



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** November 13, 2018

From: Doug Robertson, Town Manager **Item No:** 9
Town Manager's Office

Subject: APPROVE THE TOWN'S ENTRY INTO A JOINT EXERCISE OF POWER AGREEMENT REGARDING THE CALIFORNIA CHOICE ENERGY AUTHORITY, AN ADMINISTRATIVE SERVICES AGREEMENT AND OTHER ANCILLARY AGREEMENTS, AND DIRECTING THE TAKING OF FURTHER ACTIONS RELATED THERETO

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council:

1. Adopt Resolution No.2018-50, authorizing the Town's entry into a Joint Exercise of Powers Agreement regarding the California Choice Energy Authority, an Administrative Services Agreement and other Ancillary Agreements, and directing the taking of further actions related thereto; and
2. Adopt Resolution No. 2018-51, granting authority to the Town Manager to enter into certain contracts on behalf of the Town of Apple Valley, subject to Town Attorney approval.

SUMMARY:

In April 2017, the Town of Apple Valley launched its Community Choice Aggregation (CCA) program, Apple Valley Choice Energy (AVCE). Since that time, AVCE has been managed by a combination of Town staff and contracts with third party consultants. Town staff desires to streamline the administration and management of AVCE by joining as an Associate Member of California Choice Energy Authority (CalChoice).

BACKGROUND:

California Choice Energy Authority (CalChoice) is a Joint Powers Authority of agencies operating CCA programs in California. CalChoice is unique in that each CCA program maintains its autonomy in rate setting, program branding, renewable energy content policies and revenue control. It provides the opportunity for programs to share administrative, regulatory and procurement activities to minimize costs and maximize efficiencies. Current Associate Members include Lancaster (Lancaster Choice Energy), San Jacinto (San Jacinto Power), Pico Rivera (Pico Rivera Innovative Municipal Energy) and Rancho Mirage (Rancho Mirage Energy Authority). If the resolution attached to the staff report is approved, Apple Valley would become the fifth member of CalChoice.

CalChoice allows standalone CCAs to join together and use a common set of consultants for power procurement, regulatory and legislative advocacy and regulatory reporting. By standalone CCA's joining together, CalChoice is able to cut costs for each City's CCA through the benefits of economy of scale in these back office functions.

By joining CalChoice, Apple Valley will have the benefit of working with an experienced team and be gaining access to qualified proven consultants who are currently performing CCA operations for other operating CCAs. We will also achieve economy of scale in power procurement and regulatory reporting like in traditional JPAs while maintaining local control. As additional CCAs join CalChoice, AVCE will enjoy a reduction in fees as the costs are further spread among its members.

Staff recommends adoption of the following Resolutions:

Resolution No. 2018-50, authorizing the Town's Entry into a Joint Exercise of Powers Agreement regarding California Choice Energy Authority and Directing the Taking of Further Actions Related Thereto which Approves Entering into CalChoice and Approval of Related Documents.

Resolution No. 2018-51, Granting Authority to the Town Manager to Enter into Certain Contracts on Behalf of Apple Valley Choice Energy which Grants Authority to the Town Manager to Approve Certain Contracts within Certain Parameters for AVCE.

FISCAL IMPACT:

The Administrative Services Agreement (attached as Exhibit A to Resolution No. 2018-50, authorizing the Town's Entry into a Joint Exercise of Power Agreement) outlines the fee structure for CalChoice Associate Members. With the current membership, CalChoice Administrative fees are estimated at \$500,000 per year, which is within the current Apple Valley Choice Energy budget.

ATTACHMENTS:

1. Resolution No.2018-50, authorizing the Town's entry into a Joint Exercise of Powers Agreement Regarding California Choice Energy Authority and Directing the Taking of Further Actions Related Thereto which approves entering into CalChoice and approval of related documents.
2. Resolution No. 2018-51 granting authority to the Town Manager to Enter into Certain Contracts on Behalf of Apple Valley Choice Energy which grants authority to the Town Manager to approve certain contracts within certain parameters for AVCE.

RESOLUTION NO. 2018-50

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AUTHORIZING THE CITY'S ENTRY INTO A JOINT EXERCISE OF POWERS AGREEMENT REGARDING THE CALIFORNIA CHOICE ENERGY AUTHORITY AND DIRECTING THE TAKING OF FURTHER ACTIONS RELATED THERETO

WHEREAS, the Town of Apple Valley ("Town") is a municipal corporation organized and operating under the laws of the State of California, with the Town Council of the Town of Apple Valley ("Town Council") serving as the governing body of the City;

WHEREAS, the California Choice Energy Authority ("Authority") is a joint exercise of powers authority created under the Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) by that certain agreement dated August 14, 2012, and originally entitled "Joint Exercise of Powers Agreement Relating to the California Clean Energy Authority" ("JPA Agreement");

WHEREAS, the Authority changed its name to the "California Choice Energy Authority" via its adoption of the First Amendment to the JPA Agreement on March 28, 2017;

WHEREAS, Section 12 of the JPA Agreement provides that public agencies may be added as parties to the JPA Agreement, and thereby become members of the Authority, upon the following: (i) the filing with the Authority of an executed counterpart of the JPA Agreement, together with a copy of the resolution of the governing body of the joining public agency approving the JPA Agreement and the execution and delivery thereof; and (ii) adoption of a resolution of the Authority's governing body approving the addition of such public agency as a member;

WHEREAS, the Town Council desires for the Town to become a party to the Agreement and a member of the Authority, and, finds that doing so will further the public health, safety, and general welfare of the community.

NOW, THEREFORE, THE TOWN COUNCIL OF TOWN OF APPLE VALLEY, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE AND ORDER, AS FOLLOWS:

SECTION 1. Based on the staff report, presentation, public comment, and other matters presented to the Town Council during its consideration of this matter, the Town Council finds and declares that the foregoing recitals are true and correct, and hereby incorporated as substantive findings of this Resolution.

SECTION 2. The Town Council hereby approves and authorizes the Town to enter into the JPA Agreement, and thereby approves and authorizes the Town to become a member of the Authority. The Town Manager is authorized and directed to execute a

counterpart to the JPA Agreement on behalf of the Town and file the same, along with a copy of this Resolution, with the Authority pursuant to Section 12 of the JPA Agreement.

SECTION 3. The Town Council hereby authorizes the Town to enter into, and the Town Manager is authorized and directed to execute on the City's behalf, an administrative services agreement with the Authority in a form substantially similar to that attached hereto as Exhibit "A" ("Services Agreement"). The Town Council further authorizes the Authority to enter into any ancillary agreements required in connection with the Services Agreement on behalf of the Town.

SECTION 4. The Town Council hereby authorizes the Town to enter into, and the Town Manager is authorized and directed to execute on the Town's behalf, any ancillary agreements on behalf of the Town as required in connection with the performance of the duties specified in the Services Agreement.

SECTION 5. The Town Council further authorizes the Authority to negotiate, from time to time, the Authority's entry into purchase contracts on behalf of the City for the purchase of energy and renewable energy, and related products, and for which contracts the Town shall be solely responsible for payment of through the Security Agreements (each, an "Energy Contract"), which Energy Contract shall be substantially similar to the form to attached to the Services Agreement as Exhibit "A"; provided that the term of any such Energy Contract shall not exceed five (5) years. The Authority shall provide the proposed Energy Contract to the Town Manager, or his/her authorized designee, who is hereby authorized and directed to review the proposed Energy Contract and, in the exercise of his/her reasonable discretion, provide the Authority with his/her written approval thereof. The Authority shall have, and the Town Manager may not withhold, the authority to grant a seller under the Energy Contract a first priority security interest in the collateral (*i.e.* the lock box account) secured by the Security Agreements.

SECTION 6. Upon receipt of the written approval from the Town Manager of an Energy Contract as set forth in Section 5 above, which may be provided via email correspondence, the Town Council authorizes the Authority to enter into an Energy Contract on behalf of and for the sole benefit of the Town. The Town Council further authorizes the Authority to enter into any ancillary agreements required in connection with an Energy Contract, subject to receipt of written approval from the Town Manager of any such ancillary agreements as set forth in Section 5 above.

SECTION 7. The Town Clerk shall certify to the adoption of this Resolution, which shall take effect immediately upon its adoption.

APPROVED and **ADOPTED** by the Town Council of the Town of Apple Valley
this 13th day of November 2018.

APPROVED:

Art Bishop, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

**ADMINISTRATIVE SERVICES AGREEMENT
(TOWN OF APPLE VALLEY),**

**Dated as of _____, 2018
between**

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

**TOWN OF APPLE VALLEY,
as Customer**

ADMINISTRATIVE SERVICES AGREEMENT (TOWN OF APPLE VALLEY)

This ADMINISTRATIVE SERVICES AGREEMENT (TOWN OF APPLE VALLEY) (this "Agreement"), dated as of _____, 2018 (the "Effective Date"), is between California Choice Energy Authority, a California joint powers authority ("Provider"), and Town of Apple Valley, a municipal corporation 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."

RECITALS

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 prorata 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, 2019, 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, 2020, 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
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 enduser 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 endusers 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 Z, 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]

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

CALIFORNIA CHOICE ENERGY AUTHORITY

Mark V. Bozigian, Executive Director

ATTEST:

Britt Avrit, MMC, City Clerk/Authority Secretary

APPROVED AS TO FORM:

City Attorney/Authority Counsel

TOWN OF APPLE VALLEY

Douglas B. Robertson, Town Manager

ATTEST:

LaVonda M. Pearson, City Clerk

APPROVED AS TO FORM:

Best, Best, and Krieger LLP

Thomas Rice, Town 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.

“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.

“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 inter-creditor 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.

“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:**

Fiscal Year 2018/2019

\$ 132,659.10 fiscal year total

\$ 18,951.30 monthly (December–June)

Fiscal Year 2019/2020

\$ 227,415.60 annually

\$ 18,951.30 monthly

2. **Reimbursable Expenses:**

(a) **Data Management Services: Fiscal Year 2018/2019**

\$ 218,750 fiscal year total (estimated)

\$ 31,250.00 monthly (December-June/estimated)

Fiscal Year 2019/2020

\$ 375,000.00 annually (estimated)

\$ 31,250.00 monthly (estimated)

(b) **Professional Services: Fiscal Year 2018/2019**

\$ 155,750 fiscal year total (not to exceed)

\$ 22,250.00 monthly (December-June/not to exceed)

Fiscal Year 2019/2020

\$ 267,000.00 annually (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: 661.723.6185 Email: cdefalco@cityoflancasterca.org With a copy to Provider's legal counsel: Troutman Sanders LLP 100 SW Main Street, Suite 1000
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	Portland, Oregon 97204 Attn: Stephen Hall Tel: 503.290.2336 Email: stephen.hall@troutmansanders.com
Customer:	Town of Apple Valley 14955 Dale Evans Pkwy Apple Valley, CA 92307 Attn: Douglas B. Robertson Tel: (760) 240-7000 x7051 Email: drobotson@applevalley.org

EXHIBIT D
AUTHORIZATION DOCUMENTS

**EXHIBIT E CUSTOMER
APPROVAL PROCEDURES**

1. Authorized Officer

Name	Title
Douglas B. Robertson	Town Manager

2. Approval Procedures

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.”

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**EXHIBIT F FORM OF
AUTHORIZED OFFICER
APPROVAL**

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

EXHIBIT G
JOINT EXERCISE OF POWERS AGREEMENT
AND AMENDMENTS THERETO

**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 maybe 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 [Signature]
Name: _____
Title: _____

ATTEST:

[Signature]
Clerk

CITY OF LANCASTER

By [Signature]
Name Mark V. Bozigian
Title Executive Director

Initial Member:

CITY OF SAN JACINTO

By [Signature]
Name: Andrew F. Kotyuk
Title: Mayor

ATTEST:

[Signature]
Richard Miller, City Clerk

**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 Contact" 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

RESOLUTION NO. 2018-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ACTING AS THE GOVERNING BODY OF APPLE VALLEY CHOICE ENERGY GRANTING AUTHORITY TO THE TOWN MANAGER TO ENTER INTO CERTAIN CONTRACTS ON BEHALF OF APPLE VALLEY CHOICE ENERGY

WHEREAS, the Town of Apple Valley (the “Town”) is municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of California; and

WHEREAS, Apple Valley Choice Energy (“AVCE”), the Town’s community choice aggregation, has been formed by the Town for the purposes of serving the retail electric service customers residing and doing business in the Town of Apple Valley; and

WHEREAS, the Town Council of the Town of Apple Valley (the “Town Council”) is the local authority with jurisdiction over AVCE and acts as the governing body of AVCE (the “AVCE Board”); and

WHEREAS, the Town Council adopted Resolution No. 2018-50 on the 13th day of November, 2018 authorizing and approving the Town to become a member of the California Choice Energy Authority (“Authority”), and further authorized the Authority to negotiate, from time to time, and enter into purchase agreements on behalf of the Town for the purchase of energy and renewable energy, and related products; and

WHEREAS, the Town Council, acting as the AVCE Board, finds and declares that for shorter-term transactions involving energy, resource adequacy capacity and/or renewable energy certificates, it is appropriate for AVCE management to have discretion in contracting, consistent with its responsibilities and expertise in efficiently operating the AVCE program; and

WHEREAS, the Town Council, acting as the AVCE Board, finds and declares that time is often of the essence in such transactions, and that such transactions are unlikely to raise policy considerations that require AVCE Board input; and

WHEREAS, the Town Council, acting as the AVCE Board, finds and declares that for longer-term commitments, it is appropriate for the AVCE Board to exercise a greater degree of oversight; and

WHEREAS, the Town Council, acting as the AVCE Board, wishes to grant the Town Manager of the Town of Apple Valley authority to execute or approve certain shorter-term AVCE contracts that are consistent with AVCE’s forecasted energy consumption.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ACTING AS THE GOVERNING BODY OF APPLE VALLEY CHOICE ENERGY, DOES HEREBY RESOLVE, DETERMINE AND ORDER, AS FOLLOWS:

Section 1. The foregoing recitals are true and correct.

Section 2. The Town Manager of the Town of Apple Valley, or his or her designee, (collectively, the "Town Manager") is hereby authorized to enter into or authorize the Authority to enter into contracts on AVCE's behalf as follows:

- A. **Short-Term Agreements:** The Town Manager and/or the Authority upon direction by the Town Manager, may enter into Power Purchase Agreements ("PPAs") (energy, resource adequacy capacity and/or renewable energy certificates) with terms of twelve (12) months or fewer. The Town Manager shall report all such agreements to the AVCE board on a monthly basis.
- B. **Medium-Term Agreements:** The Town Manager, in conjunction with the Town Attorney, and/or the Authority upon direction by the Town Manager in conjunction with the Town Attorney, may enter into PPAs (energy, resource adequacy capacity and/or renewable energy certificates) with terms of greater than twelve (12) months but not more than five (5) years. The Town Manager shall report all such agreements to the AVCE Board on a monthly basis.
- C. **Long-Term Agreements:** Approval by the AVCE Board is required before the Town Manager may enter into, or direct entry into, PPAs (energy, resource adequacy capacity and/or renewable energy certificates) with terms of greater than five (5) years.

Section 3. This resolution shall take effect immediately upon its adoption.

APPROVED and **ADOPTED** by the Town Council of the Town of Apple Valley this 13th day of November, 2018.

Art Bishop, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk