

**DESERT COMMUNITY ENERGY**

**JOINT POWERS AGREEMENT**

**Effective October 30, 2017**

**As amended by Amendment No. 1 dated December 4, 2017**

**As amended by Amendment No. 2 dated September 16, 2019**

**Among the Following Parties:**

**City of Cathedral City**

**City of Palm Desert**

**City of Palm Springs**

## DESERT COMMUNITY ENERGY

### JOINT POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”), effective as of October 30, 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 October 30, 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 7.5 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 / 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: ([Total Annual Energy Use (expressed in MWh) in the Member's jurisdiction / combined Total Annual Energy Use in all Members' jurisdictions] multiplied by ½), 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 7.5. 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 7.5 (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.
- (c) Unanimous Voting Requirement Relating to Section 5.3.5. A decision to amend or remove Section 5.3.5 shall require a unanimous vote of all Directors.

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.
- 5.3.5 Accrual of Revenues When Program Launch Dates Vary. In the event that the Authority procures energy for and begins servicing load to ratepayers of one or more Members (“Active Members”) before doing so for other Members (“Pending Members”), it shall implement an accounting system that records revenues generated by the Active Members. The Members agree that revenues generated by the Active Member(s), reduced by direct expenses, as well as Authority procurement obligations shall accrue solely to the ratepayers in the Active Member(s)’ jurisdiction(s). At such time as all Members become active, revenues going forward will be treated as one and tracked accordingly. Notwithstanding the provisions of Section 3.17., amendment or excision of this Section 5.3.5 shall require a unanimous vote of the Authority Board.

## **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), providing such information as is available to assist with forecasting of conditions over the next three years. 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 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 indemnify 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 7.65 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 7.65 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 October 30, 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 Cathedral City  
                  City of Palm Desert  
                  City of Palm Springs

**Exhibit C  
PRO FORMA  
Annual Energy Use**

<b>City</b>	<b>Electric Customers</b>	<b>Average Load (GWh)</b>	<b>Revenues (Million \$/yr)</b>
Cathedral City	24,137	329	30
Palm Desert	39,459	699	58
Palm Springs	37,826	640	56
<b>Total</b>	101,422 <sup>1</sup>	1,668	\$ 144

<sup>1</sup> Total does not include opt out rate, estimated at 10%

**Exhibit D  
PRO FORMA  
VOTING SHARES**

CVCEA CCA Program Participation and Weighted Voting Shares					
Active Participants	Annual Use (MWh)	Percent Annual MWh	MWh Voting Share	Pro Rata Vote Share	Wtd Voting Share
Cathedral City	329,000	19.72%	9.86%	16.67%	26.53%
Palm Desert	699,000	41.91%	20.95%	16.67%	37.62%
Palm Springs	640,000	38.37%	19.18%	16.67%	35.85%
<b>TOTALS</b>	1,668,000	100.00%	50.00%	50.00%	100.00%

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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)