



CITY COUNCIL
Staff Report

Meeting Date: October 8, 2019

To: Mayor and City Council

From: Scott Chadwick, City Manager

Staff Contact: Jason Haber, Assistant to the City Manager
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Subject: Resolution to Establish the Clean Energy Alliance Through a Joint Exercise of Powers Agreement and Introduction of an Ordinance to Implement a Community Choice Aggregation Program.

Recommended Action

- 1) Adopt a resolution approving and authorizing the execution of the Clean Energy Alliance Joint Powers Agreement (Exhibit 1);
- 2) Authorize the City Manager, with legal consultation, to execute the Clean Energy Alliance Joint Powers Agreement (Attachment A to Exhibit 1);
- 3) Introduce an ordinance authorizing the implementation of a Community Choice Aggregation Program within the jurisdiction of the City of Carlsbad (Exhibit 2); and
- 4) Appoint two Council Members to the Clean Energy Alliance Board of Directors (primary/alternate), representing the City of Carlsbad, in accordance with Section 4.1 of the Clean Energy Alliance Joint Powers Agreement.

Executive Summary

California Assembly Bill 117 allows local governments to form community choice aggregation / community choice energy (CCA or CCE) programs that offer an alternative electric power supply option to constituents currently served electric power by investor owned utilities (IOUs). In the case of the City of Carlsbad, the IOU is San Diego Gas and Electric.

Under a CCA program, 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 continues to provide distribution service. This gives CCAs the opportunity to design and potentially reduce retail rates for their constituents, promote local economic development and offer a cleaner power supply.

The City of Carlsbad's Climate Action Plan (CAP) sets long-term goals to reduce the greenhouse gas emissions (GHG) in the community. The CAP's goal for 2035 is to reduce GHG emissions to at

least 49 percent below Carlsbad's baseline 2005 values, and to continue further reductions to meet the state's required goal of reducing GHG by 80 percent of the statewide 1990 emissions amounts by 2050.

Recognizing that electricity emissions account for 38 percent of the City's total GHG emissions, implementing a CCA program is expected to substantially help facilitate the City achieving its goals.

Pursuant to City Council direction on August 20, 2019, staff has:

- a. Negotiated the Clean Energy Alliance Joint Powers Agreement with potential partner agencies, including the Cities of Del Mar, Santee and Solana Beach and the County of San Diego,
- b. Prepared an ordinance approving the implementation of a community choice aggregation program within the City of Carlsbad through a joint powers authority between potentially the Cities of Del Mar, Santee and Solana Beach and the County of San Diego, and
- c. Engaged Pacific Energy Advisors to conduct a peer review of the CCE Technical Feasibility Study prepared for the City by EES Consulting.

As further directed by the City Council, the recommended action will allow the Clean Energy Alliance Board of Directors to approve and submit a CCA Implementation Plan to the California Public Utilities Commission by December 31, 2019, and launch a CCA program in 2021.

Discussion

Background

The City Council has taken the following prior actions related to investigating and forming a CCA:

- July 11, 2017 - Adopted Resolution No. 2017-141, authorizing the City's participation in a CCA/CCE Technical Feasibility Study.
- February 26, 2019 - Adopted Resolution No. 2019-025, authorizing the city's participation in an evaluation of CCA/CCE program governance options.
- March 19, 2019 - Adopted Resolution No. 2019-036, expressing the City Council's intention to pursue a CCA/CCE program that prioritizes certain operating principles.
- April 16, 2019 - Adopted Resolution No. 2019-052, accepting the North San Diego County Cities CCE Technical Feasibility Study and authorizing the procurement of joint legal services to assist in negotiating and preparing CCA/CCE formation documents.
- June 25, 2019 - Adopted Resolution No. 2019-112, authorizing the formation of a City Council ad-hoc subcommittee, comprised of Mayor Hall and Councilmember

Schumacher, to receive information and advise the City Council on community choice energy.

- August 20, 2019 – After receiving a Community Choice Energy Program Governance Analysis Report and a recommendation from the City Council Ad-Hoc Subcommittee on Community Choice Energy, the City Council directed staff to:
 - Initiate negotiations with the Cities of Del Mar, Encinitas and any other potential partner agencies to prepare a Community Choice Energy Authority Joint Powers Agreement, subject to the following conditions recommended by the City Council Subcommittee:
 - Equal vote protocol (no weighted vote),
 - Equal pre-launch cost sharing formula,
 - Launch the CCA program by 2021,
 - Require at a minimum a 50% renewables energy portfolio, and
 - Offer membership in the JPA to the Cities of Escondido, Oceanside, San Marcos, and Vista on the same terms offered to the founding members of the JPA in the event any of these cities request to join the JPA and agree to contribute a proportionate share of the JPA's pre-launch operating and administrative costs, plus any direct costs associated with their incorporation into the JPA, which costs shall be eligible for reimbursement by the JPA;
 - Prepare an ordinance implementing a CCA program within the City of Carlsbad through a joint powers authority; and
 - Return to the City Council to obtain the approvals and appropriations needed to establish and convene a CCA Joint Powers Authority Board of Directors in time to approve and submit a CCA Implementation Plan to the California Public Utilities Commission by December 31, 2019 so as to launch a CCA program in 2021; and
 - Obtain a peer review analysis of EES's CCA Feasibility Study.

Based on Council direction, the City engaged in a CCA/CCE feasibility study. The analysis conducted, to date, indicates that establishing a CCA program in the City of Carlsbad through the execution of a JPA agreement is financially feasible, will reduce GHG emissions, will provide local control over energy decisions, and will generate enhanced local economic development, as expressed in the attached proposed ordinance and JPA agreement.

To confirm these findings, Pacific Energy Advisors, Inc. has been engaged to conduct a peer review of the Community Choice Energy Technical Feasibility Study conducted for the City by EES Consulting. This peer review will encompass a review of the reasonableness of the study's key input assumptions, the analytical approach used in the study, and the conclusions drawn. The peer review will be completed by November 1, 2019.

In order to implement a CCA program through a JPA, two City Council actions are required. The first action requires the City Council to adopt a resolution establishing the City's desire to participate in the JPA (Exhibit 1). The JPA will be named the Clean Energy Alliance.

The City's participation in the Clean Energy Alliance, 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 A to Exhibit 1) with the other potential founding JPA members, the Cities of Solana Beach, Santee and Del Mar and the County of San Diego, as well as other agencies in the region that may choose to join in the future.

Once established, the Clean Energy Alliance will launch, operate and govern the CCA program, on behalf of its member agencies, in accordance with the terms of the JPA agreement. The JPA agreement establishes the founding principles and the governance structure of the Clean Energy Alliance.

These founding principles and governance structure will guide the implementation and operation of the CCA program for the initial founding member agencies that adopt the required ordinance by the end of October 2019. Participating agencies must adopt the required ordinance by the end of October in order to meet state-mandated deadlines.

Once the JPA Board is constituted, it will be incumbent on the JPA Board to take the next steps toward completion of the JPA's Implementation Plan. These steps include, but are not limited to, hiring key vendors and JPA staff, setting operational policies, establishing the JPA's energy supply mix, rates and programs, and moving toward customer enrollment and launch in 2021.

The second action requested to be taken by the City Council is to adopt a CCA enabling ordinance as required by Public Utility Code Section 366.2(c)(12). The proposed ordinance is included as Exhibit 2.

The other potential founding members of the Clean Energy Alliance will be considering similar actions on the following dates: Del Mar (October 7), Santee and Solana Beach (October 9) and the County of San Diego (October 15). The City of Solana Beach introduced and adopted a CCE ordinance prior to launching its CCA program, Solana Energy Alliance, in 2018, and needs only to approve the JPA agreement on October 9.

Supporting a 2021 Launch

Launching a CCA program in 2021 is a priority for Carlsbad and the other founding members of the Clean Energy Alliance. The Clean Energy Alliance has a shared timeline for approval of the JPA agreement and ordinances by its founding members in order to support a 2021 CCA program launch.

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 CCA 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, the Clean Energy Alliance is required to submit the JPA Board-approved Implementation Plan and Statement of Intent to the CPUC no later than January 1, 2020. All Founding Members must adopt the necessary CCA ordinance, execute the JPA agreement and appoint two City Council Members (primary/alternate) to the JPA Board of Directors by the end of October. This will allow the JPA 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 CPUC submittal deadline.

Board Appointments

In accordance with Section 4.1 of the proposed JPA agreement, the City Council must appoint two City Council Members to the JPA Board of Directors (primary/alternate) to represent the City of Carlsbad. 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 fully constituted by November 1, 2019, in order for the JPA to take all necessary actions to meet all deadlines. Thus, appointments need to be made as soon as possible, but no later than November 1, 2019, to allow for adequate scheduling and briefing time.

Fiscal Analysis

In the CCE 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 program's overall budget) include staffing, administrative costs, consultant costs, San Diego Gas and Electric billing and metering costs, and associated financing.

The JPA's startup costs can be funded from the member cities' general funds, financed through a banking institution or covered by a contracted third-party CCA vendor. If the funds come from a city's general fund, they are subject to reimbursement by the JPA, Clean Energy Alliance, once Clean Energy Alliance begins generating discretionary revenue. Staff cannot predict the length of time necessary to reimburse any member agency because it is ultimately a JPA Board decision that would be influenced by the performance of the CCA program and external energy market factors. However, past experience from other operating CCAs seems to indicate that CCAs have been able to reimburse those CCA's startup costs within two to four years after launch of the CCA.

The Clean Energy Alliance JPA founding members 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 as an estimate, and assuming that all five potential partners join the Clean Energy Alliance, Carlsbad's portion of the initial startup costs would be approximately \$250,000. If one or more

potential partners decides not to join the JPA as a Founding Member, Carlsbad's share of the initial startup costs would increase to \$312,500 (four partner JPA) or \$416,600 (three partner JPA).

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 CCA program. For example, based on recent discussions with the City of Solana Beach, which established its own CCA program in 2018, it is likely that a leaner and more streamlined CCA operating structure could be achieved by the parties at a lower initial startup cost.

Finally, once the CCA 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.

Based on this, for planning purposes, the City Council should anticipate a potential mid-year budget request from the General Fund in an amount as high as \$416,600 to fund the startup costs of the CCA program. A definitive figure will be provided in the future once the Clean Energy Alliance Board of Directors determines how it will seek to obtain the necessary startup funding,

Next Steps

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

Tentative schedule:

- Late November 2019 – JPA Board is seated for first Board Meeting and drafting of Implementation Plan is directed
- Early December 2019 – JPA Board reviews draft of Implementation Plan
- Mid December 2019 – JPA Board adopts Implementation Plan
- December 31, 2019 – Implementation Plan submitted to CPUC

Environmental Evaluation (CEQA)

The action to create the Clean Energy Alliance 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).)

This ordinance is exempt from the requirements of CEQA pursuant to the California CEQA Guidelines, as it is not a “project” and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a).) The ordinance is also exempt from any CEQA requirements as there is no possibility that the ordinance or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3).) The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment. (14 Cal. Code Regs. § 15308.)

To the extent necessary, the Director of Community and Economic Development shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

Public Notification

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

Exhibits

1. City Council Resolution
2. City Council Ordinance

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD
 APPROVING AND AUTHORIZING THE EXECUTION OF THE JOINT
 EXERCISE OF POWERS AGREEMENT CREATING THE CLEAN ENERGY
 ALLIANCE, A COMMUNITY CHOICE AGGREGATION JOINT POWERS
 AUTHORITY

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, counties or a combination of two or more cities and counties to conduct a community choice aggregation (CCA) program through the creation of a JPA; and

WHEREAS, the creation of a CCA 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, the City of Carlsbad desires to enter into a Joint Exercise of Powers Agreement to establish the Clean Energy Alliance, a CCA JPA along with the Cities of Del Mar, Santee, Solana Beach and the County of San Diego, 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 Carlsbad, California as follows:

1. The Joint Exercise of Powers Agreement Creating the Clean Energy Alliance, a Community Choice Aggregation Joint Powers Authority (Clean Energy Alliance) ("Agreement") is hereby approved, and the City Manager is authorized to execute the Agreement in substantially the form attached hereto as Attachment A, 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 Clean Energy Alliance 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 at a Regular Meeting of the City Council of the City of Carlsbad on the __ day of _____, 2019, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

MATT HALL, Mayor

BARBARA ENGLESON, City Clerk

(SEAL)

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

variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency, while maintaining compliance with other regulatory requirements including the State Renewable Portfolio Standard (RPS) and customer rate competitiveness.

- 6.4 **Renewable Portfolio Standards.** The Authority shall provide its customers energy primarily from Category 1 and Category 2 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCA Program. The Authority shall avoid the procurement of energy from Category 3 eligible renewable resources (unbundled Renewable Energy Credits or RECs) to the extent feasible. The Authority's ultimate objective shall be to achieve—and sustain—a renewable energy portfolio with 100 percent renewable energy availability and usage, at competitive rates, within the Authority service territory by no later than 2035, and then beyond.
- 6.5 **Power Supply Requirements.** The Authority's power supply base product will be greater than or equal to 50% qualified renewable resources. The Board shall establish product options with higher renewable and/or GHG-free content that each Party may select (such as 75% or 100% renewable content). In no event will the Authority's power supply base product contain a lesser amount of renewable resources than the base product provided by SDG&E to its customers. Power supply options established by the Board will allow each Party the flexibility to achieve its CAP goals without impeding any other Party from doing the same.
- 6.6 **Continuation and Transition of City of Solana Beach's Existing CCA Program.** The City of Solana Beach has been operating a CCA program within its jurisdiction since 2018. The City of Solana Beach shall be permitted to continue to operate its existing CCA program until the Authority's CCA Program commences service to customers within the jurisdiction of the City of Solana Beach. The transition of CCA customers within the City of Solana Beach to the Authority's CCA Program shall be implemented in accordance with the Authority's implementation plan approved by the Board and certified by the CPUC and any policies and requirements established by the Board.

7. **FINANCIAL PROVISIONS**

- 7.1 **Fiscal Year.** The Authority's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.
- 7.2 **Depository.**
 - 7.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

- 7.2.2 All funds of the Authority 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 the Authority shall be open to inspection and duplication by the Parties at all reasonable times. Annual financial statements shall be prepared in accordance with Generally Accepted Accounting Principles of the United States of America within 6 months of the close of the fiscal year. The Board shall contract with a certified public accountant to make an annual audit of the financial statements of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.
- 7.2.3 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 policies and procedures.

7.3 Budget and Recovery Costs.

- 7.3.1 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 the Authority shall be prepared and approved by the Board in accordance with its fiscal management policies that should include a deadline for approval.
- 7.3.2 Funding of Initial Costs. The Initial Costs of establishing the Authority and implementing its CCA Program shall be divided equally among the Founding Members. In the event that the CCA Program becomes operational, these Initial Costs paid by the Founding Members shall be included in the customer charges for electric services to the extent permitted by law. The Authority may establish a reasonable time period over which such costs are recovered and reimbursed to the Founding Members. In the event that the CCA Program does not become operational, the Founding Members shall not be entitled to any reimbursement of the Initial Costs they have paid from the Authority or any Party.
- 7.3.3 CCA Feasibility and Governance Report Costs. In the event that the CCA Program becomes operational, any costs incurred by the Parties in preparing CCA Feasibility or Governance Reports in connection with establishing the Authority shall be included in the customer charges for electric services to the extent permitted by law. The Authority may establish a reasonable time period over which such costs are recovered and reimbursed to the Parties that incurred such costs. In the event that the CCA Program does not become operational, no Party shall be entitled to any reimbursement of these costs from the Authority or any Party.

7.3.4 **Program Costs.** The Parties intend that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric or other services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through appropriate charges to CCA customers receiving such services.

7.3.5 **No Requirement for Contributions or Payments.** Parties are not required under this Agreement to make any financial contributions or payments to the Authority, and the Authority shall have no right to require such a contribution or payment unless expressly set forth herein (for example, as provided in Section 2.4.3, with respect to Additional Members, Section 7.3.2 with respect to Initial Costs and Section 8.1, with respect to Withdrawal), or except as otherwise required by law.

Notwithstanding the foregoing, a Party may voluntarily enter into an agreement with the Authority to provide the following:

- (a) contributions of public funds for the purposes set forth in this Agreement;
- (b) advances of public funds for the purposes set forth in this Agreement, such advances to be repaid as provided by such written agreement; or
- (c) its personnel, equipment or property in lieu of other contributions or advances.

No Party shall be required, by or for the benefit of the Authority, to adopt any local tax, assessment, fee or charge under any circumstances.

7.4 **Accounts and Reports.** The Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by the Authority. The books and records of the Authority in the hands of the Treasurer shall be open to inspection and duplication at all reasonable times by duly appointed representatives of the Parties. The Treasurer, within 180 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Parties. The Treasurer shall cooperate with all audits required by this Agreement.

7.5 **Funds.** The Treasurer shall receive, have custody of and/or disburse Authority funds in accordance with the laws applicable to public agencies and generally accepted accounting practices, and shall make the disbursements required by this Agreement in order to carry out any of the purposes of this Agreement.

7.6 **Discretionary Revenues.** The Board shall establish policies concerning the expenditure of discretionary revenues. As determined by the Board in such policies, discretionary revenues may be used to (1) provide programs and develop

projects of the Authority or (2) allow Parties to direct funds into qualified Authority programs and projects, or provide other ratepayer benefits. The Board shall endeavor to achieve a balanced distribution of program and project benefits substantially commensurate with each Party's energy load ("balanced distribution"). The Board shall conduct periodic audits no less than every two years in order to verify the balanced distribution of program and project benefits and take any corrective action necessary to achieve or continue to maintain a balanced distribution.

7.7 **Rate Related Programs.** The Authority will maintain residential net energy metering and low-income rate discount programs.

8. WITHDRAWAL AND TERMINATION

8.1 **Withdrawal**

8.1.1 **Withdrawal by Parties.** Any Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than one year advance written notice of its election to do so, which notice shall be given to the Authority and each Party. The Board, in its discretion, may approve a shorter notice period on a case by case basis. In addition, a Party may immediately withdraw its membership in the Authority upon written notice to the Board at any time prior to the Authority filing its first year-ahead load forecast with the CPUC that included the Party's load (anticipated to occur in April 2020) without any financial obligation other than its share of Initial Costs that shall not be reimbursed and any costs directly related to the resulting amendment of the Implementation Plan. Withdrawal of a Party shall require an affirmative vote of the Party's Governing Body.

8.1.2 **Amendment.** Notwithstanding Section 8.1.1 (Withdrawal by Parties) of this Agreement, a Party may withdraw its membership in the Authority upon approval and execution of an amendment to this Agreement provided that the requirements of this Section 8.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in the Authority effective one year (or earlier if approved by the Board) after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority, should the amendment be approved by the Board.

8.1.3 **Continuing Liability; Further Assurances.** A Party that withdraws its membership in the Authority may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement, including, but not limited to, power purchase

agreements and other Authority contracts and operational obligations. The withdrawing Party and the Authority 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 membership in the Authority. The Board shall also consider, pursuant to Section 3.2.12, adoption of a policy that allows a withdrawing Party to negotiate assignment to the Party of costs of electric power or other resources procured on behalf of its customers by the Authority upon its withdrawal. In the implementation of this Section 8.1.3, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.

- 8.2 **Termination of CCA Program.** Nothing contained in Section 6 or elsewhere in this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.
- 8.3 **Involuntary Termination.** This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or Authority Documents upon a two-thirds vote of the entire Board excluding the vote of the Party subject to possible termination. Prior to any vote to terminate this Agreement 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 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 the Authority Documents 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 membership in the Authority terminated may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement.
- 8.4 **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 membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 8.1 (Withdrawal) of this Agreement.
- 8.5 **Continuing Liability; Refund.** Upon a withdrawal or involuntary termination of a Party, the Party shall be responsible for any claims, demands, damages, or

liabilities attributable to the Party through the effective date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities commencing or arising after the effective date of the Party's withdrawal or involuntary termination.

Notwithstanding the foregoing or any other provisions of this Agreement, such Party also shall be liable to the Authority for (a) any damages, losses, or costs incurred by the Authority which result directly from the Party's withdrawal or termination, including but not limited to costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party's load; and (b) any costs or obligations associated with the Party's participation in any program in accordance with the program's terms, provided such costs or obligations were incurred prior to the withdrawal of the Party. From and after the date a Party provides notice of its withdrawal or is terminated, the Authority shall reasonably and in good faith seek to mitigate any costs and obligations to be incurred by the withdrawing or terminated Party under this Section through measures reasonable under the circumstances, provided that this obligation to mitigate does not impose any obligation on the Authority to transfer any cost or obligation directly attributable to the membership and withdrawal or termination of the withdrawing or terminated party to the ratepayers of the remaining members. Further, the liability of the withdrawing or terminated Party shall be based on actual costs or damages incurred by the Authority and shall not include any penalties or punitive charges imposed by the Authority. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. The withdrawing or terminated Party agrees to pay any such deposit determined by the Authority. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party. In the implementation of this Section 8.5, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself. The liability of a withdrawing Party under this Section shall be only to the Authority and not to any other Party.

- 8.6 **Disposition of Authority Assets.** Upon termination of this Agreement and dissolution of the Authority by all Parties, after payment of all obligations of the Authority, the Board may sell or liquidate Authority property and shall distribute any remaining assets to the Parties in proportion to the contributions made by the existing Parties. Any assets provided by a Party to the Authority shall remain the asset of that Party and shall not be subject to distribution under this section.

9. MISCELLANEOUS PROVISIONS

- 9.1 **Dispute Resolution.** The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before

exercising any remedy provided by law, a Party or the Parties and the Authority shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and the Authority. The Parties agree that each Party may specifically enforce this section. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 60 days after the demand for mediation is made, any Party and the Authority may pursue any remedies provided by law.

- 9.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority 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. The Authority 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 Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees. In addition, pursuant to the Act, no Director shall be personally liable on the Authority's bonds or be subject to any personal liability or accountability by reason of the issuance of bonds.
- 9.3 **Insurance and Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority and the Parties. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective governing board members, officers, agents and employees, from any and all claims, losses, damages, deductibles or self-insured retentions, costs, fines, penalties, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, errors, omissions or negligence of the Authority or its officers, employees, agents, contractors, licensees or volunteers.
- 9.4 **No Third Party Beneficiaries.** The provisions of this Agreement are for the sole benefit of the Parties and the Authority and not for the benefit of any other person or entity. No third party beneficiary shall be created by or arise from the provisions of this Agreement.
- 9.5 **Notices.** Any notice required or permitted to be made hereunder shall be in writing and shall be delivered in the manner prescribed herein at the principal place of business of each Party. The Parties may give notice by (1) personal delivery; (2) e-mail; (3) U.S. Mail, first class postage prepaid, or a faster delivery method; or (3) by any other method deemed appropriate by the Board.

Upon providing written notice to all Parties, any Party may change the designated address or e-mail for receiving notice.

All written notices or correspondence sent in the described manner will be deemed given to a party on whichever date occurs earliest: (1) the date of personal delivery; (2) the third business day following deposit in the U.S. mail, when sent by "first class" mail; or (3) the date of transmission, when sent by e-mail or facsimile.

- 9.6 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of each Party.
- 9.7 **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 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the approved assigns of the Parties. This section 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 the Authority, or the disposition of the 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 the Authority or the Parties under this Agreement.
- 9.8 **Amendment.** This Agreement may be amended by a written amendment approved by the Board in accordance with the Special Voting requirements of Section 4.12.
- 9.9 **Severability.** If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were adjudged invalid or void by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.
- 9.10 **Governing Law.** This Agreement is made and to be performed in the State of California, and as such California substantive and procedural law shall apply.
- 9.11 **Headings.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language of this Agreement.
- 9.12 **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.

The Parties hereto have executed this Joint Powers Agreement establishing the Clean Energy Alliance.

CITY OF _____

By: _____
City Manager

DATE: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Exhibit A: Definitions

"AB 117" means Assembly Bill 117 (Stat. 2002, Ch. 838, codified at Public Utilities Code Section 366.2), which created Community Choice Aggregation.

"Act" means the Joint Exercise of Powers Act of the State of California (Chapter 5, Division 7, Title 1 of the Government Code commencing with Section 6500).

"Agreement" means this Joint Powers Agreement.

"Authority" means the Clean Energy Alliance.

"Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Policies and Procedures, the annual budget, and plans and policies.

"Board" means the Board of Directors of the Authority.

"Community Choice Aggregation" or "CCA" means an electric service option available to cities, counties, and other public agencies pursuant to Public Utilities Code Section 366.2.

"CCA Program" means the Authority's Community Choice Aggregation program established, conducted and operated under Public Utilities Code Section 366.2.

"Days" shall mean calendar days unless otherwise specified by this Agreement.

"Director" means a member of the Board representing a Party appointed in accordance with Sections 4.1 (Board of Directors) and 4.2 (Appointment and Removal of Directors) of this Agreement.

"Effective Date" means the date on which the Agreement shall become effective and the Authority shall exist as a separate public agency, as further described in Section 2.1 (Effective Date and Term) of this Agreement.

"Founding Member" means any jurisdiction that becomes a member of the Authority before October 1, 2020, as identified in Exhibit B.

"Governing Body" means for any city, its City Council; and for any other public agency, the equivalent policy making body that exercises ultimate decision-making authority over such agency.

"Initial Costs" means reasonable and necessary implementation costs advanced by the Founding Members in support of the formation of the Authority and approved by the Board for reimbursement, which are (a) directly related to the establishment of the Authority and its CCA program, and (b) incurred by the Authority or its Members relating to the initial operation of the Authority, such as the hiring of the executive and operations staff, any required accounting, administrative, technical and legal services in support of the

Authority's initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements, and activities associated with drafting and obtaining approval of the Authority's implementation plan. Initial Costs do not include costs associated with the investigation of the CCA model, attendance at routine planning meetings, or a Party's pre-formation reports related to their decision to pursue CCA or join the Authority. Initial costs also do not include the costs incurred by the City of Solana Beach relating to the termination of its CCA program. The Authority Board shall determine the repayment timing and termination date for the Initial Costs.

"Investor Owned Utilities" means a privately-owned electric utility whose stock is publicly traded and is subject to CPUC regulation.

"Parties" means, collectively, the signatories to this Agreement that have satisfied the conditions as defined above for "Founding Members" or in Section 2.4 (Addition of Parties) of this Agreement, such that they are considered members of the Authority.

"Party" means, singularly, a signatory to this Agreement that has satisfied the conditions as defined above for "Founding Members" or in Section 2.4 (Addition of Parties) of this Agreement, such that it is considered a member of the Authority.

Exhibit B: List of Founding Members

Any public agency that becomes a member by October 1, 2020

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CARLSBAD AUTHORIZING THE IMPLEMENTATION OF A
COMMUNITY CHOICE AGGREGATION PROGRAM

WHEREAS, California Public Utilities Code (the "Act") Section 366.2 authorizes cities and counties to individually or jointly provide retail electric service to an aggregation of customers within their jurisdictions, which is referred to as community choice aggregation (CCA); and

WHEREAS, since 2017 the City 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, the City completed a CCA feasibility study which determined that a CCA program could result in local benefits including the use of renewable energy at levels above the State Renewables Portfolio Standard, the provision of competitive rates to consumers, and economic opportunity for the City; and

WHEREAS, pursuant to Section 366.2 of the Act, if each entity adopts the ordinance required by Public Utilities Section 366.2(c)(12), two or more public entities authorized to be a community choice aggregator under Section 331.1 of the Act may participate jointly in a CCA program through a Joint Powers Authority established pursuant to Government Code Section 6500 et seq.; and

WHEREAS, the City wishes to implement a CCA program at this time through a Joint Powers Authority together with other Founding Members, which will be called the Clean Energy Alliance; and

WHEREAS, under section 366.2 of the Act, customers have the right to opt out of the CCA program and continue to receive bundled electric service from the incumbent utility; and

WHEREAS, 366.2(c)(12) of the Act provides that an entity which elects to implement a CCA program within its jurisdiction must do so by ordinance; and

WHEREAS, this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a).) Further, the ordinance is exempt from CEQA as there is no possibility that the ordinance or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3).) The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment. (14 Cal. Code Regs. § 15308.) To the extent necessary, the Director of Community and Economic Development shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

NOW, THEREFORE, the City Council of the City of Carlsbad, California, ordains as follows:

1. The above recitations are true and correct.
2. In order to provide businesses and residents within the jurisdictional boundaries of the City with a choice of electric service providers and with the benefits described in the recitals above, the City Council hereby elects pursuant to Section 366.2(c)(12) of the Act to implement a

CCA program within the jurisdiction of the City of Carlsbad by participating in the CCA program of the Clean Energy Alliance, under the terms and conditions provided in its Joint Powers Agreement, on file with the City Clerk.

EFFECTIVE DATE: This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the _____ day of _____ 2019, and thereafter

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the _____ day of _____ 2019, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

APPROVED AS TO FORM AND LEGALITY:

CELIA A. BREWER, City Attorney

MATT HALL, Mayor

BARBARA ENGLESON, City Clerk

(SEAL)