

# DESERT COMMUNITY ENERGY

## Community Choice Aggregation Board Meeting

### Agenda Monday, October 30, 2017 2:00 p.m.

Coachella Valley Association of Governments  
73-710 Fred Waring Drive, Palm Desert  
Suite 200 Conference Room  
(760) 346-1127

1. CALL TO ORDER

2. ROLL CALL

A. Member Roster

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3. PLEDGE OF ALLEGIANCE

4. PUBLIC COMMENTS

This is the time and place for any person wishing to address Desert Community Energy on items not appearing on the agenda to do so.

5. COMMITTEE MEMBER / DIRECTOR COMMENTS

6. CONSENT CALENDAR

A. Approve a non-substantive change to the Joint Powers Agreement as requested by the City of Palm Desert and authorize the Executive Director to proceed with actions necessary to effect this change

**P4**

7. **DISCUSSION / ACTION**

A. **Election of Chair and Vice Chair – Tom Kirk**

**RECOMMENDATION:** Elect a Chair and Vice Chair

B. **Update on Our Progress – Tom Kirk**

**P30**

C. **Presentation of CCA Logo Concepts – Brian Rix, BurkeRix**

**RECOMMENDATION:** Select logo for Desert Community Energy

D. **Community Choice Aggregation: Agreement between CVAG and Desert Community Energy for Implementation and Management Services – Katie Barrows**

**P33**

**RECOMMENDATION:** Authorize the Chair or Executive Director to execute an agreement with Coachella Valley Association of Governments (CVAG) to provide implementation and management services for a Community Choice Aggregation program for the Coachella Valley region

E. **Agreement with The Energy Authority consultant team to provide CCA Implementation, Wholesale Power Procurement, and Associated Technical Operating Services - Katie Barrows**

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**RECOMMENDATION:** Authorize the Executive Director to negotiate an agreement between Desert Community Energy (DCE) and The Energy Authority (TEA) team to provide CCA launch, implementation, wholesale power procurement, and operational services for a Community Choice Aggregation (CCA) program and bring the final agreement back to the DCE Board for approval.

F. **Cost Sharing Agreements for Legal Services and Technical Consulting Services Related to Power Charge Indifference Adjustment (PCIA) – Benjamin Druyon**

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**RECOMMENDATION:** Authorize the Executive Director to:

- 1) Enter into a cost sharing agreement with Western Riverside Council of Governments and Los Angeles Community Choice Energy for legal services related to the California Public Utilities Commission Proceeding R17-06-026, Review of the Power Charge Indifference Adjustment, for not to exceed \$20,000 as DCE's share.
- 2) Enter into a cost sharing agreement with Los Angeles Community Choice Energy and Western Riverside Council of Governments for consulting services related to the California Public Utilities Commission Proceeding R17-06-026 Review of the Power Charge Indifference Adjustment, for not to exceed \$20,000 as DCE's share.

G. **Discussion of a regularly scheduled meeting date and time – Katie Barrows**

**RECOMMENDATION:** Establish a regular meeting schedule

8. **INFORMATION**

9. **ANNOUNCEMENTS**

Next meeting date and time to be announced.

10. **ADJOURNMENT**

**ITEM 2A****DESERT COMMUNITY ENERGY****Board Meeting  
2017 Member Roster**

<b>CCA Committee Members</b>	
City of Cathedral City	<b>Shelley Kaplan</b> Councilmember
City of Desert Hot Springs	<b>Yvonne Parks</b> Councilmember
City of Palm Desert	<b>Sabby Jonathan</b> Mayor Pro Tem
City of Palm Springs	<b>Geoff Kors</b> Councilmember

<b>Staff</b>
Tom Kirk, Executive Director
Katie Barrows, Director of Environmental Resources
Erica Felci, Governmental Projects Manager
Benjamin Druyon, Management Analyst
Linda Rogers, Program Assistant II

## ITEM 6A

# DESERT COMMUNITY ENERGY

## Board Meeting

October 30, 2017

## Staff Report

**Subject:** Consider Proposed Change to Joint Powers Agreement

**Contact:** Katie Barrows, Director of Environmental Resources ([kbarrows@cvaq.org](mailto:kbarrows@cvaq.org))

**Recommendation:** Approve a non-substantive change to the Joint Powers Agreement as requested by the City of Palm Desert and authorize the Executive Director to proceed with actions necessary to effect this change

**Background:** During review of the Joint Powers Agreement by the City of Palm Desert, a minor change was proposed to Section 6.1.3 which covers the right of a jurisdiction to withdraw prior to program launch. This proposed change regards the time period during which member agencies are asked to provide notice of their intent to withdraw from Desert Community Energy. It was noted during the Palm Desert City Council discussion that the current JPA provision allowing for a right to withdraw upon limited conditions within 15 days of receiving the report referenced in 6.1.3 is way too tight given the usual agenda sequence. The final motion approved by the Palm Desert City Council included instructions to the City Council's representative at the initial meeting of the Joint Powers Authority to seek an amendment to the draft Joint Powers Agreement in Section 6.1.3 so as to provide for the right to withdraw within 30 days of receiving the referenced report with impunity. The relevant portion of Section 6.1.3 is excerpted below, with the language of concern to Palm Desert and their proposed change shown in underline/strikeout:

*The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, DCE shall provide to the Parties the report from the electrical utility consultant(s) retained by DCE that compares the total estimated electrical rates that DCE will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility (SCE). If the report provides that DCE is unable to provide total electrical rates, as part of its baseline offering, to customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may immediately withdraw its membership in DCE without any further financial obligation, as long as the Party provides written notice of its intent to withdraw to DCE Board no more than fifteen (15) thirty (30) days after receiving the report. A Party may also withdraw its membership in DCE prior to December 31, 2017 for any reason. . ."*

This change is considered non-substantive and very reasonable. Staff recommends that the Board approve this change, and authorize staff to proceed with actions necessary to effect this amendment.

Staff also requests that members identify any proposed changes to the JPA that they would like to recommend. Staff proposes to compile other proposed changes and bring them to the Board at a future meeting.

The Palm Desert City Council also requested a copy of the draft report referenced in Section 6.1.3; the information referenced for this report will be included in the CCA Implementation Plan. Staff is working with our consultants at The Energy Authority to draft the Implementation Plan so that we can provide the quantitative information to Palm Desert for their review prior to their November 16, 2017 meeting; this information would also be available to other member agencies. We anticipate presenting the draft Implementation Plan to the Board at the next meeting.

Given the timeline and efforts of participating cities to move this forward, a clause to allow CCA members to withdraw prior to December 31, 2017 for any reason was included in Section 6.1.3 of the JPA. Based on a launch date of June 2018, after December the new CCA will need to begin making commitments for purchase of power and will need to anticipate how many customers will need to be served when the CCA launches and begins providing electricity to participants.

**Fiscal Analysis:** No Impact

**Attachments:**

1. Joint Powers Agreement

**ATTACHMENT 1:**  
**DESERT COMMUNITY ENERGY**  
**JOINT POWERS AGREEMENT**

This Joint Powers Agreement ("Agreement"), effective as of \_\_\_\_\_, 2017 is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B (individually "Party" or "Member", collectively "Parties" or "Members"). The term "Parties" or "Members" shall also include an incorporated municipality or county added to this Agreement in accordance with Section 2.4.

**RECITALS**

- A. The Parties share various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.
- B. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. In 2016, the Legislature passed SB 32, which codifies a 2030 greenhouse gas emissions reduction target of 40 percent below 1990 levels.
- C. The purposes for entering into this Agreement include:
  - a. Reducing greenhouse gas emissions related to the use of power throughout the jurisdictions of the Parties and neighboring regions;
  - b. Providing electric power and other forms of energy to customers at a competitive cost;
  - c. Carrying out programs to reduce energy consumption;
  - d. Stimulating and sustaining the local economy by developing local jobs in renewable and conventional energy; and
  - e. Promoting long-term electric rate stability, energy security and reliability for residents through local control of electric generation resources.
- D. It is the mission and purpose of this Agreement to build a Community Choice Aggregation program that is locally controlled and delivers cost-competitive clean electricity, product choice, price stability, energy efficiency and greenhouse gas emission reductions.
- E. It is the intent of this Agreement to promote the development and use of a wide range of renewable and efficient energy sources and energy efficiency programs, including but not limited to solar, wind, and biomass energy production. The purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State's transition to clean power resources to the extent feasible. The DCE

will also add increasing levels of locally generated renewable resources as these projects are developed and customer energy needs expand.

- F. The Parties desire to establish a separate public agency, known as the Desert Community Energy, or DCE, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
- G. The Parties anticipate adopting an ordinance electing to implement through the DCE a common Community Choice Aggregation (CCA) program, an electric service enterprise available to cities and counties pursuant to California Public Utilities Code Sections 331.1(b) and 366.2. The first priority of the DCE will be the consideration of those actions necessary to implement the CCA Program.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

#### **ARTICLE 1: DEFINITIONS AND EXHIBITS**

- 1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.
- 1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A:	Definitions
Exhibit B:	List of the Parties
Exhibit C:	Annual Energy Use
Exhibit D:	Voting Shares
Exhibit E:	Signatures

#### **ARTICLE 2: FORMATION OF DESERT COMMUNITY ENERGY**

- 2.1 Effective Date and Term. This Agreement shall become effective and DCE shall exist as a separate public agency on \_\_\_\_\_, 2017 or when the Parties execute this Agreement, whichever occurs later. The DCE shall provide notice to the Parties of the Effective Date. DCE shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 6.4, subject to the rights of the Parties to withdraw from DCE.
- 2.2 Formation. There is formed as of the Effective Date a public agency named Desert Community Energy. Pursuant to Sections 6506 and 6507 of the Act, DCE is a public agency separate from the Parties. Pursuant to Sections 6508.1 of the Act, the debts, liabilities or obligations of DCE shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of DCE. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of

the Parties agree to assume the debt, liability or obligation of DCE. Notwithstanding Section 7.54 of this Agreement, this Section 2.2 may not be amended unless such amendment is approved by the governing board of each Party.

2.2.1 Name. DCE may change its name at any time through adoption of a resolution of the Board of Directors.

2.3 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to build a Community Choice Aggregation program that achieves significant, long-term GHG emission reductions by offering clean, cost effective and price stable electricity to residents, businesses, and agricultural producers while carrying out innovative programs to reduce customer energy use, and to promote local renewable and efficient energy production technologies. To that end, DCE will study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate in the CCA Program, as further described in Section 4.1. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any other energy programs approved by DCE.

2.4 Membership in DCE.

2.4.1 The initial Members of DCE are the Cities of Blythe, Cathedral City, Desert Hot Springs, Indian Wells, Palm Desert, and Palm Springs.

2.4.2 Any city or county may request to become a member of DCE by submitting a resolution adopted by its City Council or Board of Supervisors to the Board of DCE. The Board shall review the request and shall vote to approve or disapprove the request. The Board may establish conditions, including but not limited to financial conditions, under which the city or county may become a member of DCE. The Board shall notify the then members of DCE of this request and the date that the request will be on the Board's meeting agenda for action. The date set for Board action shall be at least forty-five (45) days from the date the notice is mailed to the members. If the request is approved by the Board, the city or county shall become a member of DCE under

the terms and conditions set forth by the Board and upon approval and execution of this Agreement by the requesting city or county.

2.5 Powers. DCE shall have all powers common to the Parties and such additional powers accorded to it by law. DCE is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 3.17:

2.5.1 to make and enter into contracts;



- 2.5.2 to employ agents and employees, including but not limited to an Executive Officer;
- 2.5.3 to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;
- 2.5.4 to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property; however, DCE shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection without first meeting and conferring in good faith;
- 2.5.5 to lease any property;
- 2.5.6 to sue and be sued in its own name;
- 2.5.7 to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;
- 2.5.8 to form subsidiary or independent corporations or entities if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;
- 2.5.9 to issue revenue bonds and other forms of indebtedness;
- 2.5.10 to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- 2.5.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
- 2.5.12 to adopt Operating Rules and Regulations;
- 2.5.13 to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services; and
- 2.5.14 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate DCE to act as the community choice energy aggregator on its behalf.

2.6 Limitation on Powers. As required by Government Code Section 6509, the power of DCE is subject to the restrictions upon the manner of exercising power possessed by the City of (*insert name of one participating city*).

### ARTICLE 3: GOVERNANCE AND INTERNAL ORGANIZATION

- 3.1 Governing Body. DCE shall be governed by a legislative body known as the Board of Directors ("Board"). The initial Board shall consist of one (1) director appointed by each of the initial members. Each Director shall serve at the pleasure of the governing board of the Party appointing such Director, and may be removed as Director by such governing board at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director within 60 days of the date that such position becomes vacant. Directors shall be elected officials or senior staff of the appointing Party that is the signatory to this Agreement. Each Party may appoint an alternate to serve in the absence of its Director. Alternates may be either elected officials or senior staff of the appointing Party that is the signatory to this Agreement. The Board shall exercise all powers and conduct all business of DCE, either directly or by delegation to other bodies or persons pursuant to this Agreement.

If additional cities or counties join DCE, as set forth in section 2.4, each city or county that becomes a member of DCE shall be entitled to one (1) director and one (1) alternate appointed as set forth above.

Ex Officio Directors. The Board may appoint ex officio members of the Board. Ex officio directors shall receive all meeting notices, shall have the right to participate in Board discussions and the right to place items on the agenda but shall not be counted towards a quorum and shall have no vote.

- 3.2 Regular Board Meetings. The Board shall hold at least one regular annual meeting and shall provide for such other regular meetings as it deems necessary. Meetings of the Board shall be held at such locations within one of the member jurisdictions, and at such times as may be designated from time to time by the Board. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).
- 3.3 Special Meetings of the Board. Subject to all noticing requirements of the Ralph M. Brown Act, special meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5, to be held at such times and places within one of the member jurisdictions as may be ordered by the Chair. A majority of the Board may also call a special meeting for any purpose.
- 3.4 Chair and Vice-Chair. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The Chair and Vice Chair shall serve at the pleasure of the Board. There shall be no limit on the number of terms held by either the Chair or Vice Chair.
- 3.5 Conduct of Meetings. The Chair or, in the absence of the Chair, the Vice-Chair, shall preside at all meetings of the Board.
- 3.6 Resignation of a Director. Any Director may resign effective on giving written notice to the Board and the other Members, unless the notice specifies a later

time for the effectiveness of such resignation. A successor shall be appointed by the affected Member as provided for in this Agreement.

- 3.7 Quorum. Except as otherwise provided in this Agreement, every act or decision by the Board shall be made by a majority vote of the Directors present at a meeting duly held at which a quorum is present. No action may be taken by the Directors if a quorum of the Board is not present. In the absence of a quorum, any meeting of the Board may be adjourned from time to time by a vote of the majority present, but no other business may be transacted except as provided for in this Section.

A quorum shall exist if a majority of the Directors then designated by and serving on behalf of the Members are present at any duly called meeting of the Board. Ex officio, non-voting directors shall not be included when calculating the number of Directors necessary to constitute a quorum or the number of votes necessary to approve an action. In the event that a Member has failed to designate a Director, or a Member's designated Director has died, resigned, left office, been terminated or is otherwise unwilling or unable to act as the designating Member's representative, and a replacement Director has not yet been designated, and there is no designated alternate, such that a Member has no duly acting representative on the Board, then that Member's vacant Board position shall not be included when calculating the number of Directors necessary to constitute a quorum or the number of votes necessary to approve an action.

- 3.8 Other Officers. The Executive Officer of DCE shall be the secretary of DCE, or as otherwise determined by the Board. Any officer, employee or agent of any Member of DCE may also be an officer, employee, or agent of any of the Members. DCE shall have the power to appoint such additional officers and to employ such employees and assistants as may be appropriate. Each and all of said officers, employees and assistants shall serve at the pleasure of DCE and shall perform such duties and shall have such powers as DCE may, from time to time, determine. Any officer may resign at any time by giving written notice to the secretary. Any such resignation shall be effective upon receipt of such notice or at any later time specified in the notice. Officers shall assume the duties of their offices immediately after their appointment and shall hold office until their successors are appointed, except in the case of their removal or resignation. Vacancies of officers shall be filled by appointment of the Board and such appointee shall hold office until the appointment of his or her successor.
- 3.9 Minutes. The secretary of DCE shall cause to be kept minutes of regular, adjourned regular and special meetings of the Board. The secretary shall cause a copy of all minutes, along with copies of all ordinances and resolutions, to be forwarded to each of the Parties hereto.
- 3.10 Rules. A majority of Directors may adopt rules governing meetings if not inconsistent or in conflict with this Agreement. In the absence of rules adopted by the Directors, Roberts' Rules of Order, as they may be amended from time to time, shall govern the meetings of the Board in so far as they are not inconsistent or in conflict with this Agreement or any DCE bylaws.
- 3.11 Powers and Functions of the Board. The Board shall exercise general governance and oversight over the business and activities of DCE, consistent with this Agreement and applicable law. The Board shall provide general policy

guidance to the CCA Program. Board approval shall be required for any of the following actions:

- 3.11.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.
  - 3.11.2 The appointment or termination of the Executive Officer and General Counsel.
  - 3.11.3 The appointment or removal of officers described in Section 3.17, subject to Section 3.17.1.
  - 3.11.4 Any decision to provide retirement or post-retirement benefits that are defined benefit programs, subject to the requirements of section 5.3.4, below.
  - 3.11.5 The adoption of the Annual Budget.
  - 3.11.6 The adoption of an ordinance.
  - 3.11.7 The approval of agreements, except as provided by Section 3.12.
  - 3.11.8 The initiation or resolution of claims and litigation where DCE will be the defendant, plaintiff, petitioner, respondent, cross complainant or cross petitioner, or intervenor; provided, however, that the Executive Officer or General Counsel, on behalf of DCE, may intervene in, become a party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency, without approval of the Board as long as such action is consistent with any adopted Board policies.
  - 3.11.9 The setting of rates for power sold by DCE and the setting of charges for any other category of service provided by DCE.
  - 3.11.10 Termination of the CCA Program.
- 3.12 CVAG's Participation. CVAG shall provide, under contract with DCE, administrative services required by DCE during the first five (5) years of the implementation of the DCE; and thereafter as the administrative services contract may be renewed from time to time by DCE, and shall exercise such other powers and duties as the Board deems necessary to achieve the purpose of this Agreement. During any such term, CVAG's Executive Director may serve as the secretary of DCE.
- 3.13 Executive Officer. Except as may be provided pursuant to any administrative services agreement referenced in Section 3.12, the Board of Directors shall have the authority to appoint an Executive Officer for DCE, who shall be responsible for the day-to-day operation and management of DCE and the CCA Program. The Executive Officer may be retained under contract with DCE, be an employee of DCE, be an employee of CVAG, or be an employee of one of the Parties. The Executive Officer shall report directly to the Board and serve as staff to DCE. Except as otherwise set forth in this Agreement, the Executive Officer may

exercise all powers of DCE, including the power to hire, discipline and terminate employees as well as the power to approve any agreement if the total amount payable under the agreement is less than \$100,000 in any fiscal year, or such higher amount as may be established by the Board from time to time, by resolution of the Board, except the powers specifically set forth in Section 3.11 or those powers which by law must be exercised by the Board of Directors. The Executive Officer shall serve at the pleasure of the Board.

- 3.14 DCE Staff. Except as may be provided pursuant to any administrative services agreement referenced in Section 3.12, DCE may contract with CVAG for staff services, retain its own staff, or contract with another entity for services. Unless other employment is approved by the Commission, the DCE Executive Officer may utilize CVAG staff as may be necessary to accomplish the purposes of DCE. CVAG staff time, as well as office expenses, direct and indirect overhead, shall be charged to DCE utilizing direct billing and other accounting practices that provide for a clear separation of funds.

3.15 Commissions, Boards, and Committees

3.15.1 The Board may establish commissions, boards or committees, including but not limited to a standing executive committee of the Board, as the Board deems appropriate, to assist the Board in carrying out its authority and functions under this Agreement and may delegate authority to such commissions, boards or committees as set forth in a Board resolution. Such delegation may be modified, amended or revoked at any time the Board may deem appropriate. Any decision delegated pursuant to this subsection may be appealed to the Board, as the Board so determines.

3.15.2 The Board may also establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.

3.15.3 Any board, commission or committee formed under this section shall comply with the requirements of the Ralph M. Brown Act. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees, and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

- 3.16 Director Compensation. Directors shall serve without compensation from DCE. However, Directors may be compensated by their respective appointing authorities. The Board, however, may adopt by resolution a policy relating to the reimbursement by DCE of expenses or other costs incurred by Directors.

- 3.17 Voting. As described in Section 3.7 and in Section 3.17.3, action by DCE Board will be taken solely by a majority vote of the total number of Directors present except as provided in Section 3.17.5 below. In addition, as described in Section 3.17.4, upon request of two (2) Directors, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the Weighted Voting Shares present. No action may be approved solely by a majority vote by shares. The

voting shares of Directors and approval requirements for actions of the Board shall be as follows:

3.17.1 Weighted Voting Shares

Each member agency shall have a Voting Share as determined by the following formulas:

- (a) Pro Rata Voting Share. Each Member shall have an equal voting share determined by the following formula: (  $[1 / \text{total number of Members}]$  multiplied by  $\frac{1}{2}$  ), expressed as a percentage to two decimal places; and
- (b) Annual Energy Voting Share. Each Member shall have an additional voting share determined by the following formula: ( $[\text{Total Annual Energy Use (expressed in MWh) in the Member's jurisdiction} / \text{combined Total Annual Energy Use in all Members' jurisdictions}]$  multiplied by  $\frac{1}{2}$ ), expressed as a percentage to two decimal places. Annual Energy Use values are to be based on total CCA-related retail energy sales of all electric customer accounts as of December 31 of the most recent year for which such data is available. In the absence of actual data, the Board may approve the use of reasonably estimated Annual Energy Use values.
- (c) Weighted Voting Share. Each Member's Weighted Voting Share shall be the respective sum of the values computed in (a) and (b) above, expressed as a percentage to two decimal places. The combined total Weighted Voting Shares of all Members is 100.00 percent.

3.17.2 Exhibit Showing Weighted Voting Shares. The initial Weighted Voting Shares are set forth in Exhibit D based on data available as of the Effective Date of this Agreement. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Members and or changes in the Members' annual MWh retail energy usage. Adjustments to Exhibit D shall be approved by the Board.

3.17.3 Action Approval Requirements. Except as provided in Sections 3.17 and 3.17.4 and 3.17.5, the Board shall act solely upon the affirmative vote of a majority of Directors present at the meeting.

3.17.4 Option for Approval by Voting Shares. Notwithstanding Section 3.17.3, any two (2) Directors present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both Weighted Voting Shares and by the affirmative vote of a majority of Directors present at the meeting. If two Directors make such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of Weighted Voting Shares present, as determined by Section 3.17.1 except as provided in Section 3.17.5.

3.17.5 Special Voting Requirements for Certain Matters.

- (a) Two-Thirds and Weighted Voting Approval Requirements Relating to Sections 6.2 and 7.54. Notwithstanding any other provision of this Agreement, action of the Board on the matters set forth in Section 6.2 (involuntary termination of a Member), or Section 7.54 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of Directors present; provided, however, that:
  - (i) notwithstanding the foregoing, any two (2) Directors present at a meeting may demand that the vote be determined on the basis of both Weighted Voting Shares and by the affirmative vote of Directors present, and if any two (2) Directors make such a demand, then approval shall require the affirmative vote of both at least two-thirds of Directors present and the affirmative vote of Directors having at least two-thirds of the Weighted Voting Shares present, as determined by Section 3.17.1; and (ii) for votes to involuntarily terminate a Member under Section 6.2, the Director for the Member subject to involuntary termination may not vote, and the number of Directors constituting two-thirds of all Directors, and the Weighted Voting Share of each Member shall be recalculated as if the Member subject to possible termination were not a Member.
- (b) Seventy-Five Percent Special Voting Requirements for Eminent Domain and Contributions or Pledge of Assets.
  - (i) A decision to exercise the power of eminent domain on behalf of DCE to acquire any property interest other than an easement, right-of-way, or temporary construction easement shall require a vote of at least 75% of all Directors.
  - (ii) The imposition on any Member of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program shall require a vote of at least 75% of all Directors and the approval of the governing boards of the Members which are being asked to make such contribution or pledge.
  - (iii) Notwithstanding the foregoing, any two (2) Directors present at the meeting may demand that a vote under subsections (i) or (ii) be determined on the basis of Weighted Voting Shares and by the affirmative vote of Directors, and if any two (2) Directors make such a demand, then approval shall require both the affirmative vote of at least 75% of all Directors and the affirmative vote of Directors having at least 75% of all Weighted Voting Shares, as determined by Section 3.17.1. For purposes of this section, "imposition on any Member of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program" does not include any obligations of a withdrawing or terminated Member imposed under Section 6.3.

- 3.18 Treasurer and Auditor. The Treasurer shall function as the combined offices of Treasurer and Auditor pursuant to Government code section 6505.6 and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 65.5 of the Act. The Treasurer for DCE shall be the depository and have custody of all money of DCE from whatever source and shall draw all warrants and pay demands against DCE as approved by the Board. The Treasurer shall cause an independent audit(s) of the finances of DCE to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 5. The Treasurer shall serve at the pleasure of the Board.
- 3.19 Administrative Services Provider. The Board may appoint one or more administrative services providers to serve as DCE's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board. The appointed administrative services provider may be one of the Members, or CVAG as provided in Section 3.12. A separate services agreement shall set forth the terms and conditions by which the appointed administrative services provider(s) shall perform or cause to be performed tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. Any such services agreement shall set forth the terms and the circumstances under which the services agreement may be terminated by DCE. This section shall not in any way be construed to limit the discretion of DCE to hire its own employees to administer all or any portion of the CCA Program or any other program.

#### **ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS**

- 4.1 Preliminary Implementation of the CCA Program.
- 4.1.1 Enabling Ordinance. To be eligible to participate in the CCA Program, each Party must adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in DCE.
- 4.1.2 Implementation Plan. DCE shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 3.17.
- 4.1.3 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of DCE to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.
- 4.2 Authority Documents. The Parties acknowledge and agree that the affairs of DCE will be implemented through various documents duly adopted by the Board through Board resolution. The Parties agree to abide by and comply with the



terms and conditions of all such documents that may be adopted by the Board, subject to the Parties' right to withdraw from DCE as described in Article 6.

## **ARTICLE 5: FINANCIAL PROVISIONS**

5.1 Fiscal Year. DCE's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

5.2 Depository.

5.2.1 All funds of DCE shall be held in separate accounts in the name of DCE and not commingled with funds of any Party or any other person or entity.

5.2.2 All funds of DCE shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of DCE shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of DCE, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

5.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

5.3 Budget and Recovery of Costs.

5.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of DCE shall be approved by the Board in accordance with the Operating Rules and Regulations.

5.3.2 Funding of Initial Costs. The Parties acknowledge that implementing the CCA Program will require some form of funding either provided by all or some of the Parties or attained in some other manner. If the CCA Program becomes operational, these Initial Costs paid by such Parties or attained from other sources shall be included in the customer charges for electric services as provided by Section 5.3.3 to the extent permitted by law, and respective Parties or other sources shall be reimbursed from the payment of such charges by customers of DCE. CVAG shall also be entitled to reimbursement for Initial Costs. DCE may establish a reasonable time period over which such costs are recovered and repaid to respective Parties or other sources. In the event that the CCA Program does not become operational, respective Parties shall not be entitled to any reimbursement of the funded Initial Costs from DCE or any Party. If any of the initial member agencies or other sources assists in funding initial costs, they shall also be entitled to reimbursement pursuant to this section. The Board shall approve the manner of funding and

repayment of initial CCA program costs which may include reasonable interest charges.

- 5.3.3 CCA Program Costs. The Parties desire that all costs incurred by DCE that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but not limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources, to the extent permitted by law.
- 5.3.4 Employee Retirement and Post-retirement Benefits. Should the Board determine to provide a defined benefits retirement benefit to DCE employees (such as PERS) or other post-retirement benefits that would be within an Other Post-Retirement Benefits (OPEB) obligation to DCE employees, prior to providing such benefit(s) to any employee, the Board shall (1) obtain a third party independent actuarial report on the long term costs of the benefit or benefits, (2) adopt a funding plan for the payment of both current and long-term costs that provides for the payment of all such costs on a current, pay-as-you-go, basis and eliminates any known or reasonably anticipated unfunded liability associated with the benefit(s) and (3) notice all Member agencies of the pending consideration of the benefit(s) together with the actuarial report and funding plan, for at least sixty (60) days and obtain the consent, by resolution of not less than 75 percent of the then current Member agency boards or councils

## **ARTICLE 6: WITHDRAWAL AND TERMINATION**

### **6.1 Withdrawal.**

- 6.1.1 Right to Withdraw. A Party may withdraw its participation in the CCA Program, effective as of the beginning of DCE's next fiscal year, by giving no less than 6 months advance written notice of its election to do so, which notice shall be given to DCE and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.
- 6.1.2 Right to Withdraw After Amendment. Notwithstanding Section 6.1.1, a Party may withdraw its membership in DCE following an amendment to this Agreement adopted by the Board which the Party's Director voted against, provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 6.1.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 6.3.
- 6.1.3 The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, DCE shall provide to the Parties the report from the electrical utility consultant(s) retained by DCE that compares the total estimated electrical rates that DCE will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of

estimated renewable energy used with that of the incumbent utility (SCE). If the report provides that DCE is unable to provide total electrical rates, as part of its baseline offering, to customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may immediately withdraw its membership in DCE without any further financial obligation, as long as the Party provides written notice of its intent to withdraw to DCE Board no more than ~~fifteen (15)~~ thirty (30) days after receiving the report. A Party may also withdraw its membership in DCE prior to December 31, 2017 for any reason. Any withdrawing Party shall not be entitled to any return of funds it may have provided to DCE, provided, however, that if, after the program is launched there are unobligated and unused funds, the withdrawing member shall be refunded its pro rata share of the unobligated and unused funds.

6.1.4 Continuing Financial Obligation; Further Assurances. Except as provided by Section 6.1.3, a Party that withdraws its participation in the CCA Program may be subject to certain continuing financial obligations, as described in Section 6.3. Each withdrawing Party and DCE shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from participation in the CCA Program.

6.2 Involuntary Termination of a Party. Participation of a Party in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Party's participation in the CCA Program upon a vote of Board members as provided in Section 3.17.5. Prior to any vote to terminate participation with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least thirty (30) days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 6.3.

6.3 Continuing Financial Obligations; Refund. Except as provided by Section 6.1.3, upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or other financial obligations arising from such Party's membership or participation in the CCA Program through the effective date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any new financial obligations arising after the date of the Party's withdrawal or involuntary termination. Claims, demands, damages, or other financial obligations for which a withdrawing or terminated Party may remain liable include, but are not limited to, losses from the resale of power contracted for by DCE to serve the Party's load and any unfunded liabilities such as unfunded retirement contributions or costs and any unfunded post-retirement benefits. With respect to such financial obligations,

upon notice by a Party that it wishes to withdraw from the CCA Program, DCE shall notify the Party of the minimum waiting period under which the Party would have no costs for withdrawal if the Party agrees to stay in the CCA Program for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Party elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. DCE may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with DCE, as reasonably determined by DCE and approved by a vote of the Board, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with DCE above that which is required to pay any existing or ongoing financial obligations shall be returned to the Party. If there is a disagreement related to the charge(s) for exiting, the Parties shall attempt to settle the amount through mediation or other dispute resolution process as authorized by section 7.1. If the dispute is not resolved, the Parties may agree to proceed to arbitration, or any party may seek judicial review. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

- 6.4 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its participation in the CCA Program, as described in Section 6.1.
- 6.5 Disposition of Property upon Termination of Authority. Upon termination of this Agreement, any surplus money or assets in possession of DCE for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

## **ARTICLE 7: MISCELLANEOUS PROVISIONS**

- 7.1 Dispute Resolution. The Parties and DCE shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. Should such informal efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.
- 7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of DCE shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. DCE shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Sections 995 et seq. Nothing in this

section shall be construed to limit the defenses available under the law, to the Parties, DCE, or its Directors, officers, or employees

- 7.3 Indemnification of Parties. DCE shall acquire such insurance coverage as is necessary to protect the interests of DCE, the Parties, and the public. Subject to the provisions of Section 7.4 and provided that a Party has acted in good faith and in accordance with this Agreement, DCE shall defend with counsel acceptable to said Party, indemnify and hold such Party free and harmless from any loss, liability or damage incurred or suffered by such Party by reason of litigation arising from or as a result of any of the following: the Party's participation in the JPA; action taken to approve and/or implement the CCA; or any other act performed or to be performed by the Party pursuant to this Agreement; provided, however that such indemnification or agreement to hold harmless pursuant to this section shall be recoverable only out of DCE assets and not from other Parties. To the extent DCE's assets are insufficient to satisfy its obligations under this Section, any member Agency forced to expend its own funds to satisfy what would otherwise be DCE's obligations shall be entitled to reimbursement from DCE.
- 7.4 Limitations on Liability. The Parties acknowledge that Section 895.2 of the California Government Code provides that a Member is jointly and severally liable for the torts of the joint powers agency, but that Sections 895.4 and 895.6 of that Code allow the members of a joint powers agency to contractually agree to indemnity and contribution provisions that allow such liability to be apportioned among the members based on their respective degree of fault giving rise to the liability. The Parties further acknowledge that they have agreed at Section 7.3 above to indemnify and defend those Member agencies against loss, liability or damage suffered by a Member Agency individually as a result of that Agency's good faith acts taken pursuant to this Agreement. Now, therefore, in contemplation of such authority, the Parties agree that, as among themselves, each shall assume that portion of the liability imposed upon DCE or any of its Members, officers, agents or employees by law for injury caused by any negligent or wrongful act or omission occurring during the performance of this Agreement that is not covered by insurance, that is determined by the DCE to be that Member's proportionate share accruing during the Member's period of participation in DCE. Said determination shall be by three-fourths vote of the Member Agencies, meaning an affirmative vote of three-fourths of the total number of Member Agencies. The Members acknowledge that, given the possible variables, determination of a proper apportionment may be difficult. Therefore, subject only to arbitration rights set out at Section 6.3, the Members agree that the Board's good faith determination of a fair apportionment shall be final, binding and enforceable as a term of this Agreement. Each Member shall to the extent provided herein indemnify and hold harmless the other Members for any loss, costs or expenses that may be imposed on such other Members solely by virtue of Section 895.2.
- 7.5 Amendment of this Agreement. This Agreement may not be amended except by a written amendment approved by a vote of Board members as provided in

Section 3.17.5. DCE shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments. Exhibits A through E of this Agreement may be revised from time to time by Board vote and copies of such revised exhibits shall be distributed to all Parties.

- 7.6 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 7.6~~5~~ shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 7.6~~5~~ does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to DCE, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of DCE or the Parties under this Agreement.
- 7.7 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.
- 7.8 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.
- 7.9 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.
- 7.10 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of DCE or Party, as the case may be, or such other person designated in writing by DCE or Party. Notices given to one Party shall be copied to all other Parties. Notices given to DCE shall be copied to all Parties.
- 7.11 No Third Party Beneficiaries. This Agreement shall reflect the Parties' rights and obligations as by and among themselves. Nothing herein shall

create any right in any third party to enforce any right or obligation set out in this Agreement as against any Party hereto.

**Exhibit A**  
**Definitions**

1. "Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.)
2. "Administrative Services Agreement" means an agreement or agreements entered into after the Effective Date by DCE with one or more entity that will perform tasks necessary for planning, implementing, operating and/or administering the CCA Program, or any portion of the CCA Program or any other energy programs adopted by DCE.
3. "Agreement" means this Joint Powers Agreement.
4. "Annual Energy Use" has the meaning given in Section 3.17.1(b).
5. "Authority" means the DCE.
6. "Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions, and activities of DCE, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.
7. "Board" means the Board of Directors of DCE.
8. "CCA" or "Community Choice Aggregation" means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.
9. "CCA Program" means DCE's program relating to CCA that is principally described in Article 2 of this Agreement.
10. "CVAG" shall mean the Coachella Valley Association of Governments.
11. "Director" means a member of the Board of Directors appointed by and representing a Party.
12. "Effective Date" means \_\_\_\_\_, 2017 or when initial members of DCE execute this Agreement, whichever occurs later, as further described in Section 2.1.
13. "Implementation Plan" means the plan generally described in Section 4.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.
14. "Initial Costs" means all costs incurred by the DCE and or any Parties relating to the establishment and initial operation of DCE, such as the hiring of an Executive Officer and any administrative staff, and any required accounting, administrative, technical, or legal services in support of DCE's initial activities or in support of the negotiation, preparation, and approval of one or more Administrative Services Agreements.
15. "Operating Rules and Regulations" means one or more sets of rules, regulations, policies, bylaws and procedures governing the operation of DCE.



16. "Parties" or "Members" means, collectively, the signatories to this Agreement.
17. "Party", "Member" or "Member Agency" means a signatory to this Agreement.
18. "Total Annual Energy Use" has the meaning given in Section 3.17.1(b).

**Exhibit B**  
**List of Parties**

Parties:      City of Blythe – not in first phase  
                 City of Cathedral City  
                 City of Desert Hot Springs  
                 City of Indian Wells – not in first phase  
                 City of Palm Desert  
                 City of Palm Springs

**Exhibit C  
PRO FORMA  
Annual Energy Use**

<b>Member</b>	<b>Number of Customers</b>	<b>Annual Energy Use (MWh)</b>
Blythe	5,898	117,000
Cathedral City	24,137	329,000
Desert Hot Springs	11,421	140,000
Indian Wells	5,230	158,000
Palm Desert	39,459	699,000
Palm Springs	37,826	640,000
<b>Total</b>	<b>123,971</b>	<b>2,083,000</b>

**Exhibit d  
PRO FORMA  
VOTING SHARES**

<b>CVCEA CCA Program Participation and Weighted Voting Shares</b>					
<b>Participants</b>	<b>Annual Energy Use (MWh)</b>	<b>Percent Annual Energy Use</b>	<b>Annual Energy Use Voting Share %</b>	<b>Pro Rata Voting Share %</b>	<b>Weighted Voting Share %</b>
<b>Blythe</b>	117,000	5.62%	2.81%	8.33%	11.14%
<b>Cathedral City</b>	329,000	15.79%	7.90%	8.33%	16.23%
<b>Desert Hot Springs</b>	140,000	6.72%	3.36%	8.33%	11.69%
<b>Indian Wells</b>	158,000	7.59%	3.79%	8.33%	12.13%
<b>Palm Desert</b>	699,000	33.56%	16.78%	8.33%	25.11%
<b>Palm Springs</b>	640,000	30.72%	15.36%	8.33%	23.70%
<b>TOTALS</b>	<b>2,083,000</b>	<b>100.00%</b>	<b>50.00%</b>	<b>50.00%</b>	<b>100.00%</b>

1. [

Formulas used:

1. ANNUAL ENERGY USE VOTING SHARE: TOTAL ANNUAL ENERGY USE (EXPRESSED IN MWH) IN THE MEMBER'S JURISDICTION / COMBINED TOTAL ANNUAL ENERGY USE ALL MEMBERS' JURISDICTIONS] MULTIPLIED BY ½), EXPRESSED AS A PERCENTAGE TO TWO DECIMAL PLACES. SEE SECTION 3.17.1 (B)
2. PRO-RATA VOTING SHARE: [1 / TOTAL NUMBER OF MEMBERS] MULTIPLIED BY ½), EXPRESSED AS A PERCENTAGE TO TWO DECIMAL PLACES. SEE SECTION 3.17.1 (A)
3. WEIGHTED VOTING SHARE: [THE RESPECTIVE SUM OF THE VALUES COMPUTED IN (1) AND (2) ABOVE, EXPRESSED AS A PERCENTAGE TO TWO DECIMAL PLACES. SEE SECTION 3.17.1 (C)

**Exhibit E**  
**Signatures**

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Desert Community Energy, Community Choice Aggregation program.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Party: \_\_\_\_\_

(One signature page for each Member)

# DESERT COMMUNITY ENERGY

## Board Meeting

October 30, 2017

## Staff Report

**Subject:** Update on Our Progress

**Contact:** Tom Kirk, Executive Director ([tkirk@cvag.org](mailto:tkirk@cvag.org))

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**Recommendation:** Information Only

**Background:** As we initiate the Coachella Valley's Community Choice Aggregation program with our first official meeting, here is a brief summary of our progress to date and what is yet to come. Good progress has been made since the Ad Hoc Working Group was convened in April 2017 to review and discuss plans for implementation of a CCA. CVAG staff appreciates the commitment of time and valuable input by elected officials and jurisdiction staff throughout this process. A summary of the activities is provided in the following update.

### Status of City Approvals

Palm Desert was the third city to approve participation in the Community Choice Aggregation program at their September 28 city council meeting. Desert Hot Springs is expected to consider CCA on November 7. Indian Wells City Council decided to wait and see before joining a CCA program. With the approval of two member jurisdictions, the Joint Powers Authority is official. Here is the status for each city:

Palm Springs – approved July 5

Cathedral City – approved July 26

Palm Desert – approved September 28, second reading November 16

Indian Wells – voted to wait and see

Desert Hot Springs – November 7 agenda

Blythe – may be interested at a later date

**Benchmark Steps to CCA Formation.** Based on the recommendations of existing CCAs and others, May or early June is the best time to launch a CCA for a variety of reasons. Power procured prior to launch, in February/March, is generally available at lower prices. It is also better to launch before electricity bills increase during the summer months. A draft schedule targeting launch of a CCA in June 2018 was reviewed earlier by the Ad Hoc working group. An updated schedule is attached for your review; the schedule is estimated and may be adjusted.

A new name has been chosen, Desert Community Energy, with a tagline *The Power of Choice*. The marketing team will present logo designs for your consideration at the October 30 meeting.

Outreach to communities and stakeholders has begun to introduce participating communities to CCA and provide opportunities for them to learn more. A "Frequently Asked Questions" is available on the CVAG website to answer common questions about CCAs and a DCE website is in development. Prior to and after launch of a CCA, all SCE customers will be sent a minimum of

four opt-out notices explaining how a CCA works and their choices to join the CCA or stay with SCE.

Implementation Plan. The filing of an Implementation Plan with the California Public Utilities Commission (CPUC) and a notice of intent with Southern California Edison (SCE) are essential steps for the formation of a CCA. The Energy Authority will assist us with preparation of the Implementation Plan; they are developing financial models and a proforma to be included that will identify projected rate savings and greenhouse gas and renewable energy goals. Our target is to complete a draft Implementation Plan for consideration by the Board at the next meeting. We would like to submit this plan to the CPUC this fall. In particular, the current discussion at the CPUC regarding the Power Charge Indifference Adjustment (PCIA) or “exit fee” (see Item 7G) has emphasized the importance of submitting the Implementation Plan before the first of the year.

The Ad Hoc working group also discussed potential funding needs for start-up of a CCA. There are no up-front costs for cities to participate. TEA and Calpine have offered an arrangement whereby the CCA will not be required to pay for their services until the CCA begin to provide electricity to and collect revenue from customers. Calpine will also provide a \$500,000 special fund to cover hard costs required for start-up, including mailing four required opt-out notices to customers. CVAG staff is considering the option for CVAG or CVCC to provide funding for the CCA start-up costs at a reasonable interest rate; these funds would be paid back once CCA is operational and sufficient revenues are generated.

#### Other CCA Programs

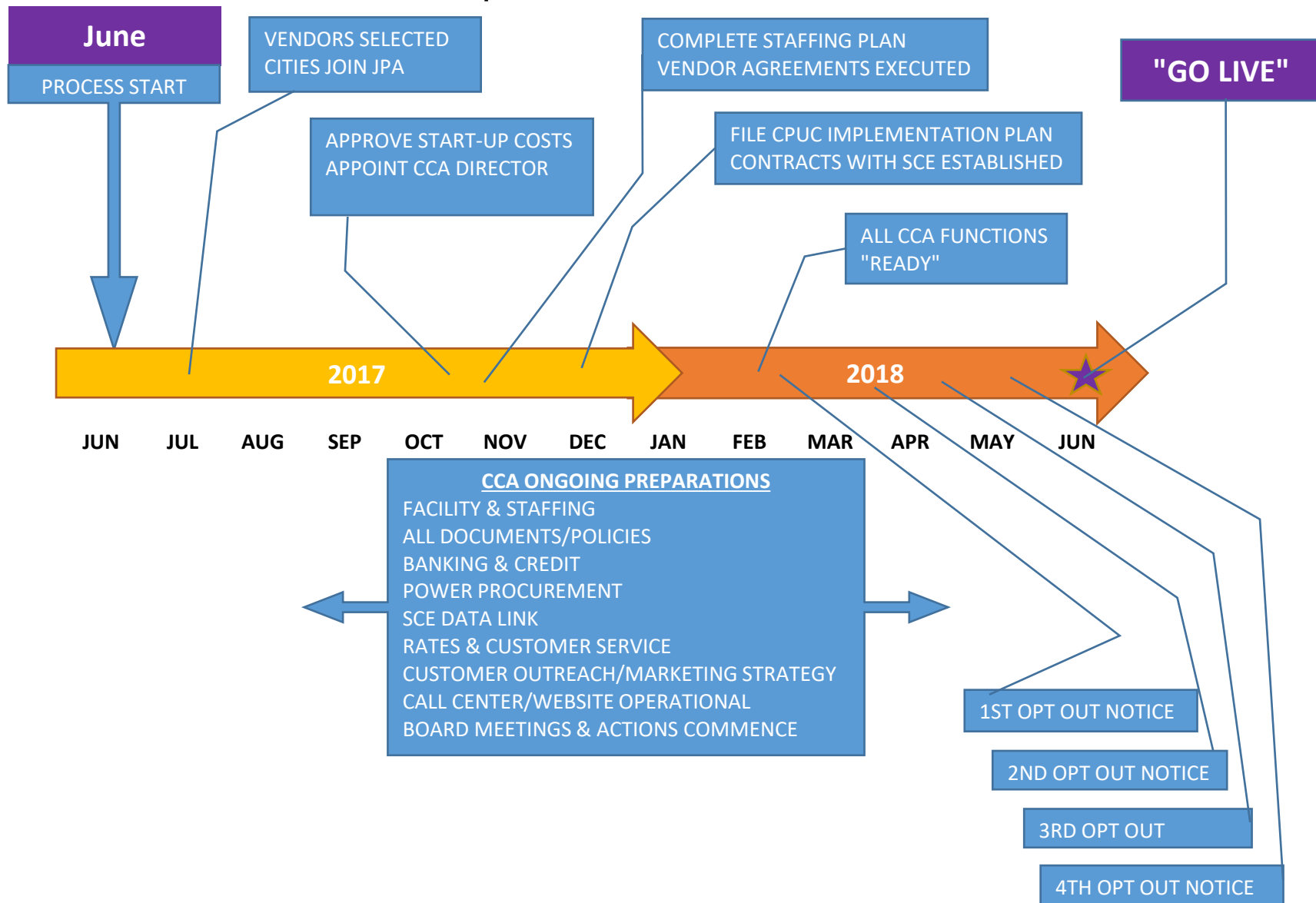
On September 19, 2017, the Rancho Mirage City Council approved an agreement with California Choice Energy Authority (CCEA), operated by the City of Lancaster. Lancaster and California Choice Energy Authority will provide operational and administrative support services, including the purchase and sale of electricity and data management services, on behalf of their CCA. Rancho Mirage’s CCA program is expected to launch in May 2018. CCEA will provide implementation support services in preparation for the launch, and operational support services.

Riverside County plans to establish their own Community Choice Aggregation (CCA) Program in partnership with Good Energy, L.P. The Board of Supervisors is considering adoption of the CCA ordinance on October 24 and a public hearing on approval of their Implementation Plan to be submitted to the California Public Utilities Commission on November 7.

**Fiscal Analysis:** No impact.

**Attachments:** DCE CCA Implementation Timeline

# DCE CCA implementation Timeline





## **ITEM 7D**

# **DESERT COMMUNITY ENERGY**

## **Board Meeting**

**October 30, 2017**

## **Staff Report**

**Subject:** Community Choice Aggregation: Agreement between CVAG and Desert Community Energy for Implementation and Management Services

**Contact:** Katie Barrows, Director of Environmental Resources ([kbarrows@cvag.org](mailto:kbarrows@cvag.org))

**Recommendation:** Authorize the Chair or Executive Director to execute an agreement with Coachella Valley Association of Governments (CVAG) to provide implementation and management services for a Community Choice Aggregation program for the Coachella Valley region

**Background:** Community Choice Aggregation allows cities and counties to pool or aggregate their buying power to secure electrical energy supply contracts on a region-wide basis, and to offer competitive rates to their consumers with the option of purchasing power from greener sources. The Community Choice Aggregation Ad Hoc Working Group has been meeting monthly since April 2017 to review and discuss plans for implementation of a CCA. A summary of the activities is provided in the following update.

One of the issues discussed by the CCA Ad Hoc Working Group is governance structure for the new CCA. At the May 2017 meeting the Ad Hoc Working Group considered three options for governance structure, including: 1) a new JPA/new agency; 2) working under CVAG's existing JPA; and 3) creating a new JPA, with CVAG providing staff during the start-up period. The Working Group recommended the "New JPA, CVAG provides staff" option. This option includes establishing a separate JPA from CVAG, with an agreement for CVAG to provide administrative services to get the CCA off the ground, for a period of up to five years. This arrangement is similar to the management services and staffing CVAG currently provides for the Coachella Valley Conservation Commission, a separate JPA.

Based on the recommendation of the Ad Hoc Working Group for CVAG to provide staff during the start-up period, the attached Implementation and Management Services Agreement ("Agreement") was drafted by CVAG general counsel. The Agreement between CVAG and the new CCA, Desert Community Energy (DCE), provides for CVAG to administer the program to get the CCA off the ground, for a period of up to five years. The Agreement is modeled after a similar agreement between CVAG and the Coachella Valley Conservation Commission. Through the terms of this agreement, CVAG will provide staff support to the CCA program. In addition to staff support, which includes meeting coordination, support to the board, oversight of consultants, and coordination of CCA implementation, CVAG staff will also provide administrative support and accounting services including preparation of the budget, oversight of the annual audit, and management of the various DCE funds. Of the seven CVAG employees likely to provide support for the CCA program, each will only spend part of their time on the CCA program. CVAG will only charge DCE for the actual staff time incurred; CVAG tracks each employee's allocation of time spent on all projects.

In the initial stages of CCA development, CVAG anticipates using consultants to assist with the various tasks necessary for implementation and operation. CVAG will provide supporting staff to coordinate and oversee the activities of the consultant team. A team led by The Energy Authority (TEA) and Calpine was selected to provide operations and implementation services. To provide local support, Burke-Rix Communications was selected to work with Desert Community Energy on marketing and outreach for the CCA. The authorization for these services is described in Item 7E. Item 7F addresses a cost-sharing agreement for legal and technical support for the Power Cost Indifference Adjustment (PCIA) or “exit fee” charge.

**Fiscal Analysis:** The Agreement allows CVAG to invoice Desert Community Energy based upon actual staff time spent at rates not to exceed the rates paid by CVAG. The CCA board will determine a budget and staffing needs for the implementation and management services to be provided by CVAG. CVAG is tracking all expenses related to formation of a CCA; when a CCA is formed, these costs would be reimbursed.

**Attachments:**

1. Implementation and Management Services Agreement

**Contract Finalization:** The Executive Director and/or legal counsel are authorized to make non-substantive changes or revisions to the CVAG-CCA agreement as necessary to address minor issues.

**IMPLEMENTATION AND MANAGEMENT SERVICES AGREEMENT**  
**between**  
**DESERT COMMUNITY ENERGY**  
**and**  
**THE COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS**

This Implementation and Management Services Agreement ("Agreement") is made and entered into by and between Desert Community Energy ("DCE") and the Coachella Valley Association of Governments ("CVAG") and shall become effective upon the terms set forth herein.

WHEREAS, CVAG is a public agency formed by a Joint Powers Agreement pursuant to Government Code section 6500 et seq.; and

WHEREAS, DCE is a public agency formed by a Joint Powers Agreement ("DCE JPA"), pursuant to Government Code section 6500 et seq., to collectively study, promote, develop, conduct, operate, and manage a Community Choice Aggregation ("CCA") Program on behalf of its members, and to exercise all other powers necessary and incidental to accomplishing this purpose; and

WHEREAS, the DCE JPA specifies that CVAG shall provide, under contract with DCE, administrative services required by DCE during the first five (5) years of the implementation of the CCA program; and thereafter as the administrative services contract may be renewed from time to time; and that during any such term, CVAG's Executive Director may serve as the secretary of DCE; and

WHEREAS, the DCE JPA provides that the Executive Officer of DCE may be an employee of CVAG; and

WHEREAS, the DCE JPA provides that DCE may contract with CVAG for staff services and that CVAG staff time, as well as office expenses, direct and indirect overhead, shall be charged to DCE utilizing direct billing and other accounting practices that provide for a clear separation of funds;

NOW, THEREFORE, DCE and CVAG agree to the following terms with respect to compensation to be paid by DCE to CVAG for the administration of the Community Choice Aggregate Program.

1. APPOINTMENT OF EXECUTIVE OFFICER

DCE hereby retains CVAG, acting through its Executive Director, to serve as the Executive Officer for DCE, and to serve as Secretary for DCE's Board of Directors, and to provide staff for DCE, to fulfill the needs and requirements of DCE; and CVAG agrees to provide such services through such personnel as may be required for the administration of the CCA Program, all upon the terms set forth below.

## 2. DUTIES OF CVAG

CVAG shall administer, coordinate, and supervise the activities of DCE as set forth in the DCE JPA, and shall act for DCE in accomplishing its purposes as set forth in the DCE JPA. DCE's Executive Officer appointed in Section 1 above, acting either individually or through such personnel as he or she shall from time to time appoint, shall have and exercise all those powers and responsibilities of DCE, its Executive Officer and Secretary, as enumerated in the DCE JPA.

## 3. OTHER PERSONNEL SERVICES

The Executive Officer for DCE appointed in Section 1 above may retain and appoint additional staff as may from time to time be necessary or convenient to fulfill the needs of DCE. Such additional staff may be retained as CVAG employees or contractors.

## 4. TERM OF AGREEMENT

This Agreement shall be effective for a five-year term as of the effective date of the DCE JPA, and only upon execution by both CVAG and DCE. Once effective, this Agreement shall continue thereafter for successive five-year terms without further action by either party. This Agreement may be terminated at any time by either party giving the other party six (6) months prior written notice.

## 5. COMPENSATION

(a) DCE agrees to pay CVAG based upon actual staff time spent at rates not to exceed the rates paid by CVAG. These costs shall include recovery of overhead costs based on a proportional share of actual payroll expenditures for CVAG staff involved in the CCA program. In any fiscal year, the total to be paid hereunder shall not exceed the sum included in CVAG's adopted budget specific to the CCA Program. A not-to-exceed amount for each of the following four years shall be determined prior to the start of each fiscal year and shall be approved by DCE and CVAG as part of the annual budget process.

(b) DCE shall reimburse CVAG for non-employee costs incurred by CVAG while performing the services hereunder, which may include, but not be limited to, supplies, legal services, consultant services, equipment, board member stipends and board member and staff expenses reimbursements. The reimbursement of these costs will be provided at the same rate charged to CVAG.

(c) CVAG shall invoice DCE for payment no more frequently than monthly but at least semi-annually.

(d) DCE acknowledges that rates for CVAG staff are set, and may be adjusted, by the CVAG General Assembly.

(e) Payment by DCE to CVAG shall be made within thirty (30) days of receipt of each invoice.

(f) OWNERSHIP OF DOCUMENTS

Upon completion of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall be the property of and be delivered to DCE and may be used, reused, or otherwise disposed of by DCE without the permission of CVAG. CVAG may retain a copy of any such materials for use by CVAG.

(g) INDEMNIFICATION

(a) To the fullest extent permitted by law, CVAG shall indemnify, protect, defend and hold harmless DCE and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs which arise out of, pertain to, or relate to the acts or omissions of CVAG.

(b) To the fullest extent permitted by law, DCE shall indemnify, protect, defend and hold harmless CVAG and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs which arise out of, pertain to, or relate to the acts or omissions of DCE.

(h) INSURANCE

CVAG shall maintain prior to the beginning of and for the duration of this Agreement general liability and motor vehicle coverage with limits not less than \$1 million per occurrence. CVAG and DCE shall at all times provide workers' compensation benefits for employees.

(i) ADMINISTRATION

DCE's Board of Directors, or its designee, shall administer this Agreement on behalf of DCE. CVAG's Executive Committee shall administer this Agreement on behalf of CVAG.

(j) ASSIGNMENT

This Agreement shall not be assigned by either party, in whole or in part, without the prior written consent of the other party.

(k) AMENDMENT

This Agreement represents the entire agreement between the parties with respect to personnel and management services provided by CVAG to DCE. Any amendment or modification of the provisions of this Agreement must be in writing and signed by each of the parties hereto.

(l) WAIVER

Any waiver by either party of a breach of any of the terms of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.

(m) SEVERABILITY

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(n) GOVERNING LAW AND VENUE

This Agreement and its construction and interpretation as to validity, performance and breach shall be construed under the laws of the State of California applicable to agreements both entered into and to be performed in California. The provisions of the Government Claims Act (Government Code section 900 et seq.) shall be applicable for any disputes under this Agreement. Venue shall be within the County of Riverside, Desert Judicial Branch, for any legal or equitable action to enforce the terms of this Agreement, to declare the rights of the parties under this Agreement, or for any action with relates to this Agreement in any manner.

(o) APPROVAL/COUNTERPARTS

This Agreement must be approved by DCE's Board of Directors and CVAG's Executive Committee. Each party has had the opportunity to participate in drafting and preparation of this Agreement. This Agreement may be executed in counterparts which together shall constitute one and the same Agreement.

(p) CERTIFICATION OF AUTHORITY TO EXECUTE THIS AGREEMENT

CVAG and DCE certify that the individuals signing below on behalf of their respective party has authority to execute this Agreement on behalf of that party, and may legally bind that party to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date or dates indicated below.

DESERT COMMUNITY ENERGY

COACHELLA VALLEY ASSOCIATION  
OF GOVERNMENTS

By: \_\_\_\_\_  
Chair

By: \_\_\_\_\_  
Chair

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

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

## **ITEM 7E**

# **DESERT COMMUNITY ENERGY**

## **Board Meeting**

**October 30, 2017**

## **Staff Report**

**Subject:** Agreement with The Energy Authority consultant team to provide CCA Implementation, Wholesale Power Procurement, and Associated Technical Operating Services

**Contact:** Katie Barrows, Director of Environmental Resources, CVAG  
([kbarrows@cvaq.org](mailto:kbarrows@cvaq.org))

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**Recommendation:** Authorize the Executive Director to negotiate an agreement between Desert Community Energy (DCE) and The Energy Authority (TEA) team to provide CCA launch, implementation, wholesale power procurement, and operational services for a Community Choice Aggregation (CCA) program and bring the final agreement back to the DCE Board for approval.

**Background:** Community Choice Aggregation allows cities and counties to aggregate and secure electrical energy supply on a region-wide basis, and to offer such power supplies to consumers within their jurisdictions. In April 2016, the CVAG Executive Committee authorized CCA investigation working in tandem with WRCOG and others to conduct an initial CCA feasibility assessment. CVAG subsequently established a Community Choice Aggregation Ad Hoc Working Group which has been meeting monthly and includes elected representatives and staff from cities served by Southern California Edison which are interested in participating in CVAG's CCA program.

An essential CCA milestone is attaining business and technical capabilities in order to conduct CCA program implementation and launch activities, and to subsequently perform the full array of wholesale power procurement, scheduling coordination, customer service, credit support, California Independent System Operator (CAISO) interface and settlements, data interchange with Southern California Edison (SCE), load forecasting, legislative and regulatory involvement, resource planning, risk management, budgeting and rates, and other CCA related activities. Subject to CCA size and internal staffing, it is generally not cost effective to self-perform most of these tasks although the DCE Board and management has full authority and responsibility over all CCA business functions and outcomes. For certain infrastructure and program support, DCE intends to leverage available CVAG expertise to be considered under Item 7D. For the more technically complex CCA program services, CVAG worked with WRCOG to issue a Request for Proposals (RFP) for CCA implementation and operations services during early 2017. Six of the nine RFP responders were later interviewed by CVAG and WRCOG staff and representatives during May 2017.

A second interview session for the top two contenders was held in June 2017. CVAG staff notes special appreciation for the assistance of Cathedral City Manager Charles McClendon and Councilmember Shelley Kaplan during the interview and selection process. A team-based proposal led by The Energy Authority (TEA) and Calpine Energy Services (Calpine) was selected. The Energy Authority is a non-profit corporation providing wholesale power and portfolio management services to over 50 public power agencies across the country. TEA is currently providing implementation/operation services to several other CCAs in California, including

Redwood Coast Energy Authority and the City of Solana Beach. Calpine is a power supply and services company which also provides data management and coordination with SCE, and customer service support to CCAs. Calpine currently serves all operating CCAs in California. Other members of the TEA/Calpine team include LEAN Energy US which provides assistance with CCA implementation and governance, and Green Ideals which has assisted many of the existing CCAs with outreach. CVAG completed a separate RFP process for a local firm to assist with marketing, branding, and outreach and selected Burke-Rix Communications to work with DCE and the TEA team on these CCA activities. Given their experience with CCA across the state and the issues and concerns of potential CCA customers, Green Ideals will be available to assist Burke Rix and staff with outreach and marketing, including website development, on an as needed basis. CVAG will provide support staff to coordinate and oversee the activities of the consultant team.

TEA and Calpine have offered an arrangement whereby DCE will not be required to pay for services until the CCA commences electricity sales and collects revenue from customers. Calpine will also provide up to a \$500,000 fund to cover certain hard costs required for start-up, including mailing four required opt-out notices to customers. Alternatively, CVAG staff is considering the option for CVAG to provide such start-up funding at a reasonable interest rate. Any CVAG provided funds would be repaid once the CCA is operational and sufficient cash balances are available.

Resource Management Agreement with The Energy Authority. Staff is working with TEA and CVAG legal counsel to review and provide input on a Resource Management Agreement (RMA) and task orders for the various consulting services to be provided for CCA implementation. CVAG legal counsel is working with TEA's contracts office to resolve some questions and concerns and finalize the RMA and associated documents. We anticipate bringing the final agreement back to the Board at the next meeting for approval. The RMA provides for a range of services and is to be executed between DCE and TEA. TEA will be acting as the primary contractor in coordination with other members of the service provider team. The RMA includes multiple Task Orders and a Deposit Account Control Agreement. Each Task Order includes a schedule of services and deliverables. The component parts of the RMA are outlined below:

- Resource Management Agreement. The RMA creates the overarching framework for services provided to DCE. It has been structured with individual task orders for specific services as outlined below. The general requirements of the RMA apply to the services in each Task Order. In addition, from time to time DCE may require additional services that TEA may be willing to provide and/or coordinate. Any additional services may be added to the RMA through amendment to an existing Task Order or entering into a new Task Order that would be attached to the RMA, as approved by DCE and TEA. The RMA has a contract term of five (5) years.
- Task Order 1. Task Order 1 (TO1) addresses the scope of services required to prepare for CCA deployment up to and including program launch. Deliverables per TO1 include: coordination between DCE, TEA, Calpine, Lean and others; facilitation with DCE JPA activities; preparation of DCE's Implementation Plan to be filed at the CPUC; preparation and submittal of requisite SCE notices and materials; California Air Resources Board (CARB) and Western Renewable Energy Generation Information System (WREGIS) registrations; development of the DCE initial Integrated Resource Plan (IRP); initial rate activities and procurement planning; and other activities as warranted. TO1 is to terminate upon formal CCA service launch date.
- Task Order 2. Task Order 2 (TO2) addresses the scope of services for DCE CCA program operations following program launch date. Deliverables per TO2 include: full-range power procurement activities including meeting Renewable Portfolio Standard (RPS) mandates and California Independent System Operator (CAISO) interface requirements; power accounting and settlements; credit support activities; load forecasting and tracking; CCR bidding and risk



strategies; financial and technical service; establishment of billing and payment obligations; risk management policy and practices development; re-certification of IRP as necessary; outline of TEA hourly billing rates; other activities as warranted. TO2 also contain Schedule A indicating target lock box and reserve fund amounts.

- Task Order 3. Task Order 3 (TO3) addresses Data Management and Customer Call Center Services provided by Calpine Energy Solutions and as required by DCE for both Phase II (launch) and Phase III (operations). These services include the initial setting up and testing of requisite data transfer protocols between DCE and SCE, the ongoing monthly administration and data transfer associated with CCA billing activities, and call center/customer service functions including customer relationship management.
- Task Order 4. Task Order 4 (TO4) addresses the services provided by LEAN EnergyUS and Green Ideals related to CCA program start-up, program and policy support, website development, branding, coordinating with marketing/messaging consultants as requested by DCE, and other activities as directed by DCE on a time and materials basis. Marketing and outreach work by BurkeRix will be included in Task Order 4.
- Attachment A to the RMA. Attachment A is the Deposit Account Control Agreement which identifies the subordination and control of banking fund balances by The Energy Authority to assure amounts due and payable are completed in a timely fashion and to provide collateralization for TEA's credit support assistance.

**Conclusion:** The Energy Authority and subconsultants bring together a team that provides a reasonable and necessary foundation and technical service suite for the successful launch and operation of DCE's CCA Program. Advantages in working with this team include their experience, their ability to provide their credit and upfront capital for power procurement, their knowledge of CCA best practices, and their collaborative approach to providing support for our emerging CCA. Staff recommends the DCE Board: 1) approve the selection of The Energy Authority, Calpine Energy Solutions, Lean EnergyUS, Green Ideals, and BurkeRix Communications to provide implementation and operations services; and 2) authorize the Executive Director to negotiate an agreement between Desert Community Energy (DCE) and The Energy Authority (TEA) to provide CCA launch, implementation, wholesale power procurement, and operational services for our CCA program, in consultation with DCE General Counsel. As noted, the final agreement will be presented for approval to the DCE Board at the next meeting.

**Fiscal Analysis:** The funding for CCA operations will come from payment of utility bills by customers once the CCA launch occurs and we begin serving customers. The initial expenses will cover the first months of operations, staffing, legal and other administrative functions until a revenue stream is established. A primary goal will be development of a reserve fund to hedge against changing conditions and to build credit worthiness for the CCA. The one-time upfront costs for TEA are estimated at approximately \$400,000. Included in this amount is the cost for The Energy Authority to prepare the Implementation Plan to be submitted to the CPUC. This estimate also includes the marketing and outreach component of the project, development of a logo and brand, website and initial community outreach to educate community members about CCA which are expected to occur prior to December 31, 2017. Power procurement would begin in January 2018 so is not included in this estimate. The estimated ongoing costs for TEA services are approximately \$2.5 million. Staff will present a summary of pre-launch estimated costs, as well as monthly/annual services costs post launch at the October 30 meeting. CVAG is tracking all expenses related to initial formation of the DCE CCA; these costs would be reimbursed once the CCA collects sufficient revenues. CVAG, in concert with TEA, will track all TEA and subconsultant expenses prior to and after program launch. CVAG/DCE and TEA staffs will track such costs, prepare budget estimates and budget tracking procedures, and periodically report to the DCE Board. Approximately three months after program launch CVAG and TEA staff will present to the Board a detailed repayment plan for cumulated CCA expenditures incurred during the pre-launch through approximately 3 months post launch period.

## **ITEM 7F**

# **DESERT COMMUNITY ENERGY**

## **Board Meeting**

**October 30, 2017**

## **Staff Report**

**Subject:** Cost Sharing Agreements for Legal Services and Technical Consulting Services Related to Power Charge Indifference Adjustment (PCIA)

**Contact:** Benjamin Druyon, Management Analyst ([bdruyon@cvag.org](mailto:bdruyon@cvag.org))

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**Recommendation:** Authorize the Executive Director to:

- 1) Enter into a cost sharing agreement with Western Riverside Council of Governments and Los Angeles Community Choice Energy for legal services related to the California Public Utilities Commission Proceeding R17-06-026, Review of the Power Charge Indifference Adjustment, for not to exceed \$20,000 as DCE's share.
- 2) Enter into a cost sharing agreement with Los Angeles Community Choice Energy and Western Riverside Council of Governments for consulting services related to the California Public Utilities Commission Proceeding R17-06-026 Review of the Power Charge Indifference Adjustment, for not to exceed \$20,000 as DCE's share.

**Background:** On June 29, 2017, the CPUC opened a proceeding to consider alternatives to the "exit fee" that Community Choice Aggregation and Direct Access customers pay in order to keep remaining Investor Owned Utility customers financially unaffected by their departure. This fee, referred to as the Power Charge Indifference Adjustment (PCIA), is required by legislation. Legislation also requires that departing customers do not experience cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load. This proceeding will consider whether the PCIA can be reformed or whether alternative mechanisms would better meet the statutory goals for cost allocation.

The Power Charge Indifference Adjustment is the mechanism to ensure that customers who remain with the utility do not end up taking on the long-term financial obligations the utility incurred on behalf of now-departed customers. Examples of such financial obligations include long-term power purchase contracts with independent power producers and utility expenditures to build power plants.

As part of staff's work in developing a CCA program, CVAG along with Western Riverside Council of Governments (WRCOG) has become party to the California Public Utilities Commission (CPUC) Proceeding R17-06-026 to ensure our interests are represented. The CPUC has agreed to hold a PCIA workshop in the Los Angeles area at a date to be determined sometime in early November. We are encouraged to send representatives to this workshop. Staff will provide an update on the PCIA at the October 30 meeting.

In order to provide cost efficiencies for legal services, staff has been working with staff from WRCOG and Los Angeles Community Choice Energy (LACCE), to develop agreements to cost share legal and technical services for the PCIA proceeding. WRCOG would serve as the lead for the legal services agreement, using Best, Best, & Krieger to provide legal services, including coordination with the CPUC. Los Angeles Community Choice Energy would serve as the lead for the technical services, using EES Consulting, Inc. to provide analysis and recommendations on

PCIA charges and their impact on our emerging CCAs. Attached are these two agreements for the Board's review.

**Fiscal Analysis:** Costs for this work attributed to Desert Community Energy can be reimbursed once the CCA is operational and begins collecting revenues.

**Attachments:**

- 1) Cost Sharing Agreement for Legal Services between DCE, WRCOG and LACCE.
- 2) Cost Sharing Agreement for Consulting Services between DCE, WRCOG and LACCE.

## Attachment 1

### **COST SHARING AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS, DESERT COMMUNITY ENERGY AND LOS ANGELES COMMUNITY CHOICE ENERGY**

THIS COST-SHARING AGREEMENT (“**Agreement**”) is made as of \_\_\_\_\_, 2017 (“**Effective Date**”), by and between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (“**WRCOG**”), a California joint powers authority, DESERT COMMUNITY ENERGY (“**DCE**”), a California joint powers authority, and LOS ANGELES COMMUNITY CHOICE ENERGY (“**LACCE**”), a California joint powers authority. WRCOG, DCE AND LACCE may individually referred to as a “**Party**” or collectively as the “**Parties**.”

#### **RECITALS**

- A. The Parties desire to reduce consultant costs of supporting its officers and employees with respect to regulatory issues associated with their respective development and implementation of community choice aggregation programs (“**Program**”).
- B. The Parties desire to provide for a cost sharing arrangement relating to each Party’s use of certain technical consultants for the Program.

#### **AGREEMENT**

NOW, THEREFORE, the Parties hereby agree as follows:

1. Shared Costs. The Parties shall furnish through third party consultants engaged by LACCE, all or part of the following services to be utilized by the Parties for the Program:
  - 1.1. technical advisory services regarding California Public Utilities Commission proceedings and regulatory requirements in an amount not to exceed \_\_\_\_\_;
  - 1.2. technical advisory services regarding community choice aggregation issues as agreed to in writing between the Parties; and
  - 1.3. other third party technical consultant services as agreed to in writing by the Parties.
2. Reimbursement of Shared Costs. WRCOG and DCE agree to reimburse LACCE on a monthly basis in arrears for the costs of the services provided hereunder based on the actual cost attributable to each Party as rendered or on an equal basis, as agreed to in writing by the Parties. The Parties agree that all charges to each Party for services provided under this Agreement shall be based on the actual costs without any allowance or margin for profit to the other Party.
3. Books and Records. Each Party shall maintain appropriate and accurate books of account and records relating to the services utilized by the Parties under this Agreement, and such books of account and records shall be accessible for inspection by representatives (including the auditors) of the other Party at any time during normal business hours. Except in the ordinary course of business of each Party, the other shall, and shall use commercially reasonable efforts to cause each of its employees, contractors, agents, officers and directors to, keep confidential any and all

information he or she may obtain from time to time in connection with the services he or she renders under this Agreement.

5. Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated by either Party upon thirty (30) days written notice.

6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns as provided in this Agreement.

7. Entire Agreement. This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.

8. Alternative Dispute Resolution. The Parties shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. If a dispute is unable to be informally resolved or settled by the Parties, then thirty (30) days prior to filing any legal action, other than a legal action for temporary injunctive relief as contemplated herein, the executive officers of each Party shall meet together in person in good faith to endeavor to reach a mutually beneficial resolution and settlement of such dispute.

9. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**WESTERN RIVERSIDE COUNCIL OF  
GOVERNMENTS**

*Approved By:*

\_\_\_\_\_  
Rick Bishop, Executive Director

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
General Counsel

**LOS ANGELES COMMUNITY CHOICE  
ENERGY**

*Approved By:*

\_\_\_\_\_  
Bill Carnahan, Executive Director

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
General Counsel

**DESERT COMMUNITY ENERGY**

*Approved By:*

\_\_\_\_\_  
Tom Kirk, Executive Director

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
General Counsel

## Attachment 2

### **COST SHARING AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS, DESERT COMMUNITY ENERGY AND LOS ANGELES COMMUNITY CHOICE ENERGY**

THIS COST-SHARING AGREEMENT (“**Agreement**”) is made as of \_\_\_\_\_, 2017 (“**Effective Date**”), by and between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (“**WRCOG**”), a California joint powers authority, DESERT COMMUNITY ENERGY (“**DCE**”), a California joint powers authority, and LOS ANGELES COMMUNITY CHOICE ENERGY (“**LACCE**”), a California joint powers authority. WRCOG, DCE AND LACCE may individually referred to as a “**Party**” or collectively as the “**Parties**.”

#### **RECITALS**

- A. The Parties desire to reduce consultant costs of supporting its officers and employees with respect to regulatory issues associated with their respective development and implementation of community choice aggregation programs (“**Program**”).
- B. The Parties desire to provide for a cost sharing arrangement relating to each Party’s use of certain technical consultants for the Program.

#### **AGREEMENT**

NOW, THEREFORE, the Parties hereby agree as follows:

1. Shared Costs. The Parties shall furnish through third party consultants engaged by LACCE, all or part of the following services to be utilized by the Parties for the Program:
  - 1.1. technical advisory services regarding California Public Utilities Commission proceedings and regulatory requirements in an amount not to exceed \_\_\_\_\_;
  - 1.2. technical advisory services regarding community choice aggregation issues as agreed to in writing between the Parties; and
  - 1.3. other third party technical consultant services as agreed to in writing by the Parties.
2. Reimbursement of Shared Costs. WRCOG and DCE agree to reimburse LACCE on a monthly basis in arrears for the costs of the services provided hereunder based on the actual cost attributable to each Party as rendered or on an equal basis, as agreed to in writing by the Parties. The Parties agree that all charges to each Party for services provided under this Agreement shall be based on the actual costs without any allowance or margin for profit to the other Party.
3. Common Interest: To further their common interests in the Program, the Parties and their respective counsel have shared, and desire to continue to share, orally, in writing, and by other means, information concerning the Program and other material that is subject to the attorney-client privilege, the attorney work product doctrine, and other related or applicable privileges and protections (collectively, “**Common Interest Materials**”) without in any way waiving any

applicable privilege, protection, or immunity, or diminishing the confidentiality of the Common Interest Materials. With these goals in mind, the Parties agree as follows:

3.1 Exchange of Information. In consideration of their common interests, the Parties agree that any exchanges among the Parties, their counsel, consultants and/or experts acting on their behalf (collectively, “**Party Affiliates**”) of Common Interest Materials does not waive any privilege, protection, or confidentiality applicable to such materials. The Parties intend that all privileges, protections, and confidentiality applicable to Common Interest Materials shared among the Parties and/or Party Affiliates under this Agreement will apply to the same extent as if the Common Interest Materials had not been shared. Without limiting the foregoing, this Agreement and any drafts thereof are Common Interest Materials.

3.2 Confidentiality. Each Party will keep all Common Interest Materials in strict confidence, and will use such materials only as permitted under this Agreement or as otherwise permitted by the disclosing Party. No Party may disclose Common Interest Materials to any third party for any purpose, except as otherwise permitted by the disclosing Party. For the avoidance of doubt, this Agreement does not restrict a Party from disclosing Common Interest Materials to its own counsel. Nothing in this Agreement obligates any Party to disclose to another Party any privileged or confidential information.

3.3 Injunctive Relief. The Parties agree that the disclosure of any Common Interest Materials in violation of this Agreement may cause irreparable harm for which there is no adequate remedy at law. Each Party agrees that immediate injunctive relief is an appropriate and necessary remedy for violation of this Agreement.

3.4 Relationship. Nothing in this Agreement creates either: (a) a fiduciary duty among the Parties or with any third party or (b) an attorney-client relationship between any attorney and any Party that is not represented by that attorney as its counsel.

4. Books and Records. Each Party shall maintain appropriate and accurate books of account and records relating to the services utilized by the Parties under this Agreement, and such books of account and records shall be accessible for inspection by representatives (including the auditors) of the other Party at any time during normal business hours. Except in the ordinary course of business of each Party, the other shall, and shall use commercially reasonable efforts to cause each of its employees, contractors, agents, officers and directors to, keep confidential any and all information he or she may obtain from time to time in connection with the services he or she renders under this Agreement.

5. Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated by either Party upon thirty (30) days written notice.

6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns as provided in this Agreement.

7. Entire Agreement. This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade



inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.

8. Alternative Dispute Resolution. The Parties shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. If a dispute is unable to be informally resolved or settled by the Parties, then thirty (30) days prior to filing any legal action, other than a legal action for temporary injunctive relief as contemplated herein, the executive officers of each Party shall meet together in person in good faith to endeavor to reach a mutually beneficial resolution and settlement of such dispute.

9. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**WESTERN RIVERSIDE COUNCIL OF  
GOVERNMENTS**

*Approved By:*

\_\_\_\_\_  
Rick Bishop, Executive Director

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
General Counsel

**LOS ANGELES COMMUNITY CHOICE  
ENERGY**

*Approved By:*

\_\_\_\_\_  
Bill Carnahan, Executive Director

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
General Counsel

**DESERT COMMUNITY ENERGY**

*Approved By:*

\_\_\_\_\_  
Tom Kirk, Executive Director

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
General Counsel