
**San Joaquin Valley Power Authority
- Program Agreement 1 -
(Community Choice Aggregation)**

Effective _____, 2007

Among

San Joaquin Valley Power Authority

And the following CCA Members:

**XXXXXXXXXX
XXXXXXX
XXXXXXXXXX**

**SAN JOAQUIN VALLEY POWER AUTHORITY
PROGRAM AGREEMENT 1
(Community Choice Aggregation)**

This **Program Agreement 1** ("Agreement"), effective as of _____, 2007 ("Effective Date"), is made and entered into by and among the **San Joaquin Valley Power Authority** ("Authority") and the **CCA Members** (as defined hereunder). Capitalized terms used in this Agreement without other definition shall have the meanings specified in Exhibit A.

RECITALS

1. The Authority is an independent public agency formed in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) and established by that certain Joint Powers Agreement, effective as of November 15, 2006. The Authority was formed in order to study, promote, develop, and conduct electricity-related programs, including specifically a program relating to Community Choice Aggregation ("CCA"), which is an electric service option available to cities and counties pursuant to Assembly Bill 117 (Stat. 2002, ch. 838) ("AB 117").
2. The Kings River Conservation District ("KRCD") is a California public agency established in 1951 by the Kings River Conservation District Act (Stat. 1951, ch. 931), and possessing various powers relating to the establishment of works related to, among other things, water management and the generation and delivery of electricity within KRCD's service area, which encompasses over 1.2 million acres in Fresno, Kings and Tulare counties.
3. Under the Joint Powers Agreement, KRCD was appointed the Authority's exclusive agent for planning, implementing, operating and administering the Authority's CCA program in accordance with direction provided by the Authority. In furtherance of this appointment and in accordance with approval by the Authority's Board of Directors, on January 29, 2007, KRCD submitted the Authority's CCA Implementation Plan ("Implementation Plan") and statement of intent to the California Public Utilities Commission ("CPUC").
4. The CCA Members are members of the Authority, and desire to implement a CCA program whereby the CCA Members' electric loads, and the electric loads of the residents and businesses within the CCA Members' respective jurisdictions, will be aggregated and served by the Authority.
5. The Authority and the CCA Members desire to enter into this Agreement in order to establish the general terms and conditions of the Authority's CCA program ("CCA Program"). The Authority and the CCA Members desire to have representatives of the CCA Members (acting by and through the Authority's Board of Directors ("Board")) further implement the Authority's CCA Program through specific rates, rules, policies and regulations duly approved by the Board, subject to any restrictions set forth in this Agreement and the Joint Powers Agreement.

AGREEMENT

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

ARTICLE 1 INTRODUCTION

The purpose of this Agreement, in conjunction with the Joint Powers Agreement and the Power Services Agreement, is to provide the contractual framework for the CCA Program through which the Authority will provide aggregated electric services to the CCA Members' electric loads, and the electric loads of participating residents and businesses within the CCA Members' respective jurisdictions (collectively, "CCA Customers"). The objective of the CCA Program is to provide predictable, reliable, cost-effective, cost-based electric services to the CCA Customers. This Agreement provides the general terms and conditions associated with the CCA Program, with specific implementation of the CCA Program to be accomplished through various Program Addendums, as described in Section 6.1.2, subject to the provisions contained herein.

ARTICLE 2 DEFINITIONS

Capitalized terms used in this Agreement without other definition shall have the meanings specified in Exhibit A, unless the context requires otherwise.

ARTICLE 3 RELATIONSHIP TO THE MOU

- 3.1 General.** Twelve municipalities and Kings County ("Initial Participants") and KRCD entered into that certain Memorandum of Understanding, dated March 1, 2005 ("MOU"), pursuant to which the Initial Participants and KRCD have been investigating and analyzing the feasibility of implementing the CCA Program. The Initial Participants are the original signatories and parties to the Joint Powers Agreement. Under Section 5.1.4 of the Joint Powers Agreement, the Authority agreed to perform or caused to be performed activities relating to the CCA Program in order (a) to complete necessary work under the MOU and (b) to prepare the CCA Program for actual implementation, as evidenced by the execution and effectiveness of this Agreement.
- 3.2 Notices.** Under the MOU, KRCD is required to provide certain notices regarding the completion of activities related to the Authority's potential role as a Community Choice Aggregator. The Authority and the CCA Members agree that the Authority has assumed KRCD's obligations with respect to all such notices. The Authority and the CCA Members further agree that, with the Authority's approval of the Implementation Plan and with the Authority's delivery of this Agreement, as described in Section 4.1, the Authority shall be deemed to have performed all obligations under the MOU with respect to notices to the CCA Members.
- 3.3 Successor Agreement.** The CCA Members, which constitute the remaining participants under the MOU, agree that this Agreement is intended to describe all matters relating to the CCA Program, and that, upon this Agreement becoming effective under Section 4.2, the MOU shall terminate pursuant to Section 5.1 thereof.

**ARTICLE 4
PROGRAM COMMENCEMENT**

- 4.1 Delivery Date.** Upon approval of the Board, the Authority shall execute this Agreement and deliver a copy of this Agreement to all Joint Powers Agreement Parties. The date on which the Authority delivers this Agreement for execution by the Joint Powers Agreement Parties shall be referred to as the "Delivery Date."
- 4.2 Effective Date.** This Agreement shall become effective on the date on which the Authority has received a duly executed counterpart of this Agreement from at least 9 Joint Powers Agreement Parties ("Minimum Participation Level"). For the purpose of implementing this Section 4.2, the reference to "Joint Powers Agreement Parties" shall include the Initial Participants and Tulare County, should Tulare County become a Joint Powers Agreement Party in accordance with Section 3.1 of the Joint Powers Agreement and Authority Resolution 07-03. The Authority shall provide written notice to all Joint Powers Agreement Parties of the Effective Date.
- 4.2.1 Effect of Failure to Execute.** During the first 90 days after the Delivery Date, a Joint Powers Agreement Party may cause this Agreement to be effective as to such Joint Powers Agreement Party by executing this Agreement and returning it to the Authority. A failure by a Joint Powers Agreement Party to execute and return this Agreement to the Authority during the first 90 days after the Delivery Date shall automatically cause this Agreement to be null and void as to any such Joint Powers Agreement Party.
- 4.2.2 Failure to Achieve Minimum Participation Level.** If the Authority fails to achieve the Minimum Participation Level by 90 days after the Delivery Date, this Agreement shall not become effective, and neither the Authority nor any CCA Member shall have any rights or obligations under this Agreement. The Authority shall provide written notice to all Joint Powers Agreement Parties of any such occurrence.
- 4.3 Commencement Notice.** Notwithstanding Section 4.2, the CCA Program shall not commence and no implementation activities under this Agreement shall be initiated unless and until (a) the Board shall have approved and the Authority and KRCD shall have executed the Power Services Agreement and (b) the Board shall have adopted a resolution finding, among other things, that the CCA Program is reasonably expected to achieve key financial goals described in the Implementation Plan, including the establishment of rates at a discount of 5 percent from comparable generation-related rates under the respective Utility Distribution Company's otherwise applicable tariff. The aforementioned resolution shall be approved by an affirmative vote of the Board in which the minimum percentage voting share, as described in Section 4.8 of the Joint Powers Agreement, shall be no less than 67% of the voting shares of the CCA Members, as further described in Section 5.2.1.
- 4.3.1 Notice.** The Authority shall provide written notice to all the CCA Members of the adoption of the aforementioned resolution ("Commencement Notice").
- 4.3.2 Failure to Provide Commencement Notice.** If the Authority has not delivered the Commencement Notice to the CCA Members by 90 days after the Effective Date, the CCA Members may terminate this Agreement by providing 10 days advance written notice to the Authority; provided, however, delivery of the Commencement Notice during the 10-day notice period shall automatically extinguish any such termination.

If, as a result of any such termination(s), the number of remaining CCA Members is less than the Minimum Participation Level, this Agreement shall automatically terminate without further action by the Authority. The Authority shall provide notice to all the CCA Members of any such termination.

ARTICLE 5 GOALS, SCOPE AND GENERAL ROLES

- 5.1 CCA Program Goals.** As further described in the Implementation Plan, the goals for the Authority's CCA Program are (a) to enhance local electric reliability and diversity through the development of Local Electric Facilities, including local renewable generation resources (b) to achieve greater levels of electricity price stability and transparency through local decision-making, (c) to provide electricity cost savings for local businesses and residents, (d) to provide greater levels of local control over and collaboration on energy decisions, and (e) to provide revenue to the CCA Members for their respective contribution to the development and ongoing operation of the CCA Program.
- 5.2 Board.** The Board, following the voting procedure described below, shall govern and be responsible for the administration of this Agreement and for the operation of the CCA Program. The CCA Members represent that their respective Director (or alternate Director, acting in the Director's absence) on the Board has authority to act for the CCA Member with respect to matters pertaining to this Agreement and the CCA Program.
- 5.2.1 Voting.** The vote of the Board on any issue pertaining to this Agreement and the CCA Program (including the approval of Program Addendums, as described in Section 6.1.2) shall follow the methodology described in Section 4.8 of the Joint Powers Agreement.
- 5.2.2 Representative Duties.** The Board shall adopt policies, establish rates, approve plans and procedures, and otherwise govern the CCA Program. Without limiting the generality of the foregoing, the Board shall make decisions and take actions on the following matters related to this Agreement and the CCA Program, and such other matters as may be necessary for the implementation of this Agreement and the operation of the CCA Program:
- (a) Administer, enforce and interpret the provisions of this Agreement in order to accomplish the purpose and objective of this Agreement;
 - (b) Review, approve and, as necessary, modify the specific rules, rates and procedures required for the implementation of this Agreement and the operation of the CCA Program, as reflected in Program Addendums; and
 - (c) Review and approve the Authority's budget with respect to services provided under this Agreement and the CCA Program.
- 5.3 CCA Members.** In accordance with the phase-in plan developed for the CCA Program, the CCA Members shall procure from the Authority their Full Electricity Requirements for Eligible Member Loads (as defined below) for the term of this Agreement. Additionally, by and through their representation on the Board, the CCA Members shall participate in the governance, control and implementation of the CCA Program.

5.4 The Authority.

5.4.1 Community Choice Aggregator. The CCA Members acknowledge and agree that the Authority shall be the “Community Choice Aggregator,” as described in AB 117 and decisions of the CPUC, in the provision of electric services to the CCA Customers, it being agreed by the CCA Members that, by adopting the enabling ordinance in accordance with Public Utilities Code Section 366.2(c)(10) and execution of this Agreement, the CCA Members have transferred to the Authority their rights to serve CCA Customers within their respective boundaries effective as of the date of the ordinance, subject to their right to withdraw from this Agreement, as described in Section 11.2.

5.4.2 Power Services Provider. Under Section 4.11 of the Joint Powers Agreement, KRCD was appointed the Authority’s exclusive agent for planning, implementing, operating and administering the CCA Program. The Authority represents that concurrent with the execution of this Agreement, or as soon thereafter after as reasonably practicable, the Authority will execute a Power Services Agreement with KRCD by which the Authority will reaffirm its authorization for KRCD to act as the Authority’s exclusive agent to implement the CCA Program and will further specify the scope of services provided by KRCD. Without limiting the generality of the foregoing, under the Power Services Agreement KRCD will be expected to, among other things, plan, obtain and schedule sources of electricity to supply the CCA Customers’ Full Electricity Requirements, develop and present for Board approval Program Addendums for the implementation of this Agreement, and provide retail and regulatory services in support of the CCA Program, including but not necessarily limited to rate analysis and recommendations, billing, customer service, marketing, regulatory and public relations, and serving as liaison with the Utility Distribution Company and the CPUC.

5.5 Utility Distribution Company. The Utility Distribution Company will provide distribution and billing services to the CCA Customers, and will provide various services to the Authority, pursuant to rules, rates, agreements and tariffs approved by and on file with the CPUC.

ARTICLE 6 METHOD OF IMPLEMENTATION

6.1 General. This Agreement provides the general framework by which the Authority will conduct the CCA Program. The Authority and the CCA Members expect the CCA Program to evolve from that described in the initial Implementation Plan and this Agreement. As generally described in Section 5.2, the Board shall govern and be responsible for the actual operation of the CCA Program. The Authority and the CCA Members agree that rules, rates and procedures shall be developed for the implementation of this Agreement and the operation of the CCA Program, as further described below.

6.1.1 Implementation Plan. The current plan for implementing the CCA Program is described in the Implementation Plan, which is hereby incorporated into this Agreement by this reference. The Authority intends to modify the Implementation Plan from time to time to more accurately reflect the then-current CCA Program.

6.1.2 Program Addendums. Rules, rates and procedures for the specific implementation of this Agreement and operation of the CCA Program shall be set

forth in writing from time to time and presented for approval by the Board as Program Addendums. In developing Program Addendums, the Authority shall endeavor to develop Program Addendums in a manner that best preserves the principles of this Agreement in light of the evolving conditions then-affecting the CCA Program. The CCA Members will be given an opportunity to review such proposed rules, rates and procedures, and to present their respective views to the Board concerning such proposed rules, rates and procedures. Upon approval by the Board, the specific rule, rate or procedure shall be referred to as a Program Addendum, with individual, sequential numbers (or other numbering system approved by the Board) being used to reference such Program Addendums.

6.1.2.1 Incorporation by this Reference. Subject to Section 6.1.2.2, the CCA Members agree that Program Addendums shall constitute addendums to this Agreement and shall, by this reference and except as may be specifically stated otherwise in such Program Addendum, be automatically incorporated into this Agreement and made subject to the terms and conditions hereof.

6.1.2.2 Need for Written Consent. In developing Program Addendums, a distinction exists with respect to obligations that relate to CCA Members as parties to this Agreement and obligations that relate to CCA Members as CCA Customers. The Authority and the CCA Members agree that (a) a Program Addendum may not impose any additional obligations on CCA Members in their role as parties to this Agreement without their express written consent and (b) a Program Addendum may impose additional obligations on CCA Members without their express written consent if such additional obligation is a term or condition of service under the CCA Program that applies to all similarly situated CCA Customers.

6.1.3 **Conflicts.** In resolving any conflict between or among the components of this Agreement, a Program Addendum and the Implementation Plan, the following priority shall control: (a) this Agreement, (b) a Program Addendum and (c) the Implementation Plan.

6.2 Agency Relationship.

6.2.1 **General.** The CCA Members hereby authorize the Authority to act as their respective agent to implement the CCA Program with respect to the CCA Customers.

6.2.2 **Relationship with CCA Customers.** The Authority and the CCA Members agree that the relationship with CCA Customers shall exist with and be maintained by the Authority, not the CCA Members.

6.2.3 **Further Assurances.** Subject to the limitations set forth in Section 6.1.2.2, the Authority and the CCA Members agree to execute and deliver all further instruments and documents, and take any further action, that may be reasonably necessary to implement this Agreement, including specifically the transfer of rights from the CCA Members to the Authority, as described in Section 5.4.1, the appointment of the Authority as the CCA Members' respective agent, as described in Section 6.2.1, or as necessary to allow the Authority to satisfy its obligations under the Power Services Agreement with respect to the CCA Program.

ARTICLE 7
RESOURCE PLAN AND OPERATION

- 7.1 General.** Through the Power Services Agreement, the Authority shall cause to be provided the necessary administrative, technical, financial, regulatory and management services to effectuate the resource planning and operations required under this Agreement for the CCA Program.
- 7.2 Initial Phase-in.**
- 7.2.1 General.** The Authority anticipates that it will implement a phase-in plan with respect to the type and number of CCA Customers to be initially served by the Authority, it being understood by the Authority and the CCA Members that the Authority intends to eventually provide universal access to all eligible customers, as described in AB 117 and decisions of the CPUC. The Authority's phase-in plan is described in the Implementation Plan.
 - 7.2.2 Eligible Member Loads; Full Electricity Requirements.** As described in the Implementation Plan, the initial phase of the CCA Program will consist of all eligible electric loads of the CCA Members ("Eligible Member Loads"). The CCA Members agree that, for the term of this Agreement, they will procure from the Authority their Full Electricity Requirements for the Eligible Member Loads.
 - 7.2.3 Waiver of Certain Rights.** The CCA Members acknowledge that there are various rights accorded to customers under AB 117 and decisions of the CPUC with respect to the implementation of AB 117. As partial consideration hereunder, and in light of the CCA Members' relationship to the Authority and to the Board, the CCA Members agree to waive (a) their respective right to receive all opt-out notices otherwise required under the Utility Distribution Company's rules and described in Section IX.1 of the Implementation Plan as it exists on the Delivery Date and (b) their respective right to opt-out of the CCA Program, subject to their right to withdraw from this Agreement.
- 7.3 Annual Resource Plan and Periodic Reports.** Through the Power Services Agreement, the Authority shall cause to be developed (a) an Annual Resource Plan for the purpose of implementing the CCA Program, which such plan shall include, but not be limited to, information relative to load demand forecasts, projected resource availability, adherence to pertinent regulatory requirements (including resource adequacy, renewable portfolio and greenhouse gas requirements), and scheduling plans and (b) periodic reports to the CCA Members describing key elements of the implemented Annual Resource Plan, including any variances to the plan or contingency actions taken by the Authority.
- 7.4 Electric Resources.** Through the Power Services Agreement, the Authority shall cause to be procured or acquired, electric resources to meet the CCA Customers' anticipated demands. It is anticipated that such electric resources shall consist of a mix of short and long-term electric resources, which may include Local Electric Facilities. In this regard, as described in the Implementation Plan, the CCA Members acknowledge that KRCD is currently investigating the development of a local natural gas-fired electric generating facility with the intent of supplying power for electric loads served under the CCA Program.
- 7.4.1 Objectives.** The primary objectives of the Authority's electric resource acquisition program are:

- (a) to provide economic benefits to the CCA Members and to CCA Customers from pooling electric resources to meet the aggregated electric loads of CCA Customers
- (b) to supply the CCA Customers' Full Electricity Requirements at the lowest practicable cost; and
- (c) to promote the development of local electric generating facilities, including local renewable generation resources.

7.4.2 Net Unavoidable Costs. All costs associated with the CCA Program, including debt service and related finance costs, shall be recoverable through rates from all CCA Customers existing as of the effective date of the commitment to such purchases and acquisitions, and from all future CCA Customers reasonably forecasted to be served by such electric resources. As described in the Implementation Plan, a termination fee (including a Cost Recovery Charge) will apply to recover, among other things, the net unavoidable costs of electric resource commitments attributable to the CCA Customers that terminate service under the CCA Program. The methodology for calculating the "net unavoidable cost" and other matters related to the termination fee shall be further described in a Program Addendum.

ARTICLE 8 RATES

8.1 General. Except as expressly stated otherwise herein, all costs incurred by the Authority in the performance of this Agreement and the CCA Program shall be recovered through rates applicable to the CCA Customers. The Board shall approve the rates for electric services under the CCA Program, and the rules describing the CCA Customers' obligations to pay such rates.

8.1.1 Initial Rates. As described in Section 6.3.3 of the Joint Powers Agreement, the CCA Members desire that, to the extent reasonably practicable, all costs that are attributable to the provision of electric services under the CCA Program, including costs of development and start-up (as described in Section 8.1.2), and costs of various reserve funds, credit requirements and insurance coverage, shall be recovered through rates from CCA Customers under the CCA Program. The CCA Members intend that all such rates will first be applied upon the commencement of electric services provided under the CCA Program.

8.1.2 Development and Start-up Costs. As described in Section IV of the Implementation Plan, KRCD has incurred and will continue to incur various costs in the development and start-up of the CCA Program, with such costs to be addressed in the Power Services Agreement.

8.1.3 Participation Fee. The Authority and the CCA Members acknowledge that the CCA Members have incurred and will continue to incur various costs (including opportunity costs) with respect to the development, operation and oversight of the CCA Program. In recognition of these costs and other contributions made by the CCA Members to the CCA Program, and upon an affirmative vote of the Board,

the Board may establish discounted rates for CCA Members, or provide other comparable economic benefits to CCA Members.

- 8.2 Rate Principles.** Rates for CCA Customers shall be based on rate principles agreed upon by the Board, as generally described in the Implementation Plan. The Board shall establish appropriate rate and customer classifications. The Authority and the CCA Members agree that similarly situated customers served by the Authority within each of the CCA Members' respective boundaries shall be subject to the same rate; provided, however, for a legitimate purpose and upon an affirmative vote of the Board consisting of no less than 67% of the voting shares of the CCA Members, the Board may establish preferential rates for certain CCA Customers and/or customer classifications, including economic development rates.
- 8.3 Adjustments.** Rates may be adjusted by the Board as may be reasonably required to collect additional operating funds to address shortfalls or to return amounts of any over-collection that may occur due to various factors, including but not limited to seasonal adjustments.
- 8.4 Target Rate Benefit.** The Authority shall endeavor to establish and maintain rates for CCA Customers at levels equal to or less than comparable generation-related rates under the respective Utility Distribution Company's otherwise applicable tariff. As described in the initial Implementation Plan, and as specified in Section 4.3 (Commencement Notice), the Authority's goal is to offer initial program rates under the CCA Program that provide a discount of 5 percent from comparable generation-related rates under the respective Utility Distribution Company's otherwise applicable tariff.
- 8.5 Records and Accounts.** The Authority shall keep, or cause to be kept, records and accounts of operations under the CCA Program. Each CCA Member shall have the right at its own expense to examine and copy the records and accounts referred to above, and records and accounts relating to the computation of the rates, charges and costs attributable to the CCA Customers under this Agreement, on reasonable notice during regular business hours and subject to confidentiality requirements established by the Board in accordance with applicable law.
- 8.6 Cooperation in the Collection of Delinquent Charges.** The CCA Members agree to cooperate with the Authority as may be reasonable in the collection of delinquent charges under the CCA Program from CCA Customers within the CCA Members' respective jurisdiction.

ARTICLE 9 ANNUAL REVIEW

All transactions of and costs incurred by the Authority under the CCA Program shall be subject to an annual audit, which shall be completed as soon as reasonably practicable following the end of each fiscal year, as described in Section 6.1 of the Joint Powers Agreement. In connection with this annual audit, the Authority shall produce and provide to the CCA Members cost accounting reports pertaining to the operations of the CCA Program.

ARTICLE 10 BILLING

- 10.1 Billing Statement.** In accordance with procedures reviewed and approved by the Board, and consistent with the Utility Distribution Company's rules, a billing statement shall be delivered to each CCA Customer for charges owed by the CCA Customer under the CCA Program.
- 10.2 Authority Responsibility for Billing CCA Customers.** Consistent with Section 6.2.2, the CCA Members shall not be responsible for billing CCA Customers within the CCA Members' respective boundaries, it being agreed by the Authority and the CCA Members that, as generally described in Section 10.1, the Authority shall cause the CCA Customers to be billed for electric services provided under the CCA Program.
- 10.3 Payment.** Certain information concerning the CCA Customer's responsibility for payment of services under the CCA Program is described in the Implementation Plan. The Authority shall establish specific rules and procedures describing the CCA Customers' respective rights and obligations concerning payments, including the rights of a CCA Customer to dispute a bill.

ARTICLE 11 TERM AND TERMINATION

- 11.1 Term.** The term of this Agreement shall commence on the Effective Date and shall continue in effect from year to year until terminated as described herein.
- 11.2 Continuing Participation.** The CCA Members acknowledge that participation in the CCA Program may change by the addition and/or withdrawal of the CCA Members, and by the addition or opt-out of CCA Customers. The CCA Members agree that the withdrawal or termination of a CCA Member (and its associated CCA Customers), and the opt-out of CCA Customers, shall not affect this Agreement or the remaining CCA Members' continuing obligations under this Agreement and the CCA Program.
- 11.3 Addition of CCA Members.** As described in Section 3.1 of the Joint Powers Agreement, additional parties may be included in the Joint Powers Agreement, and, subject to the satisfaction of any additional conditions established by the Board, may also be included as an additional CCA Member.
- 11.4 Withdrawal of CCA Members.**
- 11.4.1 General.** A CCA Member may withdraw from this Agreement upon written notice given to the Authority and to the other CCA Members no less than 6 months prior to the CCA Member's designated withdrawal date.
- 11.4.2 Responsibility for Returned CCA Customers.** Withdrawal of a CCA Member from this Agreement may result in the CCA Customers within the withdrawing CCA Member's jurisdiction being returned to bundled electric service provided by the Utility Distribution Company. The withdrawing CCA Member and the Authority shall cooperate with each other, and the respective Utility Distribution Company, to minimize or eliminate costs attributable to the return of formerly CCA Customers to bundled electric service provided by the Utility Distribution Company. Should there be any costs reasonably determined by the Board to be

attributable to the return of formerly CCA Customers, including costs specified in Sections S.7 and T.2 of the Utility Distribution Companies' CCA rules (as amended from time to time), the withdrawing CCA Member agrees to be responsible for all such costs.

11.4.3 Continuing Obligations. A CCA Member's withdrawal shall not relieve such CCA Member of any obligation arising prior to the effective date of such withdrawal. Without limiting the generality of the foregoing, the withdrawing CCA Member agrees (a) to be responsible for the termination fee (including Cost Recovery Charge) determined by the Board to be applicable to recover, among other things, the net unavoidable costs of electric resource commitments, as generally described in Section 7.4.2, attributable to the withdrawing CCA Member's Eligible Member Loads and (b) to cooperate with the Authority as may be reasonably necessary to effectuate an orderly transition.

11.5 Termination of this Agreement. This Agreement may be terminated by written consent of all the CCA Members; provided, however, the foregoing shall not be construed as limiting the rights of an individual CCA Member to withdraw from this Agreement (as described in Section 11.4) and thus to terminate this Agreement as to such CCA Member.

ARTICLE 12 MISCELLANEOUS

12.1 No Joint and Several Liability. The CCA Members shall not be jointly and severally liable for obligations of the Authority under third-party agreements, it being the intent and agreement of the Authority and the CCA Members that liabilities under third-party agreements shall be incurred directly by the Authority. The Authority shall be responsible for its debts, liabilities and obligations, which shall not be the debts, liabilities, or obligations of any CCA Member, unless the governing body of that CCA Member has expressly agreed in writing that the CCA Member shall assume such specifically described debts, liabilities or obligations.

12.2 Amendments. To be effective, an amendment to this Agreement must include the following two elements: (a) an affirmative vote of the Board and (b) the written consent of each then-existing CCA Member.

12.3 Dispute Resolution. The dispute resolution process to be followed for matters related to this Agreement is described in Section 8.1 of the Joint Powers Agreement, which Section is hereby incorporated into this Agreement.

12.4 Liability of Authority, Officers, and Employees. The Authority's Board members, officers, employees and agents (including KRCD) shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties under the CCA Program. No Authority Board member, officer, employee or agent shall be responsible for any act or omission by another Board member, officer, employee or agent. The Authority shall indemnify and hold harmless the individual Authority Board members, officers, employees and agents for any action taken lawfully and in good faith under the CCA Program. Nothing in this section shall be construed to limit the defenses available under the law to the CCA Members, the Authority, or Authority Board members, officers, employees or agents.

- 12.5 **Assignment.** The rights and duties of the CCA Members with respect to this Agreement may not be assigned or delegated without the advance unanimous written consent of the Authority and the other CCA Members, which consent shall not be unreasonably delayed or withheld. The rights and duties of the Authority may not be assigned or delegated without the advance unanimous written consent of the CCA Members, which consent shall not be unreasonably delayed or withheld; provided, however, the Authority may, without any additional consent, (a) delegate the Authority's obligations to KRCD pursuant to the Power Services Agreement and (b) assign rights to KRCD in connection with services provided under the Power Services Agreement. This Agreement shall inure to the benefit of, and be binding upon, the successors and authorized assigns of the Authority and the CCA Members.
- 12.6 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Authority and the CCA Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.
- 12.7 **Execution by Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by the Authority and the CCA Members, each executed counterpart shall have the same force and effect as an original instrument and as if the Authority and the CCA Members 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.
- 12.8 **Notices.** The notice process to be followed for matters related to this Agreement is described in Section 8.8 of the Joint Powers Agreement, which Section is hereby incorporated into this Agreement.

/

/

/

/

/

/

/

**ARTICLE 13
SIGNATURE**

IN WITNESS WHEREOF, the Authority and the CCA Members have executed this Program Agreement 1 as of date written below.

SAN JOAQUIN VALLEY POWER AUTHORITY

By: _____

Title: _____

Date: _____

CCA MEMBER

By: _____

Name: _____

Title: _____

City/County: _____

Date: _____

Exhibit A
To
Project Agreement 1

- Definitions -

“AB 117” means Assembly Bill 117 (Stat. 2002, ch. 838, principally codified at Public Utilities Code Section 366.2), which created the CCA option.

“Agreement” means this Program Agreement 1.

“Annual Resource Plan” means the plan developed by KRCD under the Power Services Agreement, and approved by the Board, for the purpose of implementing this Agreement and the CCA Program, as described in Section 7.2.

“Authority” means the San Joaquin Valley Power Authority, an independent public agency formed in accordance with the Joint Powers Act of the State of California (Government Code Section 6500, *et seq.*) and established by the Joint Powers Agreement.

“Board” means the Authority’s Board of Directors.

“CCA” means Community Choice Aggregation, an electric service option available to cities and counties pursuant to AB 117.

“CCA Customers” means the CCA Members and residential and business customers within the CCA Members’ respective jurisdictions for whom the Authority is providing electric services under the CCA Program, as described in Article 1.

“CCA Members” means Joint Powers Agreement Parties that are also signatories to this Agreement.

“CCA Program” means the CCA program described in this Agreement by which the Authority aggregates and serves the electric loads of the CCA Customers.

“Commencement Notice” means the written notice provided by the Authority to the CCA Members under Section 4.3.1 by which the Authority notifies the CCA Members of the satisfaction to certain conditions precedent to the commencement of the CCA Program, as described in Section 4.3.

“Community Choice Aggregator” means the Authority serving in the role as community choice aggregator, as described in AB 117 and decisions of the CPUC.

“Cost Recovery Charge” means the charge described in the Implementation Plan, and generally in Section 7.3.2, applicable to the CCA Customers that terminate service under the CCA Program for costs reasonably attributable to the CCA Customers’ electric loads, as determined by the Board.

“CPUC” means the California Public Utilities Commission.

“Delivery Date” means the date on which the Authority delivers this Agreement for execution by Joint Powers Agreement Parties, as generally described in Section 4.1.

“Director” means, as defined in the Joint Powers Agreement, a member of the Board representing a Joint Powers Agreement Party.

“Effective Date” means the date on which this Agreement has become effective, as described in Section 4.2.

“Eligible Member Loads” means the electric loads of the CCA Members that are eligible for service under the CCA Program, as described in the Utility Distribution Company’s rules, excluding any electric loads served under a “direct access” service option (as described in the Utility Distribution Company’s rules) through the duration of the contract for such service, as such contract existed as of the Delivery Date.

“Full Electricity Requirements” means, with respect to electricity accounts served under the CCA Program, all of the CCA Customer’s electricity requirements, excepting from such requirement all load that may be self-supplied by a CCA Customer through qualifying electric generation.

“Implementation Plan” means the plan required for submittal to the CPUC under Assembly Bill 117 as the means of describing the CCA Program and assuring compliance with various elements contained in Assembly Bill 117, as initially submitted by the Authority on January 29, 2007 and as it may be modified from time to time.

“Initial Participants” means Kings County and the cities of Clovis, Corcoran, Dinuba, Fresno, Hanford, Kerman, Kingsburg, Lemoore, Parlier, Reedley, Sanger and Selma, as described in Section 3.1.

“Joint Powers Agreement” means that certain Joint Powers Agreement, effective as of November 15, 2006, establishing the Authority as an independent public agency pursuant to the Joint Powers Act of the State of California (Government Code Section 6500, *et seq.*).

“Joint Powers Agreement Parties” means, collectively, as of the Delivery Date, the Initial Participants and, thereafter, all then-existing parties to the Joint Powers Agreement, reflecting the fact (a) that parties to the Joint Powers Agreement may withdraw from the Joint Powers Agreement or have the Joint Powers Agreement terminated as to such party and (b) that parties other than the Initial Participants may be added to the Joint Powers Agreement, including Tulare County should Tulare County become a party to the Joint Powers Agreement in accordance with Section 7.1 of the Joint Powers Agreement and Authority Resolution 07-03.

“Joint Powers Agreement Party” means, singularly, as of the Delivery Date, each of the Initial Participants and, thereafter, each then-existing party to the Joint Powers Agreement, reflecting the fact (a) a party to the Joint Powers Agreement may withdraw from the Joint Powers Agreement or have the Joint Powers Agreement terminated as to such party and (b) a party other than the Initial Participants may be added to the Joint Powers Agreement, including Tulare County should Tulare County become a party to the Joint Powers Agreement

in accordance with Section 7.1 of the Joint Powers Agreement and Authority Resolution 07-03.

“KRCD” means the Kings River Conservation District, a California public agency established in 1951 by the Kings River Conservation District Act (Stat. 1951, ch. 931).

“Local Electric Facilities” means electric generating facilities, including local renewable generation resources, developed and constructed in support of the CCA Program, as described in a separate agreement with the Authority or in a Program Addendum, including a proposed natural gas-fired electric generating facility to be owned by KRCD, nominally rated at 500 megawatts, and associated linear interconnection facilities, as generally described in the initial Implementation Plan.

“Minimum Participation Level” means at least 9 Joint Powers Agreement Parties, with the reference to “Joint Powers Agreement Parties” including the Initial Participants and Tulare County, should Tulare County become a Joint Powers Agreement Party in accordance with Section 3.1 of the Joint Powers Agreement and Authority Resolution 07-03, as further described in Section 4.2.

“MOU” means the Memorandum of Understanding, dated March 1, 2005, among KRCD, and the Initial Participants, pursuant to which the MOU parties have been investigating and conducting certain preliminary implementation activities for a CCA program, as described in Section 3.1.

“Power Services Agreement” means the agreement contemplated to be entered into between the Authority and KRCD, the execution of which is a condition precedent to the commencement of the CCA program, as described in Section 4.3, pursuant to which KRCD shall continue to serve as the exclusive provider of services necessary to fulfill the Authority’s role as Community Choice Aggregator under this Agreement and the CCA Program.

“Program Addendum” means a specific rule, rate or procedure for the implementation of this Agreement and the CCA Program, as generally described in Section 6.1.2.

“Utility Distribution Company” means either Pacific Gas and Electric Company or Southern California Edison Company, as the case may be, as an investor-owned utility acting in the role described by the CPUC pursuant to rules and decisions relating to CCA.