

~~Second~~Third Amended and Restated Bylaws of  
**The California Choice Energy Authority**  
Approved: \_\_\_\_\_

## **ARTICLE 1 THE AUTHORITY**

### **Section 1.1    Name**

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

### **Section 1.2    Authority Board Members**

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

### **Section 1.3    Principal Office**

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

### **Section 1.4    Compensation**

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

### **Section 1.5    Conflicts of Interest**

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

## **ARTICLE 2 OFFICERS**

### **Section 2.1    Officers**

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

### **Section 2.2    Chair**

~~The Board member appointed by the Lancaster City Manager shall serve as the Chair of the Board of Directors unless a majority of the Board of Directors votes to appoint a different board member as the Chair of the Board of Directors, in which event, such Board member shall serve as Chair of the Board of Directors for a two (2) year term. At the conclusion of such two (2) year term, and every two (2) years thereafter, an election shall be held at which a Chair shall be selected by majority vote of the Board of Directors for a two (2) year term. The Chair shall be the Mayor of Lancaster and shall preside at all meetings of the Authority, but~~ The chair shall have no authority greater than any other board member except as set forth in the Agreement and/or these By-laws.

Section 2.3 Vice Chair

Upon approval of the Second Amendment to Joint Exercise of Powers Agreement, and every two years thereafter, an election shall be held at which a Vice Chair shall be selected by majority vote of the Board of Directors for a two year term. In the event that the Board of Directors elects a Chair pursuant to Section 2.2 above, an election shall be held for Vice Chair at the same Board of Directors meeting at which a Chair is elected. At the conclusion of such two (2) year term, and every two (2) years thereafter, an election shall be held at which a Vice Chair shall be selected by majority vote of the Board of Directors for a two (2) year term. The Vice Chair ~~shall be appointed by the Chair with consent of the remainder of the Board, and~~ shall perform the duties of the Chair in the absence or incapacity of the Chair, until such time as a new Chair is selected or appointed.

Section 2.4 Chief Executive/Executive Director

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

Section 2.5 Secretary

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

Section 2.6 Treasurer/Auditor-Controller

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

Section 2.7 Confirmation of Officers

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

Section 2.8 Authority to Bind Authority

No member, officer, agent or employee of the Authority shall have any power or authority to bind the Authority by any contract, to pledge its credit, or to render it

liable for any purpose in any amount, except to the extent that such person has been granted or delegated prior specific or general authority by vote of the Board.

### **ARTICLE 3 EMPLOYEES AND AGENTS**

#### **Section 3.1 Appointment of Employees and Agents**

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

### **ARTICLE 4 MEETINGS**

#### **Section 4.1 Ralph M. Brown Act**

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

#### **Section 4.2 Regular Meetings**

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

#### **Section 4.3 Special Meetings**

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

#### **Section 4.4 Closed Sessions**

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

#### **Section 4.5 Public Hearings**

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

#### **Section 4.6 Quorum**

A majority of the authorized number of Board members shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other official purposes, except that less than a quorum may adjourn from time to

time until a quorum is obtained. Any action or decision of the Authority shall be on motion duly approved by a majority of a quorum of the Board at a lawfully held meeting.

Section 4.7 Adjourning Meetings and Continuing Public Hearings to Other Times or Places

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

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

Section 4.8 Order of Business.

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

Section 4.9 Parliamentary Procedure

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

## ARTICLE 5 ADDITION OR REMOVAL OF MEMBER AGENCY

Section 5.1 Adding ~~Associate~~ Member

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

Section 5.2 ~~Associate~~ Membership

Any local agency in the state of California may, with the approval of the Board, become an ~~Associate~~ Member of the Authority by delivering to the Authority an ~~Associate Membership Agreement~~, substantially in the form attached as Exhibit "A," duly approved and executed by the local agency's governing body. Any ~~Associate~~ Member shall be entitled to participate in all programs and other

undertakings of the Authority, including, without limitation, the construction and financing of any local public improvement, the establishment, implementation and operation of a Community Choice Aggregation (as defined in the Cal. Public Utilities Code), and/or any other Authority programs and undertakings.

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

### Section 5.3 Committees.

The Board may establish any advisory committee as the Board deems appropriate to assist the Board in carrying out its functions. The Board may establish rules, regulations, policies, or procedures to govern any such committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

#### ~~5.3.1 The Board shall establish the following committee:~~

- ~~a) Advisory Committee. The Board shall establish an advisory committee consisting of representatives from the Associate Members ("Member"). The Member representative may be an elected official, staff member or other representative as the Member determines to be appropriate and designates in writing. Participation in the Advisory Committee is voluntary on the part of each Member agency. The Advisory Committee shall not be active unless at least three Members have designated a Member representative in a writing submitted to the Board.~~

~~The primary purpose of the Advisory Committee is to review and recommend to the Board:~~

- ~~a. A fiscal year budget;~~
- ~~b. Agreements with 3rd party consultants;~~
- ~~c. Other responsibilities as the Board deems appropriate.~~

- ~~b) Meetings of the Advisory Committee. All meetings of the Advisory Committee shall be held in accordance with the Ralph M. Brown Act. For the purposes of convening meetings and conducting business, unless otherwise provided in the bylaws, a majority of the members of the Advisory Committee shall constitute a quorum for the transaction of business, except that less than a quorum or the secretary of the Advisory Committee may adjourn meetings from time to time. As soon as practicable, but no later than the time of posting, the Secretary of the Advisory Committee shall provide notice and the agenda to the Board. Minutes of the Advisory Committee meetings shall be provided to the Board as soon practicable after approval by the Advisory Committee.~~

~~e) — Officers of the Advisory Committee. Unless otherwise determined by the Board, the Advisory Committee shall choose its officers, comprised of a Chairperson, a Vice Chairperson and a Secretary. The Clerk of the Member agency of the appointed Secretary shall be the Clerk of the Advisory Committee.~~

#### Section 5.4 Termination of Associate Membership

~~A n Associate~~ Member may, upon request, terminate its membership in Authority upon the conclusion of the term of every Energy Contract that the Authority has entered into on behalf of the ~~Associate~~ Member that has not been assigned to the ~~Associate~~ Member. Upon receipt of an ~~Associate~~ Member's request to commence the process terminate its membership, the Authority shall take all reasonably practicable steps to assist the ~~Associate~~ Member to negotiate the assignment and assumption of all Energy Contracts that the Authority has entered into on behalf of the ~~Associate~~ Member to the ~~Associate~~ Member and otherwise to facilitate the ~~Associate~~ Member's disassociation from the Authority. Upon assignment and assumption of all Energy Contracts (or expiration of the term of each such Energy Contract), the Authority and the departing ~~Associate~~ Member shall negotiate and execute an agreement documenting the termination of the ~~Associate~~ Member's membership in Authority ("Termination Agreement") and assumption of all rights, duties and obligations pertaining to all Energy Contracts, Administrative Services Agreement(s), technical and/or operational support agreement(s) and/or other contracts entered by Authority on such ~~Associate~~ Member's behalf. The Authority shall be guided in its negotiation of the Termination Agreement by the principles of 1) ensuring the Authority and the ~~Associate~~ Member's financial obligations are fairly and equitably divided, including, but not limited to, requiring the departing ~~Associate~~ Member to replace and/or substitute collateral (or the applicable portion thereof) previously deposited by the Authority on such ~~Associate~~ Member's behalf; 2) making best efforts to facilitate the departing ~~Associate~~ Member's departure by negotiating in good faith for the assignment and/or termination of agreements with third parties entered into in whole or in part on behalf of such ~~Associate~~ Member without compromising Authority's ongoing contracts and/or relationships with such third parties; and 3) not unreasonably delaying, withholding and/or conditioning its consent to such Termination Agreement.

### **ARTICLE 6 AUTHORITY BONDS OR OTHER DEBT INSTRUMENTS**

#### Section 6.1 Voting Requirement

The Authority shall not issue any bonds, certificates of participation or other debt instruments without prior approval of the ~~Associate~~ Members. Any ~~Associate~~ Member which does not approve issuance of a bond, certificate of participation or other debt instrument shall not be liable for the repayment of such bond, certificate of participation or other debt instrument.

### **ARTICLE 7 AMENDMENTS**

#### Section 7.1 Amendment by the Board of Directors

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

**EXHIBIT “A”**

**ASSOCIATE MEMBERSHIP AGREEMENT**  
**By and Between the California Choice Energy Authority and the**  
**\_\_\_\_\_, CALIFORNIA**

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

**WITNESSETH:**

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

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

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

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

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

Section 1. Associate Member Status. \_\_\_\_\_ is hereby made an Associate Member of the Authority for all purposes of the Agreement and the By-laws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by \_\_\_\_\_ and the Board of Directors of the Authority, \_\_\_\_\_ shall be and remain an Associate member of the Authority unless and until such membership is terminated pursuant to Authority Bylaws Section 5.3 as the same may be amended from time to time.



Section 2. Restrictions and Rights. \_\_\_\_\_ shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Authority. In addition, no officer, employee or representative of \_\_\_\_\_ shall have any right to become an officer or director of the Authority.

Section 3. Authority Actions. \_\_\_\_\_ hereby represents and warrants that it has reviewed the, to the extent it deems necessary and appropriate, the actions previously taken by the Board of Directors of the Authority and agrees to be bound thereby to the same extent as the Associate Members of the Authority are subject to and bound by such actions.

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

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

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

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

\_\_\_\_\_  
CALIFORNIA,  
a \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
CALIFORNIA CHOICE ENERGY AUTHORITY  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Secretary

**CERTIFICATE OF SECRETARY**

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

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

\_\_\_\_\_  
Secretary