

# **CLEAN ENERGY ALLIANCE**

## **Community Choice Aggregation Implementation Plan and Statement of Intent**

**December 2019**

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# 1 INTRODUCTION

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The Clean Energy Alliance (“CEA” or “Alliance”), located within San Diego County, is a Joint Powers Authority (“JPA”) pursuing the implementation of a community choice aggregation program (“CCA” or “Program”). Founding Member Agencies of CEA include the following three (3) municipalities within the County of San Diego, which have elected to allow the JPA to provide electric generation service within their respective jurisdictions:

City of Carlsbad  
City of Del Mar  
City of Solana Beach

This Implementation Plan and Statement of Intent (“Implementation Plan”) describes CEA’s plans to implement a voluntary CCA program for electric customers within the jurisdictional boundaries of the Member Agencies. Electric customers within the Cities of Carlsbad and Del Mar currently take bundled electric service from San Diego Gas and Electric (“SDG&E”). Electric customers within the City of Solana Beach currently have the option of taking electric service from Solana Energy Alliance (“SEA”), an existing Community Choice Aggregation program, or as a bundled customer of SDG&E. The Program will provide electricity customers the opportunity to jointly procure electricity from competitive suppliers, with such electricity being delivered over SDG&E’s transmission and distribution system. The planned start date for the Program is May 1, 2021. All current SDG&E customers within the Del Mar and Carlsbad service area will receive information describing the CEA Program and will have multiple opportunities to opt out and choose to remain full requirement (“bundled”) customers of SDG&E, in which case they will not be enrolled. Current SEA customers will receive information describing the CEA Program and their transition from SEA to CEA. They will also have multiple opportunities to opt out. Thus, participation in the CEA Program is completely voluntary. However, as provided by law, customers will be automatically enrolled according to the anticipated schedule later described in Chapter 5 unless they affirmatively elect to opt-out. Once, and as long as CEA is operational and all SEA customers have transitioned to CEA, SEA will cease to be an operational CCA.

Implementation of CEA will enable customers within CEA’s service area to take advantage of the opportunities granted by Assembly Bill 117 (“AB 117”), the Community Choice Aggregation Law.

CEA’s primary objectives in implementing this Program are to:

- 1) Procure an electric supply portfolio with higher renewable content than SDG&E;
- 2) Provide cost competitive electric services when compared to SDG&E;
- 3) Gain local control in rate setting to provide long-term rate stability for residents and businesses;
- 4) Meet Climate Action Plan goals of the Member Agencies.

The California Public Utilities Code provides the relevant legal authority for the Alliance to become a Community Choice Aggregator and invests the California Public Utilities Commission (“CPUC” or “Commission”) with the responsibility for establishing the cost recovery mechanism that must be in place before customers can begin receiving electrical service through the CEA Program. The CPUC also has responsibility for registering the JPA as a Community Choice Aggregator and ensuring compliance with

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basic consumer protection rules. The Public Utilities Code requires adoption of an Implementation Plan at a duly noticed public hearing. The plan must then be filed with the Commission.

The Alliance is also aware that a CCA Program-specific Renewables Portfolio Standard (“RPS”) Procurement Plan must be completed and submitted to the CPUC during its CCA registration process – the Alliance anticipates that the renewable energy targets reflected in this Implementation Plan will meet or exceed applicable procurement mandates, including prudent planning reserves.

On December 19, 2019, the JPA, at a duly noticed public hearing, adopted this Implementation Plan, through Resolution No. 2019-003 (a copy of which is included as part of Appendix A).

The Commission has established the methodology to use to determine the cost recovery mechanism, and SDG&E has approved tariffs for imposition of the cost recovery mechanism. The cities of Del Mar and Carlsbad have adopted an ordinance to implement a CCA program through its participation in CEA and Solana Beach adopted its ordinance to implement a CCA program as part of implementing SEA. Each of the Members has adopted a resolution permitting CEA to provide service within its jurisdiction<sup>1</sup>. Having accomplished these milestones, CEA submits this Implementation Plan to the CPUC. Following the CPUC’s acknowledgement of its receipt of this Implementation Plan and resolution of any outstanding issues, CEA will submit a draft customer notice, file a draft Renewable Portfolio Standards Procurement Plan, submit the Financial Security Requirement and execute the Service Agreement with San Diego Gas & Electric as established in CPUC Resolution E-4907. CEA will take the final steps needed to register as a CCA and participate in the year-ahead Resource Adequacy (“RA”) process prior to initiating the customer notification and enrollment process.

### 1.1 STATEMENT OF INTENT

The content of this Implementation Plan complies with the statutory requirements of AB 117. As required by Public Utilities Code Section 366.2(c)(3), this Implementation Plan details the process and consequences of aggregation and provides the Alliance’s statement of intent for implementing a CCA program that includes all of the following:

- Universal access;
- Reliability;
- Equitable treatment of all customer classes; and
- Any requirements established by state law or by the CPUC concerning aggregated service.

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<sup>1</sup> Copies of individual ordinances adopted by the Clean Energy Alliance’s Members are included within Appendix A

## **Clean Energy Alliance Implementation Plan**

### **1.2 ORGANIZATION OF THIS IMPLEMENTATION PLAN**

The remainder of this Implementation Plan is organized as follows:

Chapter 2: Aggregation Process

Chapter 3: Organizational Structure

Chapter 4: Startup Plan & Funding

Chapter 5: Program Phase-In

Chapter 6: Load Forecast & Resource Plan

Chapter 7: Financial Plan

Chapter 8: Rate setting

Chapter 9: Customer Rights and Responsibilities

Chapter 10: Procurement Process

Chapter 11: Contingency Plan for Program Termination

Appendix A: Clean Energy Alliance Resolution No. 2019-XXX (Adopting Implementation Plan)

The requirements of AB 117 are cross-referenced to Chapters of this Implementation Plan in the following table.

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### AB 117 Cross References

AB 117 REQUIREMENT	IMPLEMENTATION PLAN CHAPTER
Statement of Intent	Chapter 1: Introduction
Process and consequences of aggregation	Chapter 2: Aggregation Process
Organizational structure of the program, its operations and funding	Chapter 3: Organizational Structure Chapter 4: Startup Plan & Funding Chapter 7: Financial Plan
Disclosure and due process in setting rates and allocating costs among participants	Chapter 8: Rate setting
Rate setting and other costs to participants	Chapter 8: Rate setting Chapter 9: Customer Rights and Responsibilities
Participant rights and responsibilities	Chapter 9: Customer Rights and Responsibilities
Methods for entering and terminating agreements with other entities	Chapter 10: Procurement Process
Description of third parties that will be supplying electricity under the program, including information about financial, technical and operational capabilities	Chapter 10: Procurement Process
Termination of the program	Chapter 11: Contingency Plan for Program Termination
Methods for ensuring procurement from small, local, and diverse business enterprises in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects.	Chapter 6: Load Forecast and Resource Plan

## 2 AGGREGATION PROCESS

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### 2.1 INTRODUCTION

This Chapter describes the background leading to the development of this Implementation Plan and describes the process and consequences of aggregation, consistent with the requirements of AB 117.

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In 2017 the cities of Del Mar, Carlsbad and other interested partner agencies engaged the assistance of a technical consultant to evaluate the feasibility of establishing a CCA program, considering various agency member formations. The studies revealed that a CCA program was viable, offering customers rates competitive with SDG&E. Throughout early 2019 the Member Agencies evaluated several different options related to the provision of CCA services to their service territories. SEA has been a financially stable CCA since launching in June 2018. The financial model reflected in Section 7, Table 9, demonstrates that the proposed CEA is a financially viable CCA program.

The CEA was formed with the following objectives: 1) procure a power supply from a minimum 50% renewable energy sources; 2) help meet the goals of the Member Agency's Climate Action Plans to reduce GHG emissions; 3) provide cost-competitive electric services to the customers of CEA; 4) gain local control of the territory's energy procurement needs; and 5) provide local clean energy programs and benefits.

The City of Solana Beach ("Solana Beach") currently operates SEA, the only CCA that is currently serving customers in SDG&E territory. Solana Beach intends to transition its customers from SEA to CEA during CEA's launch month of May 2021. Once its customers are fully transferred to CEA, Solana Beach will no longer operate SEA. Solana Beach will submit an amended Implementation Plan, concurrent with this CEA Implementation Plan, that reflects its customers transitioning to CEA.

The Alliance released a draft Implementation Plan in November 2019, which described the planned organization, governance and operation of the CCA Program. Following consideration of comments related to the draft document, a final Implementation Plan was prepared and duly adopted by the CEA Board of Directors.

The CEA Program represents a culmination of planning efforts that are responsive to the expressed needs and priorities of the residents and business community within the service territory. The Alliance plans to expand the energy choices available to eligible customers through creation of innovative new programs for voluntary purchases of renewable energy and net energy metering to promote customer-owned renewable generation.

## **2.2 PROCESS OF AGGREGATION**

Before they are enrolled in the Program, prospective CEA customers in Carlsbad and Del Mar will receive two written notices in the mail that will provide information needed to understand the Program's terms and conditions of service and explain how customers, if they desire, can opt-out of the Program. All customers that do not follow the opt-out process specified in the customer notices will be automatically enrolled, and service will begin at their next regularly scheduled meter read date following the date of automatic enrollment, subject to the service phase-in plan described in Chapter 5. The initial enrollment notices will be provided to customers in March 2021, with a second notice being provided in April 2021.

Customers currently being served by SEA were provided the required enrollment notices during their transition from SDG&E service in 2018. These customers are not subject to the four required notices for customers leaving SDG&E service, however, they will be provided at least one notice notifying them of the transition from SEA service to CEA service and any rate or service impacts.

Customers enrolled in the CEA Program will continue to have their electric meters read and to be billed for electric service by the distribution utility (SDG&E). The electric bill for Program customers will show

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separate charges for generation procured by CEA as well as other charges related to electricity delivery and other utility charges assessed by SDG&E.

After service cutover, customers will have approximately 60 days (two billing cycles) to opt-out of the CEA Program without penalty and return to the distribution utility (SDG&E). CEA customers will be advised of these opportunities via the distribution of two additional enrollment notices provided within the first two months of service. Customers that opt-out between the initial cutover date and the close of the post enrollment opt-out period will be responsible for program charges for the time they were served by CEA but will not otherwise be subject to any penalty for leaving the program. Customers that have not opted-out within thirty days of the fourth enrollment notice will be deemed to have elected to become a participant in the CEA Program and to have agreed to the CEA Program's terms and conditions, including those pertaining to requests for termination of service, as further described in Chapter 8.

### 2.3 CONSEQUENCES OF AGGREGATION

#### 2.3.1 Rate Impacts

CEA customers will pay the generation charges set by the Alliance and no longer pay the costs of SDG&E generation. Customers enrolled in the Program will be subject to the Program's terms and conditions, including responsibility for payment of all Program charges as described in Chapter 9.

The Alliance's rate setting policies described in Chapter 7 establish a goal of providing rates that are competitive with the projected generation rates offered by the incumbent distribution utility (SDG&E). The Alliance will establish rates sufficient to recover all costs related to operation of the Program, and the CEA Board will adopt actual rates.

Initial CEA Program rates will be established following approval of the Alliance's inaugural program budget, reflecting final costs from the CEA Program's energy procurement. The Alliance's rate policies and procedures are detailed in Chapter 7. Information regarding final CEA Program rates will be disclosed along with other terms and conditions of service in the pre-enrollment and post-enrollment notices sent to potential customers.

Once CEA gives definitive notice to SDG&E that it will commence service, CEA customers will generally not be responsible for costs associated with SDG&E's future electricity procurement contracts or power plant investments. Certain pre-existing generation costs and new generation costs that are deemed to provide system-wide benefits will continue to be charged by SDG&E to CCA customers through separate rate components, called the Cost Responsibility Surcharge and the New System Generation Charge. These charges are shown in SDG&E's electric service tariffs, which can be accessed from the utility's website, and the costs are included in charges paid by both SDG&E bundled customers as well as CCA and Direct Access customers<sup>2</sup>. SEA customers that transition to CEA will maintain their current Power Charge Indifference Adjustment ("PCIA") vintage of 2017, having already departed from SDG&E generation services. Eligible Del Mar and Carlsbad customers who transition to CEA service will be assigned a 2020 PCIA vintage.

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<sup>2</sup> For SDG&E bundled service customers, the Power Charge Indifference Adjustment element of the Cost Responsibility Surcharge is contained within the CCA-CRS rate tariff.

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### 2.3.2 Renewable Energy Impacts

A second consequence of the Program will be an increase in the proportion of energy generated and supplied by RPS-eligible renewable resources. The resource plan includes procurement of renewable energy in excess of California's renewable energy procurement mandate, and SDG&E's forecast renewable percentage, with a goal of providing a minimum of 50% renewable energy at launch, for all enrolled customers. Consistent with Senate Bill 100, CEA renewable energy will increase toward 60% by 2030. CEA customers may also voluntarily participate in a higher renewable supply option, potentially up to 100%. To the extent that customers choose CEA's voluntary renewable energy option, the renewable content of CEA's aggregate supply portfolio will further increase. Initially, requisite renewable energy supply will be sourced through one or more short-term power purchase agreements; however, shortly after launching operations, long-term procurement of renewable energy will begin to meet California's long-term renewable energy contracting requirements that become effective in Compliance Period 4 and beyond<sup>3</sup>. Over time, the Alliance will also consider independent development of new renewable generation resources.

### 2.3.3 Greenhouse Gas Reduction

A third consequence of the Program will be an anticipated reduction in the greenhouse gas emissions attributed to the CEA supply portfolio as compared to SDG&E. An important objective of the CEA formation is to support the Climate Action Plans of the Member Agencies. Therefore, CEA will set aggressive GHG-emissions reduction targets and acquire zero or low GHG-emitting supply to achieve those targets.

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<sup>3</sup> Under California's RPS Program, 65 percent of mandated renewable energy purchases must be sourced from eligible long-term contracts beginning in calendar year 2021.

### 3 ORGANIZATION AND GOVERNANCE STRUCTURE

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This section provides an overview of the organizational structure of CEA and its proposed implementation of the CCA program. Specifically, the key agreements, governance, management, and organizational functions of CEA are outlined and discussed below.

#### 3.1 ORGANIZATIONAL OVERVIEW

CEA is a joint powers authority formed under the California Joint Exercise of Powers Act. It was established on November 4, 2019 with a Board of Directors serving as its Governing Board. The Board is responsible for establishing CEA's Program policies and objectives and overseeing CEA's operation. In December 2019, the Board appointed an Interim Chief Executive Officer ("CEO") to manage the operation of the Alliance in accordance with policies adopted by the Board.

#### 3.2 GOVERNANCE

The CEA Program will be governed by the CEA Board, which shall include one appointed designee from each of the Member Agencies. The Members of CEA include three (3) municipalities within the County of San Diego, Del Mar, Carlsbad and Solana Beach, all of which have elected to allow CEA to provide electric generation service within their respective jurisdictions. The Alliance's Board will be comprised of representatives appointed by each of the Members in accordance with the JPA agreement. The CEA Program will be operated under the direction of an CEO appointed by the Board, with legal and regulatory support provided by a Board appointed General Counsel.

The Board's primary duties are to establish program policies, approve rates and provide policy direction to the CEO, who has general responsibility for program operations, consistent with the policies established by the Board. The Board will elect a Chair and Vice Chair and may form various standing and ad hoc committees, as appropriate, which would have responsibility for evaluating various issues that may affect the Alliance and its customers, including rate-related and power contracting issues, and would provide analytical support and recommendations to the Board in these regards.

#### 3.3 MANAGEMENT

The CEA CEO has management responsibilities over the functional areas of Administration & Finance, Marketing & Public Affairs, Power Resources & Energy Programs, and Government Affairs, as well as the assisting the Board with overall supervision of the legal services provided by the Alliance's General Counsel. In performing the defined obligations to CEA, the CEO may utilize a combination of internal staff and/or contractors. Certain specialized functions needed for program operations, namely the electric supply and customer account management functions described below, will be performed by experienced third-party contractors.

Major functions of the Alliance that will be managed by the CEO are summarized below.



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### 3.4 ADMINISTRATION

CEA's CEO will be responsible for managing the organization's human resources and administrative functions and will coordinate with the CEA Board, as necessary, with regard to these functions. The functional area of administration will include oversight of any employee hiring and termination, compensation and benefits management, identification and procurement of requisite office space and various other issues. It is likely that existing Member Agency staff will initially assist with this function.

### 3.5 FINANCE

The CEO is also responsible for managing the financial affairs of the Alliance, including the development of an annual budget, revenue requirement and rates; managing and maintaining cash flow requirements; arranging potential bridge loans as necessary; and other financial tools.

Revenues via rates and other funding sources (such as a rate stabilization fund, when necessary) must, at a minimum, meet the annual budgetary revenue requirement, including recovery of all expenses and any reserves or coverage requirements set forth in bond covenants or other agreements. The Alliance will have the flexibility to consider rate adjustments, administer a standardized set of electric rates, and may offer optional rates to encourage policy goals such as encouraging renewable generation and incentivizing peak demand reduction, provided that the overall revenue requirement is achieved.

CEA's finance function will be responsible for preparing the annual budget, arranging financing necessary for any capital projects, preparing financial reports, managing required audits and ensuring sufficient cash flow for successful operation of the CEA Program. The finance function will play an important role in risk management by monitoring the credit of energy suppliers so that credit risk is properly understood and mitigated. In the event that changes in a supplier's financial condition and/or credit rating are identified, the Alliance will be able to take appropriate action, as would be provided for in the electric supply agreement(s).

### 3.6 MARKETING & PUBLIC AFFAIRS

The marketing and public affairs functions include general program marketing and communications as well as direct customer interface ranging from management of key account relationships to call center and billing operations. The Alliance will conduct program marketing to raise consumer awareness of the CEA Program and to establish its "brand" in the minds of the public, with the goal of retaining and attracting as many customers as possible into the CEA Program. Communications will also be directed at key policy-makers at the state and local level, community business and opinion leaders, and the media.

In addition to general program communications and marketing, a significant focus on customer service, particularly representation for key accounts, will enhance the Alliance's ability to differentiate itself as a highly customer-focused organization that is responsive to the needs of the community. CEA, through its data services provider, will also establish a customer call center designed to field customer inquiries and routine interaction with customer accounts.

The customer service function also encompasses management of customer data. Customer data management services include retail settlements/billing-related activities and management of a customer database. This function processes customer service requests and administers customer enrollments and departures from the CEA Program, maintaining a current database of enrolled customers. This function

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coordinates the issuance of monthly bills through SDG&E's billing process and tracks customer payments. Activities include the electronic exchange of usage, billing, and payments data with SDG&E and CEA, tracking of customer payments and accounts receivable, issuance of late payment and/or service termination notices (which would return affected customers to bundled service), and administration of customer deposits in accordance with credit policies of the Alliance.

The customer data management services function also manages billing-related communications with customers, customer call centers, and routine customer notices. The Alliance will contract with an experienced third party to perform the customer account and billing services functions.

### 3.7 POWER RESOURCES & ENERGY PROGRAMS

CEA must plan for meeting the electricity needs of its customers utilizing resources consistent with its policy goals and objectives as well as applicable legislative and/or regulatory mandates. CEA's long-term resource plans (addressing the 10-20-year planning horizon) will comply with California Law and other pertinent requirements of California regulatory bodies. In particular, CEA is aware of compulsory Integrated Resource Planning requirements, as identified in Senate Bill 350 (de León, 2015), which require, among other provisions, that CCAs periodically submit integrated resource planning documents and related materials to the CPUC. Specifically, the Public Utilities Code requires that, "The plan of a community choice aggregator shall be submitted to its governing board for approval and provided to the commission for certification, consistent with paragraph (5) of subdivision (a) of section 366.2". The Alliance intends to comply with this requirement similar to the manner in which other CCA organizations have complied and will rely on the experience gained by such organizations in completing pertinent data templates and documentation during future processes. Integrated resource planning efforts of the Alliance will make use of demand side energy efficiency, distributed generation and demand response programs as well as traditional supply options, which rely on structured wholesale transactions to meet customer energy requirements. Integrated resource plans will be updated and adopted by the Board as required by state law and applicable regulations. The Alliance is also aware of the need to periodically prepare and submit RPS Procurement Plans, which shall address the manner in which the CEA Program will achieve compliance with pertinent provisions of California's RPS mandate. As required, the first RPS Procurement Plans will be developed and submitted during the 90-day certification period related to this Implementation Plan.

The Alliance may develop and administer complementary energy programs that may be offered to CEA customers, including green pricing, energy efficiency, net energy metering and various other programs that may be identified to support the overarching goals and objectives of the Alliance.

#### 3.7.1 Electric Supply Operations

Electric supply operations encompass the activities necessary for wholesale procurement of electricity to serve end use customers. These highly specialized activities include the following:

- *Electricity Procurement* – assemble a portfolio of electricity resources to supply the electric needs of Program customers.
- *Risk Management* – application of standard industry techniques to reduce exposure to the volatility of energy and credit markets and insulate customer rates from sudden changes in wholesale market prices.

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- *Load Forecasting* – develop load forecasts, both long-term for resource planning, short-term for the electricity purchases, and sales needed to maintain a balance between hourly resources and loads.
- *Scheduling Coordination* – scheduling and settling electric supply transactions with the California Independent System Operator (“CAISO”).

The Alliance will contract with one or more experienced and financially sound third-party energy services firms to perform most of the electric supply operations for the CEA Program. These requirements include the procurement of energy, capacity and ancillary services, scheduling coordinator services, short-term load forecasting and day-ahead and real-time electricity trading.

### 3.8 GOVERNMENTAL AFFAIRS & LEGAL SUPPORT

The CEA Program will require ongoing regulatory and legislative representation to manage various regulatory compliance filings related to resource plans, RA, compliance with California’s RPS program and overall representation on issues that will impact CEA customers. The Alliance will maintain an active role at the CPUC, the California Energy Commission, the California Independent System Operator (“CAISO”), the California legislature and, as necessary, the Federal Energy Regulatory Commission with either in-house staff or contracted third parties with experience in the energy market arena.

CEA’s General Counsel is hired by and reports to the Board of Directors. However, the CEO will assist the Board in supervising the legal services as provided by General Counsel. The Alliance may retain specialized outside legal services, as necessary, to review power purchase agreements, give advice on regulatory matters, and provide other specialized legal services related to activities of the CEA Program. In addition, CEA’s wholesale services provider may assist with regulatory filings related to wholesale procurement.

## 4 STARTUP PLAN AND FUNDING

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This Chapter presents the Alliance's plans for the start-up period, including necessary expenses and capital outlays. As described in the previous Chapter, the Alliance will utilize a mix of internal staff and contractors in its CCA Program implementation and operation.

### 4.1 STARTUP ACTIVITIES

The initial program startup activities include the following:

- Hire staff and/or contractors to manage implementation
- Adopt policies and procedures for the operation of CEA
- Identify qualified suppliers (of requisite energy products and related services) and negotiate supplier contracts
  - Electric supplier and scheduling coordinator
  - Data management provider (if separate from energy supply)
- Define and execute communications plan
  - Customer research/information gathering
  - Media campaign
  - Key customer/stakeholder outreach
  - Informational materials and customer notices
  - Customer call center
  - Website
- Post financial security requirement and complete requisite registration requirements
- Establish reserves that may be required by energy suppliers
- Pay utility service initiation, notification and switching fees
- Perform customer notification, opt-out and transfers
- Conduct load forecasting
- Establish rates
- Legal and regulatory support
- Financial management and reporting

Some costs related to starting up the CEA Program may be the responsibility of the CEA Program's contractors. These may include capital requirements needed for collateral/credit support for electric

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supply expenses, customer information system costs, bond requirements, electronic data exchange system costs, call center costs, and billing administration/settlements systems costs.

### 4.2 STAFFING AND CONTRACT SERVICES

Personnel in the form of Alliance staff, Member Agency staff, or contractors will be utilized as needed to match workloads involved in forming CEA, managing contracts, and initiating customer outreach/marketing during the pre-operations period. During the startup period, minimal personnel requirements may include a CEO, legal support, and other personnel needed to support regulatory, procurement, finance, legal, marketing, and communications activities. This support will come from existing Member Agency staff and contractors. Once operational, additional staff and/or contractors may be retained, as needed, to support the rollout of additional value-added services (e.g., efficiency projects) and local generation projects and programs.

### 4.3 CAPITAL REQUIREMENTS

The start-up of the CCA Program will require capital for three major functions: (1) staffing and contractor costs; (2) deposits and reserves; and (3) operating cash flow. Based on the Alliance's anticipated start-up activities and implementation schedule, a total need of \$4.4M has been identified to support the aforementioned functions. Out of the \$4.4 capital requirements, \$450,000 will be funded from member advances for costs incurred in fiscal year 19/20, \$959,000 is related to the implementation/startup efforts (i.e., rate setting, power procurement and contract negotiations, marketing and communications, regulatory compliance, SDG&E security deposit, etc.) in order to serve customers by May 2021. A deposit in the amount of \$500,000 will also need to be posted to CAISO for the Alliance to be a Congestion Revenue Rights Holder. The remaining \$2,500,000 is the "float" required for CEA to pay its monthly bills before the program generates enough internal cash to self-fund its working capital needs.

The capital requirement is further broken down as follows:

**Clean Energy Alliance  
Draft Budget  
Fiscal Years 19/20 and 20/21**

	FY 19/20	FY 20/21
Staffing/Consultants	\$ 50,000.00	\$ 235,000.00
Legal Services	130,000.00	200,000.00
Professional Services	115,000.00	200,000.00
CCA Bond	147,000.00	
CAISO Fee		500,000.00
CalCCA Membership & Dues	1,500.00	130,000.00
Print/Mail Services		132,000.00
Advertising		10,000.00
Graphic Design Services	6,500.00	10,000.00
Website Maintenance		2,500.00
Audit Services		40,000.00
Cash Flow & Lockbox Reserves		2,500,000.00
<b>TOTAL PROJECTED BUDGET</b>	<b>\$ 450,000.00</b>	<b>\$ 3,959,500.00</b>

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The finance plan in Chapter 7 provides additional detail regarding the Alliance's expected capital requirements and general Program finances. All the capital required for start-up will be provided through in-kind support from Member Agencies, deferred fees, Member advances and direct loans.

Related to the Alliance's initial capital requirement, this amount is expected to cover staffing and contractor costs during startup and pre-startup activities, including direct costs related to public relations support, technical support, and customer communications. Requisite deposits and operating reserves are also reflected in the initial capital requirement, including the following items: 1) operating reserves to address anticipated cash flow variations; 2) deposit with the CAISO prior to commencing market operations (if required); 3) Financial Security Requirement (CCA bond posted with the CPUC); and 4) SDG&E service fee deposit, if required.

Operating revenues from sales of electricity will be remitted to CEA beginning approximately sixty days after the initial customer enrollments. This lag is due to the distribution utility's standard meter reading cycle of 30 days and a 30-day payment/collections cycle. CEA will need working capital to support electricity procurement and costs related to program management, which is included in CEA's initial \$4,400,000 capital requirement.

### **4.4 FINANCING PLAN**

CEA's initial capital requirement will be met through a combination of financing mechanisms. CEA will be seeking assistance through deferred fees from contractors and vendors, loans and/or lines of credit from financial institutions and in-kind services and advances provided by Member Agencies (to be reimbursed in the future). CEA will repay back the principal and interest costs associated with the start-up funding via retail generation rates charged to CEA customers. It is anticipated that the start-up costs will be fully recovered through such customer generation rates within the first three years of operations.

## 5 PROGRAM PHASE-IN

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CEA plans to roll out its service offering to all eligible customers in a single phase at start-up. There are approximately 58,000 eligible customer accounts within the Alliance’s boundaries, resulting in a single-phase roll-out being reasonable and the most efficient way for CEA to serve customers beginning in May 2021.

Solana Beach is currently providing energy to its residents and businesses through SEA, its community choice aggregation program. During May 2021, SEA customers will transfer from SEA to CEA. Once, and as long as CEA is operational and all SEA customers have transitioned to CEA, SEA will cease operating as a community choice aggregation program.

It is possible that Net Energy Metering (“NEM”) customers may be enrolled over multiple periods to mitigate the impact of SDG&E NEM true-up treatment.

## 6 LOAD FORECAST & RESOURCE PLAN

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### 6.1 INTRODUCTION

This Chapter describes the planned mix of electric resources that will meet the energy demands of CEA customers using a diversified portfolio of electricity supplies. Several overarching policies govern the resource plan and the ensuing resource procurement activities that will be conducted in accordance with the plan. The key policies are as follows:

- Develop a portfolio with a minimum 50% renewable energy and lower greenhouse gas (“GHG”) emissions than SDG&E.
- Manage a diverse resource portfolio to increase control over energy costs and maintain competitive and stable electric rates.
- Comply with RA procurement requirements as established by CPUC Resolution E-4907.
- Comply with applicable renewable energy procurement mandates, as increased under Senate Bill 100 (“SB 100”; de León, 2018).
- Comply with SB 350, periodically preparing and submitting (for certification by the CPUC) an Integrated Resource Plan (“IRP”).
- Comply with applicable requirements for ensuring procurement from small, local and diverse business enterprises in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects as required by SB 255 (“SB 255”; Bradford, 2019).
- As applicable, annually prepare and submit a detailed and verifiable plan to the CPUC for increasing procurement from small, local and diverse business enterprises in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects as required by SB 255.
- As applicable, annually prepare and submit a report to the CPUC regarding its procurement from women, minority, disabled veteran and LGBTQ business enterprises in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects as required by SB 255.

The plan described in this section would accomplish the following:

- **Procure Competitive Supply:** Procure energy, RA, renewables and low-GHG supply through competitive processes in the open market to support the potential offering of service options to include a 100% renewable energy voluntary opt-up product.
- **Use Best Practices Risk Management:** Maintain rate competitiveness by using a dollar-cost-averaging approach with particular attention to the methodology used in the power charge indifference adjustment (“PCIA”) calculation. Use stochastic modeling to measure and achieve risk management objectives.
- **Achieve Environmental Objectives:** Procure supply to offer two distinct generation rate tariffs: 1) a voluntary 100% renewable energy offered to CEA customers on a price premium basis relative



## Clean Energy Alliance Implementation Plan

to CEA's default retail option; and 2) a default CEA service option that is sourced from a minimum 50% renewable energy.

- **Provide NEM Tariff:** Encourage distributed renewable generation in the local area through the offering of a net energy metering tariff that is more remunerative than SDG&E's NEM tariff.
- **Compliance:** Ensure compliance with participation in the Annual and Monthly RA process.
- **Diversity:** Encourage procurement from small, local and diverse business enterprises.

CEA will comply with regulatory rules applicable to California load serving entities. CEA will arrange for the scheduling of sufficient electric supplies to meet the demands of its customers. CEA will adhere to capacity reserve requirements established by the CPUC and the CAISO designed to address uncertainty in load forecasts and potential supply disruptions caused by generator outages and/or transmission contingencies. These rules also ensure that physical generation capacity is in place to serve CEA's customers, even if there were a need for the Alliance's Program to cease operations and return customers to SDG&E. In addition, the Alliance will be responsible for ensuring that its resource mix contains sufficient production from renewable energy resources needed to comply with the statewide RPS mandate (33 percent renewable energy by 2020, increasing to 60 percent by 2030). The resource plan will meet or exceed all of the applicable regulatory requirements related to RA and the RPS.

In relation to its RPS procurement obligation, CEA is aware that SB 100 was signed into law by Governor Brown on September 10, 2018, with an effective date of January 1, 2019. One of SB 100's key requirements is to increase California's RPS procurement mandate to 44 percent by December 31, 2024, 52 percent by December 31, 2027, and 60 percent by December 31, 2030. The Alliance is also aware of applicable long-term renewable energy contracting requirements and plans to satisfy such requirements with one or more eligible contracts put in place prior to or during early-stage operation of the CCA Program. As a local governmental agency, the Alliance's resource planning and procurement activities are subject to and overseen by its Board through an open and public process.

In relation to its small, local and diverse business enterprise procurement requirement, the Alliance is aware that SB 255 was signed into law by Governor Newsom on October 2, 2019. SB 255 requires the CEA Implementation Plan that to include the methods for ensuring procurement from small, local and diverse business enterprises in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects. These methods are described in the Small, Local and Diverse Business Enterprise Procurement section.

## 6.2 RESOURCE PLAN OVERVIEW

To meet the aforementioned objectives and satisfy the applicable regulatory requirements pertaining to CEA's status as a California load serving entity, CEA's resource plan includes a diverse mix of power purchases, renewable energy, and potentially, new energy efficiency programs, demand response, and distributed generation. A diversified resource plan minimizes risk and volatility that can occur from over-reliance on a single resource type or fuel source, and thus increases the likelihood of rate stability. The planned power supply will initially be comprised of power purchases from third party electric suppliers and, in the longer-term, may include renewable generation assets owned and/or controlled by CEA.

## Clean Energy Alliance Implementation Plan

Once the CEA Program demonstrates it can operate successfully, CEA may begin evaluating opportunities for investment in renewable generating assets, subject to then-current market conditions, statutory requirements and regulatory considerations. Any renewable generation owned by CEA or controlled under a long-term power purchase agreement with a proven public power developer, could provide a portion of CEA’s electricity requirements on a cost-of-service basis. Depending upon market conditions and, importantly, the applicability of tax incentives for renewable energy development, electricity purchased under a cost-of-service arrangement can be more cost-effective than purchasing renewable energy from third party developers, which will allow the CEA Program to pass on cost savings to its customers through competitive generation rates. Any investment decisions in new renewable generating assets will be made following appropriate environmental reviews and in consultation with qualified financial and legal advisors.

As an alternative to direct investment, CEA may consider partnering with an experienced public power developer or other Joint Powers Authorities and could enter into a long-term (15-to-30 year) power purchase agreement that would support the development of new renewable generating capacity. Such an arrangement could be structured to reduce the CEA Program’s operational risk associated with capacity ownership while providing its customers with all renewable energy generated by the facility under contract.

CEA’s indicative resource plan for the years 2021 through 2030 is summarized in the following table. Note that CEA’s projections reflect a portfolio mix of renewable energy compliant with the annual RPS requirement and all other supply coming in the form of conventional resources or CAISO system power<sup>4</sup>.

*Table 1: Proposed Resource Plan*

Clean Energy Alliance Proposed Resource Plan (MWh) 2021 - 2030										
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>Demand (MWh)</b>										
Retail	144,022	928,654	949,406	965,616	980,219	990,867	997,196	1,017,140	1,037,482	1,058,232
Losses	6,193	39,932	40,824	41,521	42,149	42,607	42,879	43,737	44,612	45,504
Wholesale	150,215	968,586	990,230	1,007,137	1,022,368	1,033,474	1,040,075	1,060,877	1,082,094	1,103,736
<b>Supply (MWh)</b>										
Renewable	72,011	464,327	474,703	482,808	490,109	495,433	518,542	556,036	594,823	634,939
System	78,204	504,259	515,527	524,329	532,259	538,041	521,533	504,840	487,271	468,797
Total Supply	150,215	968,586	990,230	1,007,137	1,022,368	1,033,474	1,040,075	1,060,877	1,082,094	1,103,736

### 6.3 SUPPLY REQUIREMENTS

The starting point for CEA’s resource plan is a projection of participating customers and associated electric consumption. Projected electric consumption is evaluated on an hourly basis and matched with resources best suited to serving the aggregate of hourly demands or the program’s “load profile.” The electric sales forecast and load profile will be affected by CEA’s plan to introduce the CEA Program to customers in one

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<sup>4</sup> The Alliance has applied known RPS procurement targets, as reflected in SB 100, for calendar years 2024, 2027 and 2030. In the intervening years, the Alliance has assumed a general straight-line trajectory between each of the aforementioned years (which are associated with the final years of Compliance Periods 4, 5 and 6 respectively).

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single phase and the degree to which customers choose to remain with SDG&E during the customer enrollment and opt-out period. The Alliance’s rollout plan and assumptions regarding customer participation rates are discussed below.

**6.4 CUSTOMER PARTICIPATION RATES**

Customers will be automatically enrolled in the CEA Program unless they opt-out during the customer notification process conducted during the 60-day period prior to enrollment and continuing through the 60-day period following commencement of service. The Alliance anticipates an overall customer participation rate of approximately 90 percent of eligible SDG&E bundled service customers, based on reported opt-out rates for already operating CCAs. It is assumed that customers taking direct access service from a competitive electricity provider will continue to remain with their current supplier.

The participation rate is not expected to vary significantly among customer classes, in part because the Alliance will offer two distinct rate tariffs that will address the needs of cost-sensitive customers as well as the needs of both residential and business customers that prefer a highly renewable energy product. The assumed participation rates will be refined as CEA’s public outreach and market research efforts continue to develop.

**6.5 CUSTOMER FORECAST**

Once customers enroll, they will be transferred to service by CEA on their regularly scheduled meter read date over an approximately thirty-one-day period. Approximately 2,900 service accounts per day will be transferred during the first month of service. The number of accounts anticipated to be served by CEA at the end of the enrollment period is shown in Table 2.

*Table 2: Total Customer Counts at the end of First Month of Operation, here presuming enrollment occurs in May 2021.*

	<b><u>May-21</u></b>
Residential	49,800
Commercial & Agriculture	8,000
Street Lighting & Traffic	200

The Alliance assumes that customer growth will generally offset customer attrition (opt-outs) over time, resulting in a relatively stable customer base (<1% annual growth) over the noted planning horizon. While the successful operating track record of California CCA programs continues to grow, there is a relatively short history with regard to CCA operations, which makes it difficult to anticipate the actual levels of customer participation within the CEA Program. The Alliance believes that its assumptions regarding the offsetting effects of growth and attrition are reasonable in consideration of the historical customer growth (based on SDG&E data) within the JPA and the potential for continuing customer opt-outs following mandatory customer notification periods. The following table shows the forecast of service accounts (customers) served by CEA for each of the next ten years.

*Table 3: Customer Accounts by Year*

	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>
Residential	49,800	49,800	49,900	49,900	50,000	50,100	50,100	51,100	52,200	53,200
Commercial & Agriculture	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,200	8,400	8,500
Street Lighting & Traffic	200	200	200	200	200	200	200	200	200	200

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### 6.6 SALES FORECAST

The Alliance’s forecast reflects the rollout and customer enrollment schedule shown above.

Annual energy requirements are shown in Table 4.

*Table 4: Demand Forecast in MWh, 2021-2030*

	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>
Demand (MWh)										
Retail	144,022	928,654	949,406	965,616	980,219	990,867	997,196	1,017,140	1,037,482	1,058,232
Losses	6,193	39,932	40,824	41,521	42,149	42,607	42,879	43,737	44,612	45,504
Wholesale	150,215	968,586	990,230	1,007,137	1,022,368	1,033,474	1,040,075	1,060,877	1,082,094	1,103,736

### 6.7 CAPACITY REQUIREMENTS

The CPUC’s RA standards applicable to the CEA Program require a demonstration one year in advance that CEA has secured physical capacity for 90 percent of its projected peak loads for each of the five months May through September, plus a minimum 15 percent reserve margin.

Additionally, the Alliance must demonstrate one year in advance that it has secured physical capacity for 100 percent of its local RA obligation across all months in the upcoming compliance year 2021 and the following compliance year 2022 and 50 percent across all months in 2023. On a month-ahead basis, CEA must demonstrate 100 percent of the peak load plus a minimum 15 percent reserve margin. Per CPUC Resolution E-4907, the Alliance must participate in the year-ahead RA compliance cycle in order to serve customers in the following calendar year. The Alliance will follow the prescribed year-ahead RA compliance timeline outlined within Appendix A of Resolution E-4907; this includes:

- Submission of year-ahead load forecast to the CEC and CPUC in April 2020;
- Submission of updated year-ahead load forecast to the CEC and CPUC in August 2020;
- Submission of year-ahead compliance materials in October 2020; and
- Submission of month-ahead load migration forecast by February 2021.

A portion of CEA’s capacity requirements must be procured locally, from the San Diego – Imperial Valley local capacity area as defined by the CAISO. The Alliance would be required to demonstrate its local capacity requirement for each month of the following calendar year. The local capacity requirement is a percentage of the total (SDG&E service area) local capacity requirements adopted by the CPUC based on CEA’s forecasted peak load. CEA must demonstrate compliance or request a waiver from the CPUC requirement as provided for in cases where local capacity is not available.

CEA is also required to demonstrate that a specified portion of its capacity meets certain operational flexibility requirements under the CPUC and CAISO’s flexible RA framework.

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The estimated forward RA requirements for 2021 through 2023 are shown in the following tables<sup>5</sup>:

*Table 5: Forward Capacity Requirements (Total) for 2021-2023 in MW, presuming service starts in May 2021*

<b>Month</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
January		182.8	186.1
February		171.2	174.2
March		151.2	153.8
April		144.1	152.4
May	139.9	143.7	140.5
June	165.6	170.1	172.9
July	176.0	188.0	191.2
August	168.8	167.0	169.8
September	172.7	177.4	180.5
October	164.5	168.9	171.7
November	155.3	159.5	162.2
December	172.1	176.7	186.9

CEA's plan ensures that sufficient reserves will be procured to meet its peak load at all times. The projected CEA annual capacity requirements are shown in the following table:

*Table 6: Annual Maximum Capacity Requirements 2021-2030*

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>
Max Wholesale Demand	176.0	188.0	191.2	191.2	189.2	190.6	194.6	198.5	202.5	206.5
Reserve Requirement (15%)	26.4	28.2	28.7	28.7	28.4	28.6	29.2	29.8	30.4	31.0
Total Capacity Requirement	202.4	216.2	219.8	219.9	217.5	219.2	223.8	228.3	232.9	237.5

Local capacity requirements are a function of the SDG&E area RA requirements and CEA's projected peak demand. CEA will need to work with the CPUC's Energy Division and staff at the California Energy Commission to obtain the data necessary to calculate its monthly local capacity requirement. A preliminary estimate of CEA's annual maximum local capacity requirement for the ten-year planning period ranges between 132-155 MW as shown in Table 7.

*Table 7: Annual Maximum Local Capacity Requirements 2021-2030*

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>
Max Wholesale Demand	176.0	188.0	191.2	191.2	189.2	190.6	194.6	198.5	202.5	206.5
Local Capacity (% of Total)	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%
San Diego - IV (MW)	132.0	141.0	143.4	143.4	141.9	142.9	146.0	148.9	151.9	154.9

The CPUC assigns local capacity requirements during the year prior to the compliance period; thereafter, the CPUC provides local capacity requirement true-ups for the second half of each compliance year.

CEA will coordinate with SDG&E and appropriate state agencies to manage the transition of responsibility for RA from SDG&E to CEA during CCA program phase-in. For system RA requirements, CEA will make month-ahead showings for each month that CEA plans to serve load, and load migration issues would be addressed through the CPUC's approved procedures. CEA will work with the California Energy

<sup>5</sup> The figures shown in the tables are estimates. CEA's RA requirements will be subject to modification due to application of certain coincidence adjustments and resource allocations relating to utility demand response and energy efficiency programs, as well as generation capacity allocated through the Cost Allocation Mechanism. These adjustments are addressed through the CPUC's RA compliance process.

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Commission and CPUC prior to commencing service to customers to ensure it meets its local and system RA obligations through its agreement(s) with its chosen electric supplier(s).

### 6.8 RENEWABLES PORTFOLIO STANDARDS ENERGY REQUIREMENTS

#### 6.8.1 Basic RPS Requirements

CEA will be required by statute and CPUC regulations to procure a certain minimum percentage of its retail electricity sales from qualified renewable energy resources. For purposes of determining CEA's renewable energy requirements, many of the same standards for RPS compliance that are applicable to the distribution utilities will apply to CEA.

California's RPS program is currently undergoing reform. On October 7, 2015, Governor Brown signed Senate Bill 350 ("SB 350"; De Leon and Leno), the Clean Energy and Pollution Reduction Act of 2015, which increased California's RPS procurement target from 33 percent by 2020 to 50 percent by 2030 amongst other clean-energy initiatives. The RPS program was further amended on September 10, 2018 when Governor Brown signed SB 100, increasing California's RPS procurement target to 60 percent by 2030 amongst other clean-energy initiatives. Many details related to SB 100 implementation will be developed over time with oversight by designated regulatory agencies. However, it is reasonable to assume that interim annual renewable energy procurement targets will be imposed on CCAs and other retail electricity sellers to facilitate progress towards the 60 percent procurement mandate. For planning purposes, CEA has assumed straight-line annual increases (1.7 percent per year) to the RPS procurement target beginning in 2021, as the state advances on the 60 percent RPS in 2030. CEA will also adopt an integrated resource plan in compliance with SB 350. Furthermore, the Alliance will ensure that all long-term renewable energy contracting requirements, as imposed by SB 350, will be satisfied through appropriate transactions with qualified suppliers and will also reflect this intent in ongoing resource planning and procurement efforts.

#### 6.8.2 CEA's Renewables Portfolio Standards Requirement

CEA's annual RPS procurement requirements, as specified under California's RPS program, are shown in Table 8.

*Table 8: Renewable Procurement Obligation and Target Percentages and Volumes 2021-2030*

	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>
Retail Load (MWh)	144,022	928,654	949,406	965,616	980,219	990,867	997,196	1,017,140	1,037,482	1,058,232
RPS % Target	36%	39%	41%	44%	47%	49%	52%	55%	57%	60%
RPS Obligation (MWh)	51,560	357,532	392,105	424,871	457,762	488,497	518,542	556,036	594,823	634,939
CEA % Target	50%	50%	50%	50%	50%	50%	52%	55%	57%	60%
CEA Target (MWh)	72,011	464,327	474,703	482,808	490,109	495,433	518,542	556,036	594,823	634,939

### 6.9 PURCHASED POWER

Power purchased from power marketers, public agencies, generators, and/or utilities will be a significant source of supply during the first several years of CEA Program operation. CEA will initially contract to obtain all of its electricity from one or more third party electric providers under one or more power supply agreements, and the supplier(s) will be responsible for procuring the specified resource mix, including CEA's desired quantities of renewable energy, to provide a stable and cost-effective resource portfolio for the CEA Program.

### 6.10 RENEWABLE RESOURCES

CEA will initially secure necessary renewable power supply from its third-party electric supplier(s). CEA may supplement the renewable energy provided under the initial power supply contract(s) with direct purchases of renewable energy from renewable energy facilities or from renewable generation developed and owned by CEA. At this point in time, it is not possible to predict what projects might be proposed in response to future renewable energy solicitations administered by CEA, unsolicited proposals or discussions with other agencies. Renewable projects that are located virtually anywhere in the Western Interconnection can be considered as long as the electricity is deliverable to the CAISO control area, as required to meet the Commission's RPS rules and any additional guidelines ultimately adopted by the Alliance. The costs of transmission access and the risk of transmission congestion costs would need to be considered in the bid evaluation process if the delivery point is outside of CEA's load zone, as defined by the CAISO.

### 6.11 SMALL, LOCAL AND DIVERSE BUSINESS ENTERPRISE PROCUREMENT

CEA's procurement processes will be developed to ensure compliance with SB 255 regarding procurement from small, local and diverse business enterprises as applicable. These methods may include, but are not limited to, providing preferences to small, local and diverse business enterprises as permitted by law, developing specifications that encourage responses by small, local and diverse business enterprises, conducting outreach to these enterprises and other methods as may be directed by the CEA Board. CEA will request from contractors and information related to the hiring of small, local and diverse business enterprises that will be reported to commission.

### 6.12 ENERGY EFFICIENCY

CEA does not currently anticipate running locally managed energy efficiency programs. In the future, CEA may apply to become EE program administrators. In the meantime, CEA will support already existing energy efficiency efforts within its service territory.

## 7 FINANCIAL PLAN

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This Chapter examines the monthly cash flows expected during the startup and customer phase-in period of the CEA Program and identifies the anticipated financing requirements. It includes estimates of program startup costs, including necessary expenses and capital outlays. It also describes the requirements for working capital and long-term financing for the potential investment in renewable generation, consistent with the resource plan contained in Chapter 6.

### 7.1 DESCRIPTION OF CASH FLOW ANALYSIS

The Alliance's cash flow analysis estimates the level of capital that will be required during the startup and phase-in period. The analysis focuses on the CEA Program's monthly costs and revenues and the lags between when costs are incurred and revenues received.

### 7.2 COST OF PROGRAM OPERATIONS

The first category of the cash flow analysis is the Cost of CCA Program Operations. To estimate the overall costs associated with CCA Program Operations, the following components were taken into consideration:

- Electricity Procurement;
- Ancillary Service Requirements;
- Exit Fees;
- Staffing and Professional Services;
- Data Management Costs;
- Administrative Overhead;
- Billing Costs;
- Scheduling Coordination;
- Grid Management and other CAISO Charges;
- CCA Bond and Security Deposit; and,
- Pre-Startup Cost Reimbursement.

### 7.3 REVENUES FROM CCA PROGRAM OPERATIONS

The cash flow analysis also provides estimates for revenues generated from CCA operations or from electricity sales to customers. In determining the level of revenues, the analysis assumes the customer phase-in schedule described herein, and assumes that CEA charges a standard, default electricity tariff similar to the generation rates of SDG&E for each customer class and an optional renewable energy tariff (with a renewable energy content that exceeds the CEA default retail option) at a premium reflective of incremental renewable power costs. More detail on CEA Program rates can be found in Chapter 8.



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### 7.4 CASH FLOW ANALYSIS RESULTS

The results of the cash flow analysis provide an estimate of the level of capital required for the Alliance to move through the CCA startup and phase-in periods. This estimated level of capital is determined by examining the monthly cumulative net cash flows (revenues from CCA operations minus cost of CCA operations) based on assumptions for payment of costs or other cash requirements (e.g., deposits) by CEA, along with estimates for when customer payments will be received. This identifies, on a monthly basis, what level of cash flow is available in terms of a surplus or deficit.

The cash flow analysis identifies funding requirements in recognition of the potential lag between revenues received and payments made during the phase-in period. The estimated financing requirements for the startup and phase-in period, including working capital needs associated with the customer enrollments, is determined to be \$4.4M. Of the \$4.4M in capital requirements, \$1.4 is related to the implementation/startup efforts, to be incurred during fiscal years 19/20 and 20/21, (i.e., rate setting, power procurement and contract negotiations, marketing and communications, regulatory compliance, CPUC bond, SDG&E security deposit, etc.) in order to serve customers by May 2021. A deposit in the amount of \$500,000 will also need to be posted to CAISO for the Alliance to be a Congestion Revenue Rights Holder. The other \$2,500,000 is the “float” required for CEA to pay its monthly bills before the program generates enough internal cash to self-fund its working capital needs. Working capital requirements peak soon after enrollment of all CEA customers.

### 7.5 PROGRAM IMPLEMENTATION PRO FORMA

In addition to developing a cash flow analysis that estimates the level of working capital required to move CEA through full CCA phase-in, a summary pro forma analysis that evaluates the financial performance of the CCA program during the phase-in period is shown in Table 9. The difference between the cash flow analysis and the CCA pro forma analysis is that the pro forma analysis does not include a lag associated with payment streams. In essence, costs and revenues are reflected in the month in which service is provided. All other items, such as costs associated with CCA Program operations and rates charged to customers remain the same. Cash provided by financing activities are not shown in the pro forma analysis, although payments for loan repayments are included as a cost item.

The results of the pro forma analysis are shown in Table 9. In particular, the summary of CCA program startup and phase-in addresses projected CEA Program operations for the period beginning May 2021 through June 2030. The Alliance has also included a summary of Program reserves, which are expected to accrue over this same period.

Table 9: Pro Forma including Reserves Accumulation 2021-2030

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>Revenues from Operations (\$)</b>										
Electric Sales Revenues	\$ 11,461,369	\$ 71,583,581	\$ 73,964,197	\$ 76,857,180	\$ 79,688,575	\$ 83,285,097	\$ 88,240,950	\$ 90,005,769	\$ 91,805,885	\$ 93,642,002
Uncollected Accounts	\$ (34,384)	\$ (214,751)	\$ (221,893)	\$ (230,572)	\$ (239,066)	\$ (249,855)	\$ (264,723)	\$ (270,017)	\$ (275,418)	\$ (280,926)
<b>Total Revenues</b>	<b>\$ 11,426,985</b>	<b>\$ 71,368,830</b>	<b>\$ 73,742,304</b>	<b>\$ 76,626,609</b>	<b>\$ 79,449,510</b>	<b>\$ 83,035,242</b>	<b>\$ 87,976,228</b>	<b>\$ 89,735,752</b>	<b>\$ 91,530,467</b>	<b>\$ 93,361,076</b>
<b>Cost of Operations (\$)</b>										
Staffing & Consulting	\$ 421,013	\$ 2,570,281	\$ 2,647,390	\$ 2,726,811	\$ 2,808,616	\$ 2,892,874	\$ 2,979,660	\$ 3,039,254	\$ 3,100,039	\$ 3,162,040
Wholesale Services	\$ 152,250	\$ 929,318	\$ 957,197	\$ 985,913	\$ 1,015,490	\$ 1,045,955	\$ 1,077,334	\$ 1,098,880	\$ 1,120,858	\$ 1,143,275
Data Management Services	\$ 146,492	\$ 879,504	\$ 880,609	\$ 881,725	\$ 882,853	\$ 883,992	\$ 885,142	\$ 902,845	\$ 920,902	\$ 939,320
IOU Fees	\$ 33,662	\$ 203,090	\$ 205,339	\$ 207,615	\$ 209,919	\$ 212,252	\$ 214,613	\$ 218,906	\$ 223,284	\$ 227,749
Energy Procurement	\$ 5,866,343	\$ 54,089,555	\$ 59,546,313	\$ 61,419,452	\$ 62,917,913	\$ 64,521,128	\$ 66,312,081	\$ 67,638,323	\$ 68,991,089	\$ 70,370,911
<b>Total Operations</b>	<b>\$ 6,619,760</b>	<b>\$ 58,671,747</b>	<b>\$ 64,236,847</b>	<b>\$ 66,221,516</b>	<b>\$ 67,834,791</b>	<b>\$ 69,556,202</b>	<b>\$ 71,468,831</b>	<b>\$ 72,898,208</b>	<b>\$ 74,356,172</b>	<b>\$ 75,843,295</b>
<b>Net Program Revenues</b>	<b>\$ 4,807,225</b>	<b>\$ 12,697,083</b>	<b>\$ 9,505,457</b>	<b>\$ 10,405,092</b>	<b>\$ 11,614,718</b>	<b>\$ 13,479,041</b>	<b>\$ 16,507,397</b>	<b>\$ 16,837,545</b>	<b>\$ 17,174,295</b>	<b>\$ 17,517,781</b>
<b>Cumulative Reserves</b>	<b>\$ 4,807,225</b>	<b>\$ 17,504,308</b>	<b>\$ 27,009,765</b>	<b>\$ 37,414,858</b>	<b>\$ 49,029,576</b>	<b>\$ 62,508,617</b>	<b>\$ 79,016,013</b>	<b>\$ 95,853,558</b>	<b>\$ 113,027,853</b>	<b>\$ 130,545,635</b>

## **Clean Energy Alliance Implementation Plan**

The surpluses achieved during the phase-in period serve to build CEA's net financial position and credit profile and to provide operating reserves for CEA in the event that operating costs (such as power purchase costs) exceed collected revenues for short periods of time.

### **7.6 CLEAN ENERGY ALLIANCE FINANCINGS**

It is anticipated that CEA will need financing for its start-up activities. CEA plans to seek financing through its service providers that will amortize their start-up costs over the subsequent months following when revenues begin flowing, through a loan or line of credit from a financial institution and through in-kind services and advances from its Member Agencies that will be repaid in the future. Subsequent capital requirements will be self-funded from accrued CEA financial reserves.

### **7.7 RENEWABLE RESOURCE PROJECT FINANCING**

CEA may consider project financings for renewable resources, likely local wind and solar projects. These financings would only occur after a sustained period of successful CEA Program operation and after appropriate project opportunities are identified and subjected to appropriate environmental review.

In the event that such financing occurs, funds would include any short-term financing for the renewable resource project development costs and would likely extend over a 20 to 30-year term. The security for such bonds would be the revenue from sales to the retail customers of CEA.

## 8 RATE SETTING, PROGRAM TERMS AND CONDITIONS

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### 8.1 INTRODUCTION

This Chapter describes the initial policies proposed for CEA in setting its rates for electric aggregation services. These include policies regarding rate design, rate objectives, and provision for due process in setting Program rates. Program rates are ultimately approved by the CEA Board. The Alliance would retain authority to modify program policies from time to time at its discretion.

### 8.2 RATE POLICIES

The Alliance will establish rates sufficient to recover all costs related to operation of the CEA Program, including any reserves that may be required as a condition of financing and other discretionary reserve funds that may be approved by CEA. As a general policy, rates will be uniform for all similarly situated customers enrolled in the CEA Program throughout the JPA service territory.

The primary objectives of the rate setting plan are to set rates that achieve the following:

- Rate competitive tariff option (default service offering), including a proportionate quantity of renewable energy in excess of California's prevailing renewable energy procurement mandate;
- Voluntary renewable energy supply option (renewable content greater than the CEA default retail service offering);
- Rate stability;
- Equity among customers in each tariff;
- Customer understanding; and
- Revenue sufficiency.

Each of these objectives is described below.

### 8.3 RATE COMPETITIVENESS

The primary goal is to offer competitive rates for electric services that CEA would provide to participating customers. For participants in the CEA default energy product, the goal would be for CEA Program target generation rates to be initially at least two percent below, subject to actual energy product pricing and decisions of the Board, similar generation rates offered by SDG&E. For participants in the CEA's Program's voluntary 100% renewable energy product, the goal would be to offer the lowest possible customer rates with an incremental monthly cost premium reflective of the actual cost of additional renewable energy supply required to serve such customers.

Competitive rates will be critical to attracting and retaining key customers. In order for CEA to be successful, the combination of price and value must be perceived as superior when compared to the bundled SDG&E alternative. As planned, the value provided by the CEA Program will include a local community focus, investment and control.

## **Clean Energy Alliance Implementation Plan**

As previously discussed, the CEA Program will increase renewable energy supply to program customers by offering two distinct energy products. The default product for CEA Program customers will increase renewable energy supply to a minimum 50%, while maintaining generation rates that are targeted to provide a minimum two percent discount from comparable SDG&E rates. The initial renewable energy content provided under CEA's default product will exceed California's prevailing renewable energy procurement mandate during the initial years of operation, increasing to 60% by 2030. CEA will also offer its customers a voluntary 100% renewable energy tariff at rates that reflect CEA's cost for procuring related energy supplies.

Participating qualified low- or fixed-income households, such as those currently enrolled in the California Alternate Rates for Energy ("CARE") program, will be automatically enrolled in the default energy product and will continue to receive related discounts on monthly electricity bills through SDG&E.

### **8.4 RATE STABILITY**

CEA will offer stable rates by hedging its supply costs over multiple time horizons and by including renewable energy supplies that exhibit stable costs. Rate stability considerations may prevent CEA Program rates from directly tracking similar rates offered by the distribution utility, SDG&E, and may result in differences from the general rate-related targets initially established for the CEA Program. The Alliance plans to offer the most competitive rates possible after all Program operating costs are recovered and reserve targets are achieved.

### **8.5 EQUITY AMONG CUSTOMER CLASSES**

Initial rates of the CEA Program will be set based on cost-of-service considerations with reference to the rates customers would otherwise pay to SDG&E. Rate differences among customer classes will reflect the rates charged by the local distribution utility as well as differences in the costs of providing service to each class. Rate benefits may also vary among customers within the major customer class categories, depending upon the specific rate designs adopted by the Alliance.

### **8.6 CUSTOMER UNDERSTANDING**

The goal of customer understanding involves rate designs that are relatively straightforward so that customers can readily understand how their bills are calculated. This not only minimizes customer confusion and dissatisfaction but will also result in fewer billing inquiries to the CEA Program's customer service call center. Customer understanding also requires rate structures to reflect rational rate design principles (i.e., there should not be differences in rates that are not justified by costs or by other policies such as providing incentives for conservation).

### **8.7 REVENUE SUFFICIENCY**

CEA Program rates must collect sufficient revenue from participating customers to fully fund the annual CEA operating budget. Rates will be set to collect the adopted budget based on a forecast of electric sales for the budget year. Rates will be adjusted as necessary to maintain the ability to fully recover all costs of the CEA Program, subject to the disclosure and due process policies described later in this chapter. To ensure rate stability, funds available in CEA's rate stabilization reserve may be used from time to time to augment operating revenues.

### 8.8 RATE DESIGN

CEA will generally match the rate structures from SDG&E's standard rates to avoid the possibility that customers would see significantly different bill impacts as a result of changes in rate structures that would take effect following enrollment in the CEA Program.

### 8.9 NET ENERGY METERING

As planned, customers with on-site generation eligible for net metering from SDG&E will be offered a net energy metering rate from CEA. Net energy metering allows for customers with certain qualified solar or wind distributed generation to be billed on the basis of their net energy consumption. CEA's net energy metering tariff will apply to the generation component of the bill, and the SDG&E net energy metering tariff will apply to the utility's portion of the bill. CEA plans to pay customers for excess power produced from net energy metered generation systems in accordance with the rate designs adopted by the JPA. The goal is to offer a higher payout for surplus generation than SDG&E. In order to minimize the impact of mid-relevant period true-ups, NEM customers may be enrolled over multiple phases.

### 8.10 DISCLOSURE AND DUE PROCESS IN SETTING RATES AND ALLOCATING COSTS AMONG PARTICIPANTS

Initial program rates will be adopted by the CEA Board following the establishment of the first year's operating budget prior to initiating the customer notification process. Subsequently, CEA will prepare an annual budget and corresponding customer rates. Following the commencement of service, any proposed rate adjustment will be made to the Board and affected customers will be given the opportunity to provide comment on the proposed rate changes.

After proposing a rate adjustment, CEA will furnish affected customers with a notice of its intent to adjust rates, either by mailing such notices postage prepaid to affected customers, by including such notices as an insert to the regular bill for charges transmitted to affected customers, by including a related message directly on the customer's monthly electricity bill (on the page addressing CEA charges) or by following CEA's public hearing noticing procedures adopted by the Board. The notice will provide a summary of the proposed rate adjustment and will include a link to the CEA Program website where information will be posted regarding the amount of the proposed adjustment, a brief statement of the reasons for the adjustment, and the mailing address of the CEA Program to which any customer inquiries relative to the proposed adjustment, including a request by the customer to receive notice of the date, time, and place of any hearing on the proposed adjustment, may be directed.

## 9 CUSTOMER RIGHTS AND RESPONSIBILITIES

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This Chapter discusses customer rights, including the right to opt-out of the CEA Program and the right to privacy of customer usage information, as well as obligations customers undertake upon agreement to enroll in the CCA Program. All customers that do not opt out within 30 days of the fourth enrollment notice will have agreed to become full status program participants and must adhere to the obligations set forth below, as may be modified and expanded by the Board from time to time.

By adopting this Implementation Plan, the Alliance will have approved the customer rights and responsibilities policies contained herein to be effective at Program initiation. The Alliance retains authority to modify program policies from time to time at its discretion.

### 9.1 CUSTOMER NOTICES

At the initiation of the customer enrollment process, four notices will be provided to customers describing the Program, informing them of their opt-out rights to remain with utility bundled generation service, and containing a simple mechanism for exercising their opt-out rights. The first notice will be mailed to customers approximately sixty days prior to the date of automatic enrollment. A second notice will be sent approximately thirty days later. The Alliance will likely use its own mailing service for requisite enrollment notices rather than including the notices in SDG&E's monthly bills. This is intended to increase the likelihood that customers will read the enrollment notices, which may otherwise be ignored if included as a bill insert. Customers may opt out by notifying CEA using the CEA Program's designated telephone-based or Internet opt-out processing service. Should customers choose to initiate an opt-out request by contacting SDG&E, they would be transferred to the CEA Program's call center to complete the opt-out request. Consistent with CPUC regulations, notices returned as undelivered mail would be treated as a failure to opt out, and the customer would be automatically enrolled.

Following automatic enrollment, at least two notices will be mailed to customers within the first two billing cycles (approximately sixty days) after CEA service commences. Opt-out requests made on or before the sixtieth day following start of CEA Program service will result in customer transfer to bundled utility service with no penalty. Such customers will be obligated to pay charges associated with the electric services provided by CEA during the time the customer took service from the CEA Program, but will otherwise not be subject to any penalty or transfer fee from CEA.

Customers who establish new electric service accounts within the Program's service area will be automatically enrolled in the CEA Program and will have sixty days from the start of service to opt out if they so desire. Such customers will be provided with two enrollment notices within this sixty-day post-enrollment period. Such customers will also receive a notice detailing CEA's privacy policy regarding customer usage information. CEA will have the authority to implement entry fees for customers that initially opt out of the Program, but later decide to participate. Entry fees, if deemed necessary, would aid in resource planning by providing additional control over the CEA Program's customer base.

### 9.2 TERMINATION FEE

Customers that are automatically enrolled in the CEA Program can elect to transfer back to the incumbent utility without penalty within the first two months of service. After this free opt-out period, customers will be allowed to terminate their participation but may be subject to payment of a Termination Fee, which CEA reserves the right to impose, if deemed necessary. Customers that relocate within CEA's service territory would have CEA service continued at their new address. If a customer relocating to an address within CEA's service territory elected to cancel CCA service, the Termination Fee could be applied. Program customers that move out of CEA's service territory would not be subject to the Termination Fee. If deemed applicable by CEA, SDG&E would collect the Termination Fee from returning customers as part of CEA's final bill to the customer.

If adopted, the Termination Fee would be clearly disclosed in the four enrollment notices sent to customers during the sixty-day period before automatic enrollment and following commencement of service. The fee could also be adopted or changed by the CEA Board subject to applicable customer noticing requirements. Other CCAs have adopted small or zero-dollar termination fees, and CEA would likely do the same initially.

Customers electing to terminate service after the initial notification period would be transferred to SDG&E on their next regularly scheduled meter read date if the termination notice is received a minimum of fifteen days prior to that date. Such customers would also be liable for the reentry fees imposed by SDG&E and would be subject to SDG&E's current terms and conditions, including being required to remain on bundled utility service for a period of one year, as described in the utility CCA tariffs.

### 9.3 CUSTOMER CONFIDENTIALITY

CEA will establish policies covering confidentiality of customer data that are fully compliant with the required privacy protection rules for CCA customer energy usage information, as detailed within Decision 12-08-045. CEA will maintain the confidentiality of individual customers' names, service addresses, billing addresses, telephone numbers, account numbers, and electricity consumption, except where reasonably necessary to conduct business of the CEA Program or to provide services to customers, including but not limited to where such disclosure is necessary to (a) comply with the law or regulations; (b) enable CEA to provide service to its customers; (c) collect unpaid bills; (d) obtain and provide credit reporting information; or (e) resolve customer disputes or inquiries. CEA will not disclose customer information for telemarketing, e-mail, or direct mail solicitation. Aggregate data may be released at CEA's discretion.

### 9.4 RESPONSIBILITY FOR PAYMENT

Customers will be obligated to pay CEA Program charges for service provided through the date of transfer including any applicable Termination Fees. Pursuant to current CPUC regulations, CEA will not be able to direct that electricity service be shut off for failure to pay CEA bills. However, SDG&E has the right to shut off electricity to customers for failure to pay electricity bills, and SDG&E Electric Rule 23 mandates that partial payments are to be allocated pro rata between SDG&E and the CCA. In most circumstances, customers would be returned to utility service for failure to pay bills in full and customer deposits (if any) would be withheld in the case of unpaid bills. SDG&E would attempt to collect any outstanding balance from customers in accordance with Rule 23 and the related CCA Service Agreement. The proposed process is for two late payment notices to be provided to the customer within 30 days of the original bill

## Clean Energy Alliance Implementation Plan

due date. If payment is not received within 45 days from the original due date, service would be transferred to the utility on the next regular meter read date, unless alternative payment arrangements have been made. Consistent with the CCA tariffs, Rule 23, service cannot be discontinued to a residential customer for a disputed amount if that customer has filed a complaint with the CPUC, and that customer has paid the disputed amount into an escrow account.

### 9.5 CUSTOMER DEPOSITS

Under certain circumstances, CEA customers may be required to post a deposit equal to the estimated charges for two months of CCA service prior to obtaining service from the CEA Program. A deposit would be required for an applicant who previously had been a customer of SDG&E or CEA and whose electric service has been discontinued by SDG&E or CEA during the last twelve months of that prior service arrangement as a result of bill nonpayment. Such customers may be required to reestablish credit by depositing the prescribed amount. Additionally, a customer who fails to pay bills before they become past due as defined in SDG&E Electric Rule 11 (Discontinuance and Restoration of Service), and who further fails to pay such bills within five days after presentation of a discontinuance of service notice for nonpayment of bills, may be required to pay said bills and reestablish credit by depositing the prescribed amount. This rule will apply regardless of whether or not service has been discontinued for such nonpayment<sup>6</sup>. Failure to post deposit as required would cause the account service transfer request to be rejected, and the account would remain with SDG&E.

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<sup>6</sup> A customer whose service is discontinued by Clean Energy Alliance is returned to SDG&E generation service.



## 10 PROCUREMENT PROCESS

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### 10.1 INTRODUCTION

This Chapter describes CEA's initial procurement policies and the key third party service agreements by which the Alliance will obtain operational services for the CEA Program. By adopting this Implementation Plan, the Alliance will have approved the general procurement policies contained herein to be effective at Program initiation. CEA retains authority to modify Program policies from time to time at its discretion.

### 10.2 PROCUREMENT METHODS

CEA will enter into agreements for a variety of services needed to support program development, operation and management. It is anticipated that CEA will generally utilize competitive procurement methods for services but may also utilize direct procurement or sole source procurement, depending on the nature of the services to be procured. Direct procurement is the purchase of goods or services without competition when multiple sources of supply are available. Sole source procurement is generally to be performed only in the case of emergency or when a competitive process would be an idle act.

CEA will utilize a competitive solicitation process to enter into agreements with entities providing electrical services for the program. Agreements with entities that provide professional legal or consulting services, and agreements pertaining to unique or time sensitive opportunities, may be entered into on a direct procurement or sole source basis at CEA's discretion. Authority for terminating agreements will generally mirror the authority for entering into such agreements.

### 10.3 KEY CONTRACTS

#### 10.3.1 Electric Supply

CEA will procure initial energy supply, as well as Scheduling Coordinator Services, through competitive solicitation in the over-the-counter electricity markets. Suppliers will be selected to hedge CEA's financial risk, meet its capacity obligations and achieve its environmental objectives. CEA will administer Request for Proposal processes for energy supply. Procurement will commence once this implementation plan has been approved and the CEA Board has made the final determination to proceed to going live with the CCA.

Procurement will be an ongoing process in order to achieve desired levels of risk mitigation by dollar-cost-averaging supply costs. In addition, particular strategies will be employed to mitigate the risk of changes to the PCIA impacting CEA's rate competitiveness. Specifically, this entails procuring a certain amount of supply annually during the month of October when the PCIA market price benchmark is set for the coming year.

CEA's wholesale services provider will also serve as the Scheduling Coordinator for scheduling loads, resources and Inter-SC trades into the CAISO market. In addition, the provider will be responsible for ensuring CEA's compliance with all applicable RA and regulatory requirements imposed by the CPUC or FERC.

## Clean Energy Alliance Implementation Plan

### 10.3.2 Data Management Contract

A data manager will provide the retail customer services of billing and other customer account services (electronic data interchange or EDI with SDG&E, billing, remittance processing, and account management). The data management contract will be awarded to an experienced data management services provider.

The data manager is responsible for the following services:

- Data exchange with SDG&E;
- Technical testing;
- Customer information system;
- Customer call center;
- Billing administration/retail settlements;
- Settlement quality meter data reporting; and
- Reporting and audits of utility billing.

Utilizing a third party for account services eliminates a significant expense associated with implementing a customer information system. Such systems can impose significant information technology costs and take significant time to deploy. Separation of the data management contract from the energy supply contract provides the JPA with greater flexibility to change energy suppliers, if desired, without facing an expensive data migration issue.

## 11 CONTINGENCY PLAN FOR PROGRAM TERMINATION

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### 11.1 INTRODUCTION

This Chapter describes the process to be followed in the case of CEA Program termination. By adopting the original Implementation Plan, the Alliance will have approved the general termination process contained herein to be effective at Program initiation. In the unexpected event that the JPA would terminate the CEA Program and return its customers to SDG&E service, the proposed process is designed to minimize the impacts on its customers and on SDG&E. The proposed termination plan follows the requirements set forth in SDG&E's tariff Rule 27 governing service to CCAs. The JPA retains authority to modify program policies from time to time at its discretion.

### 11.2 TERMINATION BY CLEAN ENERGY ALLIANCE

CEA will offer services for the long term with no planned Program termination date. In the unanticipated event that the JPA decides to terminate the Program, the Board would vote on Program termination.

After any applicable restrictions on such termination have been satisfied, notice would be provided to customers six months in advance that they will be transferred back to SDG&E. A second notice would be provided during the final sixty-days in advance of the transfer. The notice would describe the applicable

## Clean Energy Alliance Implementation Plan

distribution utility bundled service requirements for returning customers then in effect, such as any transitional or bundled portfolio service rules.

At least one-year advance notice would be provided to SDG&E and the CPUC before transferring customers, and CEA would coordinate the customer transfer process to minimize impacts on customers and ensure no disruption in service. Once the customer notice period is complete, customers would be transferred *en masse* on the date of their regularly scheduled meter read date.

CEA will post a bond or maintain funds held in reserve to pay for potential transaction fees charged to the Program for switching customers back to distribution utility service. Reserves would be maintained against the fees imposed for processing customer transfers (CCA Service Requests). The Public Utilities Code requires demonstration of insurance or posting of a bond sufficient to cover reentry fees imposed on customers that are involuntarily returned to distribution utility service under certain circumstances. The cost of reentry fees is the responsibility of the energy services provider or the community choice aggregator, except in the case of a customer returned for default or because its contract has expired. CEA will post financial security in the appropriate amount as part of its registration materials and will maintain the financial security in the required amount, as necessary.

## 12 APPENDIX A: CLEAN ENERGY ALLIANCE RESOLUTION No. 2019-003 (ADOPTING IMPLEMENTATION PLAN)

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**Clean Energy Alliance**  
**JOINT POWERS AUTHORITY**

RESOLUTION NO. 2019-003

A RESOLUTION OF THE CLEAN ENERGY ALLIANCE APPROVING THE  
COMMUNITY CHOICE AGGREGATION IMPLEMENTATION PLAN AND  
STATEMENT OF INTENT

**WHEREAS**, the Clean Energy Alliance (Alliance) is a joint powers agency created by the cities of Carlsbad, Del Mar and Solana Beach; and

**WHEREAS**, the members of the Alliance desire to establish a community choice aggregation (CCA) program in support of meeting their respective Climate Action Plan goals; and

**WHEREAS**, Public Utilities Code Section 366.2(c)(3) requires a prospective CCA to file an implementation plan and statement of intent ("Plan") with the California Public Utilities Commission (CPUC) for review and certification; and

**WHEREAS**, an Implementation Plan and Statement of Intent was drafted and presented to the CEA Board of Directors for review on November 19, 2019; and

**WHEREAS**, the final Implementation Plan and Statement of Intent was presented to the CEA Board of Directors at a duly noticed public hearing for its consideration and adoption on December 19, 2019.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Clean Energy Alliance, as follows:

Section 1. The Board of Directors of the Clean Energy Alliance hereby approves the Clean Energy Alliance Community Choice Aggregation Implementation Plan and Statement of Intent.

Section 2. CEA staff is directed to file the Implementation Plan and Statement of Intent with the California Public Utilities Commission no later than December 31, 2019.

The foregoing Resolution was passed and adopted this 19th day of December, 2019, by the following vote:

AYES: Schumacher, Haviland, Becker.  
NAYS: None.  
ABSENT: None.  
ABSTAIN: None.

APPROVED:

  
\_\_\_\_\_  
Cori Schumacher, Chair

ATTEST:

  
\_\_\_\_\_  
Sheila Cobian, Board Secretary

**ORDINANCE NO. CS-362**

**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 8<sup>th</sup> day of October 2019, and thereafter

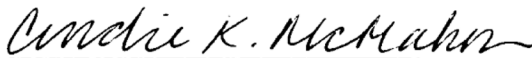
PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 15<sup>th</sup> day of October 2019, by the following vote, to wit:

AYES: Hall, Blackburn, Bhat-Patel, Schumacher.

NAYS: None.

ABSENT: None.


APPROVED AS TO FORM AND LEGALITY:



CELIA A. BREWER, City Attorney



MATT HALL, Mayor

  
for Hector Gomez, Deputy City Clerk  
BARBARA ENGLESON, City Clerk

(SEAL)



**RESOLUTION NO. 2019-197**

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 8<sup>th</sup> day of October 2019, by the following vote, to wit:

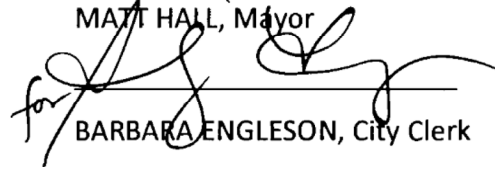
AYES: Hall, Blackburn, Bhat-Patel, Schumacher, Hamilton.

NAYS: None.

ABSENT: None.



MATT HALL, Mayor



BARBARA ENGLESON, City Clerk

(SEAL)



**Clean Energy Alliance Joint Powers Agreement**

Effective 10/10/19

## CLEAN ENERGY ALLIANCE JOINT POWERS AGREEMENT

This Joint Powers Agreement (the "Agreement"), effective as of 10/10/19, 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 CARLSBAD

By: [Signature]  
City Manager

DATE: 10 Oct 19

ATTEST:

By: Jamara B. McManis  
for City Clerk

APPROVED AS TO FORM:

By: Allison Brewer  
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. 954

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA AUTHORIZING IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM

WHEREAS, California Public Utilities Code Section 366.2 (the "Act") 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, on October 3, 2016, the Del Mar City Council approved Resolution 2016-52 stating the City's interest in exploring the feasibility of a CCA program; and

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

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

WHEREAS, the Feasibility Study determined that a CCA program would be both technically and financially feasible and 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, 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., if each entity adopts the ordinance required by Public Utilities Section 366.2(c)(12); 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 Public Utilities Code section 366.2, customers have the right to opt out of the CCA program and continue to receive bundled electric service from the incumbent utility; and

WHEREAS, Public Utilities Code section 366.2(c)(12) 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.) The Planning Director 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 Del Mar, California, hereby ordains as follows:

#### **SECTION ONE**

That the recitals set forth above are true and correct and are incorporated as though fully set forth herein.

#### **SECTION TWO**

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 Public Utilities Code Section 366.2(c)(12) to implement a CCA program within the jurisdiction of the City of Del Mar, California, 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.

#### **SECTION THREE**

This Ordinance was introduced by the City Council on October 7, 2019.

#### **SECTION FOUR**

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

#### **SECTION FIVE**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION SIX**

This Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Del Mar, California, at the Regular Meeting held this 21st day of October, 2019.



\_\_\_\_\_  
David Druker, Mayor  
City of Del Mar

APPROVED AS TO FORM:



\_\_\_\_\_  
Leslie E. Devaney, City Attorney  
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 954, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 21st day of October, 2019, by the following vote:

AYES: Mayor Druker, Deputy Mayor Haviland, Council Members  
Gaasterland, Parks and Worden

NOES: None

ABSENT: None

ABSTAIN: None



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



RESOLUTION NO.2019-52

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

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

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

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

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

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

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

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

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

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

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



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

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


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



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Dave Druker, Mayor  
City of Del Mar

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Leslie E. Devaney, City Attorney  
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF DEL MAR


I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2019-52 adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 7th day of October 2019, by the following vote:

AYES: Mayor Druker, Deputy Mayor Haviland, Council Members Parks and Worden

NOES: Council Member Gaasterland

ABSENT: None

ABSTAIN: None

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



## RESOLUTION 2019-136

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, APPROVING AND AUTHORIZING THE EXECUTION OF THE JOINT EXERCISE OF POWERS AGREEMENT CREATING THE CLEAN ENERGY ALLIANCE

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

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

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

**WHEREAS**, the City of Solana Beach desires to enter into a Joint Exercise of Powers Agreement to establish the Clean Energy Alliance Community Choice Energy Authority along with the cities of Carlsbad and Del Mar, and any additional members approved by the JPA Board in the future.

**NOW, THEREFORE**, the City Council of the City of Solana Beach hereby resolves as follows:

1. That the foregoing recitations are true and correct.
2. The Joint Exercise of Powers Agreement creating the Clean Energy Alliance ("CEA") is hereby approved, and the City Manager is authorized to execute the Agreement in substantially the form attached hereto as Exhibit A, together with minor technical or clerical corrections, if any.
3. City Manager, or his designee, is authorized and directed to take such further actions as may be necessary and appropriate to implement the intent and purposes of this Resolution.

4. This Resolution and the creation of CEA is exempt from the requirements of the California Environmental Quality Act (CEQA), as it involves organizational and administrative activities of government that will not result in direct or indirect physical changes on the environment, and therefore is not considered a "project." (14 Cal. Code Regs. § 15378(b)(5).)

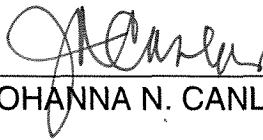
**PASSED AND ADOPTED** this 9th day of October 2019, at a regularly scheduled meeting of the City Council of the City of Solana Beach, California by the following vote:

AYES: Councilmembers – Zito, Edson, Hegenauer, Becker  
NOES: Councilmembers – None  
ABSENT: Councilmembers – Harless  
ABSTAIN: Councilmembers – None



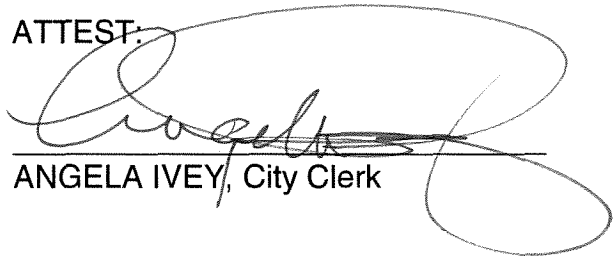
\_\_\_\_\_  
DAVID A. ZITO, Mayor

APPROVED AS TO FORM:



\_\_\_\_\_  
JOHANNA N. CANLAS, City Attorney

ATTEST:



\_\_\_\_\_  
ANGELA IVEY, City Clerk

**Exhibit A**  
**Resolution 2019-136**

**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**

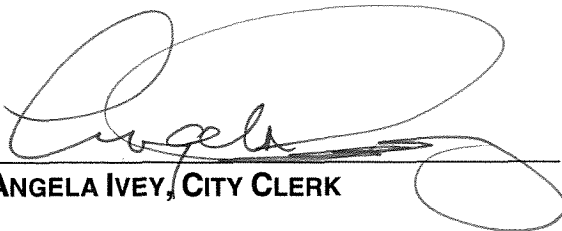
**Any public agency that becomes a member by October 1, 2020**



## RESOLUTION CERTIFICATION

STATE OF CALIFORNIA }  
COUNTY OF SAN DIEGO } SS.  
CITY OF SOLANA BEACH }

I, ANGELA IVEY, City Clerk of the City of Solana Beach, California, DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of **Resolution 2019-136** *approving and authorizing the execution of the Joint Exercise of Powers Agreement creating the Clean Energy Alliance* as duly passed and adopted at a Regular Solana Beach City Council meeting held on the 9<sup>th</sup> day of October, 2019. The original is on file in the City Clerk's Office.

  
ANGELA IVEY, CITY CLERK

CERTIFICATION DATE: Oct 31, 2019