 10

NOTICES

10.1 Notices.

(a) All notices and other communications required or permitted by this Agreement or by Applicable Law to be served upon or given to a Party by any other Party shall be deemed duly served, given and received (i) on the date of service if served personally or if sent by facsimile transmission or electronic mail during Regular Work Hours (each with appropriate confirmation of receipt) to the Party to whom notice is to be given, or (ii) on the fourth (4th) day after mailing, if mailed by first class registered or certified mail, postage prepaid or (iii) on the next day if sent by a nationally recognized courier for next day service and so addressed and if there is evidence of acceptance by receipt addressed to the address(es) set forth in Exhibit C.

(b) The Parties, by like notice in writing, may designate, from time to time, another address or office to which notices shall be given pursuant to this Agreement.

ARTICLE 11

CONFIDENTIALITY

11.1 General Confidential Information.

(a) Except as otherwise provided in this Agreement, without the prior written consent of the other Parties hereto, no Party shall disclose Confidential Information (as defined below) received in connection with the performance of the Services.

(b) Each Party that receives any Confidential Information from the disclosing Party shall use the same degree of care that it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing Party.

(c) No Party shall have any obligation under this Section 11.1 with respect to any information that:

(i) at the time of disclosure is in the public domain, or thereafter becomes part of the public domain, in each case through a source other than the receiving Party in violation of this Agreement;

(ii) is subsequently learned by receiving Party from a third party that, to the knowledge of the receiving Party, is not under an obligation to keep such information confidential;

(iii) was known to the receiving Party at the time of disclosure to be without confidentiality restrictions, as can be demonstrated by contemporaneous written evidence;

(iv) is generated independently by the receiving Party without reference to the Confidential Information of the disclosing Party, as can be demonstrated by contemporaneous written evidence, or

(v) is required to be disclosed pursuant to Applicable Law, regulation, subpoena, court order or other legal process or professional requirements, or in connection with the enforcement of the receiving Party's rights under this Agreement. Prior to any such disclosure, the disclosing Party shall, to the maximum extent possible, provide reasonable notice to the other Party, with adequate time (to be judged based upon the facts and circumstances surrounding the disclosure) for the non-disclosing party to seek court intervention if it should so elect in its sole and absolute discretion.

(d) For purposes of this Agreement, "**Confidential Information**" shall mean all end-user customer specific information, including energy consumption, and market sensitive data, including non-public wholesale energy pricing disclosed in connection with negotiation or procurement of energy or related products under Energy Contracts in connection with the Services whether or not such information was owned or developed by the disclosing Party, which the receiving Party may obtain knowledge of, through or as a result of the relationship established hereunder with the disclosing Party.

(e) Provider shall obtain written approval from Customer in connection with any press release or promotional materials that reference the relationship established through this Agreement and such Parties shall agree on the form and content of such press release.

11.2 Limited Disclosure of Confidential Information.

Notwithstanding the provisions of Section 11.1, Provider shall be entitled to the extent necessary for the performance of its duties hereunder to allow access to the Confidential Information to such of its employees and consultants who are directly concerned with the carrying out of Provider's duties under this Agreement, provided that Provider shall inform each of such Persons of the confidential nature of, and Provider's obligation of confidentiality with respect to, such Confidential Information and such employees and consultants shall agree to keep the Confidential Information confidential in accordance with the terms of this Agreement.

ARTICLE 12

DISPUTE RESOLUTION

12.1 Negotiations.

The Parties shall attempt in good faith to resolve all disputes promptly by negotiation, as set forth below.

(a) A Party may give another Party written notice of any dispute between such Parties that has not been resolved in the normal course of business. Representatives of such Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) Business Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(b) If such representatives are unable to resolve, or do not anticipate being able to resolve, the dispute within twenty (20) calendar days after receiving notice of such dispute, either Party may initiate legal proceedings in a court of competent jurisdiction as provided in Section 13.2.

(c) If a Party intends to be accompanied at a meeting by an attorney, the other Party shall be given at least three (3) Business Days' notice of such intention so that the other Party may also be accompanied by an attorney. All negotiations pursuant to this Section 12.1 are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and applicable state rules of evidence. Each Party shall bear its own costs for this dispute resolution phase.

12.2 Continued Prosecution of the Work.

In case of any dispute, Provider shall continue to diligently perform its obligations under this Agreement, and, without limiting the generality of the foregoing and subject to Section 5.3(c), Customer shall continue to make payments to Provider for those portions of the Services performed hereunder that are not the subject of dispute in accordance with this Agreement.

ARTICLE 13
MISCELLANEOUS

13.1 Execution.

This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which, when so executed and delivered (including by electronic mail), shall be an original, but all such counterparts shall together constitute but one and the same instrument.

13.2 Governing Law; Venue and Jurisdiction.

THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES.

ANY LITIGATION ARISING HEREUNDER SHALL BE SUBJECT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF CALIFORNIA AND VENUE SHALL BE IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA OR THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA LOCATED IN RIVERSIDE COUNTY. ANY OF THE FOREGOING COURTS

SHALL HAVE PERSONAL JURISDICTION OVER THE PARTIES HERETO. EACH PARTY WAIVES ANY AND ALL RIGHTS TO CONTEST SAID JURISDICTION AND VENUE AND WAIVES ANY RIGHT TO COMMENCE ANY ACTION AGAINST THE OTHER PARTY IN ANY OTHER JURISDICTION.

13.3 Intentionally Omitted.

13.4 Amendments, Supplements, Etc.

Neither this Agreement nor any of the terms hereof may be amended, supplemented, or modified orally, but only by an instrument in writing signed by Provider and by Customer.

13.5 Headings.

The headings of the Articles and Sections of this Agreement have been inserted for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

13.6 Assignment.

(a) Neither Party may assign, pledge or otherwise transfer this Agreement without the prior written consent of the other Party.

(b) Any attempted assignment, pledge or other transfer in violation of this Section 13.6 shall be null and void.

13.7 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, to the extent that assignment is permitted hereunder.

13.8 Other Customers.

Nothing in this Agreement shall be construed to prevent or prohibit Provider from providing the same or similar services to any Person not a Party to this Agreement and from entering into a form of agreement substantially similar to this Agreement with any such Persons; provided that the provision of such services does not adversely affect Provider's ability to perform its obligations hereunder.

13.9 Waiver.

No provision of this Agreement may be waived except in writing by the waiving Party. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

13.10 Severability.

If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal, unenforceable or void, that provision shall be modified so as to be enforceable and as nearly as possible reflect the original intention of the Parties, it being agreed and understood by the Parties that (i) this

Agreement and all the provisions hereof shall be enforceable in accordance with their respective terms to the fullest extent permitted by Applicable Law, and (ii) the remainder of this Agreement shall remain in full force and effect.

13.11 Construction.

Every term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

13.12 Entire Agreement.

This Agreement, including the exhibits and schedules attached hereto, which are hereby incorporated by this reference as though fully set forth herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Parties any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.13 Third-Party Beneficiaries.

This Agreement is made and entered into for the sole benefit of the Parties and each of their permitted successors and assigns and no other person or entity shall be a direct or indirect legal beneficiary of, have any rights under, or have any direct or indirect cause of action or claim in connection with this Agreement.

13.14 Survival.

Section 5.4, Article 7, Article 8, Article 9, and Article 13 shall survive the termination or expiration of this Agreement and any provision which by its terms or by implication is intended to survive the termination or expiration of this Agreement shall so survive.

13.15 No Rules of Construction Against Drafter.

Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

**CalChoice DRAFT
21 JUNE 2018**

IN WITNESS WHEREOF, the duly authorized officers of the Parties have executed this Agreement as of the Effective Date.

CALIFORNIA CHOICE ENERGY AUTHORITY

By: _____

Name: Jason Caudle

Title: Executive Director

CITY OF POMONA

Linda Lowry, City Manager

APPROVED AS TO CONTENT:

[Name], [Title]

ATTEST:

Rosalia A. Butler, City Clerk

APPROVED AS TO FORM:

Christ Hogin, City Attorney

EXHIBIT A

SCHEDULE OF DEFINITIONS

The terms defined in this Schedule of Definitions shall include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof. When used in the Agreement (as defined below), unless otherwise defined therein, the following terms shall have the respective meanings set forth below:

“Affiliate” of a Person (the “First Person”) shall mean a Person which directly or indirectly Controls, or is Controlled by, or is under common control with, the First Person, and shall also include any limited partnership or limited liability company of which the First Person or Affiliate thereof is the general partner, managing member or manager, as the case may be, and any Subcontractor, agent, representative, employee or authorized personnel of the First Person. “Control” of a Person shall mean the customership, directly or indirectly, of more than fifty percent (50%) of the voting securities of that Person.

“Agreement” means this Administrative Services Agreement between Customer and Provider.

“Applicable Law” shall mean all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements and regulations of any Governmental Authority having jurisdiction over the matter in question which are applicable to or which affect Provider’s provision of the Services and/or the subject matters encompassed by this Agreement.

“Authorization Documents” shall mean the documents identified and summarized in Exhibit D, and the requirements of any documents in replacement of the foregoing or in addition thereto provided by Customer and added to and summarized in Exhibit D from time to time.

“Authorized Officer” means the officer(s) of Customer designated as an “Authorized Officer” in the Customer Approval Procedures.

“Base Term” shall have the meaning set forth in Section 3.1(a).

“Bundled Load” means the proposed electric energy consumption of a member of Provider, as set forth in the implementation plan filed for such member pursuant to Code Section 366.2.

“Business Day” shall mean any day except a Saturday, Sunday or other day on which commercial banks in the State of California are authorized by law to close.

“Claims” shall mean claims, actions, damages, expenses (including reasonable attorneys’ fees), fines, penalties, losses or liabilities.

“Code” shall have the meaning given thereto in the recitals.

“Confidential Information” shall have the meaning given in Section 11.1(d).

“CPUC” shall have the meaning given thereto in the recitals.

CALCHOICE DRAFT
21 JUNE 2018

“Customer” shall have the meaning given thereto in the introductory paragraph of the Agreement, and its permitted successors and assigns, if any, under the Agreement.

“Customer Approval Procedures” means the approval procedures set forth in Exhibit E hereto.

“Customer Indemnified Party” shall mean Customer (including successors and permitted assigns) and its shareholders, partners, directors, officers, agents and employees.

“Disputed Payment” shall have the meaning given thereto in Section 5.3(d).

“Effective Date” shall have the meaning given in the introductory paragraph of this Agreement.

“Energy Contract” means an agreement for the purchase of energy, renewable energy or related products, including a power purchase agreement and/or confirmation letter thereto, entered into by Provider for the benefit of Customer.

“Fixed Fee” shall have the meaning given thereto in Section 5.1(a).

“Fixed Fee Services” shall have the meaning given thereto in Section 4.1.

“Force Majeure” shall mean any event that wholly or partly prevents or delays the performance by the Party affected of any obligation arising under this Agreement, but only if and to the extent such event is not within the reasonable control, directly or indirectly, of and not the fault of the Party affected including (provided that the foregoing requirements are satisfied): condemnation; expropriation; invasion; plague; drought; landslide; storms or wind of sufficient intensity to prevent safe performance of work; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to an energy facility to the extent caused by third parties; strikes and other labor disputes (including collective bargaining disputes and lockouts) involving Subcontractors; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and actions of a Governmental Authority (excluding the actions of the claiming party). “Force Majeure” shall not include (1) an event that prevents or delays (i) Provider’s or Customer’s compliance with (a) Applicable Laws; and (b) Permits required under Applicable Law in connection with such Party’s performance under this Agreement and (ii) Customer’s indemnity obligations hereunder, (2) labor shortages; (3) labor strikes and other labor disputes (including collective bargaining disputes and lockouts) with regard to work by Provider or a Subcontractor (except if such action is part of a regional or national action); or (4) economic hardship (including lack of money).

“Governmental Authority” shall mean any federal, provincial, state or local government authority, agency, court or other body, officer or public entity, including any zoning authority, building inspector, or health or safety inspector, including the CPUC.

“Indemnified Party” shall mean a Provider Indemnified Party or Customer Indemnified Party.

“Indemnifying Party” shall have the meaning given thereto in Section 7.3.

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“JPA” shall mean that certain Joint Exercise of Powers Agreement Relating to the California Clean Energy Authority dated August 14, 2012, as the same has been or may be amended from time to time.

“Payment Date” shall have the meaning given thereto in Section 5.3.

“Payment Invoice” shall have the meaning given thereto in Section 5.3.

“Permit” shall mean any waiver, exemption, variance, franchise, certification, approval, permit, authorization, license, consent, or similar order of or from any Governmental Authority having jurisdiction over the matter in question.

“Person” shall mean any individual, partnership, joint stock company, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

“Provider” shall have the meaning given thereto in the introductory paragraph of this Agreement, and its successors and permitted assigns, if any.

“Provider Indemnified Party” shall mean Provider and its Affiliates and their respective shareholders, partners, directors, officers, agents, employees and representatives.

“Regular Work Hours” means 8:00 am (PT) to 5:00 pm (PT) on a Business Day.

“Reimbursable Expenses” shall have the meaning set forth in Section 5.2.

“Reimbursable Services” shall have the meaning given thereto in Section 4.1.

“Scope of Work Exhibit” means Exhibit B hereto.

“Security Documents” means, with respect to each Energy Contract, the security documents entered into by Customer in connection therewith pursuant to which Customer grants to the energy suppliers under each Energy Contract (or its collateral agent) a security interest in any and all monies received from the Utility or the end-users in Customer’s territory in connection with such Energy Contract, which security documents shall include (i) an account control agreement for an account (sometimes referred to as a “lockbox account”) among Customer, an account bank and the energy supplier to such Energy Contract (or its collateral agent), (ii) an intercreditor and collateral agency agreement, among Customer, the counterparties to such Energy Contracts and, if applicable, the collateral agent, and (iii) a security agreement between Customer and the counterparty to such Energy Contract (or its collateral agent).

“Services” shall have the meaning set forth in Section 4.1 and shall be comprised of the Fixed Fee Services and the Reimbursable Services.

“Subcontractors” means any subcontractor, of any tier, vendor or supplier of materials, equipment or services to Provider or any subcontractor, of any tier, of any Person engaged or employed by Provider or any subcontractor of any tier that provides any part of the Services.

“Supplemental Procurement Services” has the meaning set forth in Exhibit B.

CALCHOICE DRAFT
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“Term” shall have the meaning set forth in Section 3.1(a).

“Termination Notice” shall have the meaning given thereto in Section 3.1(b).

“Utility” means Southern California Edison.

**EXHIBIT B
SCOPE OF WORK**

A. Fixed Fee Services

1. Portfolio Operations

(a) Energy Procurement.

- (i)** Provider to consider load patterns of the CCA and advise Customer on assembling a supply portfolio that will match resources to the aggregate load shape of the CCA's customer base.
- (ii)** Provider to conduct procurement of energy, renewable energy, carbon free energy and resource adequacy procurement with third party suppliers as required from time to time to meet the load requirements of the CCA.

(b) Risk and Credit Management.

- (i)** Provider to monitor the credit rating and financial condition of Customer's energy suppliers.
- (ii)** Provider to periodically calculate the financial exposure to a specific supplier.

(c) Load Forecasting and Data Collection.

- (i)** Provider to collect, process and forecast load information.

(d) Scheduling Coordination.

- (i)** Provider to coordinate scheduling with the grid operator's schedule coordinator; exchange customer usage and billing information with the Utility.

2. Account Services

- (a)** If necessary, Provider to calculate individual end-user customer bills.
- (b)** Provider to confirm receipt of funds in lockbox account.
- (c)** Provider to review and validate invoices from Schedule Coordinator.
- (d)** Provider to direct distribution of funds from lockbox account.

3. Administration and Management of CCA Program

4. Regulatory Representation and Compliance Filings

B. Reimbursable Services

(a) Data Management Services (e.g., electronic data interchange (EDI) services; customer information system development and maintenance; customer call center management and staffing; billing administration; settlement quality meter data services; customer care, billing and related reports; and qualified reporting entity (QRE) services).

(b) Professional Services (e.g., review and negotiation of template Energy Contracts and Security Documents on behalf of Customer; electric load evaluation; community choice aggregation operational analysis; projected customer rate analysis and comparison; and support and maintenance of financial model).

(c) Legal Services (e.g., review and negotiation of template Energy Contracts and Security Documents on behalf of Customer; legal services to customize existing templates for Energy Contracts and Security Documents to accommodate Customer requested changes).

(d) “Supplemental Procurement Services” means reimbursement for any payments (including deposits) that Provider makes to energy suppliers on behalf of, and at the request of, Customer for the purchase of electricity and other related services to be delivered or provided to Customer. The process for Supplemental Procurement Services will be subject to the approval process set forth in Exhibit E.

EXHIBIT C

**FIXED FEE RATE, REIMBURSABLE EXPENSES
AND NOTICE ADDRESS**

1. **Fixed Fee Rate:**

<u>Fiscal Year</u>
\$ 510,760.00 fiscal year total
\$ 42,563.33 monthly

2. **Reimbursable Expenses:**
 - (a) **Data Management Services:**

<u>Fiscal Year</u>
\$ 610,300.00 fiscal year total (estimated)
\$ 50,858.33 monthly (estimated)

 - (b) **Professional Services:**

<u>Fiscal Year</u>
\$ 267,000.00 fiscal year total (not to exceed)
\$ 22,250.00 monthly (not to exceed)

 - (c) **Legal Services (as incurred):** \$ 20,000 annually (estimated)

 - (d) **Supplemental Procurement Services (as incurred):** \$ Amounts approved by Customer and Provider in accordance with Exhibit E.

3. **Address for Notices:**

Provider:	California Choice Energy Authority 44933 Fern Avenue Lancaster, California 93534 Attn: Cathy DeFalco Tel: 888.639.2411 Email: Cathy@CalChoice.org With a copy to Provider's legal counsel: Hall Energy Law PC Attn: Stephen Hall Tel: 503.477.9354 Email: Steve@HallEnergyLaw.com
Customer:	City of Pomona Attn: Linda Lowry, City Manager Tel: (909) 620-3773 Email: Linda_Lowry@ci.pomona.ca.us

EXHIBIT D

AUTHORIZATION DOCUMENTS

[City's Resolution to Join CalChoice]

EXHIBIT E

CUSTOMER APPROVAL PROCEDURES

1. Authorized Officer

[Table to be completed with name, title of Customer's officer that is authorized to provide Provider with necessary approvals.]

Name	Title
Linda Lowry	City Manager
	[Additional Authorized Title]

2. Approval Procedures

[To be completed — Procedures to contain thresholds for which receipt of Authorized Officer's approval is required.]

Authorized Officer Approval IS Required if Term of Energy Contract is GREATER than:	Five (5) Years
Authorized Officer Approval IS NOT Required if Notional Amount of Energy Contract is EQUAL TO OR LESS than:	Five (5) Years
Authorized Officer Approval IS Required if the proposed Transaction is entered into through Provider's Supplemental Procurement Services process.	

3. Required Contract Provisions in Energy Contracts (or substantially similar language):

Section 3.6 of the EEI Master Agreement:

“With respect to each Transaction, as security for Party B’s obligations, Member shall have created and set aside a Special Fund and shall have entered into the Security Documents for such Special Fund in form and substance reasonably satisfactory to Party A and Party B. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction, and the obligations of a Member to make payments pursuant to a Transaction, are to be made solely from the Special Fund applicable to such Transaction.”

Section 6.9 of the EEI Master Agreement:

“Seller agrees that the obligations of Party B to make payments hereunder are (i) to be made solely from the Secured Account of the Member for whose account a Confirmation is allocated to, and (ii) do not constitute any kind of indebtedness of Party B or (iii) create any kind of lien on, or security interest in, any property or revenues of Party B.”

Section 8.5 of the EEI Master Agreement:

“Section 8.5: Section 8 and Schedule M of the Agreement and the Security Documents set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and in Schedule M and in the Security Documents, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party or Member that is complying with the relevant provisions of Section 8 of this Agreement;

(c) and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.”

Section 10.19 of the EEI Master Agreement:

“10.19 No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with, and subject to, the terms and conditions of each Transaction and the applicable Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any Member or of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction, and the obligations of a Member to make payments pursuant to a Transaction, are to be made solely from the Special Fund applicable to such Transaction, as set forth in the applicable Security Agreements.”

EXHIBIT F

FORM OF AUTHORIZED OFFICER APPROVAL

Prior to any procurement, CalChoice, or CalChoice representative will communicate the details of the proposed procurement via email. An Authorized Office, as identified in Exhibit E, will give written approval of the procurement via email.

EXHIBIT G

**JOINT EXERCISE OF POWERS AGREEMENT
AND AMENDMENTS THERETO**

EXHIBIT “E”

**INTERCREDITOR AND COLLATERAL AGENCY
AGREEMENT**

CONFIDENTIAL DRAFT
2/3/2019

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT, dated as of

by and among

RIVER CITY BANK, A CALIFORNIA CORPORATION as Collateral Agent,

THE SECURED CREDITORS,

and

CITY OF POMONA, A CALIFORNIA MUNICIPAL CORPORATION AND CHARTER CITY,
d/b/a [NAME OF CCA]

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Exhibit A – Form of Joinder

**INTERCREDITOR AND
COLLATERAL AGENCY AGREEMENT**

This **INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT** (this “Agreement”), dated as of _____ (the “Effective Date”), is entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely in its capacity as Collateral Agent (“Collateral Agent”), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a “PPA Provider”), (iii) California Choice Energy Authority (“CCEA”), and (iv) The City Of Pomona, a California municipal corporation and charter city, d/b/a [Name of CCA] (“City”).

RECITALS:

A. On behalf of City, CCEA has (i) entered into the Master Agreements (as defined in the Security Agreement) and (ii) may in the future enter into a Power Purchase Agreement (as defined in the Security Agreement) with a PPA Provider, pursuant to which CCEA has agreed, or will agree, to purchase the Product (as defined in the Security Agreement) from such PPA Provider for the account of City;

B. City shall sell the Product purchased by CCEA to City’s customers at rates established by City from time to time;

C. Pursuant to the Security Agreement City has pledged to Collateral Agent, for the benefit of the PPA Providers and CCEA, as Secured Creditors, a first priority continuing security interest in and to the Collateral (as such terms are defined in the Security Agreement);

D. City’s customers are billed by Southern California Edison (“SCE”) amounts they owe for the Product provided by City;

E. As of the date hereof, City has directed SCE to remit all present and future collections on accounts receivable now or hereafter billed by SCE on behalf of City to Collateral Agent, for remittance to the Lockbox Account (as defined in the Security Agreement) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and City direct SCE otherwise;

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement;

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement and the Security Agreement, with PPA Providers having a senior right to distributions from the Collateral;

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H. Secured Creditors desire in this Agreement to appoint River City Bank as Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein; and

I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

Section 1.1. Definitions

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

"Affiliate" means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 51% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Agreement" shall have the meaning assigned thereto in the Preamble hereof.

"Applicable Law" means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) any binding arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

"Bankruptcy Proceeding" means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency,

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reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the States of California or Delaware are required or authorized to be closed.

“City” means the party identified as such in the Preamble hereof, and its successors and permitted assigns, and includes City in its capacity as a debtor in possession under the Bankruptcy Code.

“Collateral” has the meaning given to such term in the Security Agreement.

“Collateral Agent” means the party identified as such in the Preamble hereof, and its successors and permitted assigns in such capacity.

“Control Agreements” means the Account Control Agreement, dated as of the date hereof, among the Depositary Bank, City and Collateral Agent and any other agreements entered into among City and Depositary Bank which shall designate the Deposit Accounts as blocked accounts under the “control” of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Customer” means any customer of City who purchases Product from City but is invoiced by SCE, and any other obligor(s) responsible for payment of a Receivable.

“Deposit Accounts” has the meaning given to such term in the Security Agreement.

“Depositary Bank” has the meaning given to such term in the Security Agreement.

“Distribution Date” has the meaning given to such term in the Security Agreement.

“Distribution Date Certificate” has the meaning given to such term in the Security Agreement.

“Event of Default” has the meaning set forth in the applicable Master Agreement or Power Purchase Agreement.

“Joinder” has the meaning given to such term in Section 6.5.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

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“Lockbox Account” has the meaning given to such term in the Security Agreement.

“Master Agreements” means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iii) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and

(iv) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

“Obligations” has the meaning given to such term in the Security Agreement.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“Power Purchase Agreement” means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations (including confirmations entered into after the date hereof), and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to CCEA for the account of City, as amended, modified, supplemented, restated, extended or replaced from time to time.

“PPA Provider” means each seller of Product under a Power Purchase Agreement that is a party to this Agreement, and its respective successors and assigns.

“Product” means one or more of the following: energy, renewable energy attributes, capacity attributes or resource adequacy benefits, or any other similar or related products contemplated in the Power Purchase Agreements.

“Receivable” means an Account evidencing City’s rights to payment for Product, billed in an invoice sent to a Customer by SCE, together with all late fees and other fees which SCE and City agree are to be charged in such invoice to the Customer by SCE on behalf of City.

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“Required Secured Creditors” means, as of any date, the PPA Provider, or PPA Providers that, as of such date, have at least seventy five percent (75%) of the total aggregate Sharing Percentage, as calculated on such date.

“Secured Creditors” means each PPA Provider party to this Agreement, CCEA, and their respective successors and assigns

“Security Agreement” means the Security Agreement, dated as of even date herewith, between City and Collateral Agent for the benefit of Secured Creditors, granting a security interest in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.

“Sharing Percentage” means, as of any date, with respect to each PPA Provider as calculated by City in a commercially reasonable manner, the percentage equivalent of a fraction, (a) the numerator of which is the sum of (i) the outstanding amount of the Obligations of such PPA Provider, as of such date, and (ii) the calculated amount of the Termination Payment, if any, that would be owed to such PPA Provider if a Termination Event occurred on such date, and (b) the denominator of which is the sum of (i) the outstanding aggregate amount of the Obligations of all PPA Providers as of such date, and (ii) the calculated aggregate amount of the Termination Payments, if any, that would be owed to all PPA Providers if a Termination Event occurred on such date.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

“Termination Payment” means, with respect to any Power Purchase Agreement, any and all Obligations arising upon or in connection with a Termination Event under such Power Purchase Agreement, including any termination fees and payments or other amounts owed by City thereunder, as of the date of such Termination Event, as calculated in a commercially reasonable manner by the PPA Provider to such Power Purchase Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Security Agreement, this Agreement and all other agreements, instruments or documents to which City is a party and which are executed and delivered from time to time in connection with or as security for City’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

Section 1.2. Other Interpretive Provisions

References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS

Section 2.1. Liens in the Collateral

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the Secured Creditors, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of City to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

Section 2.2. No Debt Subordination

Nothing in this Agreement shall be construed to be or operate as a subordination of
any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

Section 2.3. Restrictions on Enforcement Action

So long as any Obligation is outstanding and the Security Agreement remains in effect, the provisions of this Agreement and the Security Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert claims against the Collateral or City pertaining to the Obligations. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or otherwise restrict a Secured Creditor from

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exercising any right of termination, acceleration or similar right in accordance with its Power Purchase Agreement, or prohibit or otherwise restrict a Secured Creditor from exercising any set-off rights it may have with respect to the Obligations owing to it.

Section 2.4. No Restriction on Terms of Power Purchase Agreements

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. City (acting through CCEA) and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to CCEA, on behalf of City, or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing to such PPA Provider in an itemized manner, and City, on its own behalf and on behalf of the CCEA, consents to such disclosure to such Person or any party hereto.

Section 2.5. Representations and Warranties

Each Secured Creditor represents and warrants to the other parties hereto that:

- (a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor;
- (b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms; and
- (c) any Termination Payment calculated by it and provided to the Collateral Agent or the other Secured Creditors shall be calculated in good faith, in accordance with its Power Purchase Agreement, and consistent with such Secured Creditor's historical practices.

Section 2.6. Cooperation; Accountings

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

SECTION 3. AGENCY PROVISIONS

Section 3.1. Appointment and Authorization of Collateral Agent

(a) Each Secured Creditor hereby designates and appoints River City Bank, as Collateral Agent of such Secured Creditor under this Agreement and River City Bank hereby accepts such designation and appointment. The Collateral Agent is a non-fiduciary agent of the Secured Creditors and does not act in a fiduciary capacity or as trustee for the Secured Creditors or Collateral.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the Security Agreement, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and perform its obligations under this Agreement, the Security Agreement, the Control Agreements and each other document as may be necessary or convenient in connection with the foregoing; provided, however, that the Collateral Agent shall not amend, modify or terminate the Control Agreements without the prior written consent of the Secured Creditors.

(c) Collateral Agent shall not (i) be subject to any fiduciary or other implied duties, (ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the Security Agreement, the Control Agreements, or other agreement to which the Collateral Agent is a party, and (iii) be required to take action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability.

(d) The Collateral Agent, hereby represents and warrants that (i) it has all requisite power and authority to execute, deliver and perform under this Agreement; (ii) the execution, delivery and performance by it of this Agreement has been duly authorized by all requisite corporate or other action; (iii) no consent or approval of any other Person and no consent, license, approval or authorization of any governmental authority is required in connection with the execution, delivery, and performance by it of this Agreement; and (iv) this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect from time to time affecting the rights of creditors generally and general principles of equity regardless of whether such enforcement is considered in a proceeding in equity or at law.

Section 3.2. Collateral

(a) Deposit Accounts Subject to Collateral Agent's Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Deposit Accounts is held for the benefit of all the Secured Creditors and itself as Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Deposit Accounts.

(b) Collateral Held by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

Section 3.3. Delegation of Duties

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Subject to Section 3.4, Collateral Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact unless Collateral Agent acted in bad faith or gross negligence in the selection of such agents or attorneys-in-fact. Collateral Agent may utilize the services of such Persons as Collateral Agent in its reasonable discretion may determine, and shall be entitled to indemnify hereunder for all reasonable fees and expenses of such Persons.

Section 3.4. Exculpatory Provisions

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person's own bad faith, gross negligence (or ordinary negligence in the handling or disbursement of funds actually received by it pursuant to the terms hereof) or willful misconduct, respectively) or (b) responsible in any manner to City or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by City or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of City to perform its obligations thereunder.

Section 3.5. Reliance by Collateral Agent

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or

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other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to City), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by City against any and all liability and expense which may be incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 3.6. Knowledge

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or City referring to this Agreement, describing such facts in reasonable detail.

Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it, except as expressly provided herein at Section 3.1(d) and that no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor.

Section 3.8. Reporting

City shall provide online access for the Lockbox Account that enables the Collateral Agent and the Secured Creditors to view the balance of the Lockbox Account at any time. Upon written request by a Secured Creditor, Collateral Agent will provide such Secured Creditor with a copy of the bank statement for the Lockbox Account no later than five (5) Business Days following receipt thereof by the Collateral Agent. Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of City which may come into the possession of Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall provide to Secured Creditors copies of all notices received by it regarding the Collateral, the Security Agreement or this Agreement; provided that the failure to provide such copies shall not cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person. Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral Agent's receipt of a written request from a Secured Creditor provide a report to all Secured Creditors regarding the status of any payments or distributions of Collateral received by Collateral Agent.

Section 3.9. Indemnification

City shall indemnify Collateral Agent (as such and in its individual capacity) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual capacity) arising out of actions or omissions of Collateral Agent arising out of this Agreement; provided that neither City nor the Secured Creditors shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from Collateral Agent's fraud, willful misconduct, gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of the Obligations and the termination of this Agreement.

Section 3.10. Collateral Agent May Act in its Individual Capacity

River City Bank, a California corporation, and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with City and its Affiliates as though it was not Collateral Agent hereunder.

Section 3.11. Successor Collateral Agent

(a) Collateral Agent may resign at any time upon at least 60 days' prior written notice to the Secured Creditors and City, or may be removed by the demand of the Required

Secured Creditors for cause at any time if Collateral Agent has failed to take any action that Collateral Agent is required to take hereunder after request by a Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral Agent is not authorized to take hereunder or that violates the terms hereof and, in either case, has not remedied such failure or violation with reasonable promptness after a written request for corrective action is delivered to Collateral Agent. After any resignation or removal hereunder of Collateral Agent, the provisions of this Section 3 shall continue to be binding upon and inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Collateral Agent hereunder while it was Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a successor Collateral Agent, reasonably acceptable to City, shall be appointed by the Secured Creditors provided, if an Event of Default as to City has occurred no such acceptance of the successor Collateral Agent by City shall be required. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent's notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent (it being expressly understood and agreed that any such petition by the Collateral Agent shall be at the expense of the Secured Creditors, jointly and severally) and the Collateral Agent shall continue its functions in accordance with subsection (c)

below. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a successor Collateral Agent shall have been appointed and shall have accepted such appointment.

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent, City, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation appropriate to reflect the transfer of the Lien or other rights granted herein to such successor Collateral Agent.

SECTION 4. ACTIONS BY COLLATERAL AGENT

Section 4.1. Duties and Obligations

The duties and obligations of Collateral Agent are only those set forth in this Agreement and the Security Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of the Required Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the

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foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreements or any related document.

Section 4.2. Voting; Amendments to Transaction Agreements

Collateral Agent shall act at the written instruction of the Required Secured Creditors in connection with all material actions, matters or decisions, or any actions, matters or decisions requiring a vote or instruction under this Agreement, under any Control Agreement or the Security Agreement, including with respect to Section 5.01 of the Security Agreement. Notwithstanding the foregoing or anything in any Transaction Agreement to the contrary, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendments, modifications, restatements, extensions or supplements of this Agreement, the Control Agreement or the Security Agreement.

Section 4.3. Actions Pertaining to the Collateral

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against City, the Deposit Accounts, the Depositary Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Security Agreement or any Control Agreement with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Security Agreement or any Control Agreement. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

Section 4.4. Duty of Care

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent's actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) other than to instruct City as set forth in Section 4.05 of the Security Agreement, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other

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governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

Section 4.5. Further Assurances

City and each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be reasonably necessary, to carry out or effect the intent of the parties hereto.

Section 4.6. Distribution of Proceeds of Collateral

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

Section 4.7. Deposit Accounts

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Deposit Accounts, and no such account shall be required to be interest bearing.

Section 4.8. Restoration of Obligations

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral Agent under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise to be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

Section 4.9. Privileged Materials

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be

required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

Section 4.10. Action Upon Instruction

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of the Required Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Required Secured Creditors within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and Control Agreements or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

SECTION 5. BANKRUPTCY PROCEEDINGS

The following provisions shall apply during any Bankruptcy Proceeding of City:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the Required Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.

(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by City.

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(e) Any property received by any Secured Creditor with respect to the Obligations owing to it as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

SECTION 6. MISCELLANEOUS

Section 6.1. Amendments to this Agreement and Assignments

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, City and all the Secured Creditors. This Agreement is assignable by a Secured Creditor. Collateral Agent shall only transfer or assign its rights hereunder by operation of law or in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of this Agreement and, if required by the successor Collateral Agent, the parties agree to execute and deliver a restated Agreement in the event there is a replacement of Collateral Agent. City shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of all the Secured Creditors and Collateral Agent. Any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

Section 6.2. Marshalling

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person's rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

Section 6.3. Governing Law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA

FOR THE _____ DISTRICT OF CALIFORNIA IN _____ COUNTY OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA IN _____ COUNTY AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR

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PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

Section 6.4. Waiver of Jury Trial

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 6.5. Joinder

Each time CCEA, on behalf of City, enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a “**Joinder**”) at the same time as such counterparty executes the Power Purchase Agreement. Further, no PPA Provider may assign or transfer its rights hereunder or under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share in the Collateral in accordance with the provisions of this Agreement. Each such counterparty that is an assignee shall upon execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned Obligations and shall be obligated for all obligations to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

Section 6.6. Counterparts

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

Section 6.7. Termination

Unless earlier terminated by the parties hereto, upon termination of the Security Agreement in accordance with its terms and upon payment of all Obligations owed to Collateral Agent, this Agreement shall terminate, except for those provisions hereof that by their express terms shall survive the termination of this Agreement; provided, however, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.

Section 6.8. Controlling Terms

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

Section 6.9. Notices

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as City, Collateral Agent or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

[Signatures on following pages]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representative as of the Effective Date.

RIVER CITY BANK, not in its individual capacity, but solely as Collateral Agent

By:
Name:
Title:

Notice Address:

River City Bank
2485 Natomas Park Dr.
Sacramento, CA 95833
Attention: Cash Management
Fax: 916-567-2799
Email: cashmgmt@rivercitybank.com

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_____,
as Secured Creditor

By:
Name:
Title:

Notice Address:

Attention: _____

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CITY OF POMONA

By:

Name: Linda Lowry

Title: City Manager

Notice Address:

City of Pomona

Attention: Contract Administration

505 South Garey Avenue

Pomona, CA 91766

Fax: 909-620-3710

CONFIDENTIAL DRAFT
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**CALIFORNIA CHOICE
ENERGY AUTHORITY**

By:
Name:
Title:

Notice Address:

California Choice Energy Authority
Attention: Contract Administration
44933 Fern Avenue
Lancaster, CA 93534

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EXHIBIT A

JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

River City Bank, in its capacity as Collateral Agent
2485 Natomas Park Dr.
Sacramento, CA 95833
Attention: Cash Management

Reference: _____

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of _____, 2019 (as amended or restated from time to time, the “**Intercreditor Agreement**”; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among River City Bank, as Collateral Agent, and the PPA Providers party thereto, relating to the City of Pomona, a California municipal corporation and charter city, d/b/a [Name of CCA] (“[CCA]”).

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this “**Joinder**”), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between CCEA and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of River City Bank, as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.9 of the Intercreditor Agreement.

Dated as of: _____, 20__.

By: _____ Name:
Title:

[Insert address for notices]

EXHIBIT “F”

SECURITY AGREEMENT

SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this “**Agreement**”) dated as of _____, 2019 is entered into between City of Pomona, a California municipal corporation and charter city, d/b/a [Name of CCA], as pledgor (“**City**”), and River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and permitted assigns in such capacity, the “**Collateral Agent**”), for the benefit of the PPA Providers (as defined below) and California Choice Energy Authority (“**CCEA**”), as Secured Creditors (as defined below).

RECITALS:

A. CCEA has (i) entered into the Master Agreements (as defined below) with the PPA Providers for the purchase of Product (as defined below), and (ii) may in the future enter into a Power Purchase Agreement (as defined below) with a PPA Provider, pursuant to which CCEA has agreed, or will agree, to purchase the Product from such PPA Provider for City’s account and shall cause such PPA Provider to become a party to the Intercreditor Agreement (as defined below).

B. City shall sell the Product purchased by CCEA from PPA Providers to City’s customers at rates established by City from time to time.

C. City generates accounts receivable owing to City by City’s customers for such Product.

D. City’s customers are billed by Southern California Edison (“**SCE**”) amounts they owe for the Product provided by City.

E. As of the date hereof, City has directed SCE to remit all present and future collections on accounts receivable now or hereafter billed by SCE on behalf of City to Collateral Agent, for remittance to the Lockbox Account (as defined below) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and City direct SCE otherwise;

F. City desires herein to pledge to Collateral Agent, for the benefit of Secured Creditors, a first priority continuing security interest in and to the Collateral (defined below);

G. The PPA Providers, City and Collateral Agent have entered into the Intercreditor Agreement (as defined below) wherein the PPA Providers appointed River City Bank, as Collateral Agent to act on their behalf regarding the administration, collection and allocation of the proceeds of the Collateral; and

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H. City and Collateral Agent desire to enter into this Agreement to evidence the pledge of the Collateral and to set forth their agreements regarding the Collateral and the application of the Collateral to the Obligations (as defined below).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Definitions, Etc.

1.01 Defined Terms. The following terms shall have the meanings assigned to them in this Section 1.01 or in the provisions of this Agreement referred to below:

“Applicable Law” means any applicable law, including without limitation any:

(a)

federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasigovernmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) any binding arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of California or Delaware are required or authorized to close.

“CCEA” means the California Choice Energy Authority, a California joint powers authority.

“Collateral” means the following, whether now existing or hereafter arising: (a) the Receivables; (b) the Deposit Accounts; (c) all cash, cash equivalents, Securities, Investment Property (as such term is defined in the UCC), Security Entitlements (as such term is defined in the UCC), checks, money orders and other items of value now or hereafter that are required to be, or that are, paid, deposited, credited or held (whether for collection, provisionally or otherwise) in or with respect to any Deposit Account or otherwise in the possession or under the control of, or in transit to, the Collateral Agent or the Depositary Bank for credit or with respect to any Deposit Account and all interest accumulated thereon; and (d) all Proceeds (as such term is defined in the UCC) of any or all of the foregoing. The term “Collateral” shall not include any amounts distributed to City pursuant to Section 6.02(v).

“Collateral Agent” has the meaning given to such term in the Preamble hereof.

“Control” has the meaning given to such term in Section 9-104 of the UCC.

“Control Agreements” means the Account Control Agreement, dated as of the date hereof, among the Depositary Bank, City and Collateral Agent and any other agreements entered into among City and Depositary Bank which shall designate the Deposit Accounts as blocked accounts under the Control of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Credit Rating” means for a Qualified Institution the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or agencies or, if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

“Customer” means any customer of City who purchases Product from City but is invoiced by SCE, and any other obligor(s) responsible for payment of a Receivable.

“Deposit Accounts” means the Lockbox Account, together with any other Deposit Account or Securities Account (as such terms are defined in the UCC) from time to time pledged by City to Collateral Agent, for the benefit of Secured Creditors, to secure the Obligations.

“Depositary Bank” means River City Bank, a California corporation, in its capacity as depositary bank, and its successors and assigns.

“Direction Letter” means that certain letter in the form attached at Exhibit B, a copy of which will be delivered to the Collateral Agent, from City to SCE pursuant to which City has directed SCE to remit all of the Proceeds on the Receivables collected by SCE from Customers to the Lockbox Account specified therein for application to the Obligations, unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and City jointly instruct SCE to terminate or change such direction and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof and any similar letter or written direction provided to SCE.

“Discharge Date” means that date on which: (a) any and all outstanding Obligations under the Transaction Agreements have been fully satisfied, and (b) there are no continuing obligations by City under any Transaction Agreements (other than for any provisions which are intended to survive the termination of the Transaction Agreements).

“Distribution Date” means the twenty-third (23rd) day of each month.

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“Distribution Date Certificate” means a certificate substantially in the form of Exhibit A hereto itemizing each of the payments to be remitted under Section 6.02, prepared by CCEA and submitted to City, and submitted by City to Collateral Agent in accordance with Section 6.03.

“Event of Default” has the meaning set forth in the applicable Master Agreement or Power Purchase Agreement.

“Implementation Plan” means that certain Implementation Plan filed with the California Public Utilities Commission (CPUC) and certified by the CPUC.

“Intercreditor Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of even date herewith, among Collateral Agent, the Secured Creditors from time to time party thereto and City, as amended, supplemented, restated or replaced from time to time.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit, in a form acceptable to the PPA Providers and issued by a Qualified Institution.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

“Lockbox Account” means the deposit account no. *****____, which is maintained in the name of City and is under the Control of Collateral Agent, for the benefit of the Secured Creditors, at Depositary Bank, and any replacement account, in each case, pursuant to the Lockbox Account Control Agreement.

“Lockbox Account Control Agreement” means the Account Control Agreement, dated as of the date hereof, among Depositary Bank, City and Collateral Agent and any other agreements entered into among Depositary Bank, City and Collateral Agent which shall designate the Lockbox Account as a blocked account under the Control of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Master Agreements” means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the

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exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iii) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and

(iv) the Master Power Purchase and Sale Agreement, dated as of _____, 201_, between _____ and CCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

“Moody’s” means Moody’s Investor Services, Inc.

“Obligations” means all of the obligations and liabilities under the Transaction Agreements to each PPA Provider, which are for the City’s account, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereinafter arising under or in respect of one or more of the Transaction Agreements, including all payments, fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, interest, damages and Termination Payments, if any. The term “Obligations” also includes all of City’s other present and future obligations to CCEA under that certain Administrative Services Agreement, and to each PPA Provider under the Transaction Agreements entered into by CCEA for City’s account, including the repayment of (a) any amounts that Collateral Agent (or a PPA Provider) may advance or spend for the maintenance or preservation of the Collateral and (b) any other expenditure that Collateral Agent (or PPA Provider) may make under the provisions of the Transaction Agreements for the benefit of City. For the avoidance of doubt, the term “Obligations” includes any of the foregoing that arises after the filing of a petition by or against City under any bankruptcy or insolvency statute, even if the Obligations do not accrue because of any statutory automatic stay or otherwise.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“Power Purchase Agreement” means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations (including confirmations entered into after the date hereof), and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to CCEA for the account of City, as amended, modified, supplemented, restated, extended or replaced from time to time.

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“PPA Provider” means each seller of Product under a Power Purchase Agreement that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

“Product” means one or more of the following: energy, renewable energy attributes, capacity attributes, resource adequacy benefits, or any other similar or related products contemplated in the Power Purchase Agreements.

“Qualified Institution” means a commercial bank organized under the laws of the United States or a political subdivision thereof having at the applicable time (a) a Credit Rating of (i) A- or better from Standard & Poor’s, or (ii) A3 or better from Moody’s, or (iii) if such bank has a Credit Rating at such time from both Standard & Poor’s and Moody’s, A- or better from Standard & Poor’s and A3 or better from Moody’s and (b) assets of at least Ten Billion Dollars (\$10,000,000,000).

“Receivable” means an Account evidencing City’s rights to payment for Product, billed in an invoice sent to a Customer by SCE, together with all late fees and other fees which SCE and City agree are to be charged in such invoice to the Customer by SCE on behalf of City.

“Regular Charges” means, as of any date of determination, amounts then due and owing to such PPA Provider for the Product delivered by such PPA Provider, without giving effect to any Supplemental Payment owing to such PPA Provider.

“Regular Sharing Percentage” means, as of any date of determination, with respect to each PPA Provider as calculated by CCEA in a commercially reasonable manner, the percentage equivalent of a fraction, (i) the numerator of which is the amount of the Regular Charges due and owing to such PPA Provider, as of such date, and (ii) the denominator of which is the amount of the Regular Charges due and owing to all PPA Providers, as of such date.

“Required Secured Creditors” has the meaning given to such term in the Intercreditor Agreement.

“Reserve Amount” means an amount of _____ (\$_____). If City is not subject to an Event of Default, the total Reserve Amount shall automatically be reduced by _____ percent (___%) annually, starting _____.

“Secured Creditors” means each PPA Provider party to the Intercreditor Agreement, CCEA, and their respective successors and assigns.

“Standard & Poor’s” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“Supplemental Payment” means, as of any date of determination, all Obligations owing by City to each PPA Provider, excluding, however, the Regular Charges owed to such PPA Provider. Supplemental Payments include, but are not limited to, all out-of-pocket losses such as indemnity claims arising under the Transaction Agreements to the extent such losses

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were incurred by such PPA Provider, all late payment charges due under a Power Purchase Agreement, and all Obligations arising upon a default or Termination Event, such as Termination Payments.

“Supplemental Sharing Percentage” means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (y) the numerator of which is the outstanding amount of the Supplemental Payments due and owing to such PPA Provider, as of such date, and (z) the denominator of which is the sum of the outstanding amount of the Supplemental Payments due and owing to all PPA Providers, as of such date.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination of Transactions and/or acceleration of all amounts owing thereunder in accordance with the terms of such Power Purchase Agreement.

“Termination Payment” has the meaning given to such term in the Intercreditor Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Intercreditor Agreement, this Agreement and all other agreements, instruments or documents to which City is a party and which are executed and delivered from time to time in connection with or as security for City’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

1.02 **Certain Uniform Commercial Code Terms.** As used herein, the terms **“Account”**, **“Investment Property”**, and **“Proceeds”** have the respective meanings set forth in Article 9 of the UCC. The terms **“Security”** and **“Security Entitlements”** have the respective meanings set forth in Article 8 of the UCC.

1.03 **Other Interpretive Provisions.** References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement. References to any Person include the successors and permitted assigns of such Person. References to any statute, act or regulation shall include its related current version and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United

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States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

Section 2. Grant of Security Interest.

As collateral security for the payment and performance in full of the Obligations when due, whether at stated maturity, by acceleration or otherwise, City hereby assigns, pledges and grants to Collateral Agent, for the benefit of the Secured Creditors, a first priority continuing security interest in and continuing lien on all of City's right, title and interest in and to the Collateral, including the following:

- (a) the prompt and complete payment, when due and payable, of all Obligations; and
- (b) the timely performance and observance by City of all covenants, obligations and conditions contained in the Transaction Agreements; and
- (c) without limiting the generality of the foregoing and to the fullest extent permitted under Applicable Law, the payment of all amounts, including interest which constitute part of the Obligations and would be owed by City to the Secured Creditors under the Transaction Agreements but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving City.

The collateral assignment evidenced by this Agreement is a continuing one and is irrevocable by City so long as any of the Obligations are outstanding.

Section 3. Representations and Warranties.

City represents and warrants to Collateral Agent that:

3.01 Title. It is the sole beneficial owner of the Collateral and such Collateral is free and clear of all liens, except liens in favor of Collateral Agent created hereunder.

3.02 Names, Etc. As of the date hereof, the full and correct legal name, type of organization, jurisdiction of organization, mailing address, and principal place of business is as follows: City of Pomona, a California municipal corporation and charter city, d/b/a [Name of CCA], 505 South Garey Avenue, Pomona, CA 91766.

3.03 Changes in Circumstances. City has not: (a) within the period of four (4) months prior to the date hereof, changed its location (as defined in Article 9 of the UCC); (b) within the period of five (5) years prior to the date hereof, changed its name; or (c) within the period of four (4) months prior to the date hereof, become a "new debtor" (as defined in Article 9 of the UCC) with respect to a currently effective security agreement previously entered into with any other Person.

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3.04 Security Interests. The Liens granted by this Agreement have attached and constitute a perfected first priority continuing security interest in the Collateral. City owns good and marketable title to the Collateral free and clear of all Liens other than such Liens established under this Agreement, and neither the Collateral nor any interest in the Collateral has been transferred to any other Person. City has full right, power and authority to grant a first-priority security interest in the Collateral to Collateral Agent in the manner provided in this Agreement, free and clear of any other Liens, adverse claims and options and without the consent of any other person or entity or if consent is required, such consent has been obtained. No other Lien, adverse claim or option has been created by City or is known by City to exist with respect to the Collateral. At the time the security interest in favor of Collateral Agent attaches, good and indefeasible title to all after-acquired property included within the Collateral, free and clear of any other Liens, adverse claims or options shall be vested in City. All consents for the assignment of Collateral to Collateral Agent, if any, required to be obtained by City have been obtained. This Agreement, the Intercreditor Agreement, and the Lockbox Account Control Agreement constitute legal, valid and binding obligations of City enforceable against it in accordance with their terms except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability. City will not contest the validity or legality of any Transaction Agreements entered into between CCEA and any PPA Provider for the account of City and represents and warrants that it has provided CCEA with full power and authority to enter in the Transaction Agreements for City's account.

Section 4. Covenants.

City hereby stipulates and agrees with the Collateral Agent as follows:

4.01 Perfection by Control. City shall not be permitted to withdraw funds from the Deposit Accounts until the Discharge Date and this Agreement has been terminated. Collateral Agent shall have the exclusive authority to withdraw, or (other than as set forth herein) direct the withdrawal of, funds from the Deposit Accounts. The Control Agreement for each Deposit Account shall give the Collateral Agent the sole power to direct Depositary Bank regarding the Deposit Account, and thus Collateral Agent shall Control the Deposit Accounts within the meaning of the UCC. Collateral Agent shall make distributions from the Deposit Accounts only in accordance with Section 6 of this Agreement.

4.02 Further Assurances. Upon the request of Collateral Agent, City shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, documents, agreements or other papers as may be necessary in the judgment of Collateral Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable Collateral Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

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(a) take such other action as Collateral Agent may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in the Collateral;

(b) promptly from time to time enter into such Control Agreements, each in form and substance reasonably acceptable to Collateral Agent, as may be required to perfect the security interest created hereby;

(c) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement; and

(d) permit representatives of Collateral Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and to be present at City's places of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by City with respect to the Collateral, all in such manner as Collateral Agent may reasonably require.

4.03 No Other Liens. City is and shall be the owner of or have other transferable rights in the Collateral free from any right or claim of any other Person or any other Lien and City shall defend the same against all claims and demands of all Persons at any time claiming the same or any interest therein adverse to Collateral Agent. City shall not (a) grant, or permit to be granted, any Lien with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, (b) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, or (c) cause or permit any Person other than Collateral Agent to have Control of any Deposit Account constituting part of the Collateral.

4.04 Locations; Names, Etc. Without at least thirty (30) days' prior written notice to the Collateral Agent, City shall not: (a) change its location (as defined in Article 9 of the UCC), (b) change its name from the name shown as its current legal name in Section 3 of this Agreement, or (c) agree to or authorize any modification of the terms of any item of the Collateral if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Article 9 of the UCC) by Collateral Agent over such item of Collateral.

4.05 Perfection and Recordation. City authorizes Collateral Agent to file Uniform Commercial Code financing statements describing the Collateral (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 2). The Collateral Agent, in accordance with Section 4.02 hereof, hereby requests and instructs City to, and City hereby agrees, at its sole cost and expense to, prepare and file such Uniform Commercial Code financing and continuation statements describing the Collateral as may be

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necessary to perfect and continue the security interest granted herein. City shall deliver to the Collateral Agent a file stamped copy of all such filings, which the Collateral Agent shall make available to any PPA Provider upon request.

Section 5. Remittance of Collections to Collateral Agent.

5.01 Irrevocable Direction. City has, pursuant to the Direction Letter, irrevocably instructed SCE to remit to Collateral Agent all payments due or to become due in respect of the Receivables unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and City direct otherwise in writing. The Collateral shall be collected by Collateral Agent from SCE pursuant to the Direction Letter. City shall periodically take such additional measures as may be commercially reasonable to cause SCE or Customers to make all payments due to City into the Lockbox Account designated in the Direction Letter. All invoices issued by or on behalf of City shall direct payment into the Lockbox Account designated in the Direction Letter. City shall provide Collateral Agent with such proof of compliance with this Section 5.01 as Collateral Agent may reasonably request from time to time. Without the prior written consent of Collateral Agent (acting at the written direction of the Required Secured Creditors), City shall not (a) terminate, amend, revoke or modify such payment instructions to SCE or Customers or (b) direct or cause, directly or indirectly, SCE or any Customer to make any payments except in accordance with such payment instructions. The parties agree that if any such payments, or any other Proceeds of Collateral, are received by City, (i) they shall be held in trust by City for the benefit of the Collateral Agent, (ii) City shall as promptly as possible remit or deliver same to Collateral Agent for application as provided herein, (iii) City shall take such commercially reasonable steps as necessary to require such Customer or SCE to make any future remittances into the Lockbox Account designated in the Direction Letter and (iv) such activity shall be reported promptly to Collateral Agent following City's receipt of such funds. Collateral Agent thus has the right to all collections on the Collateral remitted to it by SCE until the Discharge Date.

5.02 Application of Proceeds. The Proceeds of any collection or realization of all or any part of the Collateral shall be applied by Collateral Agent as provided for in Section 6 below.

5.03 Deficiency. If the Proceeds of the collection of the Collateral are insufficient to pay in full the Obligations, City remains liable to Collateral Agent and Secured Creditors for any deficiency.

5.04 Attorney-in-Fact. Collateral Agent is hereby appointed the attorney-in-fact of City to receive, endorse and collect all checks made payable to the order of City representing any payment or other distribution in respect of the Collateral.

5.05

Section 6. Establishment of and Distributions from Deposit Accounts.

6.01 Establishment of Deposit Accounts. City shall establish the Deposit Accounts in City's name at Depositary Bank and shall fund the Reserve Amount into the Lockbox Account. The deposits into the Deposit Accounts and all interest accumulated thereon shall be held and disbursed by the Depositary Bank in accordance with the terms and conditions of the Control Agreements and this Agreement. The Deposit Accounts are subject to the sole dominion, control and discretion of Collateral Agent until the Discharge Date. Until the Discharge Date, neither City nor any person or entity claiming on behalf of or through City shall have any right or authority, whether express or implied, to make use of, withdraw or transfer any funds or to give instructions with respect to disbursement of the Accounts other than Collateral Agent. Until the Discharge Date, subject to Section 6.02, Collateral Agent shall be entitled to exercise any and all rights in respect of or in connection with the Deposit Accounts including (i) the right to specify the amount of payments to be made from the Deposit Accounts, (ii) when such payments are to be made out of the Deposit Accounts and (iii) the right to withdraw funds for the payment of Obligations which are due and payable from the Deposit Accounts. Collateral Agent shall accept all funds remitted to the Deposit Accounts under this Agreement, and credit such funds as provided for in Section 6.02 below.

6.02 Priority of Distributions of Collateral. Proceeds of Collateral shall be allocated in accordance with this Section 6.02. On each Distribution Date, Collateral Agent shall distribute all funds in the Lockbox Account or otherwise received on the Collateral in accordance with the following priority:

(i) *first*, to each PPA Provider in payment of any Regular Charges, according to its Regular Sharing Percentage;

(ii) *second*, to each PPA Provider in payment of any Supplemental Payment owing to it according to its Supplemental Sharing Percentage;

(iii) *third*, to CCEA in payment of any amounts owing to CCEA under that certain Administrative Services Agreement between CCEA and City;

(iv) *fourth*, to the Collateral Agent (as such and in its individual capacity) in respect of its reasonable out-of-pocket fees and expenses incurred under this Agreement, the Intercreditor Agreement or the Control Agreements that have been invoiced to City, including, without limitation, payment of expenses incurred by the Collateral Agent which indemnity shall include the reasonable out of pocket attorneys' fees of outside counsel to the Collateral Agent; and

(v) *fifth*, unless an Event of Default shall exist as to City, the balance, if any, after retention in the Lockbox Account of the Reserve Amount, shall be returned to City free and clear of the lien of this Agreement, provided, however, that if the Collateral Agent has been notified of a dispute in accordance with Section 6.06, the portion of the balance, if any, up to such disputed amount shall be retained in the Lockbox Account and City shall only receive the amount of the balance, if any, that is in excess of such disputed amount until such time as the Collateral Agent receives written notice from the

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relevant PPA Provider and City that the dispute pursuant to Section 6.06 has been resolved.

Collateral Agent shall rely, and shall be fully protected in relying on a Distribution Date Certificate in making the above calculations, without any requirement that Collateral Agent verify the accuracy of such Distribution Date Certificate, subject to revision in the event of disputes resolved under Section 6.06.

6.03 Distribution Date Certificate. On or before three (3) Business Days before each Distribution Date, City shall remit, or cause to be remitted, to Collateral Agent and each PPA Provider a certificate in substantially the form of Exhibit A hereto (the “**Distribution Date Certificate**”) prepared by CCEA itemizing each of the payments to be remitted under Section 6.02 above. The PPA Providers may share such Distribution Date Certificates with their respective accountants, legal counsel and other advisors.

6.04 Replenishing the Reserve Amount; No Waiver. Subject to Section 6.05, if at any time the balance in the Deposit Accounts is less than the Reserve Amount, then (a) the Collateral Agent shall within two (2) Business Days thereafter provide City with written notice thereof, with a copy to the Secured Creditors and (b) City shall deposit such shortfall amount into the Deposit Accounts not later than ten (10) Business Days after its receipt of such notice from Collateral Agent. The Collateral Agent shall have no duty or obligation to monitor or oversee City’s replenishment of the Reserve Amount, and shall have no duty or obligation under this Section 6.04 other than to deliver the written notice required pursuant to 6.04(a). Nothing contained herein shall impair or otherwise limit City’s obligations to timely make the payments required pursuant to any of the Transaction Agreements. It is expressly understood and agreed that the Collateral Agent shall have no liability for its failure to deliver any amounts required to be delivered by it pursuant to this Agreement or any other Transaction Agreement to the extent that such amounts are not then available in the Deposit Accounts.

6.05 Release of Reserve Amount. Except following and during the continuance of an Event of Default, if City provides the Collateral Agent with a Letter of Credit for the benefit of the PPA Providers in an amount equal to the Reserve Amount, and all Secured Creditors confirm in writing to the Collateral Agent that no such Event of Default exists or is continuing. City may request in writing and, upon receipt of such request, Collateral Agent shall instruct the Depositary Bank to release and distribute the Reserve Amount to City. All of the fees, costs and expenses associated with the Letter of Credit shall be borne by City. City shall thereafter cause the Letter of Credit to be maintained in full force and effect through the Discharge Date. If at any time the issuer of the Letter of Credit is no longer a Qualified Institution, then City shall, within five (5) Business Days of such occurrence, either (a) provide Collateral Agent with a replacement Letter of Credit for the benefit of the PPA Providers issued by a Qualified Institution in an amount equal to the Reserve Amount or (b) fund the applicable Reserve Amount into the Lockbox Account.

6.06 Disputes. If a PPA Provider advises CCEA, City and Collateral Agent in writing that the calculations in any Distribution Date Certificate are in its opinion materially incorrect, then CCEA, City and such PPA Provider shall attempt to resolve the discrepancy in

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good faith. If the parties are able to reach an agreement with respect to such discrepancy in advance of the relevant Distribution Date, City shall remit to Collateral Agent and each PPA Provider a revised Distribution Date Certificate reflecting the agreed upon amounts, and the Collateral Agent shall disburse funds in accordance with such revised Distribution Date Certificate on the applicable Distribution Date, provided, however, that the Collateral Agent shall have no liability whatsoever for any failure to disburse funds in accordance with a revised Distribution Date Certificate to the extent that it has not received such revised Distribution Date Certificate sufficiently in advance of the scheduled distribution. If the parties are unable to agree, they shall resolve such dispute in accordance with the dispute resolution provision of the Power Purchase Agreement between such

PPA Provider and CCEA. In the interim, the Distribution Date Certificate originally submitted by City shall be relied upon by Collateral Agent for purposes of making distributions from the Lockbox Account or any other Deposit Account of all undisputed amounts in accordance with Section 6.02, and the Collateral Agent shall make no distribution in respect of any disputed amount until such time as it has received a revised Distribution Date Certificate. Notwithstanding the above, no dispute shall prevent any other PPA Provider from receiving its distributions from the Lockbox Account, even if such distributions would result in a shortfall of the disputed amount. However, City shall not be entitled to receive any funds if such distribution to City would result in a shortfall of the disputed amount.

6.07 Earnings on Deposit Accounts. City shall establish the Deposit Accounts as non-interest bearing accounts.

6.08 Rights and Remedies. If an Event of Default shall have occurred and is continuing, Collateral Agent, without any other notice to or demand upon City, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies as may be provided to a secured party in any jurisdiction in which Collateral is located; it being understood and agreed that the Collateral Agent would be exercising any such rights and remedies in its capacity as collateral agent for the benefit of the PPA Providers, as Secured Creditors. In addition, **CITY HEREBY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO A JUDICIAL HEARING IN ADVANCE OF THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES HEREUNDER, INCLUDING ITS RIGHT FOLLOWING AN EVENT OF DEFAULT TO TAKE IMMEDIATE POSSESSION OF THE COLLATERAL AND TO EXERCISE ITS RIGHTS AND REMEDIES WITH RESPECT THERETO**. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Intercreditor Agreement or any Control Agreements with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Intercreditor Agreement or any Control Agreements. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral

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Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

6.09 No Waiver by Collateral Agent. Collateral Agent shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be made in writing and signed by Collateral Agent (acting at the written direction of the Required Secured Creditors). No delay or omission on the part of Collateral Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any occasion shall not be construed as a bar to or a waiver of any right or remedy on any future occasion. All rights and remedies of Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, may be exercised by Collateral Agent (acting at the written direction of the Required Secured Creditors), shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Collateral Agent (acting at the written direction of the Required Secured Creditors) deems expedient.

6.10 Waivers by City. To the extent permitted by applicable law, City hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description.

6.11 Marshalling. **TO THE EXTENT THAT IT LAWFULLY MAY, CITY HEREBY AGREES THAT IT WILL NOT INVOKE ANY LAW RELATING TO THE MARSHALLING OF COLLATERAL WHICH MIGHT CAUSE DELAY IN OR IMPEDE THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT CREATING OR EVIDENCING ANY OF THE OBLIGATIONS OR UNDER WHICH ANY OF THE OBLIGATIONS IS OUTSTANDING OR BY WHICH ANY OF THE OBLIGATIONS IS SECURED OR PAYMENT THEREOF IS OTHERWISE ASSURED, AND, TO THE EXTENT THAT IT LAWFULLY MAY, CITY HEREBY IRREVOCABLY WAIVES THE BENEFITS OF ALL SUCH LAWS.**

Section 7. Miscellaneous.

7.01 Notices. Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed to the relevant party as provided below their signatures to this Agreement or at such other address for notice as City or Collateral Agent shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) that

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is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

7.02 No Waiver. No failure on the part of the Collateral Agent to exercise, and no course of dealing with respect to, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof.

7.03 Amendments. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by City and Collateral Agent.

7.04 Expenses. If City fails to do so, Collateral Agent may, upon receipt from the Required Secured Creditors of written direction and such sums as may be necessary in connection therewith, discharge taxes and any other Liens or encumbrance at any time levied or placed on any of the Collateral. City agrees to reimburse Collateral Agent on demand for any such expenditures made by Collateral Agent, and the Collateral Agent promptly upon receipt thereof shall remit such reimbursed sums to the Required Secured Creditors. For the avoidance of doubt, it is expressly understood and agreed that the Collateral Agent shall not use or expend its own funds in connection with such taxes, Liens or encumbrances. Collateral Agent shall have no obligation to make any such expenditure nor shall the making thereof be construed as a waiver or cure of any Event of Default. City agrees to reimburse Collateral Agent (as such and in its individual capacity) for all reasonable costs and expenses incurred by it (including the reasonable fees and expenses of legal counsel) in connection with (i) the performance by Collateral Agent of its duties under this Agreement, the Intercreditor Agreement or the Control Agreements, (x) protecting, defending or asserting rights and claims of the Collateral Agent in respect of the Collateral, (y) litigation relating to the Collateral, and (z) workout, restructuring or other negotiations or proceedings, and (ii) the enforcement of this Section 7.04, and all such reasonable costs and expenses shall be Obligations entitled to the benefits of the collateral security provided pursuant to Section 2.

7.05 Duty of Care; Earnings. Collateral Agent shall have no duty or obligation with respect to the Collateral except for its contractual obligations under this Agreement, the Intercreditor Agreement or the Control Agreements. The Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against any Person, beyond the safe custody of any Collateral in the Collateral Agent's possession or control. Without limiting the generality of the foregoing, Collateral Agent shall have no duty (a) other than to instruct City as set forth in Section 4.05 hereof, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and

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Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of City, the Secured Creditors, and the Collateral Agent (provided that City shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of Collateral Agent) and Collateral Agent shall only transfer or assign its rights hereunder in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of the Intercreditor Agreement). This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect in accordance with Section 7.12, and be binding upon City, its successors and assigns, and inure, together with the rights of Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns.

7.07 Counterparts. This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto shall be as effective as an original signature.

7.08 GOVERNING LAW; JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE CENTRAL DISTRICT OF CALIFORNIA IN LOS ANGELES COUNTY OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA IN LOS ANGELES COUNTY AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

7.09 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT,

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ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

7.10 **CONSENT TO INJUNCTIVE RELIEF.** WITHOUT LIMITING ANY OTHER RIGHTS OR REMEDIES THAT COLLATERAL AGENT MAY HAVE, CITY ACKNOWLEDGES THAT ITS VIOLATION OF **SECTION 5.01** WOULD RESULT IN IRREPARABLE INJURY TO COLLATERAL AGENT FOR WHICH NO ADEQUATE REMEDY AT LAW WOULD BE AVAILABLE. ACCORDINGLY, CITY HEREBY (I) CONSENTS TO THE ENTRY OF AN IMMEDIATE EX-PARTE INJUNCTION, TEMPORARY RESTRAINING ORDER, AND/OR PERMANENT INJUNCTION TO ENFORCE THE PROVISIONS OF **SECTION 5.01**, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY AND (II) WAIVES ANY DEFENSE THAT ADEQUATE REMEDIES ARE AVAILABLE AT LAW AND ANY REQUIREMENT THAT A BOND OR ANY OTHER SECURITY BE POSTED IN CONNECTION WITH THE ENTRY OF ANY RESTRAINING ORDER OR INJUNCTION.

7.11 **Captions.** The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.12 **Termination.** Unless earlier terminated in writing by the parties hereto, this is a continuing security agreement and the grant of a security interest under this Agreement shall remain in full force and effect and all the rights, powers and remedies of Collateral Agent hereunder shall continue to exist until: (a) the Obligations are paid in full as the same becomes due and payable; (b) the PPA Providers have no further obligation to deliver products or render services (including credit support services) to, or on behalf of, City; (c) City has no further obligations to the PPA Providers under any of the Transaction Agreements; and (d) the PPA Providers, upon request of City, have executed and delivered to each of City and the Collateral Agent a written termination statement, and Collateral Agent has reassigned to City, without recourse, the Collateral and all rights conveyed hereby and returned possession of the Collateral to City. Furthermore, it is contemplated by the parties that there may be times when no Obligations are owing; but notwithstanding such occurrences, unless the PPA Providers have executed a written termination under clause (d) above, this Agreement shall remain valid and shall be in full force and effect as to subsequent Obligations, provided Collateral Agent has not executed a written agreement terminating this Agreement. This Agreement shall continue irrespective of the fact that the liability of any other obligor may have ceased, or irrespective of the validity or enforceability of the Transaction Agreements, to which any other obligor may be a party, and notwithstanding the reorganization or bankruptcy of City, or any other event or proceeding affecting City or any other obligor. At City's request, Collateral Agent shall, at City's reasonable expense, instruct Depositary Bank to release all assets credited to the Deposit Accounts to City, and Collateral Agent shall also execute such other documentation as shall be reasonably requested by City to effect the termination and release of the liens on the Collateral, including notice to SCE that the Direction Letter is terminated.

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7.13 Severability. The provisions of this Agreement are intended to be severable. If for any reason any of the provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

7.14 Disclosure of Information. City hereby consents to the disclosure by any PPA Provider or Collateral Agent of any information provided by or relating to City as may be required or reasonably necessary for the administration of this Agreement, the Intercreditor Agreement or the Control Agreements, or the enforcement or protection of any of the rights of the Collateral Agent or the PPA Providers hereunder.

[Signatures on following page]

CONFIDENTIAL DRAFT

2/3/2019

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representative as of the date first written above.

CITY OF POMONA,
as Pledgor

By:
Name: Linda Lowry
Title: City Manager

Notice Address:
City of Pomona
Attention: Contract Administration
505 South Garey Avenue
Pomona, CA 91766
Fax: 909-620-3710

RIVER CITY BANK

not in its individual capacity, but
solely as Collateral Agent

By:
Name:
Title:

River City Bank
2485 Natomas Park Dr.
Sacramento, CA 95833
Attention: Cash Management
Fax: 916-567-2799

2/3/2019

Exhibit A

Form of Distribution Date Certificate

The undersigned, [INSERT NAME], the [INSERT NAME OF OFFICE HELD] of Pomona (“**City**”), hereby certifies, on behalf of City in such capacity and not in its individual capacity, with reference to that certain Security Agreement dated as of _____, 2019 (capitalized terms used herein shall have the same meaning as set forth in the Security Agreement) between City and _____, as collateral agent (“**Collateral Agent**”), to Collateral Agent as follows:

This certificate is being delivered to Collateral Agent on or before the date that is three (3) Business Days before the Distribution Date of [_____] __, 20__.

No Event of Default exists as of the date of this certificate and City does not anticipate that an Event of Default will exist as of the Distribution Date set forth in paragraph 1 above.

The funds that are on deposit in the Lockbox Account shall be disbursed on the Distribution Date as follows:

1. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of its Regular Charges, an aggregate amount equal to [_____] Dollars (\$_____)];
[Include this paragraph for each PPA Provider]
2. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of any Supplemental Payment owing in an aggregate amount equal to [_____] Dollars (\$_____)]; *[Include this paragraph for each PPA Provider]*
3. To CCEA in payment of any amounts owing to CCEA under that certain Administrative Services Agreement between CCEA and City;
4. To Collateral Agent, in respect of Collateral Agent’s reasonable out-of-pocket fees and expenses incurred under the Security Agreement or the Intercreditor Agreement that have been invoiced to City, an aggregate amount equal to [_____] Dollars (\$_____); and
5. The remaining funds, if any, that are on deposit, after retention of the Reserve Amount are to be disbursed to City into the account designated by City.

[Signatures on following page]

CONFIDENTIAL DRAFT

2/3/2019

I hereby certify, on behalf of _____ and not in my individual capacity, that this Distribution Date Certificate is true and complete in all material respects.

By: _____

Name: _____

Title: _____

Date: _____

2/3/2019

Exhibit B

Form of Direction Letter

City of Pomona, a California municipal corporation and charter city,
d/b/a [Name of CCA],
505 South Garey Avenue, Pomona, CA 91766

DIRECTION LETTER

VIA EMAIL AND U.S. MAIL

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Email: ccasvcs@sce.com

_____, 2019

RE: [Name of CCA] Direction Letter

Attached please find the Accounts Payable Electronic Funds Transfer Enrollment Form, dated as of _____, 2019 (the “**Payment Instruction**”), executed by the City of Pomona (“City”) as respecting its [Name of CCA] program and instructing SCE to initiate credit entries to account number _____, which account is held at River City Bank, a California corporation.

By the Payment Instruction and this Direction Letter, we are hereby providing SCE with written notice that we wish SCE to initiate credit entries to the above-referenced account. The payment instructions set forth in this letter may only be amended upon the joint instruction of the City and River City Bank, not in its individual capacity, but solely as collateral agent.

If you have any questions regarding the Payment Instruction or this Direction Letter, please contact me, _____, at (____) ____-____.

Very truly yours,

CITY OF POMONA

By: _____
Name: _____
Title: _____

cc: Stephen Hall, Hall Energy Law PC

EXHIBIT “G”

ACCOUNT CONTROL AGREEMENT

DRAFT
29 JANUARY 2019

DATED as of _____, 2019

- (1) River City Bank, a California corporation,
as Account Bank,
- (2) City of Pomona, a California municipal corporation and charter
city,

and
- (3) River City Bank, a California corporation, not in its individual
capacity, but solely as collateral agent, as Secured Party.

ACCOUNT CONTROL AGREEMENT

ACCOUNT CONTROL AGREEMENT (this “Agreement”) dated as of _____
(the “Effective Date”)

BETWEEN:

- (1) **RIVER CITY BANK**, a California corporation (the “Account Bank”);
- (2) **CITY OF POMONA**, a California municipal corporation and charter city, d/b/a [CCA Name] (“City”);
- (3) **RIVER CITY BANK**, a California corporation, not in its individual capacity, but solely as collateral agent (the “Secured Party”).

WHEREAS:

(A) City has pledged to the Secured Party (for the benefit of the PPA Providers and California Choice Energy Authority (as defined in the Security Agreement), as secured creditors) all of the Collateral (as defined in the Security Agreement), pursuant to that certain Security Agreement between City and Secured Party dated _____ (the “Security Agreement”);

(B) City shall direct Southern California Edison (“SCE”) to remit all present and future collections on accounts receivable now or hereafter billed by SCE and owed by City’s customers to Secured Party, for remittance to a Lockbox Account (as defined in the Security Agreement) maintained by Secured Party;

(C) Secured Party shall have, for the benefit of the Secured Creditors (as defined in the Security Agreement), a first priority continuing security interest in and lien on such Collateral pledged to Secured Party for the benefit of the Secured Creditors, as provided in the Security Agreement;

(D) City intends that Secured Party shall distribute the Collateral deposited into the Lockbox Account in accordance with the provisions of the Security Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Unless otherwise defined herein, all capitalized terms used herein and defined in the Security Agreement shall be used herein as therein defined. Reference to singular terms shall include the plural and vice versa.

1. THE ACCOUNTS.

City hereby requests that Account Bank open, and Account Bank hereby confirms that it has opened, account number ***** (a non-interest-bearing deposit account held in the name of City) which will be subject to, and administered in accordance with, the terms of this Agreement (together, the “Lockbox Account”).

The parties hereto agree that the Lockbox Account shall be funded solely by electronic transfers of immediately available funds and that Account Bank shall not be required to accept any

other items for deposit into the Lockbox Account. All amounts payable for deposit into the Lockbox Account shall be paid to Account Bank at the following accounts:

Bank: River City Bank

ABA#: _____

Account No.: ***** _____

2. CONTROL OF THE ACCOUNTS / PAYMENT MECHANICS.

- (a) The Lockbox Account shall be maintained by Account Bank in the name of City and shall be under the sole dominion and control of Secured Party. Account Bank agrees that it will comply with written instructions originated by Secured Party directing disposition of the funds in the Lockbox Account without further consent by City or otherwise.
- (b) Account Bank (i) shall disburse funds held in the Lockbox Account as instructed by Secured Party and (ii) agrees that, except as otherwise expressly provided herein, City will not have access to the funds in the Lockbox Account and that the Account Bank will not agree with City or any other party (other than the Secured Party) to comply with any instructions for the disposition of the funds in the Lockbox Account originated by City or such other party.

3. STATEMENTS AND OTHER INFORMATION.

- (a) Account Bank shall provide Secured Party with copies of the regular monthly bank statements of the Lockbox Account at such times such statements are provided to City and such other information relating to the Lockbox Account as shall reasonably be requested by Secured Party or City. Account Bank shall also deliver a copy of all notices and statements required to be sent by it to City pursuant to any agreement governing or related to the Lockbox Account, to which Account Bank is a party, to Secured Party at such times such notices and statements are provided to City. Except as otherwise required by law, Account Bank will use reasonable efforts promptly to notify Secured Party and City if Account Bank receives a notice that any other person claims that it has an interest in the Lockbox Account. As of the date of this Agreement, Account Bank confirms that it has not received notice that any other person has any interest in the Lockbox Account.

- (b) Account Bank hereby confirms that (i) the Lockbox Account has been established and is maintained with Account Bank on its books and records, (ii) Account Bank is a bank within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code of California, (iii) the Lockbox Account is a deposit account within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code of California, and (iv) the jurisdiction of Account Bank for the purposes of Article 9 of the Uniform Commercial Code of California is California.

4. **FEES.**

City agrees to pay on demand all usual and customary service charges, transfer fees and account maintenance fees of Account Bank in connection with the Lockbox Account in accordance with the terms of the separate fee agreement entered into by City and Account Bank.

5. **SET-OFF.**

Account Bank hereby agrees that Account Bank will not exercise or claim any right of set-off or banker's lien against the Lockbox Account. As of the date of this Agreement, Account Bank does not know of any claim to or interest in the Lockbox Account, except for claims and interests of the parties hereto. All of Account Bank's present and future rights against the Lockbox Account are subordinate to Secured Party's security interest therein.

6. **ACCOUNT BANK.**

The acceptance by Account Bank of its duties under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to all of Account Bank's rights, duties, liabilities and immunities:

- (a) Account Bank shall be protected in acting upon any written notice, certificate, resolution, instruction, request, authorization or other paper or document as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine and to have been signed or presented by the proper party or parties in accordance with the terms of this Agreement.
- (b) Account Bank may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. If at any time Account Bank determines that it requires or desires guidance regarding the application of any provision of this Agreement or any other document, regarding compliance with any direction it receives hereunder, Account Bank may deliver a notice to Secured Party (or City after Secured Party has informed Account Bank that City has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or City after Secured Party has informed Account Bank that City

has satisfied all of its obligations under the Power Purchase Agreements), as applicable, shall constitute full and complete authorization and protection for actions taken and other performance by Account Bank in reliance thereon. Until Account Bank has received such instructions after delivering such notice, it may, but shall be under no duty to, take or refrain from taking any action with respect to the matters described in such notice.

- (c) This Agreement sets forth exclusively the duties of Account Bank with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Account Bank.
- (d) Any funds held by Account Bank, as such, need not be segregated from other funds except to the extent required by mandatory provisions of law.

7. **REPRESENTATIONS OF ACCOUNT BANK.**

Account Bank represents and warrants as to itself (as set forth below) to Secured Party as follows, such representations are being made on the date of the execution and delivery of this Agreement, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties are correct on and as of such earlier date):

- (a) Organization, Corporate Authority. Account Bank represents and warrants that it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into and perform its obligations under this Agreement.
- (b) Authorization. Account Bank represents and warrants that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its own behalf.
- (c) Legal, Valid and Binding. Account Bank represents and warrants that this Agreement has been duly executed and delivered by it and, assuming that this Agreement is the legal, valid and binding obligation of each other party thereto, is the legal, valid and binding obligation of Account Bank, enforceable against Account Bank in accordance with its terms.
- (d) No Violation. Account Bank represents and warrants that this Agreement has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will violate any federal law or regulation relating to its banking or trust powers or contravene or result in any breach of, or constitute any default under its charter or by-laws or the provisions of any indenture,

mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected.

8. EXCULPATION OF ACCOUNT BANK; INDEMNIFICATION BY CITY.

Each of City and Secured Party agrees that Account Bank shall have no liability to any of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence, breach of an express term of this Agreement or willful misconduct of Account Bank. In no event shall Account Bank be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Account Bank's reasonable control or for the indirect, special or consequential damages. City agrees to indemnify Account Bank and hold it harmless from and against all claims, other than those ultimately determined to be founded on the gross negligence or willful misconduct of Account Bank, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Account Bank through the use of the Lockbox Account at Account Bank or pursuant to this Agreement.

9. TERMINATION.

This Agreement may be terminated upon delivery to Account Bank of a written notification thereof jointly executed by Secured Party and (provided Secured Party has not notified Account Bank that an Event of Default is then continuing) City. Notwithstanding the foregoing, this Agreement may be terminated by Secured Party in accordance with and subject to the requirements of that certain Intercreditor and Collateral Agency Agreement, dated as of the Effective Date ("Intercreditor Agreement"), between and among Secured Party, Secured Creditors, and City, at any time, with or without cause, upon its delivery of written notice thereof to each of City and Account Bank. For the avoidance of doubt, it is expressly understood and agreed that the Account Bank shall have no duty to monitor or oversee, and shall have no liability whatsoever in connection with, Secured Party's compliance with the Intercreditor Agreement. This Agreement may be terminated by Account Bank at any time on not less than sixty (60) days' prior written notice delivered to each of City and Secured Party provided that such termination shall not take effect until Secured Party confirms that a replacement account and replacement security thereover have been obtained in form and substance satisfactory to Secured Party. Upon any such termination of this Agreement, Account Bank will immediately transmit to such account as Secured Party may direct all funds, if any, then on deposit in, or otherwise standing to the credit of the Lockbox Account. The provisions of paragraphs 2 and 5 shall survive termination of this Agreement unless and until specifically released by Secured Party in writing. All rights of Account Bank under paragraphs 4, 5, 6 and 8 shall survive any termination of this Agreement.

10. IRREVOCABLE AGREEMENTS.

City acknowledges that the agreements made by it and the authorizations granted by it in paragraph 2 hereof are irrevocable and that the authorizations granted in paragraph 2 hereof are powers coupled with an interest.

11. NOTICES.

All notices, requests or other communications given to Account Bank, City or Secured Party shall be given in writing (including by facsimile) at the address specified below:

Account Bank: River City Bank
Attention: Cash Management
2485 Natomas Park Dr.
Sacramento, CA 95833
Fax: 916-567-2779
Email: cashmgmt@rivercitybank.com

City: Pomona
Attention: Contract Administration
505 South Garey Avenue
Pomona, CA 91766
Fax: 909-620-3710
Email: _____

Secured Party: River City Bank, as Collateral Agent
Attention: Cash Management
2485 Natomas Park Dr.
Sacramento, CA 95833
Fax: 916-567-2779
Email: cashmgmt@rivercitybank.com

Any party may change its address for notices hereunder by notice to each other party hereunder given in accordance with this paragraph 11. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 11 and confirmation of receipt is made by the appropriate party, (b) if given by overnight courier, five (5) days after such communication is deposited with the overnight courier for delivery, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified in this paragraph 11.

12. MISCELLANEOUS.

- (a) This Agreement may be amended only by a written instrument executed by each of the parties hereto acting by their respective duly authorized representatives.
- (b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but neither City nor Account

Bank shall be entitled to assign or delegate any of its rights or duties hereunder without first obtaining the express prior written consent of Secured Party.

- (c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (d) This Agreement and any document contemplated hereby may be delivered by a party hereto by way of facsimile or e-mail transmission and such delivery shall be deemed completed for all purposes upon the completion of such facsimile or e-mail transmission. A party that so delivers this Agreement or any such document by way of facsimile or e-mail transmission agrees to promptly thereafter deliver to the other party hereto an original signed counterpart. The signature of any party transmitted by facsimile or e-mail shall be considered for these purposes as an original document, and any such document shall be considered to have the same binding legal effect as an originally executed document. In consideration of the mutual covenants herein contained, the parties agree that none of them shall raise the use of a facsimile machine or e-mail as a defense in any suit or controversy related to this Agreement or any of the other documents and forever waive any such defense.
- (e) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF CALIFORNIA. The parties agree that the State of California (i) is and shall remain the “bank’s jurisdiction” of the Account Bank for the purposes of the Uniform Commercial Code; and (ii) shall be deemed to be the location of the Lockbox Accounts and of City’s rights and interests in and to the Lockbox Accounts. This Agreement may be executed by the parties hereto in separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.
- (f) JURY WAIVER AND JUDICIAL REFERENCE. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH

OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY

(WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH (ii) BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (1) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (2) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (3) APPOINTMENT OF A RECEIVER AND (4) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN THE FOREGOING CLAUSES (1) – (4) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A

REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iv) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(vi) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

- (g) Each party hereby submits to the nonexclusive jurisdiction of the United States District Court for the Central District of California and of any California state court sitting in Los Angeles County for the purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby and thereby. Each party irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

- (h) City hereby irrevocably appoints the City Clerk at City of Lancaster 44933 Fern Avenue, Lancaster, CA 93534, from time to time to receive on its behalf service of process issued out of the federal courts of California in any legal action or proceeding arising out of or in connection with this Agreement or any other document to which it is a party. City undertakes not to revoke the authority of the agent specified above and if, for any reason, any such agent no longer serves or is capable of serving as agent of the relevant party hereto to receive service of process in City, such party shall promptly appoint another such agent and advise Secured Party thereof and, failing such appointment within fourteen (14) days, Secured Party shall be entitled (and is hereby authorized) to appoint an agent on behalf of City. Nothing herein contained shall restrict the right to serve process in any other manner allowed by law.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representative as of the date first written above.

Account Bank

RIVER CITY BANK

By:

Name:

Title:

City

CITY OF POMONA, a California
municipal corporation and charter
city

By:

Name: Linda Lowry

Title: City Manager

Secured Party

RIVER CITY BANK, not in its
individual capacity, but solely as
Collateral Agent

By:

Name:

Title:

EXHIBIT “H”

**SOUTHERN CALIFORNIA EDISON
SERVICE AGREEMENT**



Southern California Edison
Rosemead, California (U 338-E)

Revised	Cal. PUC Sheet No.	47507-E
Cancelling Revised	Cal. PUC Sheet No.	43907-E

Sheet 1

COMMUNITY CHOICE AGGREGATOR (CCA)
SERVICE AGREEMENT

Form 14-768

(To be inserted by utility)

Advice 2500-E

Decision _____

1C12

Issued by

Akbar Jazayeri

Vice President

(To be inserted by Cal. PUC)

Date Filed Aug 12, 2010

Effective Sep 11, 2010

Resolution _____

Southern California Edison Company
**COMMUNITY CHOICE AGGREGATOR (CCA)
SERVICE AGREEMENT**

This Community Choice Aggregator (CCA) Service Agreement (this "Agreement") is made and entered into as of this ____ day of _____, _____, by and between

"_____" ("CCA"), a _____, organized and existing under the laws of the state of _____, and Southern California Edison Company (SCE), a corporation organized and existing under the laws of the state of California. From time to time, CCA and SCE shall be individually referred to herein as a "Party" and collectively as the "Parties."

Section 1: General Description of Agreement

- 1.1 This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which CCA shall offer electrical energy services. Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledges that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers. Except where explicitly defined herein (including Attachment A hereto) the definitions controlling this Agreement are contained in SCE's applicable rules or in the relevant community choice aggregation tariff.
- 1.2 The form of this Agreement has been developed as part of the CPUC regulatory process to implement Assembly Bill 117, was intended to conform to CPUC directions, was filed and approved by the CPUC for use between SCE and CCAs and may not be waived, altered, amended or modified, except as provided herein or in the applicable community choice aggregation tariff, or as may otherwise be authorized by the CPUC.
- 1.3 This Agreement incorporates by reference the applicable community choice aggregation tariff as authorized and modified from time to time by the CPUC.

Section 2: Representations

- 2.1 Each Party represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements.

Southern California Edison Company
COMMUNITY CHOICE AGGREGATOR (CCA)
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- 2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 2.4 Each Party shall (a) exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

Section 3: Term of Service

The term of this Agreement shall commence on the date of execution by both Parties hereto (the "Effective Date") and shall terminate on the earlier of (a) the date CCA informs SCE that it is no longer operating as a CCA in SCE's service territory; (b) the earlier termination pursuant to Section 4 hereof; or (c) the effective date of a new CCA Service Agreement between the Parties hereto. Notwithstanding the Effective Date of this Agreement, the CCA acknowledges that it may only offer Community Choice Aggregation Services to customers effective on or after the CPUC-approved date for commencement of such services by CCAs, and only after it has complied with all provisions of this Agreement and SCE's applicable tariffs.

Section 4: Events of Default and Remedy for Default

- 4.1 An Event of Default under this Agreement shall include either Party's material breach of any provision of this Agreement, including those incorporated by reference herein, and failure to cure such breach within thirty (30) calendar days after receipt of written notice thereof from the non-defaulting Party; or such other period as may be provided by this Agreement or SCE's applicable community choice aggregation tariff.
- 4.2 In the event of such an Event of Default, the non-defaulting Party shall be entitled to exercise any and all remedies (a) available under SCE's applicable community choice aggregation tariff; and/or (b) provided for by law or in equity to the extent not inconsistent with SCE's community choice aggregation tariff. In addition, in the event of an Event of Default this Agreement may be effectively terminated upon Commission authorization.

- 4.3 Breach by any Party hereto of any provision of SCE's community choice aggregation tariff, including a breach occurring during Exigent Circumstances as defined in Section T.3 of such tariff, which circumstances also shall include bankruptcy of CCA, shall be governed by applicable provisions contained therein and each Party will retain all rights granted thereunder. A breach of said tariff for which no remedy is specified therein shall be governed by this Agreement as an Event of Default.

Section 5: Billing and Payment

SCE will bill and the CCA agrees to pay SCE for all services and products provided by SCE in accordance with the terms and conditions set forth in SCE's community choice aggregation tariff, as stated in SCE's Electric Rule 23 and SCE's rate schedules. Any services provided by the CCA to SCE shall be by separate agreement between the Parties and are not a subject of this Agreement.

Section 6: Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred, except as provided for in this Section. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability, except in the event of an action covered by the Indemnification provisions of Section 7 of this Agreement or by the indemnification provisions in any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA, in which event this Section 6 shall not be applicable.

Section 7: Indemnification

- 7.1 To the fullest extent permitted by law, and subject to the limitations set forth in Section 6 of this Agreement, each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, employees, agents, servants and assigns (collectively, the "Indemnified Party"), and at the Indemnified Party's option, the Indemnifying Party shall defend the Indemnified Party, from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party's employees and its affiliates' employees, subcontractors and subcontractors' employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal and otherwise, which shall include

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reasonable attorneys' fees, caused wholly or in part by any negligent, grossly negligent or willful act or omission by the Indemnifying Party, its officers, directors, employees, agents or assigns arising out of this Agreement, except to the extent caused wholly or in part by any negligent, grossly negligent or willful act or omission of the Indemnified Party.

- 7.2 If any claim covered by Section 7.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in, and unless in the opinion of counsel for the Indemnified Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.
- 7.3 The Indemnifying Party's obligation to indemnify under this Section 7 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme, including, without limitation, under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Section 8: Assignment and Delegation

- 8.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Section 8 shall be void.
- 8.2 Notwithstanding the provisions of this Section 8, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, shall serve as the point of contact between its subcontractor and the other Party, and shall

provide the other Party with thirty (30) calendar days' prior written notice of any such subcontracting, which notice shall include such information about the subcontractor as the other Party shall reasonably require. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

Section 9: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party's designees as permitted under Section 8 of this Agreement) as an independent contractor.

Section 10: Entire Agreement

This Agreement consists of, in its entirety, this Community Choice Aggregator Service Agreement and all attachments hereto, all Community Choice Aggregation Service Requests submitted pursuant to this Agreement and SCE's community choice aggregation tariffs. This Agreement supersedes all other agreements or understandings, written or oral, between the Parties related to the subject matter hereof, with the express exception of any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA. This Agreement may be modified from time to time only by an instrument in writing, signed by both Parties.

Section 11: Nondisclosure

11.1 Notwithstanding anything provided below, prior to receiving any SCE confidential customer information, CCA agrees to enter into the CCA Non-Disclosure Agreement and be bound by its terms with respect to Confidential Information as defined therein.

Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement or information developed by either Party independent of any

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Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of this Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.

- 11.2 Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

- 13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) U.S. Mail, first class postage pre-paid, or (c) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to CCA:

Name of Entity: _____

Contact Name: _____

Business Address: _____

Facsimile: _____

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If the notice is to SCE:

Contact Name: _____

Business Address: _____

Facsimile: _____

- 13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.
- 13.3 Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters relating to Community Choice Aggregation Service. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

Section 14: Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15: Dispute Resolution

- 15.1 The form of this Agreement has been filed with and approved by the CPUC as part of SCE's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of SCE's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending such resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes.
- 15.2 Except as provided in Rule 23 Section T.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the CCA's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution,

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with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes, as allowed by law or in equity, or the parties may mutually agree to pursue mediation or binding arbitration to resolve such issues.

15.3 Notwithstanding the provisions of Paragraph 15.1 and 15.2 above: (a) all disputes between the Parties relating to the payment by the CCA of any SCE fees or charges shall be subject to the provisions of SCE's applicable tariffs governing disputes over customer bills; (b) all disputes between the Parties regarding non-bypassable charges (including Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by the Commission) payable by community choice aggregation customers or the CCA on behalf of such customers shall be subject to the provisions of SCE's applicable tariffs; and (c) SCE may pursue available remedies in law or equity for unauthorized electrical use by the CCA in a court of competent jurisdiction.

15.4 If the dispute involves a request for damages, parties understand that the Commission has no authority to award damages. To resolve such issues, the parties may mutually agree to pursue mediation or binding arbitration to resolve such issues, or if no such agreement is reached, to pursue other legal or equitable remedies that are available to the parties.

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in Los Angeles, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon the Party so affected giving written notice and reasonably full particulars of such force majeure to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. In the event of force majeure, as described herein, both Parties shall take all reasonable steps to comply with this Agreement and SCE's applicable tariffs despite occurrence of a force majeure event.

Section 18: Unauthorized Use of Energy (Energy Theft)

- 18.1 The CCA represents and warrants that for each of its Customers, and at all times during which it provides community choice aggregation services as an Community Choice Aggregator, the CCA shall completely, accurately, and in a timely manner account for each of its Customer's loads. Load data not accounted for in this manner may provide grounds for termination of this Agreement. For verification purposes only, SCE shall have complete access to the load data provided to the CAISO by the CCA. Such information is to remain confidential, and shall not be disclosed to any unauthorized person other than the CPUC, the California Independent System Operator or other law enforcement or regulatory authority. (T)
- 18.2 SCE shall notify the CCA immediately and the CCA shall notify SCE immediately of any suspected unauthorized energy use. The Parties agree to preserve any evidence of unauthorized energy use. Once unauthorized energy use is suspected, SCE, in its sole discretion, may take any or all of the actions permitted under SCE's applicable tariffs.

Section 19: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 20: Conflicts Between this Agreement and SCE's Community Choice Aggregation Tariff

Should a conflict exist or develop between the provisions of this Agreement and SCE's community choice aggregation tariff, as approved by the CPUC, the provisions of SCE's community choice aggregation tariff shall prevail.

Section 21: Amendments or Modifications

- 21.1 Except as provided in Section 21.2, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.
- 21.2 This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, CCA may elect to terminate this Agreement upon written notice to SCE, which shall be effective upon the receipt thereof. SCE retains the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for a change in SCE's rates, charges, classification, service or rules, or any agreement relating thereto.

Section 22: Audits

- 22.1 SCE shall retain such specific records as may be required to support the accuracy of meter data provided in SCE's consolidated billings. When the CCA reasonably believes that errors related to metering or billing activity may have occurred, the CCA may request the production of such documents as may be required to verify the accuracy of such metering and consolidated billing. Such documents shall be provided within ten (10) business days of such request. In the event the CCA, upon review of such documents, continues to believe that the SCE's duty to accurately meter and provide consolidated billing for usage has been breached, the CCA may direct that an audit be conducted. The CCA shall designate their own employee representative or their contracted representative to audit SCE's records.
- 22.2 Any such audit shall be undertaken by the CCA, or their contracted representative at reasonable times without interference with SCE's business operations, and in compliance with the SCE's security procedures. SCE and the CCA agree to cooperate fully with any such audit.
- 22.3 Specific records to support the accuracy of meter data provided in the consolidated billings may require examination of billing and metering support documentation maintained by subcontractors. SCE shall include a similar clause in its agreements with subcontractors reserving the right to designate their own employee representative, or their contracted representative to audit records related to consolidated billing to Community Choice Aggregation Customers.
- 22.4 The CCA will notify SCE in writing of any exception taken as a result of an audit. SCE shall refund the amount of any undisputed exception to the CCA within ten (10) days. If SCE fails to make such payment, SCE agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date SCE reimburses the CCA for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then SCE shall reimburse the CCA for the cost of the audit.

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- 22.5 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

Section 23: Miscellaneous

- 23.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and all its subsections; and (c) the words "include," "includes," and "including" when used in this Agreement shall be deemed in each case to be followed by the words "without limitation." The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement
- 23.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization other than a Party or a successor or assignee of a Party to this Agreement.
- 23.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.
- 23.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing.
- 23.5 Each Party shall be responsible for paying its own attorneys' fees and other costs associated with this Agreement, except as provided in Sections 6 and 7 hereof. If a dispute exists hereunder, the prevailing Party, as determined by the CPUC, or as may otherwise be determined by the dispute resolution procedure contained in Section 15 hereof, if used, or by a court of law, shall be entitled to reasonable attorneys' fees and costs.
- 23.6 To the extent that the CPUC has a right under then-current law to audit either Party's compliance with this Agreement or other legal or regulatory requirements pertaining to Community Choice Aggregation transactions that Party shall cooperate with such audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.

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- 23.7 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

On Behalf of CCA

By: _____
Name: _____
Title: _____
Date: _____

On Behalf of SCE

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT A

A. Definitions:

Billing Services - The consolidated billing services described in SCE's community choice aggregation tariff which are provided by SCE.

Community Choice Aggregation Customer - An end-use customer located within SCE's service territory who purchases Community Choice Aggregation Services through the CCA.

Community Choice Aggregator (CCA) – An entity that provides electric supply services to Community Choice Aggregation customers within SCE's service territory. A CCA may also provide certain energy efficiency and conservation programs to its Community Choice Aggregation customers as provided for under SCE's tariffs.

CCA Charges - Charges for Community Choice Aggregation Services provided by the CCA.

SCE Charges - Charges (a) for services provided by SCE; or (b) which are energy-related and which are approved by the CPUC or the Federal Energy Regulatory Commission (including any nonbypassable charges such as Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by a regulatory body) or Fixed Transition Amount Charges owing to SCE or its affiliates, as those terms are defined under the California Public Utilities Code). Fixed Transition Amount Charges are also referred to as Trust Transfer Amount (TTA) Charges.

B. Contact Persons (Section 13.3):

Billing Services

SCE Contact: _____

CCA Contact: _____

C. Parties' Representatives (Section 15.1):

SCE Representative:

Contact Name _____

Business Address _____

CCA Representative:

Contact Name _____

Business Address _____
