



# City of Palo Alto

## City Council Staff Report

(ID # 1445)

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**Report Type:** Consent Calendar

**Meeting Date:** 3/21/2011

**Summary Title:** Withdrawal from FARECal, a Financing Authority

**Title:** Resolution to Withdraw from the Financing Authority for Resource Efficiency of California

**From:** City Manager

**Lead Department:** Utilities

### **Recommendation**

Staff recommends that the City Council adopt a resolution withdrawing the City of Palo Alto (City) from the Financing Authority for Resource Efficiency of California (FARECal).

### **Executive Summary**

In order to be able to finance various energy efficiency and water conservation projects and programs, certain public agencies, including the City entered into a Joint Powers Agreement (JPA) creating FARECal in 1993. The agencies comprised a subset of the membership of the California Municipal Utilities Association. While some agencies have outstanding financings through FARECal, the City has not sought to finance any of its projects or programs through FARECal, and does not anticipate needing to seek any financings through FARECal. The City, as a member of the JPA, is responsible for its share of the cost to maintain the JPA and further bears some risk associated with the debts, liabilities and obligations of FARECal. Because the City does not foresee a need to finance any projects or programs through FARECal, staff recommends withdrawing from FARECal.

### **Background**

In 1993, the Cities of Anaheim, Colton, Healdsburg, Palo Alto, Pasadena, Redding and Riverside, the Northern California Power Agency, the Department of Water and Power of the City of Los Angeles, the North Marin Water District, the Sacramento Municipal Utility District, and the Turlock Irrigation District entered into the JPA to create a separate public entity and agency with the power to exercise the planning, financing, purchase, lease, construction, operation and maintenance of "Resource Efficiency Programs and Facilities." A number of the members have chosen to be "inactive" and other members later joined FARECal. Currently, the active members of FARECal include the Cities of Anaheim, Azusa, Colton, Palo Alto, Pasadena, and Riverside, and the Marin Water District and the Trinity Public Utility District (Trinity PUD).

The Cities of Azusa and Colton have outstanding financings stemming from original debt issuances in 1997 and 2003. Colton's original 1997 bond amount was for \$16.19 million and

Azusa's original 2003 bond amounts were for \$31.18 million. The projects financed through FARECal included electric system interconnection facilities, substations, and distribution system upgrades. In order to remain in compliance with legal auditing requirements related to the financings, in November, 2010, the FARECal Board of Directors (Board), which includes the City, approved an arrangement between FARECal and Azusa, in which Azusa will maintain FARECal's accounts and records and related auditing activities. Azusa is to be reimbursed for its costs. Currently, FARECal has \$50,000 from member contributions. It is anticipated that Azusa will be able to provide the first-year account and records maintenance within the \$50,000 amount.

### **Discussion**

Staff does not anticipate any need for the City to finance projects or programs through FARECal in large part because the City can obtain project financing at favorable rates based on its own positive credit standing. However, as a member of FARECal, the City incurs costs and liabilities. To reduce unnecessary cost and liabilities, staff recommends terminating the City's membership in FARECal. Under Section 5.4.1 of the JPA, the City may withdraw from FARECal upon (i) filing with the Board, a certified copy of a resolution of the City Council expressing its desire to withdraw, and (ii) payment of, or making arrangement satisfactory to the Board to pay, the pro rata portion of any incurred obligation arising under the JPA, which matures after the date of filing the withdrawal resolution.

Approval of the accompanying resolution will enable withdrawal from FARECal.

### **Resource Impact**

Although still preliminary a recommendation will be made to the FARECal Board at its meeting on March 31, 2011, to make no additional assessment of costs for the City's withdrawal, beyond the contributions the City has already made to the \$50,000 currently in the FARECal treasury. At the March 31 Board meeting, the City will also inquire if any funds are due back to the City. Over the long term, withdrawal from FARECal will result in savings of administrative costs paid to FARECal. Further, withdrawal from FARECal will eliminate any liabilities arising from member financings in the event of default or member bankruptcies.

The last audited financial report of FARECal was prepared for fiscal year 2005. In 2010, FARECal entered into an agency agreement with the City of Azusa to have Azusa procure accounting and auditing services to fulfill FARECal's obligations with respect to financial reporting. Azusa recently issued an RFP for these services, and the FARECal Board may approve a contract award at its March 31, 2011 meeting. The administrative costs for Azusa's agency role and any contracted financial services are unknown at this time.

### **Policy Implications**

This recommendation does not represent a change to current City policies.

### **Environmental Review**

Approval of a resolution to withdraw from the Financing Authority for Resource Efficiency of California does not meet the definition of a project pursuant to Section 21065 of the California

Environmental Quality Act (CEQA). Thus, no environmental review is required.

**Attachments:**

- Attachment A - Reso FARECal (DOC)
- Attachment B - Joint Powers Agreement Creating Financing Authority for Resource Efficiency of California (PDF)
- Attachment C - Bylaws of Financing Authority for Resource Efficiency of California (PDF)
- Attachment D - Agency Agreement Between FARECal and the City of Azusa, Acting By and Through the Light & Water Department, as Agent (DOC)
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Prepared By: Debra Lloyd, Manager

Department Head: Valerie Fong, Director

City Manager Approval: James Keene, City Manager

\* NOT YET APPROVED \*

Resolution No. \_\_\_\_\_  
Resolution of the Council of the City of Palo Alto to  
Withdraw from the Financing Authority for Resource  
Efficiency of California

WHEREAS, the City of Palo Alto (City) entered into a Joint Powers Agreement creating the Financing Authority for Resource Efficiency of California (FARECal) dated July 1, 1993; and

WHEREAS, the City is a Charter Member of FARECal; and

WHEREAS, currently active members of FARECal are the Cities of Anaheim, Azusa, Colton, Pasadena, Palo Alto, Riverside, the Marin Water District and the Trinity Public Utility District; and

WHEREAS, FARECal was formed to enable financing for activities, programs and/or equipment designed to conserve, change usage patterns or reduce the demand for electrical or other energy or capacity, natural gas or water, including water reuse or recycling, and any other programs, equipment or facilities which meet resource efficiency or management needs or requirements; and

WHEREAS, the Cities of Azusa and Colton have outstanding bonds financed through FARECal totaling \$47.37 million; and

WHEREAS, City, through the Joint Powers Agreement, incurs liability risk in the event of default under a contract with FARECal; and

WHEREAS, City has agreed to fund FARECal operations under the Joint Powers Agreement; and

WHEREAS, City has no current financing needs and anticipates no future financing needs through FARECal; and

WHEREAS, City desires to mitigate its exposure and liability risk and reduce its costs in funding FARECal; and

WHEREAS, City intends to withdraw from FARECal upon settlement of any outstanding payment obligations.

NOW, THEREFORE, the Council of the City of Palo Alto does hereby RESOLVE as follows:

\* NOT YET APPROVED \*

SECTION 1. That the Council of the City of Palo Alto hereby authorizes the City Manager, consistent with Section 5.4 of the Joint Powers Agreement to provide notice to FARECal of such withdrawal.

SECTION 2. The Council finds that the Financing Authority for Resource Efficiency of California does not meeting the definition of a project pursuant to Section 21065 of the California Environmental Quality Act (CEQA) and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting Deputy City Attorney

\_\_\_\_\_  
Mayor

APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Utilities

\_\_\_\_\_  
Director of Administrative  
Services

**JOINT POWERS AGREEMENT**  
**CREATING**  
**FINANCING AUTHORITY FOR RESOURCE EFFICIENCY OF**  
**CALIFORNIA**

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**JOINT POWERS AGREEMENT  
CREATING  
FINANCING AUTHORITY FOR RESOURCE EFFICIENCY OF CALIFORNIA**

THIS AGREEMENT, dated as of July 1, 1993, is made and entered into by and among the Members.

**RECITALS**

**WHEREAS**, each Member is a Public Agency and is empowered by law to acquire, construct, maintain and operate facilities, and rights, properties and improvements necessary therefor, for the generation, distribution and transmission of electrical or other energy or natural gas for public or private use or for the treatment, distribution, transmission and storage of water, waste water or recycled water for public or private use;

**WHEREAS**, each Member desires to promote, advance, encourage and participate in conservation, reclamation and other programs which are designed to utilize energy or water resources more efficiently; and

**WHEREAS**, each Member desires to enter into an agreement to create a separate public entity and agency pursuant to the provisions of the joint Powers Act for the purpose set forth herein and desires that such separate public entity and agency have the powers provided for herein in connection with such purpose;

**NOW, THEREFORE**, the Members, for and in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

**ARTICLE I -- PURPOSE OF AGREEMENT**

This Agreement is made pursuant to the provisions of Chapter 5, Division 7, Title 1, of the Government Code of the State of California, as amended from time to time, to create a separate public entity and agency with the power to exercise, in its own name, the powers

referred to herein. Such powers include the planning, development, financing, purchase, lease, construction, operation and maintenance of Resource Efficiency Programs and Facilities.

## ARTICLE II -- DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized shall have the meanings specified.

**Authority.** The term "Authority" shall mean the separate public entity and agency created by this Agreement.

**Board of Directors.** The term "Board of Directors" shall mean the governing body of the Authority established pursuant to Sections 3.2 and 3.3 hereof.

**Charter Member.** The term "Charter Member" shall refer to each of the following Public Agencies which executes a counterpart of this Agreement and delivers it to the California municipal Utilities Association on or before September 2, 1993: the City of Anaheim, The City of Los Angeles, the City of Palo Alto, the North Marin Water District, the City of Riverside, the City of San Francisco and the San Diego County Water Authority.

**Fiscal Year.** The term "Fiscal Year" shall mean the fiscal year of the Authority as established from time to time by the Board of Directors, being at the date of this Agreement the period from July 1 through June 30 of the following year.

**Indebtedness.** The term "Indebtedness" shall mean bonds, notes or other evidences of indebtedness, and all other obligations, instruments and agreements constituting "Bonds" under the Joint Powers Act.

**Joint Powers Act.** The term "Joint Powers Act" shall mean the provisions of Chapter 5, Division 7, Title 1, of the Government Code of the State of California, as amended and supplemented from time to time.

**Liability Share.** The term "Liability Share" shall mean, with respect to any Member, the amount of the judgment or settlement divided by the number of Members at

the time the act or omission or alleged act or omission occurred, unless any portion of the judgment or settlement arises from an act or omission or alleged act or omission directly related to the studying, planning, financing, developing, acquiring, purchasing, construction, reconstructing, implementing, improving, enlarging, enhancing, operating, maintaining, selling, disposing of, or decommissioning of any Project, Pooled Financing, Study Project or Service as to which there shall be one or more Project Contracts, Pooled Project Contracts, Study Project Contracts or Service Contracts, in which case, with respect to such portion, the term "Liability Share" shall mean, with respect to any Member, the amount of such portion multiplied by a fraction equal to (i) such Member's entitlement or right, if any, to participate in such Project, Pooled Financing, Study Project or Service at the time the act or omission or alleged act or omission occurred divided by (ii) the aggregate amount of all Members' entitlements or rights to participate in such Project, Pooled Financing, Study Project or Service at the time the act or omission or alleged act or omission occurred.

**Member.** The term "Member" shall mean (i) each original Member, (ii) any Public Agency which shall have met the conditions of Section 5.2 hereof, and (iii) any successor of a Public Agency referred to in clause (i) or clause (iii) of this definition; provided, however, that the term "Member" shall not include any entity which shall have withdrawn or been excluded from the Authority pursuant to Section 5.4 hereof.

**Original Member.** The term "Original Member" shall have the meaning ascribed thereto in Section 5.1 hereof.

**Pool.** The term "Pool" shall mean the proceeds from a Pooled Financing which are available for withdrawal by Members or other entities for Projects which have received a Pooled Project Approval and for which a Pooled Project Contract has been executed.

**Pooled Financing.** The term "Pooled Financing" shall mean a financing of one or more Projects that may or may not be defined in advance of the Pooled Financing, with security for the financing including Pooled Project Contracts entered into with one

or more Members or other entities before funds are withdrawn from the Pool by such Members or entities.

**Pooled Protect Approval.** The term “Pooled Project Approval” means a formal approval by a Pooled Project Approval Committee. Each such approval shall be in accordance with criteria to be established from time to time by the Pooled Project Approval Committee and any applicable covenants of the Pooled Financing resolution or indenture.

**Pooled Protect Contract.** The term “Pooled Project Contract” shall mean a contract between the Authority and a Member or other entity, providing the Member or other entity an entitlement to withdraw a specified amount of funds from a Pool and which establishes the Member’s or other entity’s obligations to make payments which will serve as security for a Pooled Financing.

**Pooled Project Approval Committee.** The term “Pooled Project Approval Committee” shall mean a committee, which may include one or more Directors, appointed by the Board of Directors to (i) review and recommend for approval by the Board of Directors one or more Projects for a Pooled Financing, (ii) provide Pooled Project Approvals and (iii) perform such other functions as shall be determined by the Board of Directors.

**Protect.** The term “Project” shall mean any program, activity or other undertaking of the Authority which the Board of Directors designates as a “Project” under this Agreement. Projects, among other activities, may include: Resource Efficiency Programs and Facilities; advertising, education, grants, rebates, discounts, prizes, awards; the construction or acquisition of facilities for public or private use, land and all rights associated with land, properties and improvements necessary or convenient for providing Utility Services; installations or providing of equipment or services on customer premises; and contracts for Utility Services from others.

**Project Contract.** The term “Project Contract” shall mean a contract between the Authority and a Member or other entity providing to such Member or other entity an

entitlement to participate in a Project which will be financed with a Project Financing and which establishes the Member's or other entity's obligations to make payments which will serve as security for the Project Financing.

**Project Financing.** The term "Project Financing" shall mean a financing of one or more defined Projects, with security for the financing being payments to be made under one or more Project Contracts.

**Protect Matter.** The term "Project Matter" shall mean a matter for decision by the Board of Directors involving a question pertinent to the undertaking, studying, planning, financing, developing, acquiring, constructing, reconstruction, replacement, implementing, improving, enlarging, enhancing, operating, maintaining, repairing, selling or disposing of a Project, Study Project or Service as to which there are one or more Project Contracts, Pooled Project Contracts, Study Project Contracts or Service Contracts then in effect.

**Protect Vote.** The term "Project Vote" shall mean a vote or other determination with respect to a Project Matter, taken or made by the entities which are parties to a Project Contract, Pooled Project Contract, Study Project Contract or Service Contract, in accordance with the procedures for such vote or other determination specified in such Contract. To the extent permitted by law, a Project Vote need not be taken or made during a meeting of the Board of Directors.

**Public Agency.** The term "Public Agency" shall have the meaning ascribed to the term "public agency" in Article I of the Joint Powers Act.

**Resource Efficiency Programs and Facilities.** The term "Resource Efficiency Programs and Facilities" shall mean (i) activities, programs and equipment which are designed to conserve, change usage patterns of or reduce the demand for -electrical or other energy or capacity, natural gas or water; (ii) activities, programs and equipment which are designed to utilize electrical or other energy or capacity, natural gas or water facilities more efficiently; (iii) programs, equipment or facilities which are designed to transport, distribute or treat water, waste water or recycled water for purposes of reuse;

and (iv) any other programs, equipment or facilities which meet resource efficiency or management needs or requirements, established or approved from time to time by the Board of Directors.

**Service.** The term “Service” shall mean any program, activity or other undertaking of the Authority which the Board of Directors designates as a “Service” under this Agreement. Services can include, among other activities, Resource Efficiency Programs and Facilities, the development or implementation thereof, and the purchase of supplies, material or equipment therefor.

**Service Contract.** The term “Service Contract” shall mean a contract between the Authority and a Member or other entity providing such Member or other entity an entitlement to participate in a Service and which establishes the cost sharing or payment obligations of each such Member or other entity to reimburse the Authority.

**Study Project.** The term “Study Project” shall mean any program, activity or other undertaking of the Authority which the Board of Directors designates as a “Study Project” under this Agreement. A Study Project can include, among other activities, making studies, performing research, acquiring options or permits, or incurring other preliminary costs prior to the undertaking of a Project.

**Study Project Contract.** The term “Study Project Contract” shall mean a contract between the Authority and a Member or other entity providing to such Member or other entity an entitlement to participate in a Study Project and which establishes the cost sharing or payment obligations of such Member or other entity.

**Utility Services.** The term “Utility Services” shall mean generation, production, treatment, delivery and support services required or useful for providing electric or other energy or capacity, natural gas, water, waste water or recycled water services.

### ARTICLE III -- ORGANIZATION

3.1 Creation of Authority. Pursuant to the Joint Powers Act, there is hereby created a public entity and agency to be known as the "Financing Authority for Resource Efficiency of California" which shall be a public entity separate and apart from the Members.

3.2 Governing Body. The governing body of the Authority shall be the Board of Directors. The Board of Directors shall have the responsibility for the general management of the affairs, property and business of the Authority and may, from time to time, adopt and modify such By-Laws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper. The Board of Directors may exercise and shall be vested with all powers of the Authority insofar as consistent with applicable law and this Agreement.

3.3 Members Entitled to B Represented by Directors. The Board of Directors shall consist, at any time, of the Directors then holding such position in accordance with the following provisions:

3.3.1 Charter Member Directors. Each Member which is a Charter Member shall at all times be entitled to be represented on the Board of Directors by its own Director.

3.3.2 Participation-Based Directors. If, on the first day of any calendar year after calendar year 1993, there are Members other than Charter Members,

- (a) the President shall cause to be prepared a computation of all payments made by each Member to or for the benefit of the Authority in the immediately preceding Fiscal Year, and
- (b) each of the five (5) Members (other than Charter Members) which have made the greatest amounts of payments as shown by such computation shall be entitled to be represented on the Board of Directors by its own Director throughout the then current calendar year.

3.3.3 Voting-Based Directors. If, on September 1 of calendar year 1993 or on the first day of any subsequent calendar year, there shall be

- (a) Members other than Charter Members and Members entitled to their own Directors in such calendar year pursuant to Section 3.3.2 hereof, and
- (b) fewer than three (3) Voting-Based Directors whose terms include such calendar year,

the President shall cause each Member to be notified that, at the first regular meeting of the Board of Directors in such calendar year, there will be a selection of Members entitled to be represented by their own Directors. At such meeting, by the majority vote of authorized representatives of Members voting (in person, on a one-Member, one-vote basis), other Members shall be selected as Members entitled to their own Directors. The maximum number of Members entitled to be represented by their own Directors pursuant to this Section 3.3.3 at any time shall be three (3). Each Director representing a Member selected pursuant to this Section 3.3.3 shall serve for such calendar year (or such greater number of calendar years as shall be determined unanimously by the Board of Directors voting on the matter at the time of such selection).

3.3.4 Identification of Directors. Each Director shall be the chief utility executive responsible for Utility Services of the Member represented, or the designee of such chief utility executive. If the Member shall have two or more utility operations and two or more chief utility executives responsible for Utility Services, the Director shall be the designee of such chief utility executives (acting in concert).

3.3.5 Relinquishing Entitlement to Director. Any Member, at any time, and for such number of calendar years as it shall designate, may relinquish its entitlement to be represented by its own Director, any such relinquishment to be effective at or after such Member shall deliver to the Authority as instrument to that effect.

3.4 Regular Meetings. The Board of Directors shall hold a regular meeting not less than once each calendar year. The date, hour and place of regular meetings shall be fixed by resolution of the Board of Directors.

3.5 Special Meetings. Special meetings of the Board of Directors may be called in accordance with the provisions of the Government Code of the State of California, as amended from time to time.



3.6 Legal Notice for Meetings. All meetings of the Board of Directors shall be held subject to the provisions of the laws of the State of California requiring notice of meetings of public bodies to be given. in the manner provided in such laws.

3.7 Minutes of Meetings. The Secretary of the Authority shall cause to be kept minutes of the meetings of the Board of Directors, bath regular and special, and shall, within 15 working days after each meeting, cause a copy of the draft minutes to be forwarded to each Director for review and comment. The final minutes with respect to each meeting of the Board of Directors shall be forwarded to each Member within 5 working days after the approval thereof by the Board of Directors.

3.8 Quorum. At all meetings of the Board of Directors, a majority of the Board of Directors shall constitute a quorum for the transaction of business; provided, that, if less than a majority of the Board of Directors is present at a meeting, a majority of those Directors present may adjourn the meeting.

3.9 Voting Generally. Each Director shall have one vote. Subject to Sections 3.3.3, 3.10, 3.11, 5.2.2 and 5.4.3 hereof, the vote of the majority of the Directors voting at a meeting at which a quorum is present shall decide any question brought before such meeting, and such decision shall be deemed to be the action of the Board.

3.10 Voting on Project Matters. Each Project Contract, Pooled Project Contract, Study Project Contract and Services Contract shall establish a method by which the entities participating therein shall conduct Project Votes with respect to any Project Matter arising thereunder.

With respect to any Project Matter: (a) no vote shall be taken thereon by the Board of Directors unless and until a Project Vote shall have been made or taken thereon and the result of the most recent Project Vote thereon shall have been presented to the Board of Directors; and (b) no action of the Board of Directors thereon shall be effective unless the action conforms to the most recent Project Vote made or taken thereon; provided, that, the limitations and requirements of clause (a) and clause (b) of this paragraph, or any portion thereof, may be eliminated with

respect to any Project Matter vote or action by the favorable vote of not less than 80% of the Directors present at the meeting.

3.11 Other Voting Arrangements. No provision of this Agreement shall in any way restrict the ability of the Authority to make and enter into contracts providing for its representation and voting on management or other committees with respect to a Project.

3.12 Officers.

3.12.1 At its first meeting in each calendar year, the Board of Directors shall elect or re-elect a President and a Vice President (each of whom shall be selected from among the Directors) and shall also appoint or re-appoint a Secretary and a Treasurer/Auditor (each of whom may, but need not, be selected from among the Directors). In the event that the President, Vice President, Secretary or Treasurer/Auditor so elected or appointed ceases (in the case of the President or Vice President) to be a Director, resigns from such office or is otherwise unable to perform the duties of such office, the resulting vacancy shall be filled at the next regular or special meeting of the Board of Directors held after such vacancy occurs. In the absence or inability of the President to act, the Vice President shall act as President. The President, or in the President's absence the Vice President, shall preside at and conduct all meetings of the Board of Directors.

3.12.2 The Treasurer/Auditor is designated as the treasurer and the auditor of the Authority and as such (i) shall be the depository of the Authority to have custody of all the money of the Authority, from whatever source, (ii) shall draw warrants to pay demands against the Authority when the demands have been approved by the President or the Vice President of the Authority, and (iii) shall have the other powers, duties and responsibilities of such officers as specified in Section 6505.5 of the Government Code of the State of California, as amended from time to time, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed, as is provided for and authorized by the Government Code of the State of California, as amended from time to time, pursuant to any resolution, indenture or other instrument providing for the issuance of bonds or notes of the Authority pursuant to Article IV of this Agreement.

3.12.3 The President, the Vice President and the Treasurer/Auditor, to the extent such officers' duties and responsibilities pursuant to the Joint Powers Act require, are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer shall file an official bond with the Secretary of the Authority in the amount of \$100,000.

3.12.4 In addition to the powers, duties and responsibilities provided herein or by law, the President, the Vice President and the Secretary shall have such powers, duties and responsibilities as are provided in the By-Laws of the Authority. The Treasurer/Auditor shall have such powers, duties and responsibilities as are provided herein or by the laws of the State of California.

3.12.5 The Board of Directors shall have the power to appoint, or contract to employ, a General Manager, who may be an employee of a Member and who shall have such powers, duties and responsibilities as are determined by the Board of Directors.

3.12.6 The Board of Directors shall have the power to appoint, or contract to employ, such other officers and employees of the Authority as it may deem necessary, any of whom may, but need not, be employees of a Member, and who shall have such powers, duties and responsibilities as are determined by the Board of Directors.

#### ARTICLE IV -- POWERS AND FUNCTIONS- FINANCIAL MATTERS

4.1 Powers. The Authority shall have, in its own name, any and all powers authorized by law to two or more of the Members relating to the planning, development, undertaking, purchase, lease, acquisition, construction, financing, disposition, use, operation, repair, replacement or maintenance of (a) facilities for the generation, production, transmission, conservation, reuse, recycling, storage, treatment or distribution of electrical or other energy or capacity, natural gas, water, waste water or recycled water, or (b) Resource Efficiency Programs and Facilities, or (c) any combination thereof. The Authority shall also have, in its own name, any additional powers provided to it by California law (including Section 6588 of the California Government Code), as amended from time to time.

The Authority shall have, in its own name, the power to do all acts necessary, appropriate or incidental to the exercise of the foregoing powers, including, but not limited to, the following:

- (a) to make and enter into contracts;
- (b) to employ agents and employees;
- (c) to plan, develop, acquire, construct, manage, maintain, repair, replace or operate any buildings, facilities, works, roads or improvements or interests therein;
- (d) to acquire (by the exercise of the power of eminent domain or otherwise), hold, lease, sell or otherwise dispose of any real or personal property, tangible or intangible, and any interests therein, wherever located;
- (e) to incur debts, liabilities or obligations which do not constitute a debt, liability or obligation of any Member;
- (f) to sue and be sued in its own name;
- (g) to establish a budget and authorize expenditures therefrom;
- (h) to apply for or receive grants from either public or private sources for Resource Efficiency Programs and Facilities;
- (i) to enter into agreements for the creation of separate public entities and agencies pursuant to the Joint Powers Act; and
- (j) to exercise any other power permitted by the laws of the State of California to carry out the purpose of the Authority.

Such powers shall be exercised in the manner provided in Section 6509 of the Government Code of the State of California, as amended from time to time, subject only to the restrictions upon the manner of exercising such powers as are imposed upon the City of Palo Alto or the City of Riverside (as determined by the Board of Directors) in the exercise of similar powers.

4.2 Indebtedness. The Authority shall also have the power to issue or incur, sell and deliver, in accordance with the provisions of the Joint Powers Act, Indebtedness (i) to provide funds for the acquisition, construction and financing of one or more Projects (whether through Project Financing, Pooled Financing or otherwise); (ii) for the purpose of financing one or more Study Projects and for the purpose of providing temporary financing of costs of construction or acquisition of one or more Projects; and (iii) for the purpose of refinancing previous Indebtedness of the Authority, any Member or Public Agency. The terms and conditions of the issuance of any such Indebtedness of the Authority shall be set forth in a resolution, indenture or other instrument, shall include such security provisions and shall specify such source or sources of payment, as shall be determined by the Board of Directors.

4.3 Liability and Contribution.

4.3.1 Indebtedness of the Authority, and contracts or obligations which are entered into or incurred by the Authority to carry out the purposes of such Indebtedness, and which are payable from the proceeds of such Indebtedness, shall not constitute a debt, liability or obligation of any Member. Pursuant to the Government Code of the State of California, no debt, liability or obligation of the Authority shall be a debt, liability or obligation of any Member except as provided by Section 895.2 of the Government Code of the State of California, as amended from time to time, in the case of injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement.

4.3.2 In the event any Member is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, and pays in excess of its Liability Share of such judgment, such Member shall be entitled to contribution from each other Member and may require each other Member to pay an amount towards the judgment for damages, but in no event shall any such other Member be required to pay in excess of its Liability Share of such judgment.

4.3.3 In the event any Member shall become liable upon any settlement of any action, suit or proceeding with respect to damages caused by a negligent or wrongful act or omission or alleged negligent wrongful act or omission occurring in the performance

of this Agreement, and pays in excess of its Liability Share of such settlement, such Member shall be entitled to contribution from each other Member and may require each other Member to pay an amount towards the settlement, but in no event shall any such other Member be required to pay in excess of its Liability Share of such settlement. Notwithstanding the foregoing, in no event shall any such other Member be required to pay any amount with respect to any such settlement entered into without its prior written consent.

4.3.4 Any Member entitled to contribution pursuant to Section 4.3.2 or Section 4.3.3 hereof shall, promptly after receipt of notice of commencement of any action, suit or proceeding against such Member in respect of which a claim for contribution may be made against another Member or Members under Section 4.3.2 or Section 4.3.3 hereof, notify such other Member or Members from whom contribution may be sought.

4.3.5 Nothing contained in this Agreement shall in any way diminish the liability of any Member or other party with respect to any contract between such Member or other party and the Authority.

4.4 Contributions; Payments; Advances, Etc. In accordance with the Government Code of the State of California, the Members shall make such contributions, payments and advances to the Authority as are approved from time to time by the Board of Directors. The Authority may make such arrangements relative to the repayment or return to the Members of such contributions, payments and advances as are approved from time to time by the Board of Directors.

Any Member which fails to make or pay when due any required contribution, payment or advance to the Authority, may have its rights under this Agreement terminated and may be excluded from participation in the Authority as provided in Section 5.4.3 of this Agreement. Any such Member shall continue to be liable for its obligations under any contract with the Authority and for any unpaid contribution, payment or advance approved by the Board of Directors prior to such Member's exclusion and not objected to by such Member by written notice to the Authority within thirty (30) days after such approval.

4.5 Accounts and Reports. There shall be strict account-ability of all funds and reporting of all receipts and disbursements of the Authority. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of the Authority securing its Indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or instrument. The books and records of the Authority shall be open to inspection at all reasonable times to each Member and its representatives. The Authority, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members. The Treasurer/Auditor shall cause an annual audit of the accounts and records of the Authority to be made by an independent certified public accountant or independent public accountant, all in accordance with, and at the time or times required by, law.

All the books, records, accounts and files referred to in this Section 4.5, shall be open to inspection by the holders of indebtedness of the Authority to the extent and in the manner provided in the resolution, indenture or other instrument providing for the issuance of such Indebtedness.

4.6 Termination of Powers; Liquidation; Distribution. This Agreement shall continue in full force and effect, and the Authority shall continue to possess the powers herein conferred upon it, until the expiration of the term of this Agreement pursuant to Section 6.5 of this Agreement or until the Members shall have rescinded this Agreement. Rescission of this Agreement may only be accomplished by a writing executed by each Member and approved by resolution of each Member's governing body. In no event shall this Agreement or the powers herein granted to the Authority be rescinded until (a) all Indebtedness of the Authority and the interest thereon shall have been paid or adequate provisions for such payment shall have been made in accordance with the instruments governing such Indebtedness, and (b) all other obligations and liabilities of the Authority shall have been met or adequately provided for, as determined by the Board of Directors and in accordance with the laws of the State of California.

Upon any such expiration or rescission, the Board of Directors shall liquidate the business and assets and property of the Authority as expeditiously as practicable, and distribute

any net proceeds to any Members in such manner as shall be determined by the Board of Directors in accordance with this Agreement and the laws of the State of California.

4.7 Insurance. The Authority shall obtain and cause to be maintained in effect public liability insurance and directors and officers insurance, each such insurance to afford coverage to a limit of not less than \$5,000,000 with deductibles not to exceed 10% of the face amount; provided, that the Authority shall not be required to obtain or maintain such insurance to the extent (i) the same is not available from reputable insurers in the open market as standard policies of insurance, or (ii) the Authority is unable to pay the premiums therefor from funds available to it, or (iii) determined from time to time by the Board of Directors.

#### ARTICLE V -- MEMBERSHIP

5.1 Original Members. Each Public Agency authorized to engage in activities described in this Agreement, eligible for membership in the California Municipal Utilities Association, and located in California which executes a counterpart of this Agreement and delivers it to the California Municipal Utilities Association on or before September 1, 1993 shall be an "Original Member."

5.2 Additional Members; Procedures. After September 1, 1993, any Public Agency, authorized to engage in activities described in this Agreement, eligible for membership in the California Municipal Utilities Association, and located in California may become a Member upon meeting the following additional conditions:

5.2.1 The Public Agency shall apply to the Board of Directors for membership and file with the Board of Directors an instrument in form and substance satisfactory to the Board of Directors, together with a certified copy of a resolution of its governing body, whereby the Public Agency (i) agrees to the provisions of this Agreement and (ii) requests to become a Member. In reviewing an application for membership, the Board of Directors may reject said application based on the creditworthiness of the applicant or on any other matter which has affected or may affect the creditworthiness of the applicant and which may thereby affect the creditworthiness of the Authority. The Board of Directors also reserves the right to reject an applicant if the Board of Directors



determines that the membership of such applicant would be detrimental to the effectiveness of the Authority or would interfere with the realization of the Authority's goals and purposes.

5.2.2 No such Public Agency shall become a Member until (i) its admission is approved by a vote of two-thirds of the Directors voting on the matter and (ii) such Public Agency deposits or agrees to deposit with the Authority an amount equal to such share of the costs and expenses incurred by the Authority prior to the date of admission of such Public Agency as a Member as shall be determined by the Board of Directors.

5.3 Effectiveness of Additional Memberships. Upon meeting the conditions of Section 5.2 hereof, the applicant shall become a Member for all purposes of this Agreement, and the instrument provided pursuant to Section 5.2.1 shall become a part of the official records of the Authority. Neither the effectiveness of such membership nor such instrument shall constitute an amendment or modification of this Agreement for purposes of Section 6.3 hereof.

5.4 Withdrawal or Exclusion of Member.

5.4.1 Any Member may withdraw from the Authority upon the following conditions: (i) the Member shall have filed with the Board of Directors a certified copy of a resolution of its governing body expressing its desire to so withdraw and (ii) if the Authority, prior to the filing of such resolution, i shall have incurred any obligation payable from contributions, payments or advances in accordance with Section 4.4, which obligation matures after the date of such filing, the withdrawing Member shall have paid, or made arrangements satisfactory to the Board of Directors to pay, to the Authority its pro rata portion of such obligation.

5.4.2 Upon compliance with the conditions specified in Section 5.4.1, the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any contract between the withdrawing Member and the Authority.

5.4.3 Any Member which has (i) defaulted under a contract with the Authority, or (ii) failed to pay any required contributions, payments or advances in accordance with Section 4.4 hereof, may have its rights under this Agreement terminated and may be excluded from participating in the Authority by a vote of two-thirds of the Directors voting on the matter (excluding from voting the Director, if any, representing the defaulting Member). Any excluded Member shall continue to be liable for its obligations under any contract with the Authority and for any unpaid contribution, payment or advance approved by the Board of Directors prior to such Member's exclusion and not objected to by such Member by written notice to the Authority within thirty (30) days after such approval.

No withdrawal from membership pursuant to Sections 5.4.1 and 5.4.2 hereof or exclusion from participation pursuant to Section 5.4.3 hereof shall constitute an amendment or modification of this Agreement for purposes of Section 6.3 hereof.

#### ARTICLE VI -- GENERAL PROVISIONS

6.1 Breach. If default shall be made by any Member in any undertaking contained in this Agreement, such default shall not excuse such Member or any other Member from fulfilling its obligations under this Agreement and each Member shall continue to be liable for the payment of its Liability Share, pursuant to Section 4.3, and its contributions, payments and advances pursuant to Section 4.4, and the performance of all conditions herein contained. Each Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby and each Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of such Member hereunder. Each and all of the remedies given to the Authority hereunder, including those provisions contained in Section 5.4.3, or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

6.2 Severability. In the event that any term, covenant or condition of this Agreement or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction in the premises, all other terms, covenants or

conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the provisions are not separable from all other provisions of this Agreement.

6.3 Successors and Assigns; Amendments. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Members. No Member may assign any right or obligation hereunder without the consent of all other Members. The immediately preceding sentence shall not affect, in any respect, any right of assignment under any contract between any Member and the Authority. Subject to any requirements of law, including Section 6573 of the Government Code of the State of California, as amended from time to time, this Agreement may be amended at any time and from time to time by a writing or writings executed by each Member and approved by resolution of each Member's governing body.

6.4 Notices.

6.4.1 Any notice, demand or request to any Member provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the person and at the address designated by such Member upon the commencement of its membership in the Authority.

6.4.2 A Member may, at any time, by written notice to each other Member and the Authority, designate different persons or different addresses for the giving of notices, demands or requests to it hereunder.

6.4.3 Any notice, demand or request to the Authority provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to FARECal, c/o California Municipal Utilities Association, 1225 Eighth Street, Suite 440, Sacramento, California 95824.

6.4.4 The Authority may, at any time, by written notice to each Member, designate a different or additional person or a different address for the giving of notices, demands or requests to it hereunder.

6.5 Effectiveness; Term of the Agreement. This Agreement shall become effective on the later of (a) July 1, 1993, or (b) the first date on which there shall be two or more Charter Members. Subject to the right to rescind provided by Section 4.6 hereof, this Agreement shall continue in full force and effect for a period of 50 years from its effective date or until such time as all Indebtedness of the Authority and the interest thereon shall have been paid in full or until adequate provision for such payment shall have been made in accordance with the instruments governing such Indebtedness.

6.6 Execution of Counterparts. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Original Members have caused this Agreement to be duly executed and attested by their proper officers thereunto duly authorized.

CITY OF ANAHEIM

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

CITY OF COLTON

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

CITY OF HEALDSBURG

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES  
BY  
BOARD OF WATER AND POWER COMMISSIONERS  
OF  
THE CITY OF LOS ANGELES

By \_\_\_\_\_

And \_\_\_\_\_  
Secretary

NORTH MARIN WATER DISTRICT

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

NORTHERN CALIFORNIA POWER  
AGENCY

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_



CITY OF PALO ALTO

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

CITY OF PASADENA

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_



CITY OF REDDING

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_



CITY OF RIVERSIDE

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

SACRAMENTO MUNICIPAL UTILITY  
DISTRICT

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

TURLOCK IRRIGATION DISTRICT

Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By \_\_\_\_\_



BY-LAWS  
OF  
FINANCING AUTHORITY FOR RESOURCE EFFICIENCY OF CALIFORNIA

ARTICLE I

Definitions

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified:

(a) Agreement shall mean the Joint Powers Agreement creating the Financing Authority for Resource Efficiency of California, dated as of July 1, 1993, among the various parties thereto.

(b) Authority, Board of Directors and Member shall have the respective meanings set forth in the Agreement.

ARTICLE II

Offices

Section 1. Principal Office. The principal office of the Authority shall be located at the principal office of the California Municipal Utilities Association in Sacramento, California, or at such other place as the Board of Directors may from time to time determine.

Section 2. Additional Offices. The Authority may also have offices at such other places both within and outside the State of California, as the Board of Directors may from time to time determine or the business of the Authority may require.

## ARTICLE III

### Board of Directors Meetings

Section 1. Organization of Meeting. Each meeting of the Board of Directors shall be presided over by the President or, in his or her absence, by the Vice President, or in the absence of both the President and Vice President, by any Director selected to preside by vote of a majority of the Directors present. The Secretary, or in his or her absence, any person designated by the individual presiding over the meeting, shall act as secretary of the meeting.

Section 2. Method of Voting. In voting on any question on which a vote by ballot is required by law, the voting shall be by ballot signed by the Director voting. On all other questions, the voting may be by voice vote.

## ARTICLE IV

### Directors

Section 1. Compensation. The Directors shall serve without compensation.

Section 2. Directors Not Precluded from Serving the Authority. Directors shall not be precluded from serving the Authority in any other capacity and receiving compensation for any such services.

## ARTICLE V

### Authorized Representative of Member

The determination of authorized representatives of Members for purposes of any vote pursuant to Section 3.3.3 of the Agreement shall be made by the Authority based upon written or other communication received by the Authority from such Member at or before the time of such vote.

## ARTICLE VI

### Officers

Section 1. The President. The President shall be the chief executive officer of the Authority. The President shall have the powers and duties of the general and active management of the business of the Authority, and shall see that all orders and

resolutions of the Board of Directors are carried into effect. The President shall perform such other duties and have such other powers as the Board of Directors may from time to time assign or as may be prescribed by these By-Laws or by the Agreement. The President may appoint committees, composed of less than a quorum of members of the Board of Directors, to consider and make recommendations to the Board of Directors with respect to matters of business of the Authority.

Section 2. The Vice President. The Vice President shall perform the duties of the President when the President is unavailable and such duties as from time to time may be assigned to him or her by the Board of Directors or the President or as may be prescribed by these By-Laws or by the Agreement.

Section 3. The Secretary. The Secretary shall record or cause to be recorded in books provided for the purpose all the proceedings of the meetings of the Board of Directors; shall see that all notices are duly given in accordance with the provisions of these By-laws and as required by law; shall be custodian of the records (other than financial) of the Authority; shall see that the books, reports, statements, certificates and all other documents and records required by law (other than financial books, reports, statements, certificates, documents and records) are properly kept and filed; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him or her by the Board of Directors or as may be prescribed by these By-Laws or by the Agreement.

Section 4. The Treasurer/Auditor. The Treasurer/Auditor shall perform all the duties incident to the office of Treasurer and the office of Auditor and such duties as from time to time may be assigned to him or her by the Board of Directors or as may be prescribed by law or by the Agreement.

Section 5. Other Officers, Contractors and Consultants. The Board of Directors also may appoint such other officers, contractors and independent consultants as it may deem necessary. Such officers, contractors and independent consultants shall have such powers, duties and responsibilities as shall be determined from time to time by the Board of Directors.

Section 6. Compensation. The compensation of all officers, employees, contractors and independent consultants of the Authority shall be fixed from time to time by the Board of Directors, or pursuant to authority of (general or specific) resolutions of the Board of Directors. No officer shall be prevented from receiving such salary by reason of the fact that he or she is also a Director of the Authority.

## ARTICLE VII

### Resignations by Officers

Section 1. Voluntary Resignation; Notice of Effectiveness. Any officer of the Authority may, subject to contrary provisions in any applicable contract, resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary of the Authority. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Section 2. Involuntary Resignation; Request. The Board of Directors, in the exercise of its discretion, may request the resignation of any officer elected or appointed pursuant to the Agreement or these By-Laws. Pursuant to such request, subject to contrary provisions in any applicable contracts, such officer shall resign by giving written notice to the Board of Directors. Any such resignation shall take effect at the time specified in such request.

## ARTICLE VIII

### Vacancies Among Officers

If the office of any officer elected or appointed pursuant to the Agreement or these By-Laws becomes vacant at any time by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, such vacancy may be filled at any time by the Board of Directors.

## ARTICLE IX

### Execution of Contracts, Deeds, Etc.

The Board of Directors may authorize any officer or officers, in the name of and on behalf of the Authority, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authorization may be general or confined to specific instances.

## ARTICLE X

### Indemnification

The Authority shall, to the extent legally permissible, indemnify each of the Directors, officers, General Manager, employees and other agents (including a person who serves at its request as a Director, officer, employee or other agent of another organization in which it has an interest and by which he or she is not so indemnified) against all liabilities and expenses, including amounts paid in satisfaction or compromise of judgments, fines and penalties, and counsel fees, reasonably incurred by him or her in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal in which he or she may be involved or with which he or she may be threatened while in office or thereafter, by reason of his or her being or having been such a Director, officer, General Manager, employee or agent, or by reason of any action or omission by him or her in any such above-described capacity, except with respect to any matter as to which he or she shall have been finally adjudicated in any action or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Authority, or if otherwise prohibited by law.

## ARTICLE XI

### Official Seal

The Authority shall have an official seal which shall be circular in form, containing thereon the name of the Authority, the year of its organization and the words "Official Seal, State of California". Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced in any manner whatsoever.

## ARTICLE XII

### Amendments

These By-Laws may be modified, amended or repealed or new by-laws may be adopted by the affirmative vote of the Board of Directors at any regular or special meeting of the Board of Directors.

ARTICLE XIII

**Severability**

Any adjudication that any part of these By-Laws is invalid shall not affect the validity of the remainder of these By-Laws.

**AGENCY AGREEMENT**  
**BETWEEN**  
**FINANCING AUTHORITY FOR**  
**RESOURCE EFFICIENCY OF CALIFORNIA**  
**AND**  
**THE CITY OF AZUSA, ACTING BY AND THROUGH**  
**ITS LIGHT & WATER DEPARTMENT, AS AGENT**

**November 2010**  
**Execution Copy**

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## AGENCY AGREEMENT

1. **PARTIES.** This Agency Agreement, effective as of this \_\_\_\_day of \_\_\_\_, 2010, by and between the FINANCING AUTHORITY FOR RESOURCE EFFICIENCY OF CALIFORNIA, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter referred to as “FARECal,” or “the Authority” created under the provisions of the Act, and the CITY OF AZUSA acting by and through its LIGHT & WATER DEPARTMENT a California municipal utility under California law hereinafter referred to as the “City” or the “Agent.” The City and FARECal are also sometimes referred to herein, with respect to this Agreement, individually as the “Party” and together as the “Parties”.
  
2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts which follow are incorporated into this Agreement by reference for all purposes. This Agreement has been reviewed by both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to “Sections,” “Annexes,” “Appendices,” “Schedules” and “Exhibits” shall be to Sections, Annexes, Appendices, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. All terms capitalized and not otherwise defined herein shall have the meaning set forth in the Joint Powers Agreement or Bylaws of FARECal. This Agreement is made with reference to the following facts among others:
  - 2.1 FARECal was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act”), by its members, which are municipalities, water districts, joint action agencies, municipal utility districts, public utility districts, irrigation districts and an irrigation district that supply, among other things, electrical energy and water, in the State of California, for the purpose of jointly and cooperatively undertaking the planning, development financing, purchase, lease construction, operation and maintenance of Resource Efficiency Programs and Facilities.

- 2.2 The City is a California municipal utility which provides electric energy and water to its citizens through its municipally-owned electric and water system. The City is one of the parties to the FARECal Joint Powers Agreement.
- 2.3 FARECal was established, designed and brought to fruition in order to create a viable joint powers authority with the objective of representing and carrying forth the common goals, the common aspirations and the common objectives of any public agency eligible for membership in the California Municipal Utilities Association (“CMUA”) and located in California.
- 2.4 Pursuant to the terms of the Act, and its Joint Power Agreement, FARECal has any and all powers authorized by law to two or more of its Members relating to the planning, development, undertaking, purchase, lease, acquisition, construction, financing, disposition, use, operation, repair, replacement or maintenance of facilities for the generation, production, transmission, conservation, reuse, recycling, storage, treatment or distribution of electrical or other energy or capacity, natural gas, water, waste water or recycled water, or Resource Efficiency Programs and Facilities, or any combination thereof.
- 2.5 Over the course of the past several years members of FARECal, including the City, have undertaken projects through FARECal for which FARECal has issued Indebtedness. Under California Government Code Section 6505 and Section 4.5 of the FARECal Joint Powers Agreement, FARECal is required to have its accounts and records audited by independent certified public accountants. Auditors have advised FARECal that the audit should include financial records relating to outstanding FARECal Indebtedness. Since its inception, FARECal administrative tasks, including the maintenance of FARECal’s books and records and the administration and oversight of related audits, have been carried out and/or administered by the staff of CMUA. CMUA staff has requested assistance with respect to the maintenance of FARECal accounts and records and all related auditing activities.
- 2.6 The City has offered to assist with respect to the maintenance of FARECal’s accounts and records and related auditing activities provided it is made whole for all of its related costs.
3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to carry forth certain objectives of FARECal and to appoint as agent for FARECAL for the purposes set forth herein, the Parties agree as follows.
4. **DEFINITIONS.** The terms set forth below, when initially capitalized, shall have the respective meaning set forth below:
- 4.1 Agency Costs. The costs, as set forth in Section 8 hereof, of carrying out Agency Work.
- 4.2 Agency Work. Agency shall be responsible for providing accounting and auditing services for FARECal and such other activities denoted under Section 7 of this

Agreement. Such work may be performed in whole or in part, as determined by Agent, by its own employees or by outside contractors.

- 4.3 Agent. The City of Azusa acting by and through its Light & Water Department, which shall be responsible, in accordance with the terms of this Agreement, for carrying out the Agency Work as Agent for and on behalf of FARECal.
- 4.4 Agreement. This Agreement, as it may be amended, modified or supplemented from time to time.
- 4.5 Effective Date. The date first set forth above.
- 4.6 Indebtedness: Indebtedness shall have the meaning as ascribed thereto in the Joint Powers Agreement for FARECal.

## **5. APPOINTMENT OF AGENT.**

- 5.1 Appointment of Agent. In accordance with the terms and conditions of this Agreement FARECal hereby appoints, designates, authorizes and directs the City to carry out, as agent for and on behalf of FARECal, Agency Work in accordance with the terms of this Agreement. The City hereby accepts such appointment, designation, authorization and direction.
- 5.2 Agent's Performance of Agency Work in Accordance with Applicable Laws, Rules and Regulations. In carrying forth its Agency Work pursuant to the terms of this Agreement Agent shall, in all material respects, observe all applicable laws, rules and regulations.
- 5.3 Other Agents. The Authority shall at all times have the right to appoint another agent or agents to perform, apart from and concurrent with this Agreement.
- 5.4 Procurement. In carrying out its duties under this Agreement, the City shall utilize the procedures, protocols and restrictions of the City of Palo Alto or the City of Riverside (as determined by FARECal's Board of Directors) which either Palo Alto or Riverside use when exercising similar powers, including but not limited to procurement and contracting powers.
- 5.5 Compliance with the Federal Tax Law Requirements. Notwithstanding anything to the contrary in this Agreement, each of the Parties shall take such actions in the administration and the performance of this Agreement as may be necessary, if applicable, to comply with the Federal tax law requirements on the Indebtedness, and each shall refrain from taking any action that would adversely affect compliance with the Federal tax law requirements.

## **6. RIGHTS, DUTIES AND RESPONSIBILITIES OF FARECAL.** FARECAL shall have the following rights, duties and responsibilities under this Agreement:

- 6.1 FARECal's Role. FARECal acting by and through its Board of Directors shall have the following rights duties and responsibilities under this Agreement:

- 6.1.1 Review Agency Cost Estimates: Review, modify and approve the estimates of Agency Costs submitted by the Agent pursuant to this Agreement.
- 6.1.2 Monitor Agency Work: Monitor the continuation and completion of Agency Work.
- 6.1.3 Make Recommendations and/or Modifications Regarding Agency Work: Make (i) recommendations to the Agent with respect to Agency Work and/or (ii) modifications to Agency Work undertaken by Agent.
- 6.1.4 Provide Assistance: Provide such other assistance to the Agent in carrying out Agency Work as the Board of Directors shall deem reasonable and proper and as the Agent shall request.
- 6.1.5 Perform Other Functions and Duties: Perform such other functions and duties as may be required of FARECal in connection with this Agreement.

## **7. ACTIVITIES TO BE PERFORMED BY AGENT.**

- 7.1 Inform FARECal. Promptly inform FARECal regarding significant factors which may affect or have affected Agency Work.
- 7.2 Expend Funds for Agency Costs. Expend moneys for Agency Costs in accordance with this Agreement; provided, however, in no event shall Agent expend money or incur costs for Agency Costs that exceed the estimate of Agency Costs previously approved by FARECal.
- 7.3 Arrange Services for Agency Work; Administer Contracts; Agent's Employees. Negotiate, arrange for, administer, perform and enforce all contracts necessary for the performance and completion of Agency Work and furnish conformed copies of such contracts or other related documentation to FARECal. In performing Agency Work, the Agent may use its own employees and equipment and facilities owned or directly leased by the Agent without obtaining any consent or approval of FARECal.
- 7.4 Prepare and Submit Estimates of Agency Costs. Prepare and submit to FARECal for each fiscal year, the Agent's estimate of Agency Costs.
- 7.5 Keep Accounting Records of Expenditures; Audit of Accounting Records. Keep and maintain records of moneys expended, obligations incurred, and credits accrued; and maintain for auditing those accounting records prepared, or caused to be prepared, by the Agent with respect to FARECal's moneys and Indebtedness; direct and oversee fiscal audits of FARECal.
- 7.6 Furnish Additional Assistance and Information. In addition to the services set forth in Section 7.5, furnish, upon request, to FARECal any assistance requested by FARECal's Board of Directors and agreed to by the City.

## **8. AGENCY COSTS.**

### **8.1 Agency Costs.** Agency Costs shall include the following:

- 8.1.1 All costs approved by the Agent of labor and services, performed by the Agent or by others, in connection with this Agreement.
- 8.1.2 Payroll and other expenses of employees of the Agent while performing work in connection with this Agreement, including applicable overhead costs and labor loading charges, including but not limited to time-off allowances, assignment pay, payroll taxes, workers' compensation insurance, retirement and death benefits and other employee benefits.
- 8.1.3 Costs of the Agent, to the extent not provided for by insurance, of discharging or paying any liability and loss, damage and expense, including costs and expenses for attorneys' fees and other costs of defending, settling or otherwise administering claims, liabilities or losses arising out of workers' compensation or employer's liability claims or by reason of property damage or injuries to or death of any person or persons or by reason of claims of any and every character, or costs that should be paid or provided to Agent to satisfy indemnification obligations under Section 16 of this Agreement or other costs that should be paid or provided to Agent to satisfy indemnification obligations resulting from, arising out of or connected with the performance of Agency Work, including negligent or grossly negligent acts or omissions, but excluding willful misconduct of the Agent, its City Council, or its respective officers or employees.

### **8.2 No Profit.** The Agent shall not receive any profit under this Agreement, nor shall the Agent be obligated to make any expenditure or incur any obligation regarding Agency Work with respect to which it shall not be entitled to reimbursement under this Agreement.

## **9. PAYMENT TO AGENT FOR AGENCY COSTS; AUDITS.**

- 9.1 Payment and Audit Procedures. From time to time, and at such times (not more than twice annually) as the Agent shall determine, it shall submit to FARECal requests and requisitions for payment of items of Agency Costs incurred or paid; provided, however, such Agency Costs do not exceed the estimate of Agency Costs previously approved by FARECal as provided in Section 6.1.1. FARECal agrees to raise funds sufficient to pay all Agency Costs through whatever means authorized under the FARECal Joint Powers Agreement, including Section 4.4 of the Joint Powers Agreement which provides that Members shall make such contributions, payments and advances to the Authority as are approved from time to time by the Board of Directors of FARECal. FARECal shall pay or cause to be paid the amount of each such request or requisition within 60 days after its receipt thereof. At such reasonable times as shall be requested by FARECal, the books and cost records of the Agent relevant to Agency Costs shall be subject to audit by or on behalf of FARECal.

- 9.2 Disputed Invoices. In case any portion of any invoice received by FARECal from Agent shall be in bona fide dispute, FARECal shall pay Agent the full amount of such invoice and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by Agent on any overpayment, will be credited to FARECal by Agent after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by Agent and returned to FARECal by the fifth calendar day following the receipt by Agent of the disputed overpayment. In the event such invoice is in dispute, Agent will give consideration to such dispute and will advise FARECal with regard to Agent's position relative thereto within 30 days following receipt of written notification by FARECal of such dispute.

## **10. LIABILITY.**

- 10.1 No Liability of FARECal or Agent, Their Directors, Officers, Etc.; FARECal and Agent's Directors, Officers, Employees, Not Individually Liable. Both Parties agree that neither FARECal nor the Agent, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "Released Parties") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of the City, FARECal or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by any of the Released Parties under this Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct which, unless otherwise agreed by the Parties, is to be determined and established by a court of competent jurisdiction in a final, nonappealable order). Each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any action or inaction or performance or non-performance by the Released Parties under this Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct which, unless otherwise agreed by the Parties, is to be determined and established by a court of competent jurisdiction in a final, nonappealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve either Party from its respective obligations under this Agreement, including either Party's obligation to make payments required under this Agreement. The provisions of this Section 10.1 shall not be construed so as to relieve the Agent from any obligation under this Agreement or any agreement related to FARECal Indebtedness. It is also hereby recognized and agreed that no member of the FARECal Board of Directors, the Agent nor their officers, employees, board members, agents, attorneys or advisors, or member of FARECal in its capacity as a member of FARECal, shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any agreement related to FARECal Indebtedness.

- 10.2 Extent of Exculpation; Enforcement of Rights in Equity. The exculpation provision set forth in Section 10.1 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of the other Party and the Agent may enforce by any legal means its right to payment for Agency Costs in accordance with the terms of this Agreement.
- 10.3 No Relief From Insurer's Obligations. The provisions of Section 10.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance claims.
- 10.4 No General Liability of FARECal. The undertakings by FARECal under this Agreement shall never constitute a debt or indebtedness of FARECal within the meaning of any provision or limitation of the constitution or statutes of the State of California. Any provision of this Agreement to the contrary notwithstanding, the obligation of FARECal under this Agreement to make or cause to be made payments shall be limited to those payments permitted by and monies available under a FARECAL indenture or any agreement related to FARECal Indebtedness or as provided for in this Agreement.
- 10.5 No Warranty for Agent Services. All services provided by Agent are provided on an "as is" basis. Agent disclaims all warranties, express or implied, statutory or otherwise, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

## **11. ALTERNATIVE DISPUTE RESOLUTION.**

- 11.1 Nonbinding Dispute Resolution. If any dispute arises out of or relates to this Agreement, or the asserted breach thereof, the Parties agree that the Parties shall first employ the non binding mediation process which is set forth in this Section 11 before initiating any other type of legal action.
- 11.2 Role of FARECal Board of Directors; Nonbinding Mediation Procedure. If a dispute arises between the Parties under this Agreement, the Parties may submit the dispute to the FARECal Board of Directors. If the Board of Directors is unable to resolve the dispute, the Parties may then submit the dispute to non binding mediation.

## **12. RELATIONSHIP OF THE PARTIES.**

- 12.1 Separate and Several Interests. The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust, partnership or other legal entity, or to impose a trust or partnership covenant, obligation or liability on or with regard to either or both of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this Agreement. Neither Party shall be under the control of or shall be



deemed to control any other Party. Neither Party shall be the agent of or have a right or power to bind the other Party without its express written consent, except as expressly provided in this Agreement.

### **13. UNCONTROLLABLE FORCES.**

- 13.1 Excuse of Performance by Reason of Uncontrollable Forces. Other than with respect to the obligation of a Party to make payments as provided in this Agreement, neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to an uncontrollable force. The term “uncontrollable force” shall be any cause beyond the control of the Party affected, including but not limited to failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, terrorism, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by, or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. In the event a Party is rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force, such Party shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch. In such event, the Parties shall diligently and expeditiously determine how they may equitably proceed to carry out the objectives of this Agreement.

### **14. BINDING OBLIGATIONS.**

- 14.1 All Obligations Binding. All of the obligations set forth in this Agreement shall bind the Parties and their successors and assigns.

### **15. GENERAL PROVISIONS GOVERNING AGREEMENT.**

- 15.1 Waiver Not to Effect Subsequent Events. Any waiver at any time by a Party of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.
- 15.2 Headings Not Binding. The headings and captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement

### **16. INDEMNITY AND RELATED MATTERS.**

- 16.1 Indemnification of Agent. In its capacity as Agent under this Agreement, Agent shall be entitled to indemnification from FARECal as set forth herein. FARECal shall, to the extent permitted by law, indemnify and hold harmless Agent, its City Council members, officers, employees, agents, attorneys and advisors, past,

present or future when acting for Agent (collectively, "Agent Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of the City, FARECal or third persons) (collectively, "Losses") arising by reason of any actions, inactions, errors or omissions incident to the performance of this Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct which, unless otherwise agreed by the Parties, is to be determined and established by a court of competent jurisdiction in a final, nonappealable order) on the part of Agent Indemnitees. At Agent's option, FARECal shall defend Agent Indemnitees from and against any and all Losses. If FARECal, with Agent's consent, defends any Agent Indemnitee, Agent shall approve the selection of counsel, and Agent shall further approve any settlement or disposition, such approval not to be unreasonably withheld

- 16.2 Separate Legal Capacities. The Parties acknowledge that the City, as Agent under and a Party to this Agreement, acts in a legal capacity that is separate from its capacity as a member of FARECal or a participant in any FARECal Indebtedness. Accordingly, for purposes of this Agreement, the rights, entitlements, obligations and liabilities of the City, as Agent and a Party to this Agreement, shall not apply to or otherwise be affected by, and shall be legally separate from the rights, entitlements, obligations, and liabilities of the City as a participant in any FARECal Indebtedness.

17. **GOVERNING LAW.** This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

18. **TERM AND EXPIRATION.**

- 18.1 Effective Date. This Agreement shall become effective and in full force and effect on the date first set forth above (the "Effective Date").
- 18.2 Termination. This Agreement shall continue in force and effect from the Effective Date until terminated by either Party, for any reason, upon not less than sixty (60) days prior written notice to the other Party. Payment obligations of the Parties hereunder shall survive any termination of the Agreement until satisfied. Upon termination of this Agreement, Agent shall deliver FARECal's books and accounts maintained by the Agent to CMUA or such other entity as directed by FARECal.

19. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions

are not separable from all other provisions of this Agreement.

- 20. REPRESENTATION AND NOTICES.** Any notice, demand or request provided for in this Agreement shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Financing Authority for Resource Efficiency of California  
c/o Executive Director of CMUA  
915 L Street, Suite 1460  
Sacramento, California 95814

City of Azusa, Light and Water Department  
Director of Utilities  
729 North Azusa Avenue, P.O. Box 9500  
Azusa, California 91702-9500

- 21. AMENDMENTS.** The Parties acknowledge and agree that any amendment to this agreement shall be in writing and duly executed by the Parties.

**IN WITNESS WHEREOF**, the parties hereto have duly caused this Agreement to be executed on their respective behalves by their duly authorized representatives.

FINANCING AUTHORITY FOR RESOURCE  
EFFICIENCY OF CALIFORNIA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
George F. Morrow  
President

CITY OF AZUSA acting by and through its LIGHT  
AND WATER DEPARTMENT

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Joseph R. Rocha  
Mayor