



City of Del Mar Staff Report

TO: Honorable Mayor and City Council Members

FROM: Clem Brown, Environmental Sustainability/Special Projects Manager
Via Scott W. Huth, City Manager

DATE: October 7, 2019

SUBJECT: Resolution to Establish the Clean Energy Alliance by Joint Exercise of Powers Agreement and Introduction of an Ordinance to Implement a Community Choice Aggregation Program

REQUESTED ACTION/RECOMMENDATION:

Staff recommends the City Council:

- 1) Adopt a resolution approving and authorizing the execution of the joint exercise of powers agreement creating the Clean Energy Alliance (CEA) (Attachment A);
- 2) Authorize the City Manager, with legal consultation, to execute the CEA Joint Powers Agreement (JPA Agreement) between the Cities of Del Mar, Solana Beach, Carlsbad, Santee and the County of San Diego (Attachment B);
- 3) Introduce an ordinance authorizing the implementation of a Community Choice Aggregation Program (Attachment C); and
- 4) Appoint two Council Members to the CEA Board of Directors (primary/alternate), to represent the City of Del Mar, in accordance with Section 4.1 of the JPA Agreement.

BACKGROUND

California state law (AB 117) allows local governments to form Community Choice Energy (CCE), also known as Community Choice Aggregation (CCA), programs that offer an alternative electric power option to constituents (i.e., customers) currently served electric power by investor owned utilities (IOUs), such as SDG&E. Under the CCE model, local governments purchase and manage their community's electric power supply by sourcing power from a preferred mix of traditional and renewable generation sources, while the incumbent IOU (SDG&E) continues to provide distribution service. This gives CCEs the opportunity to design and potentially reduce retail rates for their constituents, provide customer choice, promote local economic development, and offer a cleaner power supply.

The City of Del Mar's Climate Action Plan (CAP) sets long-term goals to reduce the greenhouse gas (GHG) emissions in the community. The CAP's goal for 2035 is to reduce GHG emissions to at least 50 percent below Del Mar's baseline 2012 values, and to

continue further reductions to meet the State goal of 80 percent reduction below Statewide 1990 values by 2050.

Recognizing that energy use is a significant contributor to the City's GHG emissions (36 percent of the 2012 baseline), the CAP has a goal to achieve 100% renewable energy by 2035. Implementing a CCE program is one of the actions identified in the CAP that would facilitate the City achieving this goal.

DISCUSSION/ANALYSIS:

After receiving a joint CCE Technical Feasibility Study and Governance Analysis Report, the Del Mar City Council expressed its intent to pursue a CCE program and directed staff to negotiate and enter into a CCE joint powers authority (JPA) with the Cities of Solana Beach and Carlsbad and other potential partners (e.g., City of Santee and County of San Diego). This item recommends that the City Council:

- 1) Adopt a resolution authorizing the execution of the joint exercise of powers agreement with the Cities of Del Mar, Solana Beach, Carlsbad, Santee and the County of San Diego to create the Clean Energy Alliance (CEA);
- 2) Introduce an ordinance to implement a CCE program; and
- 3) Appoint two Council Members to the CEA Board of Directors (primary/alternate).

Establishing a CCE program in the City of Del Mar through a JPA is financially feasible, will reduce GHG emissions, provide local control over energy decisions, and generate enhanced local economic development.

In order to implement a CCE program through a JPA, two City Council actions are required. The first action is to adopt a resolution establishing the City's participation in the JPA (Attachment A). Del Mar's participation in CEA, a joint powers authority, is authorized pursuant to California Government Code section 6500 et seq. The proposed resolution authorizes the City Manager to execute the JPA Agreement (Attachment B) with the other potential Founding Members, the Cities of Solana Beach Carlsbad, Santee and the County of San Diego.

The JPA Agreement contains the following key provisions:

Clean Energy Alliance Joint Powers Authority Key Terms & Conditions	
File Implementation Plan	December 2019
Launch Year	2021

Power Supply Portfolio (Section 6.5)	<ul style="list-style-type: none"> • > or equal to 50% RPS at launch (base product) • 100% RPS by 2035 • Product options with higher RPS and/or GHG-free content (e.g., 75% RPS) • Flexibility for each member to select its own energy portfolio at the 50% minimum renewal baseline or above to meet CAP goals
Rates (Recitals)	<ul style="list-style-type: none"> • Provide competitive rates with a target generation rate at least 2% below SDG&E's base product generation rate • Maintain residential net energy metering for solar customers • Maintain discount programs for low-income customers
Representation (Section 4.1)	<ul style="list-style-type: none"> • 1 Member, 1 Vote • Board Members and Alternates must be a member of the governing body of each member agency
Voting (Section 4.11 & 4.12)	<ol style="list-style-type: none"> 1. Board actions require a simple majority vote 2. Two-thirds vote of the entire Board will be required for: <ol style="list-style-type: none"> a. Issuing bonds or other debt b. Adding or removing member agencies or removing Board members c. Amending or terminating the Agreement or adopting or amending the bylaws of the Authority 3. Three-fourths vote of the entire Board will be required to initiate any action for Eminent Domain and must include an affirmative vote by the home jurisdiction 4. A unanimous vote of the entire Board will be required to amend the following provisions in the Agreement: <ol style="list-style-type: none"> a. Purpose of the Agreement (Section 2.3) b. Compliance with Local Zoning & Building Laws (Section 3.6) c. Voting Requirements (Sections 4.11 and 4.12) d. Eminent Domain (Section 4.12.2) e. Power Supply Requirements (Section 6.5) f. Transition of Solana Energy Alliance CCA (Section 6.6)
Membership (Section 2.4)	<p><u>Prior to October 1, 2020</u> – open to new members with a positive feasibility study, if no undue risk or financial burden to the JPA or Climate Action Plan goals of the founding member agencies, and payment of its share of start-up costs</p> <p><u>After October 1, 2020</u> – new members admitted with a 2/3 vote of the Board and payment of a membership fee to cover any costs incurred by the JPA</p>

Start-up Costs (Section 7.3.2)	To be split equally by the member agencies; reimbursed from JPA operating revenues
How Discretionary Revenues are to be Spent (Section 7.6)	<p><u>Guiding principal</u> - discretionary revenues will support the JPA’s long-term financial viability, enhance customer rate stability, and provide all member agencies and their customers with access to innovative energy programs, projects and services</p> <p><u>Financial provisions</u> - the JPA Board will establish specific policies for the expenditure of discretionary revenues. As determined by the Board, discretionary revenues may be used to provide programs and develop projects of the JPA, or allow member agencies to direct funds into qualified programs and projects, or provide other ratepayer benefits. The Board must endeavor to achieve a balanced distribution substantially commensurate with each member’s energy load. The Board must also conduct periodic audits no less than every two years to verify the balanced distribution of program and project benefits and take corrective action to achieve or continue to maintain a balanced distribution</p>
Withdrawal from JPA (Section 8.1)	<p>Upon start-up, a member may immediately withdraw with written notice to the Board at any time prior to the Authority filing its first load forecast with the CPUC, which is anticipated to occur in April 2020, with no financial obligation other than its share of initial costs and any costs directly related to the resulting amendment of the Implementation Plan</p> <p>After launch, a member can withdraw from the JPA with 1-year advance notice at the beginning of a fiscal year</p>
Eminent Domain (Section 4.12.2)	Requires 3/4 vote with an affirmative vote by the home jurisdiction

Once established, CEA will launch, operate and govern the CCE program, in accordance with the terms of the JPA Agreement, on behalf of its Founding Members. The JPA Agreement establishes the governing principles of CEA. These principles will guide the implementation and operation of CEA for the Founding Members that adopt the required resolution and ordinance to join the JPA in a timely manner, in order to meet State-mandated deadlines. Once the Board is seated, the Board will take the next steps in directing the completion of the CEA’s Implementation Plan, hiring key vendors and JPA staff, setting operational policies, establishing CEA’s energy supply mix, rates and programs, and moving toward customer enrollment and launch in 2021.

The second action is to adopt a CCE enabling ordinance as required by Public Utility Code Section 366.2 (c) (12). The proposed ordinance is included as Attachment C.

The other potential Founding Members of CEA will consider similar actions on the following dates: Carlsbad (October 8), Solana Beach and Santee (October 9) and the County of San Diego (October 15). It is worth noting that the City of Solana Beach has already introduced a CCE ordinance prior to launching its CCE program, Solana Energy Alliance, and needs only to approve the JPA agreement on October 9. CEA has a shared timeline for approval of the JPA Agreement and ordinances by all Founding Members in order to support a 2021 CCE program launch.

Supporting a 2021 Launch

Launching a CCE program in 2021 is a priority for Del Mar and the other Founding Members of CEA. The California Public Utilities Commission issued Resolution E-4907 in 2018, establishing a timeline and registration process for new CCE programs that requires one year between submission of a CCE Implementation Plan (must occur on or before January 1 of the given year) and program launch. To meet the 2021 target for customer enrollment and launch, CEA is required to submit the Board-approved Implementation Plan and Statement of Intent to the CPUC no later than January 1, 2020. All Founding Members must adopt the necessary CCE ordinance, execute the JPA Agreement and appoint two Council Members (primary/alternate) to the CEA Board of Directors by mid-November. This will allow the Board to schedule a first meeting in November and provide adequate time for all parties to assemble and approve the Implementation Plan prior to the December 31, 2019 CPUC submittal deadline.

Board Appointments

In accordance with Section 4.1 of the JPA Agreement, the City Council must appoint two Council Members to the CEA Board of Directors (primary/alternate) to represent the City of Del Mar. One regular Director should be appointed, as well as one alternate Director who may vote on matters when the regular Director is absent from board meetings. The Board will likely be first seated in late November, thus appointments need to be made as soon as possible to allow for adequate scheduling and briefing time.

Finance Committee Review

When the Del Mar City Council accepted the North San Diego County Cities CCE Technical Feasibility Study on April 15, 2019, they directed staff to share it with the Finance Committee for review. Staff sent the study to the Chair of the Finance Committee on May 29, 2019. On August 21, 2019, staff sent the Committee Chair the CCE Governance Analysis Report prior to it being heard by the City Council on September 9, 2019. The City Council requested that the Finance Committee assess the financial projections, investment requirements and risks associated with the proposed JPA.

In order to provide current financial information for evaluation by the Finance Committee, staff directed the City's CCE consultant, EES Consulting, to prepare a fiscal analysis of

the proposed JPA that included a 10-year pro forma of the combined electricity loads of the following three JPA member agency scenarios (Attachment D):

- Del Mar, Solana Beach and Carlsbad;
- Del Mar, Solana Beach, Carlsbad and Santee; and
- Del Mar, Solana Beach, Carlsbad, Santee and the County of San Diego.

The analysis, which also included written responses to questions from the Committee's CCE subcommittee, was submitted to Finance Committee and discussed at their meeting on October 1, 2019.

The results of the financial forecast show that the JPA could offer rates 2% lower than SDG&E's bundled rates, keep operating costs low, and accumulate healthy revenue reserves under all three JPA member agency scenarios. However, the Finance Committee offered the following feedback and recommendations related to risk management for consideration by the City Council and Del Mar's future JPA Board Director:

- An experienced management team should be hired by the JPA to manage the energy procurement, data management, operations, SDG&E coordination, and finance/treasury functions.
- The JPA should select partners/consultants with the expertise, financial capacity and record of accomplishment to execute the energy procurement and data management/scheduling tasks.
- The JPA will need to establish policies relating to the nature and extent of long-term purchases contracts, the usage of hedges and other finance mechanisms and the level of risk that the JPA wishes to undertake in procuring energy.
- A financing plan should be established that outlines the extent and nature of borrowings the JPA will enter into in the normal course of financing the business.

Overall, the Finance Committee supports the City's CAP objectives and recognizes that a CCE program may be instrumental in the City achieving its GHG emission reduction goals. However, the Committee would like to continue its evaluation of the financial aspects of the proposed JPA's business model and risk mitigation policies to ensure that the enterprise is managed prudently as these programs move forward. This monitoring will provide additional support for Del Mar's JPA Board representative.

Next Steps

Should the City Council direct staff to pursue the recommend action, the CEA Board of Directors must be formed and hold at least two meeting prior to the end of the year in order to launch the CCE in 2021 – one meeting to direct the completion of an Implementation Plan and one meeting to approve the Implementation Plan. The Implementation Plan must be filed with the CPUC by December 31, 2019.

Tentative Schedule

- End of November – JPA Board is seated for first Board Meeting and drafting of Implementation Plan is directed
- Beginning of December – JPA Board reviews draft of Implementation Plan (optional/if needed)
- Mid-December – JPA Board adopts Implementation Plan.
- December 31, 2019 – Implementation Plan submitted to CPUC

The noted actions may be scheduled to occur sooner if possible.

PRIOR CITY COUNCIL REVIEW:

October 3, 2016 – City Council adopted Resolution 2016-52 stating City interest in exploring the feasibility of a CCE program and authorized the City Manager to request load data from San Diego Gas & Electric.

June 5, 2017 – City Council authorized the City Manager to enter a cost share agreement with the cities of Encinitas, Carlsbad and Oceanside to prepare a CCE Technical Feasibility Study and allocated \$35,000 for this effort.

March 4, 2019 – City Council received the draft feasibility study and authorized the City Manager to negotiate, execute and fund an amendment to the CCE study cost share agreement allowing the City of Del Mar to participate in a joint evaluation of potential CCE governance options.

April 15, 2019 – Authorized the procurement of joint legal service to assist in negotiating and preparing CCE formation documents, and adopted Resolution 2019-19 expressing the City Council's intent to pursue a CCE Program.

September 9, 2019 – Received the CCE Governance Analysis Report and approved a recommendation from City Council Members Worden and Haviland to negotiate and enter into a CCE Authority Joint Powers Agreement with the Cities of Solana Beach, Carlsbad and other potential partners.

FISCAL IMPACT:

Startup Costs

In the technical feasibility study, the startup costs for a four-city CCE program (Del Mar, Encinitas, Carlsbad and Oceanside) were estimated to be \$1.25 million. These non-power supply costs (which represent approximately 10% of a CCE overall budget) include staffing, administrative costs, consultant costs, SDG&E billing and metering costs, and associated financing.

Startup costs can be funded by a city’s general fund, financed through a banking institution or covered by a contracted third-party CCE vendor. If the funds come from a city’s general fund, they are subject to reimbursement by the CCE program (e.g., Clean Energy Alliance) once the CCE begins generating discretionary revenue. Experience has shown that the currently operating CCEs have been able to reimburse the startup costs from their member agencies in two to four years post launch. Staff cannot predict the length of the payback period because it is ultimately a JPA Board decision that would be influenced by the performance of the CCE program and external energy market factors. All of the potential Founding Members share an interest in reimbursing startup costs provided by their respected agencies.

The proposed CEA Founding Members (Cities of Del Mar, Solana Beach, Carlsbad, Santee and the County of San Diego) will share the initial startup costs equally, with an explicit agreement that those costs be subject to reimbursement as stipulated in Sections 7.3.2 and 7.3.3 of the JPA Agreement. Using the \$1.25 million figure from the technical feasibility study, Del Mar’s portion of the initial startup costs would be approximately \$250,000 if all five potential Founding Members join the JPA. If the City of Santee and/or the County of San Diego decides not to join the JPA, Del Mar’s portion of the startup costs would increase to \$312,500 (one opts out) or \$416,600 (both opt out).

Staff’s assessment of the estimated startup costs is that they are very conservative and represent the high-end range of what it would take to establish a robust organizational structure to support the CCE program. Based on recent discussions with the City of Solana Beach, which established its own CCE Program in 2018, it is likely a leaner and streamlined CCE operating structure could be achieved by these parties at a lower initial startup cost. Finally, once the CCE program is operational and governed by the JPA (anticipated in early 2021), there would be no ongoing financial commitments required of the City beyond its initial startup costs.

Current CCE Budget/Expenditures

The table below shows the City’s CCE budget by fiscal year, current expenditures, outstanding invoices/encumbrances and the remaining available budget. This budget can be allocated to offset a portion of the City’s initial startup costs.

FY	CCE Budget	Expenditures	Outstanding Invoices (Encumbrances)	Balance
18	\$35,000	\$0	\$0	\$0*
19	\$25,000**	\$11,333 – Technical Feasibility Study	\$7,360 – Governance Analysis \$4,050 – Outside Legal Support	\$2,257
20	\$55,750	\$0	\$3,390 – Additional Financial Analysis from EES	\$52,360
21	\$30,880	\$0	\$0	\$30,880
Total Available CCE Budget				\$85,497

*\$20,000 was carried over to FY19

**City Council approved an additional \$5,000 for outside legal services on 4/15/2019

If the City were to apply the \$85,500 of available budget to its estimated share of the startup costs (\$250,000-\$416,600), the City would need to fund an additional \$164,500-\$331,100 from the General Fund Contingency to cover the difference.

ENVIRONMENTAL IMPACT:

The project is exempt from the California Environmental Quality Act (CEQA) because it is not a “project” under Section 15378(b)(5) of the CEQA Guidelines. The action involves an organizational or administrative activity of government that will not result in the direct or indirect physical change in the environment.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This project is a priority project on the City Council’s list of goals and priorities.

ATTACHMENTS:

Attachment A – Resolution 2019-XX

Attachment B – Clean Energy Alliance Joint Powers Agreement

Attachment C – Ordinance No. XXX

Attachment D – CCE JPA Fiscal Analysis for Finance Committee

RESOLUTION NO.2019-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR APPROVING AND AUTHORIZING THE EXECUTION OF THE JOINT EXERCISE OF POWERS AGREEMENT CREATING THE CLEAN ENERGY ALLIANCE

WHEREAS, Section 6500 et seq. of the Government Code authorizes the joint exercise by two or more public agencies of any power common to them as a Joint Powers Authority (“JPA”); and

WHEREAS, Public Utilities Code Section 366.2(c)(12) specifically authorizes two or more cities and counties to conduct a Community Choice Aggregation (“CCA”) program through the creation of a Joint Powers Authority; and

WHEREAS, the creation of a JPA would allow its members to share resources and jointly provide and achieve the environmental and economic benefits of a CCA program on a regional basis; and

WHEREAS, on October 3, 2016, the Del Mar City Council approved Resolution 2016-52 stating the City’s interest in exploring the feasibility of a CCA program; and

WHEREAS, since January 2018, the City of Del Mar (“City”), working in cooperation with other cities in northern San Diego County, has been actively investigating the feasibility of commencing CCA service for electric customers within the City, with the objective of addressing climate change by reducing energy-related greenhouse gas emissions, promoting electrical rate price stability and cost savings and fostering consumer choice and local economic benefits such as job creation, local energy programs and local renewable energy development; and

WHEREAS, on April 15, 2019, the Del Mar City Council received the final North San Diego County Cities Community Choice Energy Technical Feasibility Study, dated March 28, 2019 (“Feasibility Study”); and

WHEREAS, the Feasibility Study, which determined that a CCA program would be both technically and financially feasible, examined a number of organizational structures by which a CCA program could be implemented including a JPA; and

WHEREAS, the City of Del Mar (“City”) desires to enter into a JPA Agreement (“Agreement”) to establish the Clean Energy Alliance along with the Founding Members identified in the Agreement, and any additional members approved by the JPA Board in the future.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, that:

1. The Joint Exercise of Powers Agreement creating the Clean Energy Alliance (“CEA”) is hereby approved, and the City Manager is authorized to execute the

Agreement in substantially the form attached to the Staff Report as Attachment B, together with minor technical or clerical corrections, if any.

2. Staff is authorized and directed to take such further actions as may be necessary and appropriate to implement the intent and purposes of this Resolution.
3. This Resolution and the creation of the CEA is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as it involves organizational and administrative activities of government that will not result in direct or indirect physical changes on the environment, and therefore is not considered a "project." (14 Cal. Code Regs. § 15378(b)(5).)

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Del Mar, at the Regular Meeting held on the 7th day of October, 2019.

Dave Druker, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2019-__ adopted by the City Council of the City of Del Mar, California, this 7th day of October 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

Clean Energy Alliance Joint Powers Agreement

Effective _____

CLEAN ENERGY ALLIANCE JOINT POWERS AGREEMENT

This Joint Powers Agreement (the "Agreement"), effective as of _____, is made by the Founding Members of the Clean Energy Alliance 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 public agencies set forth in **Exhibit B**.

RECITALS

1. The Parties are public agencies sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their customers.
2. SB 350, adopted in 2015, mandates a reduction in greenhouse gas emissions to 40 percent below 1990 levels by 2030 and to 80 percent below 1990 levels by 2050. In 2018, the State Legislature adopted SB 100, which directs the Renewable Portfolio Standard to be increased to 60% renewable by 2030 and establishes a policy for eligible renewable energy resources and zero-carbon resources to supply 100 percent of electricity retail sales to California end-use customers by 2045.
3. The purposes for the Founding Members (as such term is defined in Exhibit A) entering into this Agreement include procuring/developing electrical energy for customers in participating jurisdictions, addressing climate change by reducing energy-related greenhouse gas emissions, promoting electrical rate price stability and cost savings, and fostering consumer choice and local economic benefits such as job creation, local energy programs and local power development. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to state, regional, and local solar and wind energy production and energy storage.
4. The Parties to this Agreement desire to establish a separate public agency, known as the Clean Energy Alliance ("Authority"), 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.
5. The Founding Members have each adopted an ordinance electing to implement through the Authority a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2 ("CCA Program"). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program on behalf of participating jurisdictions.
6. By establishing the Authority, the Parties seek to:
 - (a) Provide electricity service to residents and businesses located within the jurisdictional boundaries of the public agencies that are members of the Authority in a responsible, reliable, innovative, and efficient manner;

- (b) Provide electric generation rates to all ratepayers that are competitive with those offered by the Investor Owned Utility, San Diego Gas & Electric (SDG&E), for similar products with a target generation rate at least 2 percent below SDG&E's base product generation rate;
- (c) Offer a mix of energy products for standard commodity electric service that provide a cleaner power portfolio than that offered by SDG&E for similar service and other options, including a 90 percent and a 100 percent renewable content options in which communities and customers may "opt-up" and voluntarily participate, with the ultimate objective of achieving—and sustaining—the Climate Action Plan goals of the Parties, at competitive rates;
- (d) Develop an aggregate electric supply portfolio with overall lower greenhouse gas (GHG) emissions than SDG&E, and one that supports near-term achievement of the Parties' greenhouse gas reduction goals and renewable electricity goals;
- (e) Promote an energy portfolio that incorporates energy efficiency and demand response programs and pursues ambitious energy consumption reduction goals;
- (f) Pursue the procurement of local generation of renewable power developed by or within member jurisdictions with an emphasis on local jobs, where appropriate, without limiting fair and open competition for projects or programs implemented by the Authority;
- (g) Provide a range of energy product and program options, available to all Parties and customers, that best serve their needs, their local communities, and support regional sustainability efforts;
- (h) Support low-income households having access to special utility rates including California Alternative Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs;
- (i) Use discretionary program revenues to support the Authority's long-term financial viability, enhance customer rate stability, and provide all Parties and their customers with access to innovative energy programs, projects and services throughout the jurisdiction of the Authority; and
- (j) Create an administering Authority that seeks to maximize economic benefits and is financially sustainable, well-managed and responsive to regional and local priorities.

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:

1. DEFINITIONS AND EXHIBITS

- 1.1 **Definitions.** Capitalized terms used in this 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 Founding Members

2. FORMATION OF THE COMMUNITY CHOICE ENERGY AUTHORITY

- 2.1 **Effective Date and Term.** This Agreement shall become effective and the Authority shall exist as a separate public agency on the date this Agreement is executed by at least three Founding Members after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until the Agreement is terminated in accordance with Section 8.4 (Mutual Termination), subject to the rights of the Parties to withdraw from the Authority under Section 8.1.
- 2.2 **Formation of the Authority.** Under the Act, the Parties hereby create a separate joint exercise of power agency named the Clean Energy Alliance. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The jurisdiction of the Authority shall be all territory within the geographic boundaries of the Parties; however, the Authority may, as authorized under applicable law, undertake any action outside such geographic boundaries as is necessary to the accomplishment of its purpose.
- 2.3 **Purpose.** The purpose of this Agreement is to establish the Authority, to provide for its governance and administration, and to define the rights and obligations of the Parties. This Agreement authorizes the Authority to provide opportunities by which the Parties can work cooperatively to create economies of scale and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources in the region for the benefit of all the Parties and their constituents, including, but not limited to, establishing and operating a CCA Program.
- 2.4 **Addition of Parties.** After the initial formation of the Authority and prior to October 1, 2020, any incorporated municipality, county, or other public agency authorized to be a community choice aggregator under Public Utilities Code Section 331.1 and located within the service territory of SDG&E may become a member of the Authority if it has completed a positive CCE Feasibility Study, adopted a CCA ordinance pursuant to Public Utilities Code Section 366.2(c)(12), approved and executed this Agreement, and paid or agrees to pay its share of the Initial Costs pursuant to Section 7.3.2 of this Agreement. Notwithstanding the foregoing, such public agency may be denied membership in the Authority if the

Board determines within 60 days after the submittal of the CCE Feasibility Study that the addition of the public agency would create an undue risk or financial burden to the Authority or to the achievement of the CAP goals of the Parties.

On or after October 1, 2020, any incorporated municipality, county, or other public agency authorized to be a community choice aggregator under Public Utilities Code Section 331.1 and located within the service territory of SDG&E may apply to and become a member of the Authority if all the following conditions are met:

- 2.4.1 Adoption of a resolution by a two-thirds vote of the entire Board authorizing membership in the Authority;
 - 2.4.2 Adoption by the proposed member of a CCA ordinance as required by Public Utilities Code Section 366.2(c)(12) and approval and execution of this Agreement and other necessary program agreements by the proposed member;
 - 2.4.3 Payment of a membership fee, if any, as may be required by the Board to cover Authority costs incurred in connection with adding the new party; and
 - 2.4.4 Satisfaction of any other conditions established by the Board.
- 2.5 **Continuing Participation.** The Parties acknowledge that membership in the Authority may change by the addition, withdrawal and/or termination of Parties. The Parties agree to participate with such other Parties as may later be added by the Board, as described in Section 2.4 (Addition of Parties) of this Agreement. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

3. **POWERS**

- 3.1 **General Powers.** The Authority shall have the powers common to the Parties which are necessary or appropriate to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 3.4 (Limitation on Powers) of this Agreement.
- 3.2 **Specific Powers.** Specific powers of the Authority shall include, but not be limited to, each of the following powers, which may be exercised at the discretion of the Board:
 - 3.2.1 make and enter into contracts;
 - 3.2.2 employ agents and employees, including but not limited to a Chief Executive Officer;

- 3.2.3 acquire, own, contract, manage, maintain, and operate any buildings, public works, improvements or other assets including but not limited to public electric generation resources;
- 3.2.4 acquire property for the public purposes of the Authority by eminent domain, or otherwise, except as limited under Section 6508 of the Act and Sections 3.6 and 4.12.3 of this Agreement, and to hold or dispose of any property; provided, however, the Authority shall not exercise the power of eminent domain within the jurisdiction of a Party without its affirmative vote under Section 4.12.2;
- 3.2.5 lease any property;
- 3.2.6 sue and be sued in its own name;
- 3.2.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers authorized by law pursuant to Government Code Section 53850 et seq. and authority under the Act;
- 3.2.8 issue revenue bonds and other forms of indebtedness;
- 3.2.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;
- 3.2.10 form independent corporations or entities, if necessary, to carry out energy supply and energy conservation programs;
- 3.2.11 submit documentation and notices, register, and comply with applicable orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
- 3.2.12 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority;
- 3.2.13 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;
- 3.2.14 receive revenues from sale of electricity and other energy-related programs; and
- 3.2.15 Partner or otherwise work cooperatively with other CCA's on the acquisition of electric resources, joint programs, advocacy and other efforts in the interests of the Authority.

- 3.3 **Additional Powers to be Exercised.** In addition to those powers common to each of the Parties, the Authority shall have those powers that may be conferred upon it by law and by subsequently enacted legislation.
- 3.4 **Limitation on Powers.** As required by Section 6509 of the Act, the powers of the Authority are subject to the restrictions upon the manner of exercising power possessed by the City of Solana Beach and any other restrictions on exercising the powers of the Authority that may be adopted by the Board.
- 3.5 **Obligations of the Authority.** The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of any of the Parties unless a Party agrees in writing to assume any of the debts, liabilities, and obligations of the Authority with the approval of its Governing Body, in its sole discretion. A Party that has not agreed in writing, as duly authorized by its Governing Body, to assume an Authority debt, liability, or obligation shall not be responsible in any way for such debt, liability, or obligation, regardless of any action by the Board. Further, the debts, liabilities and obligations of the City of Solana Beach related to or arising from its existing CCA program, commonly known as the Solana Energy Alliance, shall not be the debts, liabilities or obligations of the Authority or any of the Parties except the City of Solana Beach unless the Board approves assuming specific contracts entered into by the City of Solana Beach. Any such contracts assumed by the Authority shall be obligations of the Authority only and not of any of the Parties. Notwithstanding Sections 4.12.1 and 9.8 of this Agreement, this Section 3.5 shall not be amended or its liability limitations otherwise modified by an amendment to another part of this Agreement unless such amendment is approved by the Governing Body of each Party.
- 3.6 **Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings, structures or other projects (the “project”) developed, constructed or installed or caused to be developed, constructed or installed by the Authority within the territory of the Authority (which consists of the territorial jurisdiction of the Parties) shall comply with the General Plan, zoning, land use regulations, building laws and any applicable local Coastal Plan of the local jurisdiction within which the project is located.
- 3.7 **Compliance with the Political Reform Act and Government Code Section 1090.** The Authority and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 et seq.) and Government Code Section 1090 et seq. The Board shall adopt a Conflict of Interest Code pursuant to Government Code Section 87300. The Board may adopt additional conflict of interest regulations in the Operating Policies and Procedures.

4. GOVERNANCE

4.1 **Board of Directors.**

4.1.1 The Governing Body of the Authority shall be a Board of Directors ("Board") consisting of one Director for each Party appointed in accordance with Section 4.2 (Appointment and Removal of Directors) of this Agreement.

4.1.2 Each Director must be a member of the Governing Body of the appointing Party. Each Director shall serve at the pleasure of the Governing Body of the Party that appointed such Director and may be removed as Director by such Governing Body at any time. If at any time a vacancy occurs on the Board, then a replacement shall be appointed to fill the position of the previous Director within 45 days after the date that position becomes vacant.

4.1.3 The Governing Body of each Party also shall appoint an alternate to serve in the absence of the primary Director. The alternate also shall be a member of the Governing Body of the appointing Party. The alternate shall have all the rights and responsibilities of the primary Director when serving in his/her absence.

4.1.4 Any change to the size and composition of the Board other than what is described in this section shall require an amendment of this Agreement in accordance with Section 4.12.

4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:

4.2.1 The Governing Body of each Party shall appoint and designate in writing one regular Director, who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The Governing Body of each Party shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The alternate Director may vote on matters in committee, chair committees, and fully participate in discussion and debate during meetings. All Directors and alternates shall be subject to the Board's adopted Conflict of Interest Code.

4.2.2 A Director may be removed by the Board for cause in accordance with procedures adopted by the Board. Cause shall be defined for the purposes of this section as follows:

- a. Unexcused absences from three consecutive Board meetings.
- b. Unauthorized disclosure of confidential information or documents from a closed session or the unauthorized disclosure of information

or documents provided to the Director on a confidential basis and whose public disclosure may be harmful to the interests of the Authority.

- c. Violation of any ethics policies or code of conduct adopted by the Board.

Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director has been removed may appoint a replacement.

4.3 **Director Compensation.** The Board may adopt by resolution a policy relating to the compensation or expense reimbursement of its Directors.

4.4 **Terms of Office.** Each Party shall determine the term of office for its regular and alternate Director.

4.5 **Purpose of Board.** The general purpose of the Board is to:

4.5.1 Provide structure for administrative and fiscal oversight;

4.5.2 Retain a Chief Executive Officer to oversee day-to-day operations of the Authority;

4.5.3 Retain legal counsel;

4.5.4 Identify and pursue funding sources;

4.5.5 Set policy;

4.5.6 Optimize the utilization of available resources; and

4.5.7 Oversee all Committee activities.

4.6 **Specific Responsibilities of the Board.** The specific responsibilities of the Board shall be as follows:

4.6.1 Formulate and adopt an annual budget prior to the commencement of the fiscal year;

4.6.2 Develop and implement a financing and/or funding plan for ongoing Authority operations and capital improvements, if applicable;

4.6.3 Retain necessary and sufficient staff and adopt personnel and compensation policies, rules and regulations;

4.6.4 Adopt policies for procuring electric supply and operational needs such as professional services, equipment and supplies;

- 4.6.5 Develop and implement a Strategic Plan to guide the development, procurement, and integration of renewable energy resources consistent with the intent and priorities identified in this Agreement;
 - 4.6.6 Establish standing and ad hoc committees as necessary;
 - 4.6.7 Set retail rates for power sold by the Authority and set charges for any other category of retail service provided by the Authority;
 - 4.6.8 Wind down and resolve all obligations of the Authority in the event the Authority is terminated pursuant to Section 8.2;
 - 4.6.9 Conduct and oversee Authority operational audits at intervals not to exceed three years including review of customer access to Authority programs and benefits, where applicable;
 - 4.6.10 Arrange for an annual independent fiscal audit;
 - 4.6.11 Adopt such bylaws, rules and regulations necessary or desirable for the purposes set forth in this Agreement and consistent with this Agreement;
 - 4.6.12 Exercise the Specific Powers identified in Sections 3.2 and 4.6 except as those which the Board may elect to delegate to the Chief Executive Officer; and
 - 4.6.13 Discharge other duties as appropriate or necessary under this Agreement or required by law.
- 4.7 **Startup Responsibilities.** The Authority shall promptly act on the following matters:
- 4.7.1 Oversee the preparation of, adopt, and update an implementation plan for electrical load aggregation pursuant to Public Utilities Code Section 366.2(c)(3);
 - 4.7.2 Prepare a statement of intent for electrical load aggregation pursuant to Public Utilities Code Section 366.2(c)(4);
 - 4.7.3 Obtain financing and/or funding as is necessary to support start up and ongoing working capital for the CCA Program; and
 - 4.7.4 Acquire and maintain insurance in accordance with Section 9.3.
- 4.8 **Meetings and Special Meetings of the Board.** The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board. The location of regular meetings may rotate for the convenience of the Parties, subject to Board

approval and availability of appropriate meeting space. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. Board meeting agendas generally shall be set, in consultation with the Board Chair, by the Chief Executive Officer appointed by the Board pursuant to Section 5.5. The Board itself may add items to the agenda upon majority vote pursuant to Section 4.11.1.

- 4.9 **Brown Act Applicable.** All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.).
- 4.10 **Quorum.** A simple majority of the Directors shall constitute a quorum. No actions may be taken by the Board without a quorum of the Directors present.
- 4.11 **Board Voting.** Except for matters subject to Special Voting under Section 4.12, Board action shall require the affirmative votes of a majority of the Directors on the entire Board. The consequence of a tie vote shall be “no action” taken.
- 4.12 **Special Voting.**
 - 4.12.1 The affirmative vote of two-thirds of the Directors of the entire Board shall be required to take any action on the following:
 - (a) Issuing bonds or other forms of debt;
 - (b) Adding or removing Parties or removing Directors; and
 - (c) Amending or terminating this Agreement or adopting or amending the bylaws of the Authority except as provided in Sections 3.5 and 4.12.3. At least 30 days advance written notice to the Parties shall be provided for such actions. Such notice shall include a copy of any proposed amendment to this Agreement or the bylaws of the Authority. The Authority shall also provide prompt written notice to all Parties of the action taken and attach the adopted amendment, resolution or agreement.
 - 4.12.2 An affirmative vote of three-fourths of the entire Board shall be required to initiate any action for Eminent Domain and no eminent domain action shall be approved within the jurisdiction of a Party without the affirmative vote of such Party’s Director.
 - 4.12.3 An unanimous vote of the entire Board shall be required to amend the following provisions in this Agreement:
 - (a) Section 2.3 (Purpose of Agreement)

- (b) Section 3.6 (Compliance with Local Zoning)
- (c) Sections 4.11 and 4.12 (Voting Requirements)
- (d) Section 4.12.2 (Eminent Domain)
- (e) Section 6.5 (Power Supply Requirements)
- (f) Section 6.6 (Solana Energy Alliance Transition)

5. INTERNAL ORGANIZATION

- 5.1 **Elected and Appointed Officers.** For each fiscal year, the Board shall elect a Chair and Vice Chair from among the Directors and shall appoint a Secretary and a Treasurer as provided in Government Code section 6505.5. No Director may hold more than one such office at any time. Appointed officers shall not be elected officers of the Board.
- 5.2 **Chair and Vice Chair.** For each fiscal year, the Board shall elect a Chair and Vice Chair from among the Directors. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. The Chair shall perform duties as may be required by the Board. In the absence of the Chair, the Vice-Chair shall perform all of the Chair's duties. The office of the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board, or (b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement. Upon a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter.
- 5.3 **Secretary.** The Board shall appoint a qualified person who is not on the Board to serve as Secretary. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other office records of the Authority. If the appointed Secretary is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Secretary of the Authority, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.
- 5.4 **Treasurer/Chief Financial Officer and Auditor.** The Board of Directors shall appoint a Treasurer who shall function as the combined offices of Treasurer and Auditor and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer for the Authority shall be the depository and have custody of all money of the Authority from whatever source and shall draw all warrants and pay demands against the

Authority as approved by the Board. The Treasurer shall cause an independent audit(s) of the finances of the Authority 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 qualified person or entity as the law allows at the time. The duties and obligations of the Treasurer are further specified in Section 7. The Treasurer shall serve at the pleasure of the Board. If the appointed Treasurer is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Treasurer of the Authority, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.

- 5.5 **Chief Executive Officer.** The Board shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer may not be an elected member of the Board or otherwise represent any Party to the Authority. The Chief Executive Officer may exercise all powers of the Authority, except those powers specifically reserved to the Board, including but not limited to those set forth in Section 4.6 (Specific Responsibilities of the Board) of this Agreement or the Authority's bylaws, or those powers which by law must be exercised by the Board. The Chief Executive Officer may enter into and execute power purchase agreements and other contracts, in accordance with criteria and policies established by the Board.
- 5.6 **General Counsel.** The Board shall appoint a qualified person to act as the Authority's General Counsel, who shall not be a member of the Board, or an elected official or employee of a Party.
- 5.7 **Bonding of Persons Having Access to Property.** Pursuant to the Act, the Board shall designate the public officer or officers or person or persons who have charge of, handle, or have access to any property of the Authority exceeding a value as established by the Board, and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the Board.
- 5.8 **Privileges and Immunities from Liability.** All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of the Authority to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Agreement. None of the officers, agents or employees directly employed by the Board shall be deemed, by reason of their employment by the Authority to be employed by the Parties or by reason of their employment by the Authority, to be subject to any of the requirements of the Parties.

- 5.9 **Commissions, Boards and Committees.** The Board may 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, related energy programs, and the provisions of this Agreement. To the extent possible, the commissions, boards, and committees should have equal representation from each Party. The Board may establish criteria to qualify for appointment on its commissions, boards, and committees. The Board may establish rules, regulations, policies, or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be entitled to reimbursement for expenses. The meetings of the commissions, boards, or committees shall be held in accordance with the requirements of the Ralph M. Brown Act, as applicable.

6. **IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS**

6.1 **Preliminary Implementation of the CCA Program.**

6.1.1 **Enabling Ordinance.** In addition to the execution of this Agreement, each Party shall 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 the Authority.

6.1.2 **Implementation Plan.** The Authority shall secure Board approval of an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations, and consistent with the terms of this Agreement, as soon after the Effective Date as reasonably practicable but no later than December 31, 2019.

6.2 **Authority Documents.** The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution or minute action, including but not necessarily limited to operational procedures and policies, the annual budget, and specific plans such as a local renewable energy development and integration plan and other policies defined as the Authority Documents by this Agreement. All such Authority Documents shall be consistent with and designed to advance the goals and objectives of the Authority as expressed in this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Section 8 (Withdrawal and Termination) of this Agreement.

6.3 **Integrated Resource Plan and Regulatory Compliance.** The Authority shall cause to be prepared an Integrated Resource Plan in accordance with California Public Utilities Commission regulations, and consistent with the terms of this Agreement, that will ensure the long-term development and administration of a

