

Board of Directors Meeting Agenda

January 21, 2021, 2 p.m.

City of Del Mar | Virtual Meeting

Per State of California Executive Order N-29-20, and in interest of public health and safety, we are temporarily taking actions to prevent and mitigate the effects of the COVID-19 pandemic by holding Clean Energy Alliance Joint Powers Authority meetings electronically or by teleconferencing. All public meetings will comply with public noticing requirements in the Brown Act and will be made accessible electronically to all members of the public seeking to observe and address the Clean Energy Alliance Joint Powers Authority Board of Directors.

Members of the public can watch the meeting live on the City of Del Mar's website at:

<https://delmar.12milesout.com/video/live-virtual>

You can participate in the meeting by e-mailing your comments to the Secretary at secretary@thecleanenergyalliance.org 1 hour prior to commencement of the meeting. If you desire to have your comment read into the record at the meeting, please indicate so in the first line of your e-mail and limit your e-mail to 500 words or less. These procedures shall remain in place during the period in which state or local health officials have imposed or recommended social distancing measures.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

BOARD COMMENTS & ANNOUNCEMENTS

Declare CEA Board Vice Chair Position Vacant and Elect Vice Chair

RECOMMENDATION

Declare the vice chair position officially vacant and elect vice chair to fill term through June 30, 2021, pursuant to Section 5.2 of the Clean Energy Alliance Joint Powers Agreement.

PRESENTATIONS

- 1) **San Diego Community Power (SDCP)**
- 2) **Fiscal Year 2019/20 Annual Financial Report Presentation**

3) San Diego Gas & Electric Envision Project Update

PUBLIC COMMENT

APPROVAL OF MINUTES

Minutes of the Regular Meeting held December 17, 2020

Consent Calendar

Item 1: Clean Energy Alliance Treasurer's Report

RECOMMENDATION

Receive and file Clean Energy Alliance Interim Treasurer's Report.

Item 2: Adopt Resolution #2021-001 Approving Social Media Policy

RECOMMENDATION

Adopt Resolution #2021-001 approving Investment and Social Media Policies.

Item 3: Adopt Resolution #2021-002 Approving Debt Policy

RECOMMENDATION

Adopt Resolution #2021-002 approving Debt Policy.

Item 4: Adopt Resolution #2021-003 Approving Participation in San Diego Gas & Electric's Arrearage Management Program

RECOMMENDATION

Adopt Resolution #2021-003 approving participation in the San Diego Gas & Electric Arrearage Management Program.

Item 5: Approve the 2021 Legislative and Regulatory Policy Platform

RECOMMENDATION

Approve the 2021 Legislative and Regulatory Policy Platform.

New Business

Item 6: Clean Energy Alliance Interim Chief Executive Officer Operational, Administrative and Regulatory Affairs Update

RECOMMENDATION

1) Receive and file Community Choice Aggregation Update Report from Interim CEO.

2) Receive and file Community Choice Aggregation Regulatory Affairs Report from Special Counsel.

Item 7: Adopt Resolution #2021-004 Approving Credit Agreement with JP Morgan for \$6MM Start-Up and Cash Flow Line of Credit

RECOMMENDATION

Adopt Resolution#2021-004 approving credit agreement with JP Morgan.

Item 8: Consideration of Community Advisory Committee (CAC) Meeting in February 2021

RECOMMENDATION

- 1) Reschedule March 2021 CAC Meeting to February 2021; or
- 2) Approve Special CAC Meeting in February 2021.

Item 9: Fiscal Year 2021/22 Budget Planning – Review Consulting Services Agreements and Provide Direction Regarding Staffing And Consulting Services

RECOMMENDATION

Provide direction regarding fiscal year 2021/22 staffing and consulting services for purposes of budget development.

Item 10: Review and Update Clean Energy Alliance Board Outreach Assignments Matrix

RECOMMENDATION

Review and update the Clean Energy Alliance Board Outreach Matrix.

Item 11: Approve Clean Energy Alliance Default and Optional Power Supply Product Offerings to be Available at Launch

RECOMMENDATION

Approve Clean Energy Alliance Default and Optional Power Supply Product Offerings to be available at launch.

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS

ADJOURN

NEXT MEETING: February 18, 2021, 2 p.m., hosted by City of Solana Beach (Virtual Meeting)

Reasonable Accommodations

Persons with a disability may request an agenda packet in appropriate alternative formats as require by the Americans with Disabilities Act of 1990. Reasonable accommodations and auxiliary aids will be provided to effectively allow participation in the meeting. Please contact the Carlsbad City Clerk's Office at 760-434-2808



(voice), 711 (free relay service for TTY users), 760-720-9461 (fax) or clerk@carlsbadca.gov by noon on the Monday before the Board meeting to make arrangements.

Written Comments

To submit written comments to the Board, please contact the Carlsbad City Clerk's office at secretary@thecleanenergyalliance.org. Written materials related to the agenda that are received by 5:00 p.m. on the day before the meeting will be distributed to the Board in advance of the meeting and posted on the Authority webpage. To review these materials during the meeting, please contact the Board Secretary.

**Clean Energy Alliance – Board of Directors
Meeting Minutes
December 17, 2020 – 2:00 p.m.
City of Carlsbad City Hall
1200 Carlsbad Village Drive, Carlsbad, CA 92008
Teleconference Locations per State of California Executive Order N-29-20**

SWEARING IN OF NEW BOARD MEMBER: Interim Board Clerk Susan Caputo administered the Oath of Office to incoming City of Carlsbad Board Member David Druker.

CALL TO ORDER: Vice Chair Becker called to order the regular meeting of the Clean Energy Alliance at 2:00 p.m.

ROLL CALL: Schumacher, Druker, Becker

FLAG SALUTE: Board Member Schumacher led the flag salute.

BOARD COMMENTS & ANNOUNCEMENTS: Board Member Schumacher commented and commended staff for work on the **Energy Resource Recovery Account (ERRA)** proceedings and stated comment would be forthcoming on Item 6.

Item 1: Declare Clean Energy Alliance Board Chair Position Vacant and Elect Board Chair for term through June 30, 2021

RECOMMENDATION

Declare the Board Chair position vacant and elect a Board Chair to fill term through June 30, 2021, pursuant to Section 5.2 of the Clean Energy Alliance Joint Powers Agreement.

Motion by Member Druker, second by Member Schumacher to nominate Vice Chair Becker as Board Chair; motion by Vice Chair Becker, second by Member Druker to nominate Member Schumacher as Vice Chair.

Motion carried unanimously, 3/0.

PRESENTATIONS: Interim CEO Barbara Boswell made introductory comments and Sara Madsen of Tripepi Smith presented an update of the Clean Energy Alliance Website Refresh.

Alternate CEA Board Member Worden presented an update from the inaugural meeting of the Community Advisory Committee (CAC) and requested consideration of an additional meeting of the CAC in February be placed on the CEA agenda for January.

Chair Becker requested that CAC be placed on the distribution list for CEA Agendas.

PUBLIC COMMENT: None

APPROVAL OF MINUTES: Minutes of the Regular Meeting held November 19, 2020

**Motion by Member Schumacher, second by Chair Becker to approve the minutes as submitted.
Motion carried unanimously, 3/0**

Consent Calendar

Item 2: Clean Energy Alliance Treasurer's Report

RECOMMENDATION

Receive and File Clean Energy Alliance Treasurer's Report.

Item 3: Ratify Execution of Letter of Credit in Satisfaction of California Public Utilities Commission Resolution E-5059 Setting an Update Financial Security Requirement

RECOMMENDATION

Ratify execution of a Letter of Credit, in the amount of \$147,000, with U.S. Bank, in satisfaction of the California Public Utilities Commission Resolution E-5059 setting an updated Financial Security Requirement.

Item 4: Fiscal Year 20/21 Budget Amendment for CCA Operations

RECOMMENDATION

Approve Fiscal Year 20/21 Budget Amendment for CCA Operations, increasing revenue by \$9,643,500 and expenditures by \$9,459,000.

**Motion by: Member Druker, second by Member Schumacher to approve the Consent Calendar.
Motion carried unanimously, 3/0.**

New Business

Item 5: Clean Energy Alliance Interim Chief Executive Officer Report & Regulatory Affairs Update

Interim Chief Executive Officer Barbara Boswell inquired if the Board had any questions regarding her report and introduced Special Regulatory Counsel Ty Tosdal who highlighted the following new developments from the California Public Utilities Commission hearing: 1) a favorable proposed decision was received in SDG&E's ERRA forecast proceeding and the item was held over to the January 14 meeting allowing time to work with SDG&E directly to resolve the issue and explained the interlinking of ERRA, rate setting and pro forma, and how that may affect programs that CEA may be thinking of and commented on the work being done to ensure that the CPUC approves a rate that is not artificially low and reflects the cost for service; 2) CPUC adopted a decision in the PCIA Trigger Application to amortize the amount that exceeded the amount with the Trigger Application over 36 months and will not affect CEA; 3) Customer refunds for bundled customers that will be moving from SDG&E to CEA were granted as a transfer to CEA; 4) and also as part of stipulation, support removing PCIA Trigger and CAP mechanism from future and support petition for modification as it does not achieve its intended purpose to keep limits on PCIA volatility, which it has not done, and any amount that exceeds the CAP will be collected through a 12-month amortization period in 2022.

Interim CEO Barbara Boswell clarified that the Trigger Application does apply to Solana Energy Alliance customers that will be moving to CEA and that they are part of a different PCIA Vintage which will impact those customers.

RECOMMENDATION

- 1) Receive and file Clean Energy Alliance Interim Chief Executive Officer Report.
- 2) Receive and file Clean Energy Alliance Regulatory Affairs Update Report.

CEA Board received reports.

Item 6: Clean Energy Alliance Pro-Forma Update

RECOMMENDATION

Receive presentation on the updated Clean Energy Alliance Pro-Forma.

Motion by Member Schumacher, second by Chair Becker, to continue this item to the February meeting to allow for the most updated information.

Motion carried unanimously, 3/0.

Item 7: Approve Terms and Conditions and Product Branding of Clean Energy Alliance Initial Default Energy Product Options and Programs

Interim CEO Barbara Boswell gave the presentation providing an overview of the options and recommended names and related icons available.

Board Member comments and questions included inquiry regarding the default SEA programs being available as CEA options; the number of CCAs that offer opt-down provisions to customers; the financial impacts of alternative options as PCC1 renewable and carbon-free energy and opt-down provisions; inquiry to match SDG&E rate offering; minimum default renewable rates; and equity impact.

Public comment from Micah Mitrosky on behalf of IBEW Local 569 was read into the record.

The Board requested that each city's Council as well as the Community Advisory Committee be presented with the information for feedback.

RECOMMENDATION

- 1) Approve energy product options to offer at launch, or other alternatives as determined by the Clean Energy Alliance Board:
 - * 50% Renewable Energy Product – Minimum Default Energy Product
 - * 100% Renewable Energy Product – Alternative Default Energy Product Option for Member Agencies; Voluntary Opt-Up Product for customers at a rate premium
 - * Minimum State Renewable Portfolio Standards Product – Voluntary Opt-Down for Customers at a reduced rate
- 2) Approve Product Names, or other alternatives as determined by the CEA Board:
 - Green Impact – 50% Renewable Energy Product
 - Clean Impact – 100% Renewable Energy Product

Local Impact – Meets State Required Renewable Energy Standards (If Approved by Board)
Personal Impact – Net Energy Metering Program

3) Approve CEA Terms and Conditions – General Service and Net Energy Metering

Motion by Chair Becker, second by Member Druker to adopt the CEA Product Names and Terms and Conditions – General Service and Net Energy Metering.

Motion carried unanimously, 3/0.

Motion by Member Druker, second by Member Schumacher, to present the product options and the addition of a 75% carbon free option to the CEA JPA City Councils for feedback.

Motion carried unanimously, 3/0.

Item 8: Authorize Credit Solution with JPMorgan for Clean Energy Alliance Start-up and Work Capital

Member Druker recused himself from participating on this item due to financial interest in JPMorgan.

Interim CEO Barbara Boswell gave the presentation highlighting the various aspects of the solution options offered by each of the banks.

RECOMMENDATION

Authorize Interim Chief Executive Officer to Execute All Documents and take all necessary actions to secure CEA's financing with JPMorgan, subject to General Counsel Approval, for the following amounts, or other alternatives as determined by the CEA Board:

- a) \$5,000,000 for start-up and working capital costs;
- b) \$5,000,000 (subject to credit approval and CEA Board Authorization) for liquidity via Standby Letters of Credit or cash postings for power contracts;
- c) \$5,000,000 (subject to credit approval and CEA Board Authorization) available upon launch for additional working capital or liquidity support for power purchase agreements.

Member Schumacher expressed gratitude for staff's work in getting the best possible rates.

Motion by Member Schumacher, second by Chair Becker, to authorize Interim Chief Executive Officer to Execute All Documents and take all necessary actions to secure CEA's financing with JPMorgan, subject to General Counsel Approval, for the following amounts, or other alternatives as determined by the CEA Board: a) \$5,000,000 for start-up and working capital costs; b) \$5,000,000 (subject to credit approval and CEA Board Authorization) for liquidity via Standby Letters of Credit or cash postings for power contracts; c) \$5,000,000 (subject to credit approval and CEA Board Authorization) available upon launch for additional working capital or liquidity support for power purchase agreements.

Motion carried unanimously, 3/0.

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS: Member Schumacher requested that a future item discussing potential expansion of local legislative advocacy to provide more stability in rate forecasting; and Member Druker requested the following three items be placed on a future agenda:

1} an item discussing historic usage 2) the status of the San Diego Community Power and what their future is looking like and 3) reaching out to the County of San Diego and Oceanside to gauge interest in joining CEA.

ADJOURN: Chair Becker adjourned the meeting at 4:02 p.m.

Susan Caputo, MMC
Interim Board Clerk

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Marie Marron Berkuti, Interim Treasurer

ITEM 1: Clean Energy Alliance Treasurer's Report

RECOMMENDATION

Receive and File Clean Energy Alliance (CEA) Interim Treasurer's Report for December 2020 and Annual Financial Report from the period of inception (November 4, 2019) through June 30, 2020.

BACKGROUND AND DISCUSSION

This report provides the Board with the following financial information through December 31, 2020:

- Statement of Financial Position – Reports assets, liabilities, and financial position of the CEA as of December 31, 2020
- Statement of Revenues, Expenses and Changes in Net Position for the six months ended December 31, 2020
- Budget to Actuals Comparison Schedule – Reports actual revenues and expenditures compared to the amended budget as of December 31, 2020
- Budget Reconciliation to Statement of Revenues, Expenses and Changes in Net Position
- List of Payments Issued – Reports payments issued for December 2020

As of December 31, 2020, liabilities represent invoices received for services, but not yet paid. The noncurrent accounts payable are amounts due to the cities of Carlsbad, Del Mar and Solana Beach for the \$150,000 advance made by each member agency for start-up costs and services provided to CEA for the period December 2019 to June 2020. These invoices are scheduled to be paid three years from the time CEA is operational.

The CEA's annual audit for the fiscal year ended June 30, 2020 has been completed and is included as part of the Treasurer's Report.

DECEMBER 31, 2020 REPORTS**STATEMENT OF FINANCIAL POSITION**

CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
As of December 31, 2020

ASSETS**Current Assets**

Cash Operating Account		\$ 101,469.86
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Total Current Assets		101,469.86
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Noncurrent Assets

Deposits

CCA Bond		247,000.00
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Cash Collateral Deposits-SDG&E		240,000.00
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Total Noncurrent Assets		487,000.00
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Total Assets		588,469.86
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LIABILITIES**Current Liabilities**

Accounts Payable		70,397.35
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Accrued Liabilities		14,934.98
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Refundable Deposits		75,000.00
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Total Current Liabilities		160,332.33
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Noncurrent Liabilities

Due to Member Agencies

Due to City of Carlsbad		186,571.79
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Due to City of Del Mar		151,892.97
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Due to City of Solana Beach		165,552.69
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Total Due to Member Agencies		504,017.45
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Calpine Promissory Note		582,843.71
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Total Noncurrent Liabilities		1,086,861.16
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Total Liabilities		1,247,193.49
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NET POSITION

Unrestricted (deficit)		(658,723.63)
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Total Net Position		\$ (658,723.63)
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STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

**CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION**

For the six months ended December 31, 2020

Operating Revenues	<u>\$ -</u>
Operating Expenses	
Professional Services	378,850.26
Bank Fees	985.00
Website Maintenance	<u>204.00</u>
Total Operating Expenses	<u>380,039.26</u>
Operating Income (Loss)	<u>(380,039.26)</u>
Change in Net Position	(380,039.26)
Net Position at beginning of period	<u>(278,684.37)</u>
Net Position at end of period	<u>\$ (658,723.63)</u>

BUDGET TO ACTUALS COMPARISON SCHEDULE

At its August 20, 2020 board meeting, the CEA Board approved a Promissory Note with Calpine Energy Solutions for \$400,000 to provide funding for the FY 2020/21 budget through February 2021. A second Promissory Note with Calpine for \$250,000 was approved by the CEA Board at its December 19, 2020 board meeting to provide funding for the Financial Security Requirement and the cash collateral deposits required as part of the resource adequacy procurements. Total drawdowns against the Promissory Notes as of December 2020 equal \$582,843.71. Staff will be presenting at today's Board meeting a proposed credit solution with JPMorgan.

At its June 18, 2020 board meeting, the CEA Board adopted the Fiscal Year (FY) 2020/21 budget approving \$4,006,500 in total operating expenses and uses of funds. The CEA Board approved an amendment to the budget at its November 19, 2020 board meeting to cover the Financial Security Requirement amount of \$147,000. At its December 17, 2020 board meeting, the CEA Board approved an amendment to the budget totaling \$9,459,000 in expenses and uses of funds to reflect resource adequacy contracts executed and costs associated with CEA beginning to provide service in May and June 2021. These budget amendments brought the amended adopted budget total to \$13,612,500.

Of its approved \$13,612,500.00 amended budgeted operating expenses and uses of funds, \$767,039.26 has been expended, leaving \$12,845,460.74

CLEAN ENERGY ALLIANCE
BUDGET TO ACTUALS COMPARISON SCHEDULE
For the six months ended December 31, 2020

	AMENDED BUDGET	ACTUALS	VARIANCE
Operating Revenues			
Energy Sales	\$ 8,000,000.00	\$ -	\$ 8,000,000.00
Total Operating Revenue	8,000,000.00	-	8,000,000.00
Operating Expenses			
Power Supply	8,000,000.00	-	8,000,000.00
Professional Services			
Administrative	120,000.00	62,412.43	57,587.57
Legal	320,000.00	145,095.41	174,904.59
Technical	198,200.00	124,302.25	73,897.75
Data Manager	130,200.00	-	130,200.00
Marketing	102,238.00	38,240.17	63,997.83
Audit	40,000.00	7,200.00	32,800.00
Other	19,562.00	1,600.00	17,962.00
Total Professional Services	930,200.00	378,850.26	551,349.74
Print/Mail Services	132,000.00	-	132,000.00
SDG&E Service Fees & Deposit	83,800.00	-	83,800.00
Membership Dues	15,000.00	-	15,000.00
Advertising	10,000.00	-	10,000.00
Website Maintenance	2,500.00	204.00	2,296.00
Bank Fees	-	985.00	(985.00)
Total Operating Expenses	9,173,500.00	380,039.26	8,793,460.74
Operating Income (Loss)	(1,173,500.00)	(380,039.26)	(793,460.74)
Non-Operating Expenses			
Interest Expense	10,000.00	-	10,000.00
Other Sources and Uses			
Sources			
Credit Solution	5,000,000.00	-	5,000,000.00
Calpine Promissory Note	650,000.00	582,843.71	67,156.29
Total Sources	5,650,000.00	582,843.71	5,067,156.29
Uses			
CCA Bond(Financial Security Reqmt-FSR)	47,000.00	147,000.00	(100,000.00)
CAISO Deposit	500,000.00	-	500,000.00
Lock Box Reserves/Cash Flow	2,500,000.00	-	2,500,000.00
Calpine Promissory Note Repayment	650,000.00	-	650,000.00
Collateral Deposits-SDG&E	585,000.00	240,000.00	345,000.00
Financial Security Requirement	147,000.00	-	147,000.00
Total Uses	4,429,000.00	387,000.00	4,042,000.00
Total Sources and Uses	1,221,000.00	195,843.71	1,025,156.29
Net Increase (Decrease) in Available Fund Balance	\$ 37,500.00	\$ (184,195.55)	\$ 221,695.55
Total Operating and Non-Operating Expenses and Uses of Funds	\$ 13,612,500.00	\$ 767,039.26	\$ 12,845,460.74

BUDGET RECONCILIATION TO STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

CLEAN ENERGY ALLIANCE
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES, AND CHANGES IN NET POSITION
For the six months ended December 31, 2020

Net Increase (Decrease) in Available Fund Balance per Budgetary Comparison Schedule	\$ (184,195.55)
Adjustments needed to reconcile to the changes in Net Position in the Statement of Revenues, Expenses, and Changes in Net Position	
Subtract Advances from Calpine Promissory Note	(582,843.71)
Add back:	
Collateral Deposits-SDG&E	240,000.00
CCA Bond(Financial Security Reqmt-FSR)	147,000.00
Change in Net Position	<u>\$ (380,039.26)</u>

LIST OF PAYMENTS ISSUED

The report below provides the detail of payments issued by CEA for December 2020. All payments were within approved budget.

Clean Energy Alliance
List of Payments Issued December 2020

Date	Via	Vendor	Description	Amount
12/09/20	Transfer	City River Bank	Financial Security Reqmt (FSR)-Line of Credit	\$ 147,000.00
12/09/20	Transfer	City River Bank	FSR Bank Fee	985.00
12/18/20	ACH	Bayshore Consulting Group, Inc	Oct CEO Services	6,481.18
12/18/20	ACH	Bayshore Consulting Group, Inc	Nov CEO Services	10,561.25
12/18/20	ACH	Richards, Watson & Gershon	Oct 2020 General Counsel Svcs	3,551.00
12/18/20	ACH	Tosdal APC	Nov 2020 Regulatory Counsel Svcs	13,186.24
12/18/20	ACH	Hall Energy Law PC	Nov 2020 Energy Procurement Counsel Svcs	2,796.50
12/18/20	ACH	Pacific Energy Advisors, Inc	Nov 2020 Technical Consulting Svcs	23,600.00
12/18/20	ACH	Keyes & Fox LLP	Nov ERRA Forecast Counsel Services	10,915.25
12/18/20	ACH	Tripepi, Smith & Associates, Inc.	Nov 2020 Retainer	9,248.07
12/23/20	ACH	Tullett Prebon Americas Corp	11/09/20 Brokers Fee (Exelon Generation Co)	1,600.00
			Total December Payments	<u>\$ 229,924.49</u>

ANNUAL AUDIT FOR FISCAL YEAR ENDED (FYE) JUNE 30, 2020

The CEA's Annual Financial Report from the period of inception (November 4, 2019) through June 30, 2020 (Attachment A) has been completed.

Lance, Soll & Lunghard, LLC (LSL) has audited CEA's financial statements. The goal of the independent audit is to provide reasonable assurance that the financial statements of CEA for the fiscal year ended June 30, 2020, are free of material misstatement. As part of CEA's annual audit, reviews are made to determine the adequacy of the internal control structure as well as to determine that CEA has complied with applicable laws and regulations. The Statement of Auditing Standards (SAS) No. 115, Communication of Internal Control Related Matters Identified in an Audit (Attachment B), received from the auditor's states that there were no material instances of noncompliance, no material weaknesses in internal controls, and no reportable conditions. The independent auditor concluded there was a basis for rendering an unmodified opinion and CEA's financial statements are fairly presented in conformity with Generally Accepted Accounting Principles (GAAP). The independent auditor's report is presented as the first component of the financial section of this Report.

FISCAL IMPACT

There is no fiscal impact associated with these items.

ATTACHMENTS

Attachment A - Clean Energy Alliance Annual Financial Report from the period of inception (November 4, 2019) through June 30, 2020

Attachment B - The Statement of Auditing Standards No. 115, Communication of Internal Control Related Matters Identified in an Audit

CLEAN ENERGY ALLIANCE
CARLSBAD, CALIFORNIA
ANNUAL FINANCIAL REPORT
FOR THE PERIOD OF INCEPTION (NOVEMBER 4, 2019) THROUGH JUNE 30, 2020

CLEAN ENERGY ALLIANCE
ANNUAL FINANCIAL REPORT
FOR THE PERIOD OF INCEPTION (NOVEMBER 4, 2019) THROUGH JUNE 30, 2020

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INTRODUCTORY SECTION



January 11, 2021

To the Clean Energy Alliance Board of Directors (Board) and Residents/Businesses within CEA territory:

We are pleased to submit the Comprehensive Annual Financial Report (Report) of Clean Energy Alliance (CEA) for the fiscal year ended June 30, 2020.

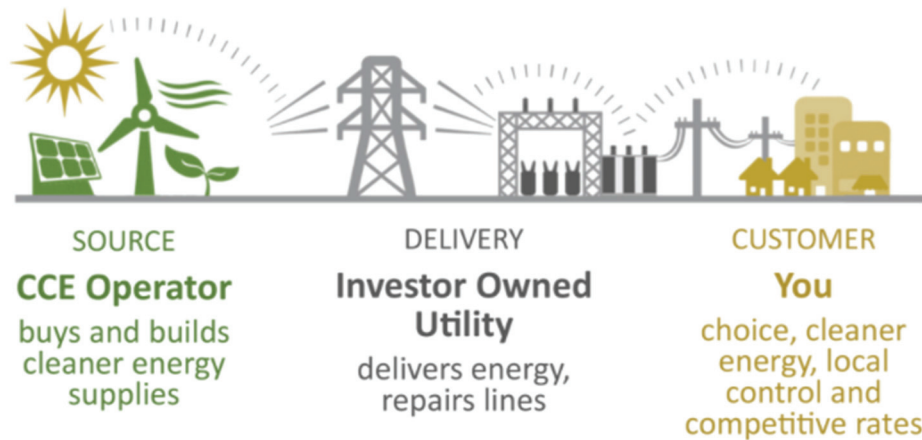
The Interim Treasurer/Chief Financial Officer prepared the data in this Report. Lance, Soll & Lunghard, LLP (LSL) independently audited the financial statements and related notes. Nonetheless, CEA bears the responsibility for the accuracy of all data presented in this Report. We, CEA's Interim Chief Executive Officer and Interim Treasurer/Chief Financial Officer, assume the responsibility for the Report's completeness and fairness of presentation including all disclosures. We affirm that, to the best of our knowledge and belief, information in the Report provides an accurate and fair representation of CEA's financial position and the status of its operations during the fiscal year ended June 30, 2020. We believe that this Report contains all information and disclosures needed to clearly understand CEA's Fiscal Year 2020 financial activities.

LSL has issued an unmodified opinion on CEA's financial statements for the fiscal year ended June 30, 2020. The independent auditors' report is located at the front of the financial section of this Report.

A Management Discussion and Analysis (MD&A) is normally included as part of the Report. The MD&A provides "financial highlights" and interprets the financial reports by analyzing trends and by explaining changes, fluctuations, and variances in the financial data by comparing current fiscal year financial information to the previous year's financial information. This is the first fiscal year for CEA; therefore, a MD&A is not included in the Report for the fiscal year ended June 30, 2020.

BACKGROUND

California Assembly Bill 117 allows local governments to form Community Choice Aggregations (CCAs), which are also referred to as Community Choice Energy (CCE) programs, that offer an alternative electric power option to constituents currently served electric power by investor owned utilities (IOUs). Under the CCE model, local governments purchase and manage their community's electric power supply by sourcing power from a preferred mix of traditional and renewable generation sources, while the incumbent IOU continues to provide distribution service. CCEs face the same requirements for renewable energy purchases as the incumbent IOUs and public utilities; however, many CCE programs can offer power content that has a greater share of renewable energy compared with the incumbent utility and at lower retail rates.



Marin County was the first to create a California CCE utility in 2008. Today there are 19 CCE programs operating throughout California. In San Diego County, Solana Beach began using this model in 2018 with Solana Energy Alliance (SEA), and other cities and the county are currently exploring CCE formations. The cities of Chula Vista, Encinitas, Imperial Beach, La Mesa and San Diego recently formed a CCE named San Diego Community Power (SDCP).

GOVERNMENT PROFILE

A feasibility study was completed in April 2019 that evaluated the financial feasibility of a potential CCE, and based on this study, the cities of Carlsbad, Del Mar, and Solana Beach partnered in November 2019 to form CEA. CEA is organized under the Joint Powers Act (California Government Code 6500 et seq). By law, as a joint powers authority (JPA), CEA is a separate legal entity from its member agencies. Its budget is separate from the member cities' general funds. In addition, CEA is funded by program revenues and reserves.



Senate Bill 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. Each city has adopted a Climate Action Plan to help the city meet the state goals for reducing greenhouse gasses and a CCA is expected to help the cities meet those goals.

Among other goals, the agreement seeks to meet the following objectives:

- Default energy product from a minimum 50% renewable sources
- Voluntary 100% renewable energy service at a premium above the default service rate
- Default rates that are set to provide a minimum target of 2% discount below San Diego Gas & Electric (SDG&E) comparable service offerings.

Each member city has equal voting power and JPA board meetings are held monthly, rotating between the cities of Carlsbad, Del Mar and Solana Beach. CEA is operated under the direction of a Chief Executive Officer (CEO) appointed by the Board, with legal and regulatory support provided by a Board-appointed General Counsel. In the future, CEA's service area may expand to include additional regional agencies.

There are approximately 58,000 eligible customer accounts within CEA's boundaries as shown in the table below:

Residential	49,800
Commercial & Agriculture	8,000
Street Lighting & Traffic	<u>200</u>
	58,000

Budgetary Process and Controls

An annual budget is adopted by the Board before the fiscal year begins and can be amended during the fiscal year by the Board as needed. All expenditures are made in accordance with the approved budget.

While CEA's first year of operations reported a deficit net position of \$278,684, as explained in Note 2 to the Financial Statements, the reason for the deficit is that CEA has not established a revenue stream by selling energy to customers but has incurred operating expenses associated with startup costs. These startup costs were funded by advances made by the founding members. From a budgetary comparison, the budget to actual variance was a net positive variance of \$71,316 as shown in the schedule on the following page.

CLEAN ENERGY ALLIANCE
BUDGETARY COMPARISON SCHEDULE
November 4, 2019 through June 30, 2020

	BUDGET	ACTUALS	VARIANCE
Operating Expenses			
Professional Services			
Administrative	\$ 50,000	\$ 95,874	\$ (45,874)
Legal	130,000	77,796	52,204
Technical	115,000	78,469	36,531
Total Professional Services	295,000	252,139	42,861
Membership Dues	1,500	26,500	(25,000)
Graphic Design Services	6,500	-	6,500
Bank Fees	-	45	(45)
Total Operating Expenses	303,000	278,684	24,316
Other Sources and Uses			
Sources			
Advances from Member Agencies	450,000	450,000	-
Uses			
CCA Bond	147,000	100,000	47,000
Total Sources and Uses	303,000	350,000	(47,000)
Net Increase (Decrease) in Available Fund Balance	\$ -	\$ 71,316	\$ (71,316)

Internal Controls

The management of CEA is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of CEA are protected from loss, theft, or misuse, and to ensure that adequate accounting data is compiled to allow for the preparation of financial statements in conformity with Generally Accepted Accounting Principles (GAAP). The internal control structure is designed to provide reasonable, but not absolute, assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the costs of a control should not exceed the benefits likely to be derived; and (2) the valuation of costs and benefits requires estimates and judgments by management. The internal control structure is subject to periodic evaluation by the management of CEA.

Annual Audit

LSL has audited CEA's financial statements. The goal of the independent audit is to provide reasonable assurance that the financial statements of CEA for the fiscal year ended June 30, 2020, are free of material misstatement. As part of CEA's annual audit, reviews are made to determine the adequacy of the internal control structure as well as to determine that CEA has complied with applicable laws and regulations.

The results of CEA's annual audit for the fiscal year ended June 30, 2020, provided no instances of material weaknesses in the internal control structure and no violations of applicable laws and regulations. The independent auditor concluded there was a basis for rendering an unmodified opinion and CEA's financial statements are fairly presented in conformity with GAAP. The independent auditor's report is presented as the first component of the financial section of this Report.

Administrative and Operational Policies

The policies listed below were approved by the end of the fiscal year and are based on government code or regulatory requirements and best practices of successfully operational CCAs:

- Travel and Expense Reimbursement Policy
- Protection of Confidential Information Policy
- Privacy and Customer Confidentiality Policy
- Advanced Metering Infrastructure Data Security and Privacy Policy
- Collections Policy

IMPLEMENTATION TIMELINE

To meet the goal of a 2021 launch, pertinent action items needed to be completed by the end of the fiscal year. These tasks were tracked on a timeline to ensure they were being completed on time and in compliance with regulatory requirements. The action items were grouped into three general categories:

- Administrative
- Implementation Plan Related
- Regulatory Compliance

Administrative tasks included actions specific to the operations of CEA, such as appointment of interim staff and adoption of policies and procedures. Implementation Plan Related tasks included actions specific to meeting the requirements established by California Public Utilities Commission (CPUC) Resolution E-4907 for the Clean Energy Alliance to begin serving customers in 2021. They included preparation, approval and filing of the Implementation Plan, creating and submitting a draft customer notice, filing the financial security (CCA bond) requirement and execution of the SDG&E Service Agreement. Regulatory Compliance tasks included actions such as preparation and filing of an initial Renewable Portfolio Standards Procurement Plan and participation in the year-ahead Resource Adequacy process.

By the end of the fiscal year, all actions listed on the timeline were successfully completed as shown in the schedule on the following page:

Clean Energy Alliance
Timeline of Implementation Related Action Items

Timing	Date Completed	Description	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20
12/19/19	12/19/19	Appoint Interim Executive Director							
12/19/19	12/19/19 & 12/23/19	Approve & File Implementation Plan & Statement of Intent							
1/16/20	1/16/20	Direction on Banking and Credit Solutions							
1/16/20	1/16/20	Authorize RFP for Technical Consultant to Assist with Regulatory Filings							
1/16/20	1/16/20	Authorize RFP for Data Manager/Call Center							
1/16/20	1/16/20	CEA Public Outreach and Marketing Kickoff							
1/20/20	1/20/20	Issue RFP for Technical Consultant & Data Manager							
2/20/20	2/20/20	Select Financial Institution & Approve Financing Plan							
2/20/20	2/20/20	Select Technical Consultant to Assist with Regulatory Filings							
2/20/20	2/20/20	Select Data Manager							
2/20/20	2/20/20	Staff Develop & Submit Draft Customer Notice to CPUC							
2/20/20	2/20/20	Develop Renewable Portfolio Standards Procurement Plan							
2/20/20	2/20/20	Authorize Execution of Service Agreement with SDG&E							
4/20/20	4/23/20	Post CCA Bond with CPUC							
4/20/20	4/23/20	Execute Service Agreement with SDG&E & Submit to CPUC							
4/20/20	4/23/20	Year-Ahead Resource Adequacy Forecast Filing							
6/30/20	6/30/20	Initial Resource Adequacy Solicitation Initiated							
6/30/20	6/30/20	File Updated Renewable Portfolio Standards Procurement Plan							

Key:

Administrative
Implementation Plan Related
Regulatory Compliance

Implementation Plan

Public Utilities Code Section 366.2(c)(3) establishes the requirements related to the filing of an Implementation Plan (Plan) for a CCA program. CEA submitted its Plan by the due date of January 1, 2020 which made CEA eligible to serve customers in 2021. This regulatory compliance document details CEA's complete organizational and operational structure including setting operational policies and its process of hiring key vendors and staff; goals such as renewable energy standards, energy supply mix and rate discount targets; and addresses universal access, reliability and state law compliance

CEA achieved a significant milestone on March 16, 2020 with the CPUC's certification of the Plan.

ELECTRICAL USAGE AND COVID-19

United States economic growth was continuing with solid growth in business investment and spending until March 2020 when the growth was curtailed by the COVID-19 pandemic. In response to the outbreak and spread of COVID-19, in March 2020, California Governor Gavin Newsom issued stay at home orders and shut down non-essential businesses. In January 2020, California expected a \$5.6 billion surplus in the state budget by the time the fiscal year ended on June 30. In May, however, the Department of Finance changed its projection, saying that the state would instead have a deficit of \$54.3 billion. Some of this shortfall was caused by expenses for COVID-19 response - an unanticipated \$7.1 billion for health programs and an additional \$6 billion for other types of responses - but most was caused by the expectation that tax revenue—personal income, corporate, and sales—will be one-quarter lower than originally projected.

Since mid-March, as infection rates fluctuated, there have been various versions of stay-at-home orders statewide and by the County of San Diego. The most recent increase in infections rates, and subsequent hospitalizations and related deaths, have resulted in Governor Newsom announcing on December 3, 2020, a regional stay-at-home order, which divides the state into 5 regions (Northern California, Bay Area, Greater Sacramento, San Joaquin Valley, Southern California). The order would be implemented in any region if the region's ICU capacity falls 15% and would be in effect for three weeks at a time. As of the beginning of January, only Northern California has not reached the 15% threshold.

How has Covid-19 affected electrical usage? Broadly speaking, the pandemic has resulted in a decrease in electricity usage by commercial customers, largely due to the economic slowdown and millions of employees working from home. Conversely, residential consumption is up, which is leading to higher bills for some households. During the hot summer and early fall months, residential usage spiked due to families being home during the day when they would otherwise be at work or school.

Shortly after Governor Newsom instituted the first stay-at-home order in March, SDG&E suspended all service disconnections due to non-payment, waived late payment fees for business customers and offered flexible payments for customers struggling to pay their monthly bills. SDG&E has also suspended sending out late notices and streamlined processed for enrollment in programs that offer discounts on power bills is up. These measures are due to expire in April 2021.

Consumer protections were further extended in June 2020 when the CPUC mandated an Arrearage Management Program (AMP) which provides debt forgiveness of past due amounts for residential customers that meet certain criteria. Debt forgiven will be reimbursed to the utilities, and CCAs, from Public Purpose Program funds administered by the CPUC. The Board will consider participating in the AMP at its January board meeting.

FUTURE GOALS AND PLANS

Credit Solution

CEA requires financing for its start-up implementation activities and initial cash flow. Initial start-up funding was provided by advances from its Member Agencies to be repaid in the future from revenues generated through CCA operations. CEA plans to seek financing for implementation and initial cash flow needs through a loan or line of credit from a financial institution.

The implementation of the CCA Program requires funding for three major functions: (1) staffing and contractor costs; (2) deposits and reserves; and (3) operating cash flow. Based on CEA's anticipated start-up activities and implementation schedule, a total need of \$6M has been identified to support the functions. A short-term borrowing arrangement has been made with Calpine Energy Solutions (Calpine) for \$650,000 to cover CEA's cash flow needs through January 2021. A revolving credit agreement with JPMorgan is expected to be finalized at the beginning of February 2021.

Out of the \$6M capital requirements, \$540K is related to the administrative costs related to 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 beginning in May 2021. Deposits in the amount of \$745K will also need to be posted to the California Independent System Operator (CAISO) for CEA to be a Congestion Revenue Rights Holder and

related to power procurements. CEA plans to repay the short-term loan to Calpine of \$650K and \$1M will be available to accommodate contingencies and letters of credit that may be required by energy suppliers. The remaining \$590K is the cash “float” required for CEA to pay its monthly bills due to the timing of when customer payments are anticipated to begin coming in and when expenses are due.

Community Advisory Committee (CAC)

The Board approved a CAC Policy at the regular Board meeting held in July. Per the policy, the purpose of the CAC is to advise CEA’s Board of Directors on those matters concerning the operation of its CCA program as directed by the Board in an annual workplan for the CAC that is adopted by the Board. The objectives of the CAC are to provide feedback to the Board, act as a liaison between the Board and the community and serve as a forum for community input on those matters assigned to the CAC in the annual workplan. The CAC does not have any decision-making authority but serves as an advisory body to the Board of Directors. The CAC membership consist of two appointees from each CEA member agency and 1 Board Alternate.

At the Board meeting held in September 2020, the Board approved the following scope of work and desired outcomes for the Workplan:

- Community Outreach
- Social Equity Issues
- CEA Program Review for meeting CEA Goals of equity & innovation
- Monitoring Climate Action Plan goals
- Play role in strategic plan process

The first meeting of the CAC took place on December 3, 2020.

Integrated Resource Plan (IRP)

The Board adopted an IRP at its August 2020 meeting which provides the CPUC with CEA’s 10-year projected electricity load as part of the integrated resource planning process. The IRP is required to ensure that California’s electric sector meets its Green House Gas (GHG) reduction goals while maintaining reliability at the lowest possible costs. The IRP was submitted by the September 1, 2020 deadline.

Energy Risk Management Policy (ERMP)

CEA established an ERMP to manage the inherent risks associated with wholesale energy market transactions. These transactions include procurement of energy products needed to fulfill customer needs and meet regulatory compliance requirements, the negotiation of contracts for those products, review and validation of related invoices, payments of invoices, resolution of disputes and management of credit concerns. The ERMP provides a framework and related guidance, intended to establish procedures for administration of the tasks and responsibilities related to risk management, including identification of necessary roles and responsibilities assigned to those individuals and groups who will be involved in the energy transactions process and risk management activities.

Energy market risks that the ERMP is intended to assist CEA in addressing include:

- Market Price Risk – exposure to changes in wholesale energy prices
- Counterparty Credit and Performance Risk – inability or unwillingness of a counterparty to perform according to its contractual obligations
- Load and Generation Volumetric Risk – inaccuracies in load forecasts resulting in over- or under-procurement of energy and/or customer rate revenues that deviate from projections
- Operational Risk – potential for failure to execute and control business activities relative to plan
- Liquidity Risk – risk that CEA will be unable to meet its financial obligations
- Regulatory/Legislative Risk – shifting state and federal regulatory policies, rules, and requirements that could negatively impact CEA

To mitigate CEA’s exposure to such risks, the Policy has been adopted to focus on the following key principles:

- Risk Management Goals and Principles
- Internal Control Principles
- Risk Management Business Practices
- Risk Management Policy Governance

CEA Communications and Marketing

A ten-month workplan was developed for communications and marketing tasks needed to support CEA’s implementation efforts. These tasks are in the areas of branding, website design and launch, social media, communication tools, customer notifications, press and public relations. As part of the branding efforts, the following logo for CEA was designed and approved:



The CEA website was updated and went live on December 1, 2020 at thecleanenergyalliance.org

CEA Launch Schedule

SDG&E has been working over the past several years on their Customer Information System replacement program, known as Envision. They had committed to, and were on track, for a January 4, 2021 go live, despite the challenges of working remote in the COVID-19 environment. With a January 2021 go live, SDG&E committed to supporting CEA’s launch of May 2021. CEA and its consultants worked diligently with SDG&E to develop a launch schedule that minimized impact to CEA while also minimizing the risk of incorrect bills being sent to customers. SDG&E and CEA agreed to a two-phased schedule with accounts transitioning to CEA in May and June 2021. May 2021 Phase 1 would include the transition of SEA customers to CEA as well as customers who do not have complex billing plans in Carlsbad and Del Mar.

Those customers who have been identified with complex billing plans would transition in June 2021. Preliminary analysis indicates that the proposed phasing does not have a material impact from a financial perspective.

CCA Launch

To date, CEA is meeting its milestones for the implementation of its CCA program and is on track to begin serving customers in May 2021/June 2021. The following are the identified milestones and completion dates:

- Award Scheduling Coordinator Services contract - September 2020
- Resource Adequacy Compliance - October 2020 and ongoing monthly reports

As a load serving entity serving customers in 2021, CEA has an obligation to procure Resource Adequacy (RA), based on quantities allocated by the CPUC and CAISO. RA procurements do not supply any energy to CEA or its customers, rather it commits the seller to be available to supply energy to the grid if called upon by CAISO and reduce the possibility of outages. This process is key to ensuring grid reliability. CEA has monthly and annual RA compliance reporting requirements with the Year-Ahead Compliance Demonstration due by October 31, 2020. This report must demonstrate CEA has entered into contracts to meet CPUC requirements. CEA successfully procured all its RA requirements by the due date and is fully compliant with its RA obligation.

- Long-Term Renewable Procurement

As a load serving entity, CEA will be required to procure 65% of its minimum state required renewable portfolio standards in contracts of 10-years or longer. To ensure compliance with this requirement, CEA's initial renewable energy solicitation is underway. The solicitation process, from beginning through final execution can be lengthy, particularly in light of the impacts of COVID-19 on the renewable development industry. The solicitation opened on July 1, 2020 with proposals due July 27, 2020. CEA's consultant, Pacific Energy Advisors, has identified a short list of projects and negotiations are proceeding. It is anticipated final contracts will be before the Board in first quarter 2021.

- System testing with SDG&E - 4th quarter 2020 and 1st quarter 2021
- Setup Call Center, develop scripting and Interactive Voice Response (IVR) recordings - 4th quarter 2020 and 1st quarter 2021
- Create customer pre-and post-enrollment Notices – 4th quarter 2020
- Select product options to offer at launch with 50% renewable energy product as the minimum default energy product/renewable energy policies - February 2021
- Set Rates - March 2021
- Customer Noticing – March – August 2021
- Procure Power – Spring 2021
- Go live in two phased CCA implementation process to accommodate SDG&E's billing system replacement project – May and June 2021

Administrative and Operational Policies

In addition to the policies mentioned in previous sections, the following policies were approved by the Board after June 30, 2020:

- Unsolicited Proposals Policy
- Non-Energy Procurement Policy
- Inclusive and Sustainable Workforce Policy
- Financial Reserve Policy
- 2020 Legislative and Regulatory Platform
- Records Retention Policy
- Bid Evaluation and Criteria Scoring System Policy
- Investment Policy (January Board Meeting)
- Social Media Policy (January Board Meeting)
- Debt Management Policy (January Board Meeting)

Acknowledgments

We would like to thank the Board of Directors for their continued support for maintaining the highest standards of professionalism in the management CEA's finances and acknowledge the professional work and advice of Lance, Sol & Lunghard, LLP.

Respectfully submitted,



Barbara Boswell
Interim Chief Executive Officer

Respectfully submitted,



Marie Marron Berkuti
Interim Treasurer/Chief Financial Officer

CLEAN ENERGY ALLIANCE

Members and officers of the Board of Directors on June 30, 2020

<u>Member Agency</u>	<u>Representative</u>	<u>Alternate</u>
City of Carlsbad	Cori Schumacher – Chair	Matt Hall
City of Del Mar	Ellie Haviland – Vice Chair	Dwight Worden
City of Solana Beach	Kristi Becker	Judy Hegenauer

CEA Staff

Barbara Boswell – Interim Chief Executive Officer
Marie Marron Berkuti – Interim Treasurer/Chief Financial Officer
Sheila Cobian – Interim Board Secretary
Susan Caputo – Interim Board Clerk

FINANCIAL SECTION



INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Clean Energy Alliance
Carlsbad, California

Report on the Financial Statements

We have audited the accompanying financial statements of Clean Energy Alliance (CEA) for the period of inception to June 30, 2020, and the related notes to the financial statements, which collectively comprise CEA's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.



To the Board of Directors
Clean Energy Alliance
Carlsbad, California

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Clean Energy Alliance as of June 30, 2020, and the changes in financial position and cash flows thereof for the period then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Management has omitted the management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

Other Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise CEA's basic financial statements. The introductory section is presented for purposes of additional analysis and are not a required part of the basic financial statements and has not been subjected to the auditing procedures applied in the audit of the basic financial statement. Accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated January 11, 2021, on our consideration of CEA's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of CEA's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering CEA's internal control over financial reporting and compliance.

A handwritten signature in cursive script that reads "Lance, Soll & Lughard, LLP".

Brea, California
January 11, 2021

CLEAN ENERGY ALLIANCE

STATEMENT OF NET POSITION
JUNE 30, 2020

Assets:

Cash and cash equivalents	\$	203,530
Deposits		<u>100,000</u>
Total Assets		<u>303,530</u>

Liabilities:

Accounts payable		78,197
Due to member agencies		<u>504,017</u>
Total Liabilities		<u>582,214</u>

Net Position:

Unrestricted		<u>(278,684)</u>
Total Net Position	\$	<u>(278,684)</u>

The notes to financial statements are an integral part of this statement.

CLEAN ENERGY ALLIANCE

**STATEMENT OF REVENUES, EXPENSES,
AND CHANGES IN NET POSITION
FOR THE PERIOD OF INCEPTION (NOVEMBER 4, 2019) THROUGH JUNE 30, 2020**

Operating Expenses:

Professional services	\$	252,139
Membership dues		26,500
Miscellaneous		45

Total Operating Expenses		278,684
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Operating (Loss)		(278,684)
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Net Position - Beginning		-
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Net Position - Ending	\$	(278,684)
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The notes to financial statements are an integral part of this statement.

CLEAN ENERGY ALLIANCE

STATEMENT OF CASH FLOWS

FOR THE PERIOD OF INCEPTION (NOVEMBER 4, 2019) THROUGH JUNE 30, 2020

Cash Flows from Operating Activities:

Payments to suppliers and service providers	\$ (246,470)
Net Cash (Used for) Operating Activities	(246,470)

Cash Flows from Noncapital Financing Activities:

Cash advances from member agencies	450,000
Net Cash Provided by Noncapital Financing Activities	450,000
Net Increase in Cash and Cash Equivalents	203,530

Cash and Cash Equivalents, Inception	-
Cash and Cash Equivalents, June 30	\$ 203,530

Reconciliation of Operating (Loss) to Net Cash (Used for) Operating Activities:

Operating (Loss)	\$ (278,684)
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Adjustments to Reconcile Operating (Loss) to

Net Cash (Used for) Operating Activities:

(Increase) in deposits	(100,000)
Increase in accounts payable	78,197
Increase in due to member agencies	54,017
Total Adjustments	32,214
Net Cash (Used for) Operating Activities	\$ (246,470)

Schedule of Non-Cash Activities:

For the year ended June 30, 2020, CEA received \$54,017 in services provided from its member agencies to support commencement of activities.

The notes to financial statements are an integral part of this statement.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
FOR THE PERIOD OF INCEPTION (NOVEMBER 4, 2019) THROUGH JUNE 30, 2020

Note 1: Summary of Significant Accounting Policies

a. Reporting Entity

Clean Energy Alliance, ("CEA"), is a joint exercise of powers agency organized under the laws of the State of California by agreements dated November 4, 2019 and entered into by the cities of Carlsbad, Del Mar, and Solana Beach, California. CEA was formed to operate a Community Choice Energy program to provide alternative energy resources within those three cities. CEA's powers are exercised through a Board of Directors (the "Board"), which is the governing body of CEA. The Board is responsible for the legislative and executive control of CEA. The governmental reporting entity consists of CEA, which reports no component units.

b. Basis of Presentation

CEA's financial statements are prepared in accordance with accounting principles generally accepted in the U.S (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements (Statements and Interpretations).

c. Basis of Accounting/Measurement Focus

The basic financial statements include a Statement of Net Position, a Statement of Revenues, Expenses and Changes in Fund Net Position, and a Statement of Cash Flows.

The basic financial statements are accounted for using the "economic resources" measurement focus and the accrual basis of accounting. Accordingly, all assets, deferred outflows of resources, liabilities (whether current or noncurrent), and deferred inflows of resources are included on the Statement of Net Position. The Statement of Revenues, Expenses and Changes in Fund Net Position presents increases (revenues) and decreases (expenses) in total net position. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned while expenses are recognized in the period in which the liability is incurred, regardless of the timing of related cash flows.

The basic financial statements distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services in connection with CEA's principal ongoing operations. The principal operating revenues of CEA are charges to customers for energy sales. Operating expenses include the cost of sales and services and administrative expenses. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

d. Net Position Flow Assumption

Sometimes CEA will fund outlays for a particular purpose from both restricted (e.g., restricted bond or grant proceeds) and unrestricted resources. In order to calculate the amounts to report as restricted net position and unrestricted net position in the financial statements, a flow assumption must be made about the order in which the resources are considered to be applied. It is CEA's policy to consider restricted net position to have been depleted before unrestricted net position is applied.

CLEAN ENERGY ALLIANCE

NOTES TO FINANCIAL STATEMENTS (CONTINUED) FOR THE PERIOD OF INCEPTION (NOVEMBER 4, 2019) THROUGH JUNE 30, 2020

Note 2: Stewardship, Accountability, and Compliance

At June 30, 2020, CEA reported a deficit net position of \$278,684. It is not unusual for organizations in their first year of operations to report a deficit. The reason for the deficit is that CEA has not yet established a revenue stream by selling energy to customers but has incurred operating expenses associated with startup costs. This deficit is expected to be eliminated as resources are obtained and sales operations commence on May 1, 2021.

Note 3: Cash and Cash Equivalents

At June 30, 2020, the reported amount of CEA's deposits was \$203,530 and the bank balance was \$305,030. The \$101,500 difference represents various reconciling items such as outstanding checks. Of the bank balance, \$250,000 was covered by federal depository insurance and \$55,030 was covered by collateral held in the pledging bank's trust department in accordance with California Government Code.

Note 4: Deposits Receivable

The CEA deposited \$100,000 with the California Public Utilities Commission (CPUC) for the purpose of covering costs borne by San Diego Gas & Electric (SDG&E) in the event of a mass involuntary return of CEA customers to SDG&E, such as the decertification of CEA or a community choice aggregation failure. This deposit is to be refunded to CEA upon the establishment of a line of credit for the aforementioned purpose.

Note 5: Related Party Transactions

CEA received funding from the cities of Carlsbad, Del Mar, and Solana Beach for the initial startup costs associated with commencing operations. These amounts are refundable back to the cities within three years after operating revenues commence. These advances and services are reported as Due to Member Agencies in the basic financial statements. Amounts due to each of the cities are as follows:

Member	Cash Advances	Services Provided	Total
City of Carlsbad	\$ 150,000	\$ 36,572	\$ 186,572
City of Del Mar	150,000	1,893	151,893
City of Solana Beach	150,000	15,552	165,552
Total	<u>\$ 450,000</u>	<u>\$ 54,017</u>	<u>\$ 504,017</u>

CLEAN ENERGY ALLIANCE

NOTES TO FINANCIAL STATEMENTS (CONTINUED) FOR THE PERIOD OF INCEPTION (NOVEMBER 4, 2019) THROUGH JUNE 30, 2020

Note 6: Subsequent Events

a. Promissory Note

CEA's Board of Directors approved the execution of Promissory Notes with Calpine Energy Solutions on August 20, 2020 and November 19, 2020 for \$400,000 and \$250,000, respectively, to provide funding for CEA operational costs through February 2021. The interest rate of the Promissory Notes is based on the 1-month LIBOR rate plus 2 percent per annum not to exceed 5 percent, with interest accruing from the date funds are deposited in CEA's account. The Notes are to be repaid in twelve equal monthly installments beginning 90 days after the Power Start Date (or date CEA begins serving customers).

b. Letter of Credit

On December 7, 2020, CEA opened a letter of credit with U.S. Bank National Association in the amount of \$147,000, with an expiration date of December 7, 2021. The purpose of this letter of credit is described in Note 4. SDG&E may only withdraw funds from the letter of credit for unpaid administrative or procurements costs associated with the return of CEA customers. Any withdrawal of these funds must first be approved by the CPUC.



INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL
OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
WITH *GOVERNMENT AUDITING STANDARDS*

To the Board of Directors
Clean Energy Alliance
Carlsbad, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of Clean Energy Alliance (CEA), as of and for the period from inception to June 30, 2020, and the related notes to the financial statements, which collectively comprise CEA's basic financial statements, and have issued our report thereon dated January 11, 2021.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered CEA's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of CEA's internal control. Accordingly, we do not express an opinion on the effectiveness of CEA's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether CEA's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.



To the Board of Directors
Clean Energy Alliance
Carlsbad, California

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of CEA's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering CEA's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Lance, Soll & Lughard, LLP

Brea, California
January 11, 2021



Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 2: Adopt Resolution Approving Clean Energy Social Media Policy

RECOMMENDATION

Adopt Resolution #2021-001 approving Clean Energy Alliance Social Media Policy.

BACKGROUND AND DISCUSSION:

As part of establishing a new organization, the Clean Energy Alliance (CEA) Board has been adopting operational and administrative policies since its inception. CEA will be ramping up its marketing and communications outreach efforts in support of its CCA launch in May. CEA will increase its social media presence to provide information and communicate to the public. A Social Media Policy establishes procedures for handling such communications that ensures that CEA is following best practices, and that the public is aware of how certain communications will be handled. The proposed Social Media Policy has been based on similar policies adopted by CCAs throughout the state and has been reviewed by member agency staff and CEA General Counsel for input.

FISCAL IMPACT

There is no fiscal impact as a result of this action.

ATTACHMENTS

Resolution 2021-001 Approving Clean Energy Alliance Social Media Policy
Draft Social Media Policy

**CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2021-001**

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE CLEAN ENERGY ALLIANCE
APPROVING SOCIAL MEDIA POLICY**

WHEREAS, the Clean Energy Alliance (CEA) is a joint powers agency, formed on November 4, 2019, by founding members cities of Carlsbad, Del Mar and Solana Beach; and

WHEREAS, Community Choice Aggregation (CCA) authorized by Assembly Bill 117, is a state law that allows cities, counties, and other authorized entities to aggregate electricity demand within their jurisdictions in order to purchase and/or generate alternative energy supplies for residents and businesses within their jurisdiction while maintaining the existing electricity provider for transmission and distribution services; and

WHEREAS, CEA Board has approved an Implementation Plan and Statement of Intent which was certified by the California Public Utilities Commission (CPUC) on March 16, 2020; and

WHEREAS, the CEA Board desires to establish administrative and operational policies.

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 Social Media Policy.

The foregoing Resolution was passed and adopted this 21st day of January 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Kristi Becker, Chair

ATTEST:

Sheila Cobian, Board Secretary



CEA-015

SOCIAL MEDIA POLICY

Clean Energy Alliance (CEA) has determined that the use of social media is an effective tool to augment traditional communications methods to communicate news and information to the public. The use of social media presents CEA with an opportunity to enhance communication with customers as a means to exchange information, increase brand awareness, and build positive engagement. This document establishes protocol for best practices when engaging with the public on social media and is subject to change by CEA as needed.

Policy

1. Clean Energy Alliance is responsible for determining who is authorized to use social media on behalf of the agency.
2. Staff should strive to respond to comments on social media within one business day, as priorities allow, and if the comments warrant a response.
3. Comments containing any of the following shall be removed as soon as possible:
 - a. Profane language or content;
 - b. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, national origin, physical or mental disability, sexual orientation, gender identity or gender orientation;
 - c. Sexual content or links to sexual content;
 - d. Disparaging, harassing, or threatening content intended to threaten or defame any person, group or organization;
 - e. Spam or comments that are clearly unrelated to the topic;
 - f. Links to any site or content posted by automatic software programs (i.e. bots);
 - g. Solicitation, promotion or endorsement of specific commercial services, products or entities;
 - h. Promotion or encouragement of illegal activity;
 - i. Content that appears to violate the intellectual property rights of CEA or a third-party under federal or state law, including copyrights or trademarks;
 - j. Content that compromises the safety or security of the public, public systems or CEA employees;
 - k. Personally identifiable information or sensitive personal information that, if released, violates federal or state law;
 - l. Promotion or endorsement of a political campaign or candidate;
 - m. Inaccurately implying the endorsement, approval, or sponsorship by CEA.

4. All comments posted to CEA social media will be monitored. CEA reserves the right to deny access to its social media pages to an individual who violates the above standards.
5. A comment on any CEA social media page is the opinion of the commentor or poster, and does not imply endorsement of, or agreement by, CEA;
6. To the extent consistent with applicable law, CEA is authorized to remove unauthorized content, comments, or links posted on its social media that violate the above standards; provided, however, that this will be performed in a view-point neutral manner.

Any comments that are removed may be considered public records and will be retained by CEA for a period of at least two (2) years, or for such other period as required by law or provided in CEA's record retention schedule.

The Chief Executive Officer (CEO) shall implement this policy and is authorized to revise this policy as needed to reflect updated CEA practices and legal developments, subject to General Counsel approval. The CEO is also authorized to adopt a more detailed internal social media policy for use by CEA employees, consultants, and agents for administering CEA's social media pages.

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 3: Adopt Resolution Approving Clean Energy Alliance Debt Issuance Policy

RECOMMENDATION

Adopt Resolution #2021-002 approving Clean Energy Alliance Debt Issuance Policy.

BACKGROUND AND DISCUSSION

The Clean Energy Alliance (CEA) Board will be considering approval of a credit agreement with JPMorgan, which provides financing of CEA's start-up, initial operations and cash flow needs. In advance of that approval, it's prudent for the Board to consider adopting a Debt Issuance Policy (Policy). The purpose of the Policy is to establish comprehensive guidelines for the issuance and management of debt issued by CEA. It is intended to help ensure the CEA, its Board, and staff adhere to sound debt issuance and management practices; CEA achieves the most advantageous cost of capital within prudent risk parameters; CEA preserves future financial flexibility; and CEA preserves and enhances the credit ratings assigned to its debt.

The Policy, as proposed, has been drafted by CEA's Special Legal Counsel Nixon Peabody LLP, and is consistent with applicable Federal and State laws, rules and regulations and reflects best practices related to debt issuance and management practices.

FISCAL IMPACT

There is no fiscal impact as a result of this action.

ATTACHMENTS

Resolution #2021-002 Approving Clean Energy Alliance Debt Issuance Policy

**CLEAN ENERGY ALLIANCE
RESOLUTION 2021-002**

**RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN ENERGY ALLIANCE
ESTABLISHING A DEBT ISSUANCE POLICY FOR FUTURE OBLIGATIONS**

WHEREAS, Clean Energy Alliance (“CEA”) is a joint powers authority established on November 4, 2019, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, the Legislature of the State of California (the “State”) has adopted S.B. 1029 (“S.B. 1029”), amending Section 8855 of the Government Code of the State, and effective in part as of January 1, 2017, which, among other things, requires local agencies within the State, such as CEA, to establish and implement a formal policy governing the methods by which the CEA issues debt obligations (“Debt”) and the internal controls over the issuance of Debt; and

WHEREAS, the Board has caused to be drafted a form of such a policy (the “Debt Issuance Policy”), a form of which is appended to this Resolution as Exhibit A and incorporated herein by this reference; and

WHEREAS, the Board hereby determines the Debt Issuance Policy proposed to be implemented for all future Debt issuances of CEA meets all the requirements of S.B. 1029 and ensures the greatest possible degree of transparency for the public as to any kind of Debt transaction obligating CEA; and

WHEREAS, the Board hereby determines that the Debt Issuance Policy shall be effective for all Debt issuances approved by the Board following the effective date of this Resolution, which shall occur upon the majority vote of the Directors of the Board; and

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Debt Issuance Policy attached hereto as Exhibit A is hereby approved and adopted, and staff is directed to comply therewith, for all future issuances of Debt approved by the Board following the effective date of this Resolution; provided, however, that staff may review the Debt Issuance Policy and report to the Board any suggested amendments to the Debt Issuance Policy, based either upon further State legislative action or upon staff experience in implementing the Debt Issuance Policy. In the event such recommendations are made to the Board, the Board reserves the right to approve or decline to approve such amendments; any amendments will be made by further Resolution of the Board.

Section 3. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was passed and adopted this 21st day of January 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Kristi Becker, Chair

ATTEST:

Sheila Cobian, Interim Board Secretary

Exhibit A

DEBT ISSUANCE POLICY

(See attachment)



CEA-##

CLEAN ENERGY ALLIANCE**DEBT ISSUANCE POLICY**

Dated as of January __, 2021

I. Purpose

The purpose of this Debt Issuance Policy (the “Debt Policy”) is to establish comprehensive guidelines for the issuance and management of debt (herein referred as “Debt”) issued by the Clean Energy Alliance (the “Issuer”). This Debt Policy is intended to help ensure that: (i) the Issuer, the governing body of the Issuer (the “Board of Directors” or the “Board”), and Issuer management and staff adhere to sound debt issuance and management practices; (ii) the Issuer achieves the most advantageous cost of capital within prudent risk parameters; (iii) the Issuer preserves future financial flexibility; and (iii) the Issuer preserves and enhances the credit ratings assigned to its debt.

II. Scope of Debt Policy

This Debt Policy shall provide guidance for the issuance and management of bonds and other forms of indebtedness of the Issuer, together with any credit, liquidity and other ancillary instruments and agreements secured or executed in connection with such transactions. While adherence to this Debt Policy is recommended in applicable circumstances, the Issuer recognizes that changes in the capital markets, Issuer programs and other unforeseen circumstances may produce situations that are not covered by the Debt Policy or require modifications or exceptions to achieve Debt Policy goals. In these cases, management flexibility is appropriate, provided specific authorization from the Board is obtained. The Issuer may approve Debt and other related agreements the terms or provisions of which deviate from this Debt Policy, upon the recommendation and approval of the Chief Financial Officer of the Issuer (the “Chief Financial Officer”) as circumstances warrant. The failure by the Issuer to comply with any provision of this Debt Policy shall not affect the validity of any Debt that is otherwise duly authorized and executed.

The Chief Financial Officer is the designated administrator of the Debt Policy. The Chief Financial Officer shall have the day-to-day responsibility and authority for structuring, implementing and managing the Issuer's debt and financing program. The Debt Policy requires that each debt issuance be specifically authorized by the Board of Directors.

III. Legal Authority; Compliance with Laws, Resolutions, Debt Documents and Contracts**A) Legal Authority**

The Issuer has exclusive authority to plan and issue Debt for Issuer related purposes, subject to approval by the Board of Directors.

B) Compliance with Law

All Debt of the Issuer shall be issued in accordance with applicable Federal and State laws, rules and regulations, including without limitation the Internal Revenue Code of 1986 (the “Code”) with respect to the issuance of tax-exempt Debt, the Securities Act of 1933 and the Securities Exchange Act of 1934, in each case as supplemented and amended, and regulations promulgated pursuant to such laws.

C) Compliance with Issuer Resolutions and Debt Documents

Debt of the Issuer shall be issued in accordance with applicable resolutions and debt documents of the Issuer, in each case as supplemented and amended.

D) Compliance with Other Agreements

Debt of the Issuer shall be issued in compliance with any other agreements of the Issuer with credit or liquidity providers, bond insurers or other third parties.

E) Compliance with SB 1029

This Debt Policy complies with California Senate Bill 1029 (2016).

IV. Administration of Debt Policy

A) Issuer

The Issuer shall be responsible for:

- 1) Approval of the issuance of all Debt and the terms and provisions thereof;
- 2) Appointment of municipal advisors, bond counsel, disclosure counsel, Issuer consultants, underwriters, feasibility consultants, trustee and other professionals retained in connection with the issuance of Debt;
- 3) Approval of this Debt Policy and any supplements or amendments;
- 4) Periodic approval of the Issuer's expenditure plans;
- 5) Periodic approval of proposed Issuer annual and supplemental budgets for submission to the Board of Directors, including without limitation provisions for the timely payment of principal of and interest on all Debt; and
- 6) Maintaining internal control procedures with respect to Debt proceeds. Debt proceeds will be held either by a third-party trustee, which will disburse such proceeds to the Issuer upon the submission of one or more written requisitions, or by the Issuer to be held and accounted for in a separate fund or account, the expenditure of which will be carefully documented by the Issuer.

B) Chief Financial Officer

The Chief Financial Officer shall have responsibility and authority for the structure, issuance and management of the Issuer's Debt and financing programs. These responsibilities shall include, but not be limited to, the following:

- 1) Determining the appropriate structure and terms for all proposed debt transactions;
- 2) Undertaking to issue Debt at the most advantageous interest and other costs consistent with prudent levels of risk;
- 3) Ensuring compliance of any proposed Debt with any applicable additional debt limitations under State law, or the Issuer's Debt Policy, resolutions and debt documents;
- 4) Seeking approval from the Board of Directors for the issuance of Debt or other debt obligations;
- 5) Coordinating with other public agencies in connection with necessary approvals associated with Debt issuance;
- 6) Recommending to the Board of Directors the manner of sale of any Debt or other debt transactions;
- 7) Monitoring opportunities to refund outstanding Debt to achieve debt service savings, and recommending such refunding to the Board, as appropriate;
- 8) Providing for and participating in the preparation and review of all legal and disclosure documents in connection with the issuance of any Debt by the Issuer;
- 9) Recommending the appointment of municipal advisors, bond counsel, disclosure counsel, Issuer consultants, underwriters, feasibility consultants and other professionals retained in connection with the Issuer's debt issuance as necessary or appropriate;
- 10) Distributing information regarding the business operations and financial condition of the Issuer to appropriate bodies on a timely basis in compliance with any applicable continuing disclosure requirements;
- 11) Communicating regularly with the rating agencies, bond insurers, investment providers, institutional investors and other market participants related to the Issuer's Debt; and
- 12) Maintaining a database with summary information regarding all of the Issuer's outstanding Debt and other debt obligations.

C) Procedures for Approval of Debt

Any proposed issuance of Debt by the Issuer shall be submitted to and subject to authorization and approval by the Board of Directors.

D) Considerations in Approving Issuance of Debt

The Issuer may take into consideration any or all of the following factors, as appropriate, prior to approving the proposed issuance of Debt:

- 1) Whether the proposed issuance complies with this Debt Policy;
- 2) Source(s) of payment and security for the Debt;
- 3) Projected revenues and other benefits from the projects proposed to be funded;
- 4) Projected operating costs and other costs related to the proposed projects;
- 5) Impacts, if any, on Issuer and Debt credit ratings;
- 6) Period, if any, over which interest on the Debt should be capitalized;
- 7) Extent to which debt service on the Debt should be level or non-level;
- 8) Appropriate lien priority of the Debt; and
- 9) Adequacy of the proposed disclosure document.

V. Purposes for Debt

The Issuer may issue Debt for the purposes of financing and refinancing the costs of capital projects undertaken by the Issuer. The Issuer may also issue Debt to pay extraordinary unfunded costs, including, but not limited to, termination or other similar payments due in connection with interest rate swaps (if any) and investment agreements entered into in connection with Debt. Proceeds of Debt may be applied to pay costs of issuance, to fund capitalized interest and debt service reserves and to pay costs incurred in connection with securing credit enhancement, including, but not limited to, premiums payable for bond insurance and reserve fund sureties.

A) New Money Debt

New money issues are those financings that generate additional funding to be available for expenditure on capital projects. New money proceeds may not be used to fund non-capital operational activities.

B) Refunding Debt

The Issuer may issue Debt to refund the principal of and interest on outstanding Debt of the Issuer in order to (i) achieve debt service savings; (ii) restructure scheduled debt service; (iii) convert from or to a variable or fixed interest rate structure; (iv) change or modify the source or sources of payment and security for the refunded Debt; or (v) modify covenants otherwise binding upon the Issuer. Refunding Debt may be issued either on a current or advance basis, as permitted by applicable Federal tax laws. The Issuer may also utilize a tender offer process to refund Debt that is not otherwise subject to optional call by the Issuer.

Refunding Debt should be issued to achieve debt service savings in most cases. Refundings which do not produce savings are permitted if justified based on the need for restructuring to remove covenants/pledges that are restrictive and/or no longer required by the market and/or to make other changes in debt documents that would benefit the current, short-term, or long term capital cost of the Issuer.

VI. Types of and Limitations on Debt

A) Long-Term Debt

The Issuer may issue Debt with longer-term maturities to amortize Issuer capital or other costs over a period commensurate with the expected life, use or benefit provided by the project, program or facilities financed from such Debt. Long-term Debt will generally have a final maturity of five (5) years or more. Long-term debt is appropriate for financing essential capital projects and certain capital equipment where the project being financed will provide benefit over multiple years and the Issuer considers the project to be of vital, time-sensitive need and there are no plausible alternative financing sources after considering other alternatives, such as pay-as-you-go funding or existing funds on hand.

B) Short-Term Debt

The Issuer may issue Debt with shorter-term maturities to provide interim funding for capital projects and expenditures that will ultimately be funded from another source such as a grant, a long-term Debt issue, or the receipt of Federal or State grants, other revenues, and/or for cash flow management. Short-term Debt shall consist of Debt of an issue with a final maturity of less than five (5) years and may include, but is not limited to, Debt in the form of Tax and Revenue Anticipation Notes, Bond Anticipation Notes, Grant Anticipation Notes, and/or Commercial Paper.

C) Power Revenue Debt

If and to the extent authorized in accordance with applicable provisions of State law, the Issuer may issue Debt payable in whole or in part from power revenues. It is expected that power revenue debt will represent the principal form of Debt of the Issuer.

D) Other Revenue Debt

If and to the extent authorized in accordance with applicable provisions of State law, the Issuer may issue Debt payable in whole or in part from other types of revenues.

E) Other Federally Supported Programs

The Issuer may also participate in federal loans administered or provided by the United States as well as federally subsidized taxable and tax-exempt bond programs, and may secure credit enhancement and/or credit support provided under Federal programs, provided such loans, bonds or programs provide an attractive funding cost or other desirable features such as, but not limited to, deep subordination of the repayment obligation, an unusually long repayment term, or no payment due until a certain period after substantial project completion.

F) Fixed-Rate Debt

The Issuer may issue Debt that bears a fixed-rate rate of interest.

G) Variable Rate Debt

The Issuer may also issue Debt that bears a variable rate of interest, including, but not limited to, variable rate demand obligations, commercial paper and floating rate notes.

VII. Terms and Provisions of Debt**A) Debt Service Structure**

The Issuer shall design the financing schedule and repayment of debt so as to take best advantage of market conditions, provide flexibility and, as practical, to recapture or maximize its debt capacity for future use. Annual debt service payments will generally be structured on a level basis; however, principal amortization may occur more quickly or slowly where permissible, to mirror debt repayment streams and/or provide future financing flexibility.

B) Amortization of Principal

Long-term Debt of the Issuer shall be issued with maturities that amortize the principal of such Debt over a period commensurate with the expected life, use or benefit (measured in years) provided by the projects, programs and/or facilities financed from the proceeds of such Debt. The weighted average maturity of such Debt (if issued as tax-exempt Debt) should not exceed one hundred and twenty percent (120%) of the reasonably estimated weighted average life, use or benefit (measured in years) of the projects, programs and/or facilities financed from the proceeds of such Debt.

Amortization of principal may be achieved either through serial maturities and/or through term Debt subject to mandatory sinking fund payments and/or optional redemptions.

C) Capitalized Interest

The Issuer may fund interest on Debt from proceeds of Debt for legal, budgeting or structuring purposes.

D) Call Provisions for Debt

- 1) **Optional Call Provisions.** The Issuer shall seek to include the shortest practicable optional call rights, with and/or without a call premium, consistent with optimal pricing of such Debt. Call premiums, if any, should not be in excess of then prevailing market standards and to the extent consistent with the most advantageous borrowing cost for the Issuer. Non-callable maturities may be considered and used to accommodate market requirements or other advantageous benefits to the Issuer.
- 2) **Extraordinary Call Provisions.** The Issuer, at its option, may include extraordinary call provisions, including for example with respect to unspent proceeds, damage to or destruction of the project or facilities financed, or other matters, as the Issuer may determine is necessary or desirable.

E) Payment of Interest

- 1) **Current Interest Debt** may be issued. It is anticipated that the interest on most, if not all, Debt issued will be paid on a current interest basis.
- 2) **Deferred Interest Debt** may also be issued. Debt of the Issuer may be issued with the payment of actual or effective interest deferred in whole or in part to the maturity or redemption date of each debt instrument, or the conversion of such debt instrument to a current interest-paying debt instrument (known, respectively, as capital appreciation bonds, zero coupon bonds and convertible capital appreciation bonds). Deferred Interest Debt may be issued to achieve optimal sizing, debt service structuring, pricing or other purposes.

F) Determination of Variable Interest Rates on Debt

The interest rate from time to time on Debt the interest of which is not fixed to maturity may be determined in such manner that the Issuer determines, including without limitation on a daily, weekly, monthly or other periodic basis, by reference to an index, prevailing market rates or other measures, and by or through an auction or other method.

G) Tender Options on Debt

The Issuer may issue Debt subject to the right or obligation of the holder to tender the Debt back to the Issuer for purchase, including, for example, to enable the holder to liquidate their position, or upon the occurrence of specified credit events, interest rate mode changes or other circumstances. The obligation of the Issuer to make payments to the holder upon any such tender may be secured by (i) a credit or liquidity facility from a financial institution in an amount at least equal to the principal amount of the Debt subject to tender, (ii) a liquidity or similar account into which the Issuer shall deposit and maintain an amount at least equal to the principal amount of the Debt subject to tender, or (iii) other means of self-liquidity that the Issuer deems prudent.

H) Multi-Modal Debt

The Issuer may issue Debt that may be converted between two or more interest rate modes without the necessity of a refunding. Such interest rate modes may include, without limitation: daily interest rates, weekly interest rates, other periodically variable interest rates, commercial paper rates, auction rates, fixed rates for a term and fixed rates to maturity (in each case with or without tender options).

I) Debt Service Reserve Funds

The Issuer may issue Debt that is secured by amounts on deposit in or credited to a debt service reserve fund or account in order to minimize the net cost of borrowing and/or to provide additional reserves for debt service or other purposes. Debt service reserve funds may secure one or more issues of Debt, and may be funded by proceeds of Debt, other available moneys of the Issuer, and/or by surety policies, letters or lines of credit or other similar instruments. Surety policies, letters or lines of credit or other similar instruments may be substituted for amounts on deposit in a debt service reserve fund if such amounts are needed for capital projects or other purposes.

Amounts in the debt service reserve funds shall be invested in accordance with the requirements of the applicable Debt documents in order to (i) maximize the rate of return on such amounts; (ii) minimize the risk of loss; (iii) minimize volatility in the value of such investments; and (iv) maximize liquidity so that such amounts will be available if it is necessary to draw upon them.

J) Lien Levels

The Issuer may create senior and junior lien pledges, as well as pledges at various lien priority levels, for each fund source which secures Debt repayment in order to optimize financing capacity.

VIII. Maintenance of Liquidity; Reserves

The Issuer may maintain unencumbered reserves in amounts sufficient in the determination of the Issuer to cover unexpected revenue losses, extraordinary payments and other contingencies, and to provide liquidity in connection with the Issuer's outstanding Debt.

IX. Investment of Debt Proceeds and Related Moneys

Proceeds of Debt and amounts in the Issuer's debt service, project fund and debt service reserve funds with respect to outstanding Debt shall be invested in accordance with the terms of the applicable Debt documents and other applicable agreements of the Issuer.

X. Third Party Credit Enhancement

The Issuer may secure credit enhancement for its Debt from third-party credit providers to the extent such credit enhancement is available upon reasonable, competitive and cost-effective terms. Such credit enhancement may include municipal bond insurance ("Bond Insurance"), letters of credit and lines of credit (collectively and individually, "Credit Facilities"), as well as other similar instruments.

A) Bond Insurance

All or any portion of an issue of Debt may be secured by Bond Insurance provided by municipal bond insurers ("Bond Insurers") if it is economically advantageous to do so, or if it is otherwise deemed necessary or desirable in connection with a particular issue of Debt. The relative cost or benefit of Bond Insurance may be determined by comparing the amount of the Bond Insurance premium to the present value of the estimated interest savings to be derived as a result of the insurance.

B) Credit Facilities

The issuance of certain types of Debt requires a letter of credit or line of credit (a "Credit Facility") from a commercial bank or other qualified financial institution to provide liquidity and/or credit support. The types of Debt where a Credit Facility may be necessary include commercial paper, variable rate Debt with a tender option and Debt that could not receive an investment grade credit rating in the absence of such a facility.

The criteria for selection of a Credit Facility provider shall include the following:

- 1) Long-term ratings from at least two nationally recognized credit rating agencies (“Rating Agencies”) preferably to be equal to or better than those of the Issuer;
- 2) Short-term ratings as appropriate for the type of Debt being issued;
- 3) Experience providing such facilities to state and local government issuers;
- 4) Fees, including without limitation initial and ongoing costs of the Credit Facility; draw, transfer and related fees; counsel fees; termination fees and any trading differential; and
- 5) Willingness to agree to the terms and conditions proposed or required by the Issuer.

XI. Use of Derivatives

Derivative products include but are not limited to interest rate swaps, interest rates caps and collars and forward or other hedging agreements. Derivative products will be considered in the issuance or management of debt only in instances where it has been demonstrated that the derivative product will either provide a hedge that reduces risk of fluctuations in expense or revenue, or, alternatively, where it will reduce total debt service cost in a manner that exceed the risks. Derivative products will only be utilized following the adoption of derivative product policy and with prior Board approval. In addition, an analysis of early termination costs and other conditional terms must be completed by the Issuer’s municipal advisor prior to the approval of any derivative product by the Board. Such analysis will document the risks and benefits associated with the use of the particular derivative product.

XII. Methods of Sale and Pricing of Debt

There are three principal methods for the sale of Debt: (i) competitive; (ii) negotiated and (iii) private placement. In addition, Debt may be incurred as a direct loan. The Issuer shall utilize the method of sale that (a) is reasonably expected to produce the most advantageous interest cost with respect to the Debt and (b) provides the Issuer with the flexibility most desirable in connection with the structuring, timing or terms of such Debt. The Issuer shall utilize such method that is likely to provide the most advantageous borrowing costs and execution on behalf of the Issuer.

Debt may be sold at such prices, including at par, a premium or a discount, as the Issuer, in consultation with its municipal advisor, may determine is likely to produce the most advantageous interest cost under then prevailing market conditions, subject to compliance with applicable State law and Federal securities laws.

A) Competitive Sale

The competitive method of sale is appropriate when:

- 1) Bond prices are stable and/or there is strong demand for the bonds;

- 2) Market timing and interest rate sensitivity are not critical to the pricing;
- 3) Issuer has a strong credit rating and is well known to investors;
- 4) The Issuer has straightforward political and organizational structure, and the project, funding, and credit quality are easy to understand and market to potential investors; and
- 5) The Debt type and structure are conventional and the transaction size is manageable.

B) Negotiated Sale

A negotiated sale is appropriate when:

- 1) There is market volatility and/or weak demand and high supply of competing financings;
- 2) The Debt structure is complex;
- 3) Issuer has lower or weakening credit rating and is not well known to investors;
- 4) The Debt has non-standard structural features, such as a forward delivery, issuance of variable rate bonds, use of derivative products, or possesses a specific structuring feature that benefits from a negotiated sale;
- 5) Early structuring and market participation by underwriters are desired and there is strong projected retail demand for the Debt; and
- 6) The Debt size is significantly larger and would limit competition.

For a negotiated bond sale, the Issuer, with the assistance of its municipal advisor, will conduct a competitive underwriter selection process for either a specific Debt issue or through the establishment of an underwriter pool from which to choose over a defined period of time.

C) Private Placement

A private placement is structured for one purchaser or a group of purchasers, who are typically qualified institutional buyers, in a non-public offering conducted by an underwriting firm serving as placement agent. Since no public offering is involved, securities disclosure requirements are not as heavy. If a private placement is considered as the optimal sale method for the Issuer, the municipal advisor will conduct a competitive selection process to recommend the placement agent.

D) Direct Purchase; Direct Loan; Revolving Obligations

A direct purchase or direct loan is structured specifically for one bank (or a syndicate of banks), putting the Issuer and bank in a bilateral borrower-lender relationship. Examples include a direct purchase agreement or revolving credit facility. Securities disclosure requirements are the least burdensome for this structure. A direct purchase or direct loan may be advisable if the Issuer is unable to access the municipal capital markets. If a direct purchase or direct loan is contemplated, the municipal advisor will conduct a competitive selection process to recommend the bank. Selection criteria will include:

- 1) A term sheet to be provided along with the request for qualifications, with any requested modifications to be highlighted by the bank and taken into consideration in the evaluation process;
- 2) A representative list of clients for whom the bank has provided similar agreements; and
- 3) Evaluation of fees, specifically, cost of the agreement including index, spread, and other administrative charges. The evaluation of fees, terms and conditions will be compared to other alternative financing methods.

XIII. Debt Redemption Programs

The Issuer may establish from time-to-time a plan or program for the payment and/or redemption of outstanding Debt and/or interest thereon from revenues and/or other available funds pursuant to a recommendation from the Chief Financial Officer. Such plan or program may be for the purposes of reducing outstanding Debt, managing the amount of debt service payable in any year, or other suitable purposes, as determined by the Issuer.

XIV. Professional Services

The Issuer may retain professional services providers as necessary or desirable in connection with: (i) the structuring, issuance and sale of its Debt; (ii) monitoring of and advice regarding its outstanding Debt; and (iii) the negotiation, execution and monitoring of related agreements, including without limitation Bond Insurance, Credit Facilities, Derivatives and investment agreements; and (iv) other similar or related matters. Professional service providers may include municipal advisors, bond counsel, disclosure counsel, Issuer consultants, bond trustees and Federal arbitrage rebate services providers, and may include, as appropriate, underwriters, feasibility consultants, remarketing agents, auction agents, broker-dealers, escrow agents, verification agents and other similar parties.

The Issuer shall require that its Municipal Advisors, bond and disclosure counsel and other Issuer consultants be free of any conflicts of interest, or that any necessary or appropriate waivers or consents are obtained.

A) Municipal Advisors

The Issuer may utilize one or more municipal advisors to provide ongoing advisory services with respect to the Issuer's outstanding and proposed Debt and related agreements, including without limitation Bond Insurance, Credit Facilities, Derivatives, investment agreements and other similar matters. Municipal advisors must be registered with the Municipal Securities Rulemaking Board and as a municipal advisor as such term is defined in the Securities Exchange Act of 1934 and shall be required to disclose any conflicts of interest.

B) Bond Counsel, Disclosure Counsel and Other Legal Counsel

- 1) **Bond Counsel.** The Issuer may utilize one or more bond counsel firms to provide ongoing legal advisory services with respect to the Issuer's outstanding and proposed Debt and related agreements, including without limitation Credit Facilities, Derivatives, investment agreements and other similar matters. All Debt issued by the Issuer shall require a written opinion from the Issuer's bond counsel, as appropriate, regarding (i) the validity and binding effect of the Debt, and (ii) the exemption of interest from Federal and State income taxes.
- 2) **Disclosure Counsel.** The Issuer may utilize a disclosure counsel firm to provide ongoing legal advisory services with respect to initial and continuing disclosure in connection with the Issuer's outstanding and proposed Debt. Such firm may be one of the Issuer's bond counsel firms.
- 3) **Other Legal Counsel.** The Issuer may encourage or require, as appropriate, the retention and use of legal counsel by other parties involved in the issuance of Debt and the execution of related agreements which are approved by the Issuer.

C) Issuer Consultant

The Issuer may utilize one or more outside Issuer consultants to provide ongoing advisory services with respect to the Issuer's outstanding and proposed Debt, Issuer fares, strategic business and financial decisions and such other matters as the Issuer requires.

D) Trustees and Fiscal Agents

The Issuer may engage bond trustees and/or fiscal agents, paying agents and tender agents, as necessary or appropriate, in connection with the issuance of its Debt.

E) Underwriters/Remarketing Agents/Broker-Dealers

The Issuer may engage an underwriter or a team of underwriters, including a senior managing underwriter, in connection with the negotiated sale of its Debt. The Issuer also may engage one or more underwriters, as necessary or appropriate, to serve as remarketing agents, broker-dealers or in other similar capacities with respect to variable rate, auction, tender option, commercial paper and other similar types of Debt issued by the Issuer.

F) Feasibility Consultants

The Issuer may retain feasibility consultants in connection with proposed project, programs, facilities or activities to be financed in whole or in part from proceeds of Debt. The criteria for the selection of such feasibility consultants, in addition to those set forth above, shall include their expertise and experience with projects, programs, facilities or activities similar to those proposed to be undertaken by the Issuer.

G) Arbitrage Rebate Services Providers

Because of the complexity of the Federal arbitrage rebate statutes and regulations, and the severity of potential penalties for non-compliance, the Issuer may retain an arbitrage rebate services provider in connection with its outstanding and proposed Debt, and may also solicit related legal and tax advice from its bond counsel or separate tax counsel. The responsibilities of the arbitrage rebate services provider shall include: (i) the periodic calculation of any accrued arbitrage rebate liability and of any rebate payments due under and in accordance with the Code and the related rebate regulations; (ii) advice regarding strategies for minimizing arbitrage rebate liability; (iii) the preparation and filing of periodic forms and information required to be submitted to the Internal Revenue Service; (iv) the preparation and filing of requests for reimbursement of any prior overpayments; and (v) other related matters as requested by the Issuer.

The Issuer shall maintain necessary and appropriate records regarding (i) the expenditure of proceeds of Debt, including the individual projects and facilities financed and the amounts expended thereon, and (ii) investment earnings on such Debt proceeds. The Issuer shall maintain such records for such period of time as shall be required by the Code.

H) Other Professional Services

The Issuer may retain such other professional services providers, including without limitation verification agents, escrow agents, auction agents, as may be necessary or appropriate in connection with its Debt.

XV. Budgeting and Capital Planning

The Issuer's budgeting process, including its budgeting process for capital expenditures, shall provide a framework for evaluating proposed Debt issuances.

XVI. Credit Rating Objectives

The Issuer shall seek to preserve and enhance the credit ratings with respect to its outstanding Debt to the extent consistent with the Issuer's current and anticipated business operations and financial condition, strategic plans and goals and other objectives, and in accordance with any developed credit strategies.

XVII. Debt Affordability

The Issuer shall periodically review its debt affordability levels and capacity for the undertaking of new financing obligations to fund its expenditure plans. Debt affordability measures shall be based upon the credit objectives of the Issuer, criteria identified by rating agencies, comparison of industry peers and other internal factors of the Issuer.

XVIII. Relationships with Market Participants

The Issuer shall seek to preserve and enhance its relationships with the various participants in the municipal bond market, including without limitation, the Rating Agencies, Bond Insurers, credit/liquidity providers and current and prospective investors, including through periodic communication with such participants.

The Issuer shall prepare or cause to be prepared appropriate disclosures as required by the Securities and Exchange Commission Rule 15c2-12, the federal government, the State of California, rating agencies and other persons or entities entitled to disclosure to ensure compliance with applicable laws and regulations and agreements to provide ongoing disclosure.

XIX. Periodic Review

The Chief Financial Officer shall review this Debt Policy on a periodic basis, and recommend any changes to the Board for consideration.

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 4: Adopt Resolution #2021-003 Approving Participation in San Diego Gas & Electric Arrearage Management Payment Program

RECOMMENDATION

Adopt Resolution #2021-003 approving participation in San Diego Gas & Electric Arrearage Management Payment Program.

BACKGROUND AND DISCUSSION

On June 11, 2020, the California Public Utilities Commission (CPUC) approved Decision 20-06-003, which requires the utilities, including SDG&E, to adopt an Arrearage Management Payment (AMP) program (AMP) effective April 16, 2021. The AMP program offers debt forgiveness to residential customers enrolled in the California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs who agree to make monthly on-time payments and meet certain criteria.

Eligibility criteria for CARE/FERA customer participation includes:

- Enrollment in CARE/FERA;
- Been a customer a minimum of six months;
- Made at least one on-time payment;
- Has a balance of at least \$500 in arrears;
- Make on-time payments going forward

Customers enrolled in the AMP program shall have 1/12 of their arrearage forgiven after each on-time payment, and after 12 on-time payments any remaining arrearage debt is to be forgiven, up to a maximum \$8,000 per customer per calendar year. Debt forgiven are reimbursed to SDG&E through the Public Purpose Program charge that is assessed and collected through all customer bills.

SDG&E is responsible for marketing and administering the program. CEA is eligible to participate in the program, however, to do so, CEA must provide express notice to SDG&E of its election to participate. In order for customers to not lose eligibility for this program when enrolled in CEA, it is staff's recommendation that CEA participate in the AMP program with SDG&E.

FISCAL IMPACT

Participation in SDG&E's AMP program provides a mechanism to assist customers who meet eligibility requirements and recovery of funds that CEA may otherwise have not collected from the customer.

ATTACHMENTS

Resolution 2021-003 Approving Participation in San Diego Gas & Electric's Arrearage Management Payment Program

**CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2021-003**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CLEAN
ENERGY ALLIANCE APPROVING PARTICIPATION IN
SAN DIEGO GAS & ELECTRIC'S
ARREARAGE MANAGEMENT PAYMENT PROGRAM**

WHEREAS, the Clean Energy Alliance (CEA) is a joint powers agency, formed in November 2019, by founding member cities of Carlsbad, Del Mar, and Solana Beach; and

WHEREAS, Community Choice Aggregation (CCA) authorized by Assembly Bill 117, is a state law that allows cities, counties, and other authorized entities to aggregate electricity demand within their jurisdictions in order to purchase and/or generate alternative energy supplies for residents and businesses within their jurisdiction while maintaining the existing electricity provider for transmission and distribution services; and

WHEREAS, CEA Board has approved an Implementation Plan and Statement of Intent which was certified by the California Public Utilities Commission (CPUC) on March 16, 2020; and

WHEREAS, the CEA Board desires to participate in San Diego Gas & Electric's Arrearage Management Payment Program.

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 participation in San Diego Gas & Electric's Arrearage Management Payment Program.

The foregoing Resolution was passed and adopted this 21st day of January 2021,
by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Kristi Becker, Chair

ATTEST:

Sheila Cobian, Board Secretary

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 5: Approve the 2021 Legislative and Regulatory Policy Platform

RECOMMENDATION

The Clean Energy Alliance (CEA) Board approve the 2021 Legislative and Regulatory Policy Platform.

BACKGROUND AND DISCUSSION

At its regular meeting September 17, 2020, the CEA Board adopted the 2020 Legislative and Regulatory Policy Platform (Platform). Pursuant to the Platform, the Board shall review and update, as appropriate the Platform each January.

The Platform serves as a guide to the CEA Board and staff in their advocacy efforts related to policy matters of interest at the state legislature and California Public Utilities Commission (CPUC). It allows both Board Members and staff to pursue actions at the legislative and regulatory levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of CEA and its mission, member agencies and customers. It provides guidance to the Chief Executive Officer on the support or oppose positions that should be taken on legislative and regulatory matters that come before the California Community Choice Association (CalCCA) Board of Directors.

The adopted Platform was developed to be consistent with the CEA Joint Powers Authority (JPA) Agreement. Specifically, the JPA Agreement identifies the following purposes of CEA:

- Procuring/developing electrical energy for customers;
- Addressing climate change by reducing energy-related greenhouse gas emissions;
- Promoting electrical rate price stability and cost savings;
- Fostering consumer choice;
- Local economic development, such as job creation, local energy programs, and local power development.

Four basic principles were developed to ensure CEA's ability to achieve its purposes as stated above.

The Platform is centered around these principles:

1. Protecting CEA's local control for the purpose of preserving the ability to self-procure its power resources, to self-determine its rates and the energy programs it offers its residents, businesses, and the communities it serves, through the mechanisms of local governance.
2. Ensuring fair treatment of CEA customers by the California Public Utilities Commission (CPUC) and other state agencies.
3. Supporting recognition that electricity is an essential service, and that CEA should have the ability to set electric rates that are affordable and competitive to the utilities.
4. Pursuing environmental initiatives that exceed minimum State mandates, promote the growth in renewable energy capacity at the local level, encourage clean energy adoption by CEA customers, and reduce fossil fuel dependency.

The Platform establishes the following positions:

- CEA will support legislation and regulatory actions which enables, protects and enhances the development and expansion of Community Choice Aggregation (CCA) programs, and that supports CCA independence in procurement, program deployment, management and decision making.
- CEA will support legislation and regulatory actions which allow CEA to develop and procure local energy generation resources to meet the needs of its electric customers.
- CEA will support legislation and regulatory actions which promote a neutral, fair and competitive energy market.
- CEA will oppose legislation and regulatory actions that jeopardize CEA's independence to self-procure its power resources, determine its rates and the energy programs it provides to its customers in the present, or could restrict its independence to do so in the future.

CEA's priorities and goals have not changed, and as a result there are no recommended changes to the 2021 Legislative and Regulatory Policy Platform as compared to the 2020 Platform.

FISCAL IMPACT

There is no fiscal impact as a result of this action.

ATTACHMENTS

Attachment – Draft 2021 Legislative and Policy Platform



CEA-10

2021 Legislative and Regulatory Policy Platform

The Clean Energy Alliance (CEA) Board of Directors desires to establish the 2021 Legislative and Regulatory Policy Platform to guide the CEA Board and staff in their advocacy efforts and engagement on policy matters of interest to CEA. The Platform allows both Board Members and staff to pursue actions at the legislative and regulatory levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of CEA and its mission, its member agencies and its customers. The Platform enables the organization to move swiftly to respond to legislative and regulatory events. The Platform also provides guidance to the Chief Executive Officer on the support or oppose positions that should be taken on legislative and regulatory matters that come before the California Community Choice Association (CalCCA) Board of Directors.

Unless otherwise approved by the Board, all CEA positions on individual bills will be presented to the Board for approval. For urgent legislative or regulatory matters where time is of the essence, the Chief Executive Officer, with Board Chair concurrence, will take a position, consistent with the Policy Platform and report the action to the full Board at the next Board meeting.

Policy Principles

CEA supports legislation and regulatory actions that enables, protects and enhances CEA's priorities and ability to serve its customers as determined by the CEA Board of Directors.

The Legislative and Regulatory Policy Platform is centered around four basic principles:

1. Protecting CEA's local control for the purpose of preserving the ability to self-procure power resources, to self-determine rates and the energy programs it offers residents, businesses and the communities it serves, through the mechanisms of local governance.
2. Ensuring fair treatment of CEA customers by the California Public Utilities Commission (CPUC) and other state agencies.
3. Supporting recognition that electricity is an essential service and that CEA should have the ability to set electric rates that are affordable and competitive to the utilities.
4. Pursuing environmental initiatives that exceed minimum State mandates, promote the growth in renewable energy capacity at the local level, encourage clean energy adoption by CEA customers, and reduce fossil fuel dependency.

CEA will support legislation and regulatory actions which enables, protects and enhances the development and expansion of Community Choice Aggregation (CCA) programs, and that

supports CCA independence in procurement, program deployment, management and decision making.

CEA will support legislation and regulatory actions which allow CEA to develop and procure local energy generation resources to meet the needs of its electric customers.

CEA will support legislation and regulatory actions which promote a neutral, fair and competitive energy market.

CEA will oppose legislation and regulatory actions that jeopardize CEA's independence to self-procure power resources, determine rates and the energy programs it provides to customers in the present, or could restrict its independence to do so in the future.

The Legislative and Regulatory Policy Platform is to be reviewed and updated every January.

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 6: Clean Energy Alliance Operational, Administrative and Regulatory Affairs Update

RECOMMENDATION

- 1) Receive and File Operational and Administrative Update Report from Interim CEO.
- 2) Receive Community Choice Aggregation Regulatory Affairs Report from Special Counsel.

BACKGROUND AND DISCUSSION

This report provides an update to the Clean Energy Alliance (CEA) Board regarding the status of the operational, administrative, and regulatory affairs activities.

OPERATIONAL UPDATE

CEA is meeting its milestones for the implementation of its community choice aggregation (CCA) program and is on track to begin serving customers in May 2021/June 2021. (Attachment A - Clean Energy Alliance Timeline of Implementation Action Items).

CEA Launch Schedule

San Diego Gas & Electric (SDG&E) has been working over the past several years on their Customer Information System replacement program, known as Envision. They had committed to, and were on track, for a January 4, 2021 go live, despite the challenges of working remote in the COVID-19 environment. With a January 2021 go live, SDG&E committed to supporting the CEA launch of May 2021. On Friday July 10, CEA staff, its regulatory attorney Ty Tosdal and data manager Calpine Energy Solutions participated in a call with San Diego Community Power and SDG&E regarding the recently approved California Public Utilities Commission (CPUC) Decision D. 20-06-003, which requires the Investor-Owned Utilities (IOU) to adopt rules and policy changes designed to reduce the number of residential disconnections, provide assistance with debt forgiveness, and offer extended payment plans. The program, known as Arrearage Management Payment program, is required to be implemented by April 2021. This timing has presented a challenge to SDG&E to keep its go live date of January 4, 2021, while also meeting the requirements of the decision. SDG&E submitted a letter to the CPUC requesting an extension to September 30, 2021, for implementing the new procedures and policies required by the decision. This request was denied by the CPUC, resulting in SDG&E postponing implementation of its

Envision project to April 2021. The postponement of the Envision go live date impacts CEA's implementation.

CEA and its consultants have worked diligently with SDG&E to develop a launch schedule that minimized impact to CEA while also minimizing the risk of incorrect bills being sent to customers. SDG&E and CEA have agreed to a two-phased schedule with accounts transitioning to CEA in May and June 2021, and the Board authorized the Interim Chief Executive Officer to enter into a letter agreement with SDG&E memorializing the phased approach. The May 2021 Phase 1 would include the transition of Solana Energy Alliance customers to CEA as well as customers in Carlsbad and Del Mar who do not have complex billing plans. Those customers who have been identified with complex billing plans would transition in June 2021. Staff continues to work with Calpine and SDG&E to fine tune the customer list for each phase.

CEA Communications and Marketing Update

Work continues on CEA's communications and marketing initiatives. The updated website went live on December 1, 2020. Next deliverables include Brand Standards (letterhead, email signatures, etc.); establishing social media presence; creation of communications tools (FAQs, information sheets); and development of customer notices.

Community Advisory Committee

The first meeting of the CEA Community Advisory Committee took place on December 3. Alternate Board Member Dwight Worden was ratified as CAC Chair, pursuant to Board identification that the Board Alternate appointment would serve as CAC Chair, and Dr. Don Mosier was elected Vice Chair. The CAC is very enthused and look forward to working on programs to support CEA's success.

Risk Oversight Committee

The Energy Risk Management Policy, adopted by the CEA Board November 19, 2020, directs establishment of the Risk Oversight Committee (ROC), selected by the Chief Executive Officer. The CEO has identified the following as members of the ROC:

Chief Executive Officer, Chair
Board Chair
Chief Financial Officer
General Counsel
Pacific Energy Advisors, to serve as technical advisors

The first meeting of the ROC is scheduled for February 4, 2021, and quarterly thereafter.

Expansion of Clean Energy Alliance

The Board will be reviewing and updating the Outreach Matrix at this meeting. There have been no contacts made since the last meeting.

Discussions with Key Potential CEA Customers

Staff has continued its discussions with San Diego County Water Agency (SDCWA) regarding Clean Energy Alliance and implications to SDCWA of its electric accounts within CEA territory becoming customers. SDCWA staff anticipates a SDCWA Board discussion regarding CCA at an upcoming Board meeting. CEA staff has also had discussions with Walmart regarding CEA and its products and services as compared to SDG&E.

Resource Adequacy Compliance

As a load serving entity serving customers in 2021, CEA has an obligation to procure Resource Adequacy (RA), based on quantities allocated by CPUC and California Independent System Operator (CAISO). RA procurements do not supply any energy to CEA or its customers, rather it commits the seller to be available to supply energy to the grid if called upon by the CAISO and reduce the possibility of outages. This process is key to ensuring grid reliability. CEA successfully procured all its RA requirements and is fully compliant with its RA obligation.

Long-Term Renewable Procurement

As a load serving entity, CEA will be required to procure 65% of its minimum state required renewable portfolio standards in contracts of 10-years or longer. To ensure compliance with this requirement, CEA's initial renewable energy solicitation is underway. The solicitation process, from beginning through final execution can be lengthy, particularly in light of the impacts of COVID-19 on the renewable development industry. The solicitation opened on July 1, 2020, with proposals due July 27, 2020. CEA's consultant, Pacific Energy Advisors, has identified a short list of projects and negotiations are proceeding. It is anticipated final contracts will be before the Board in first quarter 2021.

Staff has also begun discussions with SDG&E regarding entering into bilateral agreements for the procurement of renewable energy. These discussions are on-going, and any proposed agreement will be brought to the CEA Board for approval.

Administrative and Operational Policies

During the coming months as CEA prepares for its implementation and operation, policies will be brought to the Board for consideration in future Board meetings. The policies as proposed will be based on Government Code or regulatory requirements and best practices of successfully operational CCAs.

The policies and timeline as currently anticipated are:

February 18 Board Meeting

- Investment Policy

Contracts \$50,000 - \$100,000 entered into by Interim Chief Executive Officer

VENDOR	DESCRIPTION	AMOUNT
None		

REGULATORY UPDATE

CEA's regulatory attorney, Ty Tosdal, will provide an update to the Board on the following regulatory activities:

SDG&E 2021 ERRA Forecast Proceeding (A.20-04-014)

Annual proceeding in which SDG&E sets its energy generation and Power Charge Indifference Adjustment rates for the coming year.

SDG&E 2020 ERRA Trigger (A.20.12.007)

The 2020 ERRA Trigger application addresses an undercollection SDG&E has incurred in 2020. The application addresses how the undercollection will be addressed through rate increases in 2021.

2020 Renewable Portfolio Standards (RPS) Procurement Plans (R.18-07-003)

CEA previously submitted its 2020 Renewable Portfolio Standards (RPS) Procurement Plan with the CPUC. The CPUC has ordered many CCAs, IOUs and Energy Service Providers (ESP) to submit additional information regarding its plans to meet the state's renewable energy goals.

FISCAL IMPACT

There is no fiscal impact by this action.

ATTACHMENTS

Attachment A - Clean Energy Alliance Timeline of Implementation Action Item

Attachment B – Tosdal APC Regulatory Update Report

Attachment A

**Clean Energy Alliance
Timeline of Action Items
CCA Program Related**

Timing	Description	Status	3rd Qtr '20	4th Qtr '20	1st Qtr '21	Apr-21	May-21	Jun-21	Jul-21
9/1/20	Marketing/Customer Outreach Plan Development & Kickoff	Complete							
	Marketing Strategic Plan	Complete							
	Logo Design	Complete							
	Website Refresh	Complete							
9/17/20	Bid Evaluation and Criteria Scoring System	Complete							
9/17/20	Award Scheduling Coordinator Services	Complete							
11/19/20	Introduce/Adopt Energy Risk Management Policy	Complete		10/15 & 11/19					
10/15/20	Records Retention Policy	Complete							
	System Testing with SDG&E	In Progress							
1/21/21	Credit Solution	In Progress							
1/21/21	CEA Default Products/programs/renewable energy policies	In Progress							
2/1/21	Create Customer Pre- and Post-Enrollment Notices								
1/21/21	Social Media Policy								
1/21/21	Debt Issuance Policy								
2/1/21	Set up Call Center/Scripting/IVR Recordings								
2/18/21	Rate Setting								
2/18/21	Investment Policy								
	Energy Supply Procurement - Short Term Renewable & Conventional								
3/1/21	Customer Noticing								
5/1/21	Launch - 2 phases May & June 2021								

Key:

Board Actions/Activity
Staff/Consultant Activity
Marketing/Customer Outreach
CCA Launch

Clean Energy Alliance Board Update

January 14, 2021



Ty Tosdal
Tosdal APC



Overview

- SDG&E 2021 ERRA Forecast ([A. 20-04-014](#))
- SDG&E's 2020 ERRA Trigger ([A. 20-12-007](#))
- 2020 RPS Procurement Plans ([R. 18-07-003](#))
- Percent Income Payment Plan ([R. 18-07-005](#))



SDG&E's 2021 ERRRA Forecast Application

- The Alternate Proposed Decision (APD) requiring SDG&E to incorporate departing load into sales forecast was adopted.
- There will be no drastic reduction in SDG&E rates.
- The System Average Percent Change (SAPC) allocation method adopted.
- SDG&E's advice letter to be issued before February 1, 2021, will provide additional details.



SDG&E's 2020 ERRA Trigger

- SDG&E has applied for a modest rate increase.
- San Diego CCAs submitted a Joint Protest on January 5, 2021.
- SDG&E has committed to applying the energy requirements approved in the ERRA Forecast proceeding.
- San Diego CCAs Propose March 4, 2021, Commission Vote for implementation June 1.



2020 RPS Procurement Plans

- CEA and other CCAs, ESPs and IOUs are ordered to provide additional details to multiple sections of the RPS Plans by February 15, 2021.
- PEA is currently working on the amendments to CEA's RPS Procurement Plan narrative and RNS calculations.
- SDG&E's request to hold RPS sales solicitations in 2021 is approved.

RPS Progress to Target Comparison

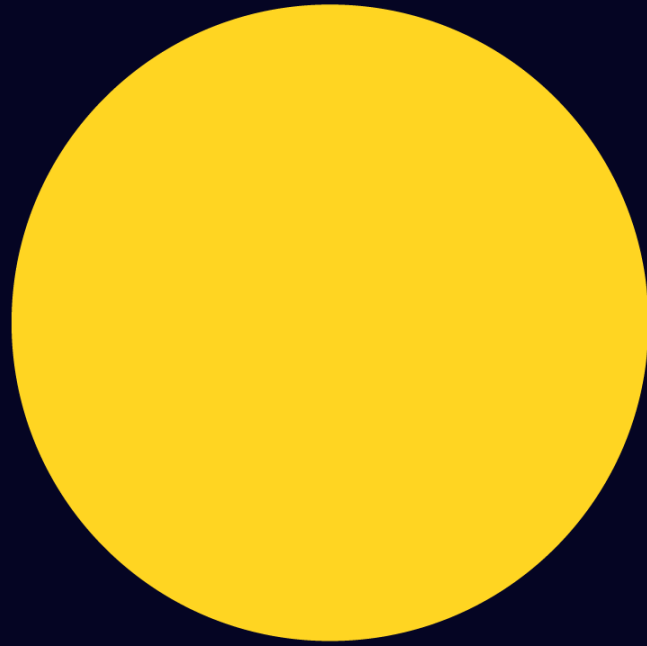


Figure 1: Aggregated IOU Progress Towards 60% RPS

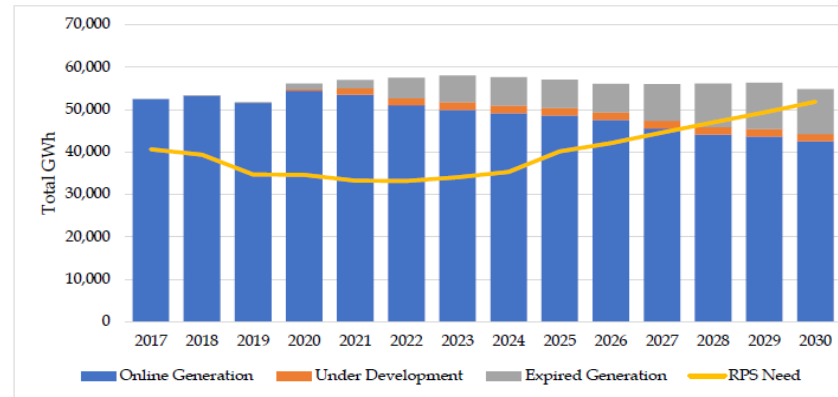
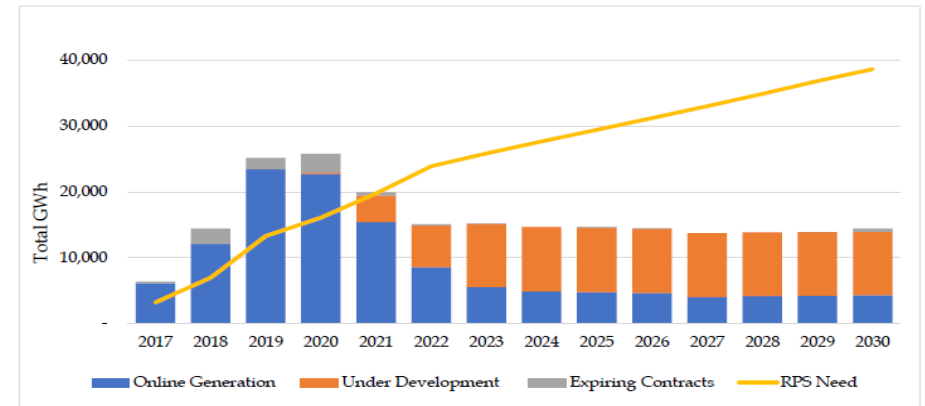
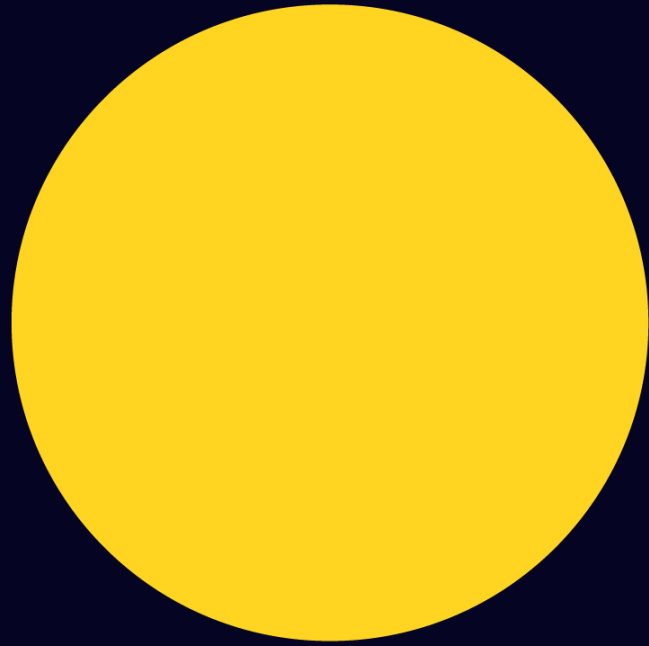


Figure 3: Aggregated CCAs Progress Towards 60% RPS



Source: CPUC Proposed Decision on 2020 RPS Plans, Filed December 11, 2020.



Percentage of Income Payment Plan (PIPP)

- The program aims to assist customers with the lowest income and provides a fixed, minimum bill based on income.
- Party comments reflect wide disagreement regarding PIPP income eligibility and program parameters.
- CalCCA supports PIPP as a 12-18 month pilot for IOUs only and PPP as cost recovery mechanism.
- SDG&E opposes the PIPP program entirely, citing duplicative nature of CARE/FERA and other factors.



Supporting Materials

Supporting materials referenced in this presentation can be found at the following link:

<https://www.dropbox.com/sh/4sdi7qczafu3w27/AACCCZGmnCOO9fLrXRxVzE59a?dl=0>



Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 7: Adopt Resolution #2021-004 Approving Credit Agreement with JPMorgan for \$6MM to Fund Start-Up and Cash Flow Line of Credit

RECOMMENDATION

1) Adopt Resolution #2021-004 approving Credit Agreement, in a form substantially as attached, with JPMorgan for \$6MM to fund start-up costs and cash flow needs and authorize the Interim Chief Executive Officer to execute all documents, subject to Special Counsel approval;

2) Approve Fee Agreement with JPMorgan related to \$6MM line of credit, and authorize Interim Chief Executive Officer, or Interim Chief Financial Officer, to execute all documents, subject to General Counsel approval.

BACKGROUND AND DISCUSSION

At its regular meeting December 17, 2020, the CEA Board approved the credit solution with JPMorgan for CEA's initial start-up beginning February 2021 and cash flow needs for an amount of \$5MM.

Actions taken to date related to pursuing a credit solution include:

February 20, 2020	Considered RFP responses for Credit Solution and put selection on hold until June 2020
June 18, 2020	Considered Credit Solution offers from JP Morgan and River City Bank. Directed staff to reach out to Member Agencies regarding providing guaranty for River City Bank option for \$2.5M of a total \$4.0M credit solution.
July 8, 2020	City of Solana Beach City Council approved guaranty up to \$175,000
July 14, 2020	City of Carlsbad City Council directed staff to return with to City Council with potential loan to CEA in lieu of providing guaranty
July 20, 2020	City of Del Mar City Council approved guaranty up to \$75,000
July 28, 2020	City of Carlsbad City Council considered loan terms and conditions; did not approve making loan to CEA.
August 20, 2020	CEA Board approved executing promissory note with Calpine Energy Solutions for administrative costs through January 2021
November 19, 2020	CEA Board authorized negotiations with JPMorgan and River City Bank for credit solution
December 17, 2020	Approval of credit solution with JPMorgan

Credit needs as presented on December 17 are detailed below:

Funding Need for Credit Solution

Admin Costs February – June 2021	\$540,000
CAISO Deposit	500,000
Deposits	245,000
Energy Supply Costs	3,125,848
Working Capital	<u>589,152</u>
TOTAL FUNDING NEED	<u>\$5,000,000</u>

Staff and Special Counsel from Nixon Peabody have been negotiating the terms of the credit agreement. Through these discussions, and further review of CEA's anticipated start-up, procurement and cash flow needs, it was determined that including a contingency for unexpected costs and energy supply procurement support would be prudent. As a result, staff is recommending increasing the line of credit from \$5MM to \$6MM, which includes an additional \$1MM: \$500,000 start-up cost contingency and \$500,000 for procurement. It is also requested by JPMorgan that the loan from Calpine Energy Solutions be repaid to occur concurrent with the closing of the financing. Staff has reviewed its current anticipated expenditures and cash needs through June 30, 2021 and it has been determined that there is capacity to repay the Calpine loan within the \$6MM credit line. The Updated uses of the credit line is shown below:

Updated Funding Need for Credit Solution:

Admin Costs February – June 2021	\$558,360
CAISO Deposit	500,000
Deposits	385,000
Energy Supply Costs	2,903,140
Calpine Loan Repayment	653,500
Start-Up Contingency	500,000
Energy Supply Contingency	<u>500,000</u>
TOTAL FUNDING NEED	<u>\$6,000,000</u>

The credit agreement (Attachment B) reflects the term sheet (Attachment D) as approved by the CEA Board December 17 and is similar to documents used by CCAs for similar start up funding. The credit agreement establishes the specific terms and agreements that CEA and JPMorgan are required to comply with for this financing. It is also consistent with the Debt Issuance Policy proposed to the CEA Board for approval at this meeting.

Cost estimates, based on scenarios of utilizing 75% of the line of credit and 100% of the line of credit reflected below:

Clean Energy Alliance - Cost Estimates

As of January 8, 2021

Scenario 1: 75% Utilization		Scenario 2: 100% Utilization	
Line of Credit Commitment Amount	\$ 6,000,000	Line of Credit Commitment Amount	\$ 6,000,000
Working Capital Loan		Working Capital Loan	
Average Utilization (% of Amount)	75%	Average Utilization (% of Amount)	100%
1 Month LIBOR (as of 1/8/2021)	0.126%	1 Month LIBOR (as of 1/8/2021)	0.126%
Applicable Margin	3.450%	Applicable Margin	3.450%
Undrawn Fee (% of Undrawn Amount)	2.150%	Undrawn Fee (% of Undrawn Amount)	2.150%
Standby LOC		Standby LOC	
Standby LOC Utilization (% of Amount)	0%	Standby LOC Utilization (% of Amount)	0%
Standby LOC Fee (% of Drawn Amount)		Standby LOC Fee (% of Drawn Amount)	
1-Year LOC Fee	3.25%	1-Year LOC Fee	3.25%
2-Year LOC Fee	3.30%	2-Year LOC Fee	3.30%
3-Year LOC Fee	3.35%	3-Year LOC Fee	3.34%
4-Year LOC Fee	3.40%	4-Year LOC Fee	3.40%
5-Year LOC Fee	3.45%	5-Year LOC Fee	3.45%
Standby LOC Draw Fee (per LOC)	\$500	Standby LOC Draw Fee (per LOC)	\$500
Upfront/Loan Origination Fee	\$0	Upfront/Loan Origination Fee	\$0
Documentation Fee	\$0	Documentation Fee	\$0
Loan Fees:	\$0	Loan Fees:	\$0
Commitment Fee:	\$32,250	Commitment Fee:	\$0
Interest on Outstanding Balances:	\$160,937	Interest on Outstanding Balances:	\$214,583
Standby LOC Fees*:	\$0	Standby LOC Fees*:	\$0
Bond Counsel Fees:	\$30,000	Bond Counsel Fees:	\$30,000
Bank Counsel Fees:	\$50,000	Bank Counsel Fees:	\$50,000
CDIAC Fees:	\$1,500	CDIAC Fees:	\$1,500
Total Cost per Annum**:	\$193,187	Total Cost per Annum**:	\$214,583
Total Cost over the Life of Facility***:	\$1,047,436	Total Cost over the Life of Facility***:	\$1,154,414
Days in Basis Year	360	Days in Basis Year	360
Daily Interest on Outstanding Balance:	\$447	Daily Interest on Outstanding Balance:	\$596
Days in Calendar Year:	365	Days in Calendar Year:	365
Years Facility in Place:	5	Years Facility in Place:	5
Utilization Amount (Draws):	\$4,500,000	Utilization Amount (Draws):	\$6,000,000
Standby LOC Amount:	\$0	Standby LOC Amount:	\$0
Total Utilization:	\$4,500,000	Total Utilization:	\$6,000,000
	75%		100%

*Assumes a 2.5Y tenor and interpolated rate of 3.325%.

**Excludes Bank Counsel Fees.

***Assumes a Facility Life of 5Y and constant utilization.

*Assumes a 2.5Y tenor and interpolated rate of 3.325%.

**Excludes Bank Counsel Fees.

***Assumes a Facility Life of 5Y and constant utilization.

Assuming a 75% utilization (or \$4.5MM), the estimated annual cost is \$193,187 and total cost over the anticipated five-year life is \$1,047,436. At a 100% utilization (\$6.0MM), the estimated annual cost is \$214,583 and cost over the five-year life is \$1,154,414.

The Fee Agreement (Attachment C) before the Board memorializes the terms and conditions of the fees associated with the credit facility consistent with the term sheet. It establishes calculation methodologies of fees including Undrawn Fees, Letter of Credit Fees, Issuance or Drawing Fees and other related fees for the Line of Credit. The document has been reviewed and approved by Nixon Peabody and CEA's General Counsel.

FISCAL IMPACT

Funding to repay the credit solution will come from revenue generated from the sale of energy to customers. CEA will be required to set rates that are sufficient to cover operating costs that do not have other revenue sources and that CEA is obligated to pay by law or contract.

ATTACHMENTS:

Attachment A - Resolution 2021-004 Approving Credit Agreement with JPMorgan
Attachment B - JP Morgan Credit Agreement
Attachment C - JPMorgan Fee Agreement
Attachment D - JPMorgan Term Sheet

**CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2021-004**

A RESOLUTION OF THE BOARD OF DIRECTORS OF
CLEAN ENERGY ALLIANCE APPROVING AND AUTHORIZING
THE EXECUTION AND DELIVERY OF A REVOLVING CREDIT AGREEMENT
WITH JPMORGAN CHASE BANK, N.A.

WHEREAS, Clean Energy Alliance (“CEA”) is a joint powers authority established on November 4, 2019, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, CEA currently includes the following members: the City of Carlsbad, the City of Del Mar, and the City of Solana Beach; and

WHEREAS, CEA has determined the need for a secured revolving line of credit to be used for general agency purposes and to provide credit support for future power purchase contracts; and

WHEREAS, CEA staff has and is negotiating the terms of a revolving line of credit with JPMorgan Chase Bank, N.A. (the “Revolving Credit Agreement”), including the Fee Agreement related thereto (the “Fee Agreement”), copies of which Revolving Credit Agreement and Fee Agreement are on file with the Board of Directors of CEA; and

WHEREAS, the Revolving Credit Agreement allows CEA to borrow cash or to request the issuance of letters of credit in an aggregate principal amount not to exceed \$6,000,000, to be used for general agency purposes and as further provided in the Revolving Credit Agreement; and

WHEREAS, the good faith estimates required to be obtained and disclosed with respect to the Revolving Credit Agreement in accordance with Government Code Section 5852.1 is set forth in the report accompanying this Resolution; and

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Board of Directors (the “Board”) of the Clean Energy Alliance (“CEA”) hereby approves the Chief Executive Officer (including the Interim Chief Executive Officer), the Chief Financial Officer/Treasurer (including the Interim Chief Financial Officer/Treasurer) and their designees as authorized representatives of CEA (each an “Authorized Representative” and collectively, the “Authorized Representatives”) in connection with the negotiation and execution of the Revolving Credit Agreement and any ancillary documents relating thereto.

Section 3. The Board hereby approves each Authorized Representative, acting singly, to execute and deliver the Revolving Credit Agreement, the Fee Agreement and any such related, ancillary documents in substantially the same form presented to the Board of Directors of CEA, with such modifications, changes, insertions, and omissions as may be approved by such Authorized Representative as in the best interests of CEA, the execution thereof to be conclusive evidence of such approval.

Section 4. The Board hereby approves each Authorized Representative, acting singly, to borrow and authorize advances or the issuance of letters of credit from time to time under the Revolving Credit Agreement in such amounts as in their judgment should be borrowed and to provide security for the obligations of CEA under the Revolving Credit Agreement, including, without limitation, a pledge of the net revenues of CEA, and to execute and deliver any requests or other documents and agreements as such Authorized Representative may, in her or his discretion, deem reasonably necessary or proper in order to carry into effect the provisions of the Revolving Credit Agreement.

Section 5. The Board hereby approves the appointment of Nixon Peabody LLP to act as special counsel to CEA in connection with the negotiation and execution of the Revolving Credit Agreement and the ancillary documents.

Section 6. The Authorized Representatives, the Interim Board Secretary, and the Interim Board Clerk and all other appropriate officials of the CEA are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to affect the purposes of this resolution.

Section 7. The Board hereby approves that all acts, transactions, or agreements undertaken, prior to the adoption of these resolutions by any of the officers of CEA, or their designees, in its name and for its account in connection with the foregoing matters, are hereby ratified, confirmed and adopted by CEA.

Section 8. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was passed and adopted this 21st day of January 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Kristi Becker, Chair

ATTEST:

Sheila Cobian, Interim Board Secretary

CHAPMAN AND CUTLER LLP
DRAFT OF 1/14/21

REVOLVING CREDIT AGREEMENT

Dated as of February ___, 2021

by and between

CLEAN ENERGY ALLIANCE,
as Borrower

and

JPMORGAN CHASE BANK, N.A.,
as Lender

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EXHIBITS

Exhibit A	—	Form of Opinion of Nixon Peabody LLP
Exhibit B	—	Form of Compliance Certificate
Exhibit C	—	Form of Borrowing Request
Exhibit D-1	—	Form of Letter of Credit Request
Exhibit D-2	—	Short Form Letter of Credit Application
Exhibit D-3	—	Form of Continuing Agreement for Commercial and Standby Letters of Credit

REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT, dated as of February __, 2021 (together with all amendments and supplements hereafter, this "*Agreement*") is by and between CLEAN ENERGY ALLIANCE, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, "*Borrower*" or "*CEA*"), and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the "*Lender*").

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Borrower and the Lender agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

"*Act*" means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq.

"*Adjusted LIBO Rate*" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"*Affiliate*" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"*Agreement*" has the meaning set forth in the introductory paragraph hereof.

"*Annual Debt Service*" means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, other Parity Debt and other Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) the quotient obtained by dividing the average daily outstanding principal balance of the Loans, other Parity Debt and Subordinate Debt during such Fiscal Year or other designated four fiscal quarter period by 5.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Applicable Margin” has the meaning set forth in the Fee Agreement.

“Audited Financial Statements” has the meaning set forth in Section 4.6.

“Authorized Representative” means an “Authorized Representative” as defined in the Resolution, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by the Borrower and delivered to the Lender.

“Availability Period” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“Bank Agreement” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to (x) make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Borrower or (y) extend credit to the Borrower.

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.5% per annum, and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; *provided* that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the LIBO Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than one (1.0%), such rate shall be deemed to be one (1.0%) for purposes of this Agreement.

“Base Rate Borrowing”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest at a rate determined by reference to the Base Rate.

“Basic Documents” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including

schedules and exhibits hereto, (b) the Fee Agreement, and (c) and any other documents executed and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the LIBO Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the LIBO Screen Rate announcing that such administrator has ceased or will cease to provide the LIBO Screen Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBO Screen Rate, a resolution authority with jurisdiction over the administrator for the LIBO Screen Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Screen Rate, which states that the administrator of the LIBO Screen Rate has ceased or will cease to provide the LIBO Screen Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate announcing that the LIBO Screen Rate is no longer representative.

“Board” means the Board of Directors of the Borrower.

“Borrower” has the meaning set forth in the introductory paragraph hereof.

“Borrowing” means the making, conversion or continuation of a Loan.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.3 and in the form of Exhibit C hereto.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Diego are authorized or required by law to remain closed; *provided* that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Cash Collateral Loan” means a Loan (or a portion of a Loan) the proceeds of which are deposited with a Person other than the Borrower in order to secure the Borrower’s payment obligations under one or more PPAs or to make a termination payment under PPAs.

“Change in Law” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation

or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by the Lender (or, for purposes of Section 2.12(b), by any lending office of the Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Closing Date*” means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by the Lender.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Commitment*” means the commitment of the Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of the Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.8. The initial amount of the Commitment is \$6,000,000.

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, “Controlling” and “Controlled” have meanings correlative thereto.

“*Debt*” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Agreement and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Debt Service Coverage Ratio” means, for any fiscal quarter of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter.

“Debt Service Coverage Ratio Notice” has the meaning set forth in Section 5.1(q) hereof.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning set forth in the Fee Agreement.

“dollars” or *“\$”* refers to lawful money of the United States of America.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for the Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Lender and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Employee Plan” means an employee benefit plan covered by Title W of ERISA and maintained for employees of the Borrower.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“Eurodollar” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan, or the Loan comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning set forth in Section 6.1 hereof.

“Excluded Taxes” means, with respect to the Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on

it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall set forth on NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, *provided* that if the Federal Funds Effective Rate as so determined would be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for the purposes of this Agreement.

“*Federal Reserve Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

“*Fee Agreement*” means the Fee Agreement of even date herewith between the Borrower and the Lender, as supplemented, amended, restated or otherwise modified from time to time.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“*Governmental Approval*” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“*Governmental Authority*” means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Guarantees*” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such

Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“Impacted Interest Period” has the meaning assigned to it in the definition of “LIBO Rate.”

“Indemnified Taxes” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) in accordance with Section 2.5.

“Interest Payment Date” means, (a) with respect to any Base Rate Loan, the first Business Day of the month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Eurodollar Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter, as the Borrower may elect; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Lender (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available that exceeds the Impacted Interest Period, in each case, at such time.

“Investment Policy” means the investment guidelines of the Borrower as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.)

“Joint Powers Agreement” means the Joint Powers Agreement of Borrower effective as of November 4, 2019, and as amended from time to time.

“Law” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“LC Collateral Account” has the meaning set forth in Section 2.4(h).

“LC Disbursement” means a payment made by the Lender pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Fees” has the meaning set forth in the Fee Agreement.

“Letter of Credit Request” means a request by the Borrower for a Letter of Credit in accordance with Section 2.4(a) and in the form of Exhibit D-1 hereto.

“Letter of Credit Sublimit” means \$0 or, subject to the terms and conditions set forth herein, such greater amount as may be agreed upon by the Lender in writing from time to time.

“Lender” has the meaning set forth in the introductory paragraph hereof.

“Liabilities” mean all claims (including intraparty claims), actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any applicable Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; *provided* that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an *“Impacted Interest Period”*) then the LIBO Rate shall be the Interpolated Rate.

“LIBO Screen Rate” means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate, for Dollars for a period equal in length to such Interest Period as displayed on such day and time on

pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion, *provided* that if the LIBO Screen Rate as so determined would be less than twenty-five basis points (0.250%), such rate shall be deemed to twenty-five basis points (0.250%) for the purposes of this Agreement.

“Lien” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Loans” means the loans made by the Lender to the Borrower pursuant to this Agreement, including, without limitation, Cash Collateral Loans, the Working Capital Loans and the Reimbursement Loans.

“Material Adverse Change” means any material or adverse change in the business, operations, properties, assets, liability, condition (financial or otherwise) or prospects of the Borrower which, in the reasonable determination of the Lender, calls into question the Borrower’s ability to perform Borrower’s Obligations hereunder.

“Material Adverse Effect” means (a) a Material Adverse Change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of the rights and remedies of any Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Borrower’s Obligations under this Agreement and any other Basic Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement or any other Basic Document to which Borrower is a party.

“Material Litigation” shall have the meaning assigned to such term in Section 4.5.

“Maturity Date” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on the third anniversary of the Closing Date (*i.e.*, February __, 2026), or such later date to which the Maturity Date may be extended pursuant to Section 2.17 and, if any such date is not a Business Day, the next preceding Business Day.

“Maximum Rate” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“Member” or *“Members”* means, individually or collectively, as applicable, (i) the City of Carlsbad, California (ii) the City of Del Mar, California and (iii) the City of Solana Beach, California.

“Member Capital Advances” means the capital contributions (whether cash or in kind) made by the Members prior to the Closing Date and outstanding in the aggregate amount of \$450,000.

“Net Revenues” means, for any period and as of any date of determination, the amount obtained by subtracting Operating and Maintenance Costs from Revenues, in each case for such period as of such date.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Lender from a Federal funds broker of recognized standing selected by it; *provided, further*, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“Obligations” means all obligations of the Borrower to the Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees (including, without limitation, the Undrawn Fee and the Letter of Credit Fees) and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of the Borrower to the Lender or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Basic Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“Operating and Maintenance Costs” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and

expenses of an independent certified public accountant, and including Borrower's share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

"Operating Reserve" means a reserve fund established by the Borrower to provide a reserve that can be utilized by the Borrower to pay Operating and Maintenance Costs (including power costs) when Revenues are insufficient.

"Other Connection Taxes" means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Overnight Lender Funding Rate" means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S. managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"Parity Debt" means any System Debt issued or incurred by the Borrower (i) the payment of which is on parity with the Borrower's payment Obligations under this Agreement and (ii) that is subject to an intercreditor agreement in form and substance satisfactory to the Lender.

"Participant" has the meaning set forth in Section 7.3(b) hereof.

"Participation" has the meaning set forth in Section 7.3(b) hereof.

"Person" means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"PPA" means a power purchase agreement executed between the Borrower and a PPA Counterparty.

"PPA Counterparty" means a party to a PPA other than the Borrower.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Lender) or any similar release by the Federal Reserve Board (as determined by the Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“Refunded Debt” means (i) that certain Agreement, dated June 1, 2020, between the Borrower and Calpine, including that certain Promissory Note, issued in connection therewith by Borrower to Calpine, currently outstanding in the aggregate principal amount of \$400,000, and (ii) that certain Agreement, dated June 1, 2020, between the Borrower and Calpine, including that certain Promissory Note 2, issued in connection therewith by Borrower to Calpine, currently outstanding in the aggregate principal amount of \$250,000.

“Reimbursement Loan” has the meaning assigned to such term in Section 2.4(d).

“Reimbursement Loan Amortization Payment Amount” means, with respect to a Reimbursement Loan, the principal amount of such Reimbursement Loan on the applicable Reimbursement Loan Start Date divided by the number of Reimbursement Loan Payment Dates in the applicable Reimbursement Loan Amortization Period.

“Reimbursement Loan Amortization Period” means, with respect to a Reimbursement Loan, the period commencing on the applicable Reimbursement Loan Start Date and ending on the applicable Reimbursement Loan Maturity Date.

“Reimbursement Loan Maturity Date” means, with respect to a Reimbursement Loan, (the Maturity Date.

“Reimbursement Loan Payment Date” means, with respect to a Reimbursement Loan, the first Business Day of each calendar quarter during the applicable Reimbursement Loan Amortization Period and the Reimbursement Loan Maturity Date.

“Reimbursement Loan Start Date” means, with respect to a Reimbursement Loan, the date such Reimbursement Loan is made.

“Reimbursement Obligations” means any and all obligations of the Borrower to reimburse the Lender for LC Disbursements under Letters of Credit and all obligations to repay the Lender for any Loan relating thereto, including in each instance all interest accrued thereon.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserve Funds Notice” has the meaning set forth in Section 5.1(r) hereof.

“Reserve Policy” means the Financial Reserve Policy (CEA-09) of the Borrower, adopted by CEA on _____, 20__.

“Resolution” means Resolution No. [____], adopted by CEA on _____, 2021.

“Revenues” means all revenues, rates and charges received and accrued by the Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the System, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

“Revolving Borrowing” means a Loan hereunder other than a Loan for which the proceeds thereof are used to repay Reimbursement Obligations.

“Revolving Credit Exposure” means, with respect to the Lender at any time, the sum of the outstanding principal amount of the Loans and its LC Exposure at such time.

“Sanctioned Country” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or

the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"Senior Debt" means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is senior to the payment in full of the Borrower's payment Obligations under this Agreement.

"State" means the State of California.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Federal Reserve Board to which the Lender is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as *"Eurocurrency liabilities"* in Regulation D). Such reserve percentage shall include those imposed pursuant to such Regulation D of the Federal Reserve Board. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Lender under Regulation D of the Federal Reserve Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinate Debt" means any unsecured System Debt issued or incurred by the Borrower, the payment of which is subordinate to the payment in full of the Borrower's payment Obligations under this Agreement in form and substance satisfactory to the Lender.

"Swap Agreement" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or any option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include the Lender or any Affiliate of the Lender).

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*System Debt*” means Debt of the Borrower.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*2020 Audited Financial Statements*” means the statement of net position of the System at June 30, 2020, the statement of revenues, expenses and changes in net position of the System for the year ended June 30, 2020, and the statement of cash flows of the System for the fiscal year ended June 30, 2020, together with unqualified audit opinion of Lance, Soll & Lunghard, LLP.

“*Type*”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

“*Undrawn Fee*” has the meaning set forth in the Fee Agreement.

“*Working Capital Loan*” means any Loan other than a Cash Collateral Loan or a Reimbursement Loan.

Section 1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all

tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if the Borrower notifies the Lender that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.4. Interest Rates; LIBOR Notification. The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate (“LIBOR”). LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting LIBOR. As a result, it is possible that commencing in 2022, LIBOR may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. In the event a Benchmark Transition Event occurs, Section 2.11(c) of this Agreement provides a mechanism for determining an alternative rate of interest. The Lender will notify the Borrower, pursuant to Section 2.11(c), in advance of any change to the reference rate upon which the interest rate of Eurodollar Loans is based. However, the Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of “LIBO Rate” or with respect to any alternative, successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of the LIBO Rate or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

ARTICLE 2

THE CREDITS

Section 2.1. Commitments. Subject to the terms and conditions set forth herein, the Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7) in the Revolving Credit Exposure exceeding the

Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

Section 2.2. Loans and Borrowings. (a) Subject to Section 2.4(d), Section 2.5(d) and Section 2.11, at the time of each Borrowing, the Borrower may elect to incur a Loan as a Base Rate Loan or a Eurodollar Loan.

(b) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is (i) **[\$250,000]** or (ii) an integral multiple of \$100,000 and not less than **[\$250,000]**. At the time that each Base Rate Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$25,000 and not less than \$100,000; *provided* that a Base Rate Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.4(d).

(c) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.3. Requests for Revolving Borrowings. To request a Borrowing, the Borrower shall notify the Lender of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 10:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 10:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by electronic means to the Lender of a written Borrowing Request in a form attached hereto as Exhibit C and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit C hereto.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Subject to satisfaction of the terms and conditions of Section 3.2, the Lender shall make available to, or for the account of, the Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on date of the applicable Borrowing.

Section 2.4. Letters of Credit.

(a) *General.* Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its PPA payment obligations, in the form of a Letter of Credit Request set forth in Exhibit D-1 hereto at any time and from time to time during the Availability Period; *provided, however*, that prior to the issuance of the initial Letter of Credit hereunder, the Borrower and the Lender shall execute a Continuing Agreement for Commercial and Standby Letters Of Credit in the form of Exhibit D-3 hereto. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the

Borrower to, or entered into by the Borrower with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or fax (or transmit through an Electronic System, if arrangements for doing so have been approved by the Lender) to the Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five (5) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the Revolving Credit Exposure shall not exceed the Commitment and (ii) the LC Exposure shall not exceed the Letter of Credit Sublimit.

The Lender shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Lender from issuing such Letter of Credit, or any Requirement of Law relating to the Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Lender shall prohibit, or request that the Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Lender is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Lender any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Lender in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally.

(c) *Expiration Date.* Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the date that is five (5) Business Days prior to the Maturity Date.

(d) *Reimbursement.* If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 11:00 a.m., New York City time, on the date that

such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, if such LC Disbursement is not less than \$100,000, and no Default or Event of Default shall have occurred, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 that such payment be financed with a Base Rate Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Base Rate Borrowing (such Base Rate Borrowing, a "*Reimbursement Loan*").

(e) *Obligations Absolute.* The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Lender; *provided* that the foregoing shall not be construed to excuse the Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) *Disbursement Procedures.* The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly after such examination notify the Borrower by telephone (confirmed by fax or through an Electronic System) of such demand for payment if the Lender has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lender with respect to any such LC Disbursement.

(g) *Interim Interest.* If the Lender shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum set forth in Section 2.10(d) for Base Rate Loans and such interest shall be due and payable on the date when such reimbursement is payable.

(h) *Cash Collateralization.* If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Lender demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Lender, in the name and for the benefit of the Lender (the “*LC Collateral Account*”), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 6.01(e) or Section 6.01(f) hereof. The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrower hereby grants the Lender a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Lender and at the Borrower’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Lender.

Section 2.5. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing (other than a Base Rate

Borrowing of a Reimbursement Loan) and the Loan comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by electronic copy to the Lender of a written Interest Election Request in a form approved by the Lender and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto; *provided, however,* that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Lender if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.1(e) or Section 6.1(f).

Section 2.6. Termination and Reduction of Commitment. (a) Unless previously terminated, the Commitment shall terminate automatically on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, the Borrower may at any time terminate, or from time to time reduce, the Commitment; *provided* that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000 and (ii) the Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.8, the Revolving Credit Exposure would exceed the Commitment.

(c) The Borrower shall notify the Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitment shall be permanent.

Section 2.7. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from each Loan made by the Lender, the Type of each Loan and the Interest Period, if any, applicable thereto and the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in such account or accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3) be represented by one or more promissory notes in such form.

Section 2.8. Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section and in accordance with any amounts due and owing pursuant to Section 2.13 of this Agreement.

(b) The Borrower shall notify the Lender by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Lender, of any

prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 10:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 10:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.6, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.6. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10.

Section 2.9. Fees. The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and the Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.10. Interest. (a) The Loans comprising each Base Rate Borrowing (other than Reimbursement Loans) shall bear interest at the Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) The Reimbursement Loans shall bear interest at the Base Rate plus the Applicable Margin.

(d) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans and Letters of Credit. Interest and fees for Letters of Credit accruing at the Default Rate shall be payable on demand of the Lender. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 3% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section, (ii) in the case of the undrawn amount of all outstanding Letters of Credit at such time, 3% plus the LC Facility Fee (as defined in the Fee Agreement) and (iii) in the case of any other amount, 3% plus the rate applicable to Base Rate Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; *provided* that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of

any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(g) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Borrower shall pay to the Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.10(g) that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

Section 2.11. Alternate Rate of Interest; Illegality. (a) Subject to clause (c) of this Section 2.11, if prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Lender determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including, without limitation, by means of an Interpolated Rate or because the LIBO Screen Rate is not available or published on a current basis) for such Interest Period; or

(ii) the Lender determines the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans (or Loan) included in such Borrowing for such Interest Period;

then the Lender shall give notice thereof to the Borrower by telephone, fax or through an Electronic System as provided in Section 7.2 as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and any such Eurodollar Borrowing shall be repaid or converted into a Base Rate Borrowing on the last day of the then current Interest

Period applicable thereto, and (B) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as a Base Rate Borrowing.

(b) If the Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable lending office to make, maintain, fund or continue any Eurodollar Borrowing, or any Governmental Authority has imposed material restrictions on the authority of the Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by the Lender to the Borrower, any obligations of the Lender to make, maintain, fund or continue Eurodollar Loans or to convert Base Rate Borrowings to Eurodollar Borrowings will be suspended until the Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower will upon demand from the Lender, either prepay or convert all Eurodollar Borrowings of the Lender to Base Rate Borrowings, either on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such Eurodollar Borrowings to such day, or immediately, if the Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

(c) If a Benchmark Transition Event occurs, then the Lender may, by notice to Borrower, select an alternate rate of interest for the LIBO Rate that gives due consideration to the then-evolving or prevailing market convention for determining a rate of interest for loans in US Dollars at such time (the "*Alternate Rate*"); Borrower acknowledges that the Alternate Rate may include a mathematical adjustment using any then-evolving or prevailing market convention or method for determining a spread adjustment for the replacement of the LIBO Rate. For avoidance of doubt, all references to the LIBO Rate shall be deemed to be references to the Alternate Rate when the Alternate Rate becomes effective in accordance with this section. In addition, the Lender will have the right, from time to time by notice to Borrower to make technical, administrative or operational changes (including, without limitation, changes to the definition of "Base Rate", the definition of "Interest Period", timing and frequency of determining rates and making payments of interest and other administrative matters) that the Lender decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of the Alternate Rate. The Alternate Rate, together with all such technical, administrative and operational changes as specified in any notice, shall become effective at the later of (i) the fifth Business Day after the Lender has provided notice to the Borrower (the "*Notice Date*") and (ii) a date specified by the Lender in the notice, without any further action or consent of the Borrower, so long as Lender has not received, by 5:00 p.m. Eastern time on the Notice Date, written notice of objection to the Alternate Rate from the Borrower. Any determination, decision, or election that may be made by the Lender pursuant to this section, including any determination with respect to a rate or adjustment or the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Borrower. Until an Alternate Rate shall be determined in accordance with this section, the interest rate shall be equal to the sum of (a) the greater of (x) Prime Rate and (y) 2.50%, plus (b) the Applicable Margin. In no event shall the Alternate Rate be less than 0.00%.

Section 2.12. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender or any Letter of Credit; or

(iii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, as a consequence of this Agreement, the Commitment of or the Loans made by, or the Letters of Credit issued by, the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; *provided further* that, if the Change in Law

giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.13. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or any prepayment pursuant to Section 2.8 hereof), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.8(b) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to the Lender shall be deemed to include an amount determined by the Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

Section 2.14. Payments Free of Taxes. (a) Any and all payments by or on account of any obligation of the Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.14) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse the Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.14, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(d) The Borrower shall indemnify the Lender, within 30 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(e) If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of the Lender, shall repay to the Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(f) Each party's obligations under this Section 2.14 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

(g) For purposes of this Section 2.14, the term "applicable law" includes FATCA.

Section 2.15. Payments Generally. (a) The Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.5 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest,

interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and unreimbursed LC Disbursements then due hereunder.

Section 2.16. Mitigation Obligation. If the Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

Section 2.17. Extension of Maturity Date. The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.17. Upon receipt of written request of the Borrower to extend the Maturity Date, received no more than one hundred twenty (120) days and no less than sixty (60) days prior to the then current Maturity Date, the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); *provided, however*, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.18. Pledge; Security of Obligations. The Net Revenues are hereby pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against the Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in this Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full

and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. Notwithstanding any other provision of this Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. Conditions Precedent to Effectiveness. The obligation of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* The Lender has received an opinion of Nixon Peabody LLP, special counsel to the Borrower, dated the Closing Date and addressed to the Lender in the form attached hereto as Exhibit A.

(b) *Documents.* (i) The Lender has received executed copies of the Basic Documents executed by the Borrower on or prior to the Closing Date certified by the Secretary of the Borrower, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date.

(ii) The Lender has received a certified copy of the Joint Powers Agreement.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of the Borrower set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Borrower, threatened (i) in connection with the Basic Documents or any transactions contemplated thereby or (ii) against or affecting the Borrower, the result of which could have a Material Adverse Effect.

(e) *No Material Adverse Change.* Since the date of the 2020 Audited Financial Statements, (i) no Material Adverse Change has occurred in the status of the business, operations or condition (financial or otherwise) of the Borrower or its ability to perform its obligations under the Basic Documents and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Lender from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* The Lender has received (i) certified copies of all proceedings of the Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, on which certification the Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees; Refunded Debt.* The Lender has received all fees and expenses due and payable to the Lender and/or its legal counsel pursuant to the Fee Agreement. All Refunded Debt shall have been paid in full in immediately available funds on or before the Closing Date, and such Refunded Debt and the documents thereto shall be terminated to the satisfaction of the Lender.

(h) *Financial Statements.* The Lender has received the 2020 Audited Financial Statements, internally prepared quarterly budget reports of the Borrower for the most recent fiscal quarter end, if not previously provided.

(i) *Rates.* The Lender has received satisfactory evidence that rates charged by the Borrower for its services will be reasonably competitive to the rates of San Diego Gas & Electric.

(i) *Other Matters.* The Lender has received such other statements, certificates, agreements, documents and information with respect to the Borrower and matters contemplated by this Agreement as the Lender may have requested.

Section 3.2. Conditions Precedent to each Credit Event. The obligation of the Lender to make a Loan on the occasion of any Borrowing, and of the Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The Borrower shall have filed the necessary notices and filings with and provided for payment to the California Debt Issuance Advisory Commission of any fee related thereto.

(b) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(c) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(d) It has provided the Lender with a completed Borrowing Request substantially in the form of Exhibit C hereto or a Letter of Credit Request substantially in the form of Exhibit D-1 hereto, as applicable.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to make Loans and issue the Letters of Credit, the Borrower represents and warrants to the Lender as follows:

Section 4.1. Organization, Powers, Etc. The Borrower (a) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified could not reasonably be expected to have a Material Adverse Effect. The Borrower has the agency power to (i) execute, deliver and perform its obligations under the Basic Documents; (ii) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) has complied with all Laws in all matters related to such actions of the Borrower as are contemplated by the Basic Documents.

Section 4.2. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance by the Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Borrower, (b) do not conflict with, or result in a violation of, any Laws, including the Joint Powers Agreement, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Borrower which violation would result in a Material Adverse Effect and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect.

Section 4.3. Binding Obligations. The Basic Documents are valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.4. Governmental Consent or Approval. No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the Borrower for execution, delivery and performance by the Borrower of the Basic Documents.

Section 4.5. Absence of Material Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by the Borrower of the Basic Documents or any proceeding taken or to be taken by the Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by the Borrower of the Basic Documents, or which could reasonably be expected to result in any Material Adverse Effect, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as “*Material Litigation*”).

Section 4.6. Financial Condition. The most recent audited financial statements of the System delivered (or deemed delivered) to the Lender (the “*Audited Financial Statements*”) were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Lender. The most recent unaudited financial statements of the System delivered (or deemed delivered) to the Lender were prepared on a consistent basis and in accordance with GAAP. The data on which such financial statements and budget reports are based were true and correct in all material respects. The Audited Financial Statements and the budget reports present fairly the net position of the System as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended. Since the date of the most recent Audited Financial Statements delivered to the Lender, no Material Adverse Effect has occurred.

Section 4.7. Incorporation of Representations and Warranties. The representations and warranties of the Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. The Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, the Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of the Lender.

Section 4.8. Accuracy and Completeness of Information. The Basic Documents and all certificates, financial statements, documents and other written information furnished to the Lender by or on behalf of the Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to

give the Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.9. No Default. (a) No Default or Event of Default under this Agreement has occurred and is continuing.

(b) No “event of default” has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not limited to, any PPA) to which the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the System.

Section 4.10. No Proposed Legal Changes. There is no amendment or, to the knowledge of the Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

Section 4.11. Compliance with Laws, Etc. The Borrower is in compliance with the Investment Policy and all Laws applicable to the Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect. In addition, no benefit plan maintained by the Borrower for its employees is subject to the provisions of ERISA, and the Borrower is in compliance with all Laws in respect of each such benefit plan.

Section 4.12. Environmental Matters. In the ordinary course of its business, the Borrower conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Borrower does not believe that Environmental Laws are likely to have a Material Adverse Effect.

Section 4.13. Regulation U. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14. Liens. This Agreement creates a valid Lien on and pledge of the Net Revenues to secure the payment and performance of the Borrower’s obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement, there is no pledge of or Lien on Net Revenues.

Section 4.15. Sovereign Immunity. The Borrower is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or its revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be made subject in any action, suit or proceeding relating to this Agreement or any other Basic Document, and no such immunity (whether or not claimed) may be attributed to the Borrower or its revenues.

Section 4.16. Usury. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17. Insurance. As of the Closing Date, the Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18. ERISA. The Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19. Sanctions Concerns and Anti-Corruption Laws. The Borrower and its respective officers and directors and to the knowledge of the Borrower, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any of its directors or officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Basic Documents will violate Anti-Corruption Laws or applicable Sanctions.

Section 4.20. System Debt. The Borrower has not incurred or issued any System Debt other than the System Debt created under this Agreement and the Member Capital Advances.

ARTICLE 5

COVENANTS

Section 5.1. Affirmative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lender that:

(a) *Accounting and Reports.* The Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Lender:

(i) as soon as available, and in any event within sixty (60) days after the close of each of the first three (3) fiscal quarters of each Fiscal Year, an unaudited balance sheet of Borrower as of the last day of the quarterly period then ended and the statements of income, retained earnings and cash flows of Borrower for the quarterly period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within six (6) months after the close of each Fiscal Year of Borrower, a copy of the audited balance sheet of Borrower as of the last day of the Fiscal Year then ended and the **[statements of income, retained earnings and cash flows]** of Borrower for the Fiscal Year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, and in any event within 45 days of adoption, the Borrower shall provide the Lender its annual budget;

(vi) as soon as available, and in any event within 45 days of the end of each month, the monthly operating information of the Borrower, substantially in the form agreed upon between CEA and the Lender, which shall include customer enrollments, opt-outs, and total revenues;

(vii) promptly after receipt thereof, copies of each PPA entered into by the Borrower; and

(viii) promptly after the request therefor, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default, and such compliance certificate shall also include the Debt Service Coverage Ratio test required by Section 5.1(q) hereof and the amount set forth in the Operating Reserve.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the properties of the Borrower and the other assets of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of System.*

(i) The Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, the Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. The Borrower shall give prior written notice to the Lender of any action referred to in this subparagraph (i).

(ii) The Borrower covenants that it will maintain and preserve the System in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for municipal power systems of like

size and character. The Borrower will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the System, so that at all times business carried on in connection with the System shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the System in an efficient and economical manner and shall not commit or allow any waste with respect to the System.

(d) *Defaults.* The Borrower shall notify the Lender of any Default or Event of Default of which the Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* The Borrower shall comply in all material respects with all Laws binding upon or applicable to the Borrower (including Environmental Laws) and material to the Basic Documents. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Borrower will not use or allow any tenants or subtenants to use its Property for any business activity that violates any federal or state law or that supports a business that violates any federal or state law.

(f) *Investment Policy and Guidelines.* The Borrower shall promptly notify the Lender in writing, not less than thirty (30) days after the Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase the types of investments permitted thereby as of the Closing Date.

(g) *Notices.* The Borrower shall promptly give notice to the Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of the Borrower to perform its obligations under any Basic Document.

(h) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies ("*Improved Provisions*," which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then the Borrower shall provide the Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Borrower shall promptly cooperate with the Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(i) *Further Assurances.* The Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Notices.* The Borrower shall promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement) or any PPA, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other System Debt which are not restricted or prohibited from being shared with the Lender under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof, (iv) notice of any proposed substitution of any Letter of Credit, and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which the Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect.

(k) *Maintenance of Insurance.* The Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however*, that the Borrower may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker’s compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the System.

(l) *Preservation of Security.* The Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(m) *Rates.* The Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the System, which shall be fair and nondiscriminatory and adequate to provide the Borrower with Revenues in each Fiscal Year sufficient to (i) pay, to the extent not paid from other available moneys, any and all

amounts the Borrower is obligated to pay or set aside from Revenues by law or contract in such Fiscal Year and (ii) maintain on a historical and projected basis a Debt Service Coverage Ratio of not less than 1.40 for each Fiscal Year.

(n) *Budget.* The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all obligations due to the Lender hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, the Borrower shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to the Lender during the course of the Fiscal Year to which such annual budget applies.

(o) *Payment of Taxes, Etc.* The Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Borrower on account of the System or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(p) *Reserved.*

(q) *Debt Service Coverage.* The Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.40 for each fiscal quarter of the Borrower, commencing with the fiscal quarter ended **[June 30, 2022]**. The Debt Service Coverage Ratio shall be tested on a rolling last twelve month basis and forward for the following twelve months as of the last day of each fiscal quarter commencing with the fiscal quarter ended **[June 30, 2022]**. The Borrower shall determine the Debt Service Coverage Ratio at each fiscal quarter and provide written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal quarter and in any event no later than forty-five (45) calendar days following the end of such fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

(r) *Reserve Policy.* The Borrower shall comply with the terms of its Reserve Policy in all respects and shall not amend such Reserve Policy without the prior written consent of the Lender.

(s) *Use of Proceeds.* (i) The proceeds of the Loans will be used only for working capital purposes to repay LC Disbursements, to cash collateralize PPA obligations or, through **[September 30, 2021]**, to pay interest accrued on any Loans hereunder or any fees owing hereunder or under the Fee Agreement. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X. Letters of Credit will be issued only to support collateral posting requirements under PPAs.

(ii) The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 5.2. Negative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Borrower to pay when due amounts owing to the Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues or the priority of payments from Net Revenues provided in this Agreement; or (iii) the rights or remedies of the Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the System or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues or the proceeds thereof other than the Liens created by this Agreement.

(f) *Sovereign Immunity.* To the fullest extent permitted by applicable law, with respect to its obligations arising under this Agreement or any other Basic Document, the Borrower irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and the Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues (irrespective of their use or intended use), all such immunity.

(g) *System.* Construct, operate or maintain any system or utility competitive with the System. The Borrower shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the System to pay the fees, rates and charges applicable to the services and facilities furnished by the System. The Borrower shall not provide any service of the System free of charge to any Person, except (i) to the extent that any such free use is required by the terms of any existing contract or agreement and (ii) for incidental insignificant free use so long as such free use does not prevent the Borrower from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger, consolidation or combination of the System with any other entity or enterprise.

(i) *Use of Proceeds.* Use the Letters of Credit for any purpose other than to secure the Borrower's obligations under PPAs. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure the Borrower's obligations under PPAs, (ii) to repay in whole or in part any LC Disbursement, (iii) for general corporate purposes, or (iv) capital expenditures related to the development or acquisition of new assets related to the System subject to prior written approval by the Lender, which such approval shall not be unreasonably be withheld. For the avoidance of doubt, Loan Proceeds may not be used for other long-term expenditures or for funding the Operating Reserve. Use the proceeds of any Loan or any Letter of Credit in violation of any Sanctions or Anti-Corruption Laws.

(j) *System Debt.* Not issue, incur or assume to exist any Senior Debt, Parity Debt or Subordinate Debt except for (i) Debt existing under this Agreement and (ii) Member Capital Advances in an amount not to exceed \$450,000.

(k) *Excess Revenues.* Not use excess revenues for any purpose other than: (i) payment of Operating and Maintenance Costs; (ii) payment of Obligations; (iii) funding and replenishment of the Operating Reserve; (iv) capital expenditures in connection with assets that will become part of the System; (v) rebates to System customers; and (vi) any other lawful purpose that inures to the direct benefit of the System.

(l) *Swap Agreements.* Not enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower has actual exposure, and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower.

(m) *Repayment of Member Capital Advances.* Not to repay the Member Capital Advances unless (i) such repayment is made on or after the third (3rd) anniversary of the date the System commences providing utility services to customers, (ii) on the date of such repayment, no Default or Event of Default has occurred and is continuing hereunder and (iii) the Borrower shall have provided to Lender a certificate, together with reasonably detailed calculations, demonstrating that Borrower has maintained and continues to maintain on a historical and projected basis a Debt Service Coverage Ratio of not less than [1.50] for each Fiscal Year.

ARTICLE 6

DEFAULTS

Section 6.1. Events of Default and Remedies. If any of the following events occur, each such event will be an “Event of Default”:

(a) the Borrower fails to pay, or cause to be paid, as and when due, (i) any principal of or any interest on any Loan or Reimbursement Obligation or (ii) any other Obligation hereunder or under the Fee Agreement and, in the case of clause (ii), such failure continues for three (3) Business Days.

(b) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) the Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(a), 5.1(c), 5.1(d), 5.1(g), 5.1(k), 5.1(l), 5.1(m), 5.1(q), 5.1(r), 5.1(s) or 5.2 hereof;

(d) the Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy,

insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) is instituted against the Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Borrower, or the Borrower publicly contests the validity or enforceability of any obligation to pay System Debt, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Joint Powers Agreement, any other Basic Document or any operative document related to System Debt;

(i) dissolution or termination of the existence of the Borrower;

(j) the Borrower (i) defaults on the payment of the principal of or interest on any System Debt beyond the period of grace, if any, *provided* in the instrument or agreement under which such System Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any System Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such System Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such System Debt;

(k) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$250,000 are entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days;

(l) *Reserved;*

(m) the passage of any Law has occurred which could reasonably be expected to have a Material Adverse Effect.

Section 6.2. Remedies. Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f)), and at any time thereafter during the continuance of such event, the Lender may by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) require cash collateral for the LC Exposure in accordance with Section 2.4(h) hereof and (iii) declare all Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any Event of Default described in Section 6.1(e) or 6.1(f), the Commitment shall automatically terminate and the principal of the Loans then outstanding, and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE 7

MISCELLANEOUS

Section 7.1. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by the Borrower therefrom, will in any event be effective unless the same is in writing and signed by the Lender and an Authorized Representative of the Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2. Notices. All notices and other communications provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Borrower:

Clean Energy Alliance

[]

[]

Attention: []

Telephone: []

Facsimile: []

with a copy to:

Nixon Peabody LLP

[]

[]

Attention: []

Telephone: []

(b) if to the Lender:

JPMorgan Chase Bank, N.A.

383 Madison Avenue, 3rd Floor

New York, New York 10179

Mail Code: NY1-M076

Attention: Allyson Goetschius or Janice Fong

Telephone: (212) 270-0335 or (212) 270-3762

Facsimile: (917) 849-0272

Email: Allyson.l.goetschius@jpmorgan.com or
Janice.r.fong@jpmorgan.com

with a copy to:

JPMorgan Chase Bank, National Association

JPM-Delaware Loan Operations

500 Stanton Christiana Road, NCC5, Floor 01

Newark, DE 19713-2107

Attention: PFG Servicing

Telephone: (302) 634-9627

Email/Fax: PFG_Servicing@jpmorgan.com

And, for compliance-related items, with a copy to:

public.finance.notices@jpmchase.com

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed, respectively, addressed as aforesaid, except that requests for LC Disbursements submitted to the Lender will not be effective until received by the Lender.

Section 7.3. Survival of Covenants; Successors and Assigns. (a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include

the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of the Lender. The Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably); *provided* that the Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Borrower and the Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a “*Participant*”) a participation or participations in all or any part of the Lender’s rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a “*Participation*”) without the consent of the Borrower. In the event of any such grant by the Lender of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower may continue to deal solely and directly with the Lender in connection with the Lender’s rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Lender; *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and *provided, further*, that the Borrower’s liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Borrower would owe to the Lender but for such participation.

Section 7.4. Reserved.

Section 7.5. Liability of Lender; Indemnification. (a) To the extent permitted by the laws of the State, the Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; *provided* that this provision is not intended to and will not preclude the Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither the Lender nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Lender against presentation of requests for LC Disbursements or requests which the Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that the Borrower is not required to indemnify the Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent that a court of competent

jurisdiction has determined by a final, non-appealable judgment were caused by the gross negligence or willful misconduct of the Lender.

(b) To the extent permitted by the laws of the State, the Borrower indemnifies and holds harmless the Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which the Lender may incur (or which may be claimed against the Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; *provided that* the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Borrower, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and waives, any claim against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Borrower under this Section 7.5 will survive the termination of this Agreement.

Section 7.6. Expenses. Upon receipt of a written invoice, the Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents, (iii) the fees and disbursements of counsel to the Lender with respect to advising the Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Lender. In addition, and notwithstanding the foregoing, the Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Lender in enforcing any obligations or in collecting any payments due from the Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Borrower under this Section 7.6 will survive the termination of this Agreement.

Section 7.7. No Waiver; Conflict. Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between the Borrower and the Lender.

Section 7.8. Modification, Amendment Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9. Dealings. The Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Borrower and/or any PPA Counterparty regardless of the capacity of the Lender hereunder or under any Letter of Credit.

Section 7.10. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11. Counterparts; Integration; Effectiveness; Electronic Execution. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Basic Documents and any separate letter agreements with respect to fees payable to the Lender constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 7.2), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an “*Ancillary Document*”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective

as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (i) to the extent the Lender has agreed to accept any Electronic Signature, the Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Lender and the Borrower, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Lender may, at its option, create one or more copies of this Agreement, any other Basic Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Basic Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Basic Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Lender’s reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 7.12. Table of Contents; Headings. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13. Entire Agreement. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14. Governing Law Waiver of Jury Trial. (a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF THE LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.15. Reserved.

Section 7.16. USA PATRIOT Act. The Lender notifies the Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Act*”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower agrees to provide such documentary and other evidence of the Borrower’s identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.17. Reserved.

Section 7.18. Assignment to Federal Reserve Bank. The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the Borrower to the

Lender in accordance with the terms of this Agreement will satisfy the Borrower's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

Section 7.19. Reserved.

Section 7.20. Arm's Length Transaction. The transaction described in this Agreement is an arm's length, commercial transaction between the Borrower and the Lender in which: (i) the Lender is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) the Lender is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Lender has to the Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) the Lender is not recommending that the Borrower take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Borrower should discuss the information contained herein with the Borrower's own legal, accounting, tax, financial and other advisors, as the Borrower deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Borrower and the Lender have duly executed this Agreement as of the date first written above.

CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, N.A.

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF OPINION OF NIXON PEABODY LLP

February __, 2021

JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179

Clean Energy Alliance

[_____]
[_____]

Re: Clean Energy Alliance and JPMorgan Chase Bank, N.A. –
Revolving Credit Agreement and Fee Agreement

Ladies and Gentlemen:

We have acted as special counsel to Clean Energy Alliance, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. (“CEA”), in connection with: (i) the Revolving Credit Agreement, dated as of February __, 2021 (the “Revolving Credit Agreement”) and the Fee Agreement, dated February __, 2021 (the “Fee Agreement” and together with the Revolving Credit Agreement, the “Loan Documents”) each between CEA, as borrower, and JPMorgan Chase Bank, N.A., as lender (the “Lender”).

In connection with this opinion, we have examined, among other documents, copies of the Loan Documents and the following additional documents, instruments and agreements, each in the form executed as of the dates set forth below:

- (a) the Joint Powers Agreement of CEA, effective as of November 4, 2019, as amended;
- (b) Resolution No. [____ - ____], adopted by CEA on February __, 2021;
- (c) [Investment Policy of CEA]; and
- (d) [_____].

Subject to the assumptions and qualifications contained herein, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of CEA, agreements and such other instruments and certificates of public or governmental officials and of officers and representatives of CEA, and made such investigations of law, as we have deemed necessary or appropriate as a basis for the opinions expressed below. We have relied as to factual

matters upon representations of officers and representatives of CEA, including the representations of CEA in the Loan Documents. We have not independently investigated or verified the facts represented and do not opine as to the accuracy of any such facts.

In rendering the following opinions, we have assumed, without investigation, the authenticity of any document or instrument submitted to us as original, the conformity to the originals of any document or instrument submitted to us as a copy, the authenticity of the originals of such latter documents, the legal capacity of natural persons and the genuineness of all signatures on such originals or copies, and that all documents executed by a party other than CEA were duly and validly authorized, executed and delivered by such party and are the legal, valid and binding obligations of such party enforceable against such party in accordance with their respective terms.

We have further assumed that the Loan Documents accurately reflect the intent and business purposes of the parties thereto and the complete understanding of the parties thereto with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder. The terms and conditions of the transactions described in the Loan Documents have not been amended, modified or supplemented by any (a) other agreement, negotiations or understanding of the parties thereto or (b) waiver of any of the material provisions of the Loan Documents.

We have assumed that the Lender has complied with all legal requirements pertaining to its status as such status relates to its power to enter into and make advances under the Loan Documents and enforce its remedies under the Loan Documents. In addition, we have assumed the Lender is either exempt from or has complied with all state and federal laws and regulations applicable to it as a result of entering into and making advances under the Loan Documents. Further, we have assumed the Lender (a) is a person exempt from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon a loan or forbearance, and (b) has no present intent to transfer the Loan Documents to a person or entity that is not exempt from the usury laws of the State of California. Finally, we have assumed that all of the conditions to, and all of the requirements for, the effectiveness of the Loan Documents have been satisfied or waived.

Where statements in this opinion are qualified by the term “material” or “materially,” those statements involve judgments and opinions as to the materiality or lack of materiality of any matter to CEA’s business, assets, results of operations or financial condition that are entirely those of CEA and its officers.

Members of our firm involved in the preparation of this opinion are licensed to practice law in the State of California and, in rendering the following opinions, do not purport to be experts on, or to express an opinion herein concerning, any law other than (i) the laws of the State of California and (ii) the federal law of the United States, in each case, as in effect on the date hereof and in our experience as are normally applicable to the transactions of the type contemplated by the Loan Documents (the foregoing laws, subject to the exceptions and qualifications herein, are referred to herein collectively as the “*Applicable Laws*”). We express no opinion as to whether the laws of any particular jurisdiction apply, and no opinion to the extent that the laws of any

jurisdiction other than those identified above are applicable to the Loan Documents or the transactions contemplated thereby.

We express no opinion herein with respect to any document, instrument or agreement other than the Loan Documents.

Based upon and subject to the foregoing and the other assumptions and qualifications hereinafter contained, **[we are of the opinion that the Loan Documents constitute the legal, valid and binding obligations of CEA]**¹, enforceable against CEA in accordance with their terms.

This opinion is qualified by, and we render no opinion with respect to, the following:

(i) We express no opinion as to the effect of bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting the relief of debtors or the rights and remedies of creditors generally, including without limitation the effect of statutory or other law regarding fraudulent conveyances, preferential transfers and equitable subordination;

(ii) Our opinions are qualified by the limitations imposed by general principles of equity upon the availability of equitable remedies for the enforcement of provisions of any of the Loan Documents, and by the effect of judicial decisions which have held that certain provisions are unenforceable when their enforcement would violate the implied covenant of good faith and fair dealing, or would be commercially unreasonable, or where their breach is not material;

(iii) We express no opinion as to the effect of Section 1670.5 of the California Civil Code or any other California law or equitable principle which provides that a court may refuse to enforce, or may limit the application of, a contract or any clause thereof which the court finds to have been unconscionable at the time it was made or contrary to public policy;

(iv) We express no opinion as to the enforceability of provisions of any of the Loan Documents expressly or by implication waiving broadly or vaguely stated rights or unknown future rights, or waiving rights granted by law where such waivers are against public policy;

(v) We express no opinion as to the enforceability of any provision of any of the Loan Documents purporting to (a) waive rights to trial by jury, service of process or objections to the laying of venue or to forum in connection with any litigation arising out of or pertaining to any of the Loan Documents, (b) exclude conflict of law principles under California law, (c) establish particular courts as the forum for the adjudication of any controversy relating to any of the Loan Documents or (d) establish the laws of any

¹ Requested opinions to come.

particular state or jurisdiction for the adjudication of any controversy relating to any of the Loan Documents;

(vi) We express no opinion as to the effect of judicial decisions that may permit the introduction of extrinsic evidence to modify the terms or the interpretation of any of the Loan Documents;

(vii) We express no opinion as to the enforceability of any provisions of any of the Loan Documents providing that (a) rights or remedies are not exclusive, (b) rights or remedies may be exercised without notice, (c) every right or remedy is cumulative and may be exercised in addition to or with any other right or remedy, (d) the election of a particular remedy or remedies does not preclude recourse to one or more other remedies or (e) the failure to exercise, or any delay in exercising, rights or remedies available under any of the Loan Documents will not operate as a waiver of any such right or remedy;

(viii) We note that a requirement that provisions of any of the Loan Documents may only be waived in writing may not be binding or enforceable if an oral agreement has been created modifying any such provision or an implied agreement by trade practice or course of conduct has given rise to a waiver;

(ix) We express no opinion as to any provision of the Loan Documents which provides for indemnification, contribution, waiver or release to the extent such provision may be limited or rendered unenforceable, in whole or in part, by applicable federal or state securities laws, criminal statutes, or the policies underlying such laws and by the effect of general rules of contract law that limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification for liability for action or inaction, to the extent the action or inaction involves negligence, gross negligence, recklessness, willful misconduct or unlawful conduct of any person to be indemnified, exculpated, released, or exempted, or waivers of unmatured claims or rights;

(x) We express no opinion as to the creation, attachment, priority, enforceability or perfection of any security interest, including, without limitation, any security interest in the Debt Service Reserve Account or any security interest created by the Assignment; and

(xi) The opinions expressed herein are subject to the qualification that actions taken or determinations made by the parties to the Loan Documents be taken in good faith and be reasonable in view of the circumstances.

Our opinions expressed herein are rendered as of the date hereof and do not address the passage of time or other events subsequent to the date hereof. We disclaim any undertaking to advise you of any change in law or fact which may affect the continued correctness of any opinion as of a later date.

No opinion expressed herein may be cited, quoted or otherwise referenced in any financial statement, prospectus, private placement memorandum or other similar document, nor may copies

of this opinion be delivered to any person other than the addressees hereto, without our prior written consent.

The addressees hereto may rely on the opinions expressed herein (subject to the assumptions and qualifications set forth herein) only in connection with the transactions contemplated by the Loan Documents. No other person may rely on the opinions expressed herein for any purpose without our prior written consent. This opinion is not to be filed with any governmental agency or other person or entity without our prior written consent.

Very truly yours,

NIXON PEABODY LLP

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “*Certificate*”) is furnished to JPMorgan Chase Bank, N.A. (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of February __, 2021 (together with all amendments and supplements thereto, the “*Agreement*”), by and between the Clean Energy Alliance (including its successors and assigns, the “*Borrower*”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. To the best of my knowledge the financial statements required by Section 5.1(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Clean Energy Alliance System in accordance with GAAP as of the date and for the period covered thereby.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

5. **[The Debt Service Coverage Test Calculation]** pursuant to Section 5.1(q).
6. Amounts held in the Operating Reserve are as follows: \$_____.

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

CLEAN ENERGY ALLIANCE

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF BORROWING REQUEST

_____, 20__

JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: _____

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of February __, 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between Clean Energy Alliance (with its successors and assigns, the "*Borrower*") and JPMorgan Chase Bank, N.A. (with its successors and assigns, the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that the Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the "*Proposed Loan*"):

1. The Business Day of the Proposed Loan is _____, 20__ (the "*Issuance Date*").
2. The principal amount of the Proposed Loan is \$_____, which is not greater than the Revolving Credit Exposure or the Loan Sublimit as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans outstanding under the Agreement will not exceed the Loan Sublimit as of the Issuance Date, and the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date.
3. The interest rate with respect to the Proposed Loan shall be a **[Base Rate Loan*][Eurodollar Loan][.];[IN THE CASE OF A EURODOLLAR BORROWING]** the initial Interest Period shall be for **[one month][three months].**

* Reimbursement Loans may only be Base Rate Loans, not Eurodollar Loans.

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of the Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects (or in the case of any representation qualified by materiality, in all respects) on the date hereof, as if made on the date hereof;

(b) No Event of Default has occurred and is continuing; and

(c) No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect.

5. The proceeds for Proposed Loan are being used for the following purposes:

(a) To provide cash collateral to secure the Borrower's obligations under PPAs,

(b) to repay in whole or in part any LC Disbursement under Section 2.4(d) in the case of a Reimbursement Loan*,

(c) for general corporate purposes,

(d) to pay interest accrued on any Obligations through September 30, 2021, or

(e) capital expenditures related to the development or acquisition of new assets related to the System.

6. The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds or deposited [in the amount of \$_____] into Borrower's account at the Lender in accordance with the instructions set forth in the Agreement or to or on behalf of the Borrower in accordance with the instructions set forth below and the Borrower hereby confirms that the Lender is authorized to make said disbursements:

[Insert wire instructions and amounts]

* Reimbursement Loans may only be Base Rate Loans, not Eurodollar Loans

CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved by the Lender:

JPMORGAN CHASE BANK, N.A.

By: _____

Name: _____

Title: _____

EXHIBIT D-1

FORM OF LETTER OF CREDIT REQUEST

_____, 20__

JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: _____

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of February __, 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between Clean Energy Alliance (with its successors and assigns, the "*Borrower*") and JPMorgan Chase Bank, N.A. (with its successors and assigns, the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.4 of the Agreement, that the Lender issue a Letter of Credit under the Agreement, and in that connection sets forth below the following information relating to such Letter of Credit (the "*Proposed Letter of Credit*"):

1. The Business Day of the Proposed Letter of Credit is _____, 20__ (the "*Issuance Date*").

2. The principal amount of the Proposed Letter of Credit is \$_____, which is not greater than the Revolving Credit Exposure or the Letter of Credit Sublimit as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Letter of Credit, the aggregate principal amount of all Letters of Credit outstanding under the Agreement will not exceed the Letter of Credit Sublimit as of the Issuance Date set forth in 1 above, and the aggregate principal amount of all Loans and Letters of Credit outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date set forth in 1 above.

3. The tenor of the Proposed Letter of Credit shall be [_____].

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:

(a) The representations and warranties of the Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects on the date hereof, as if made on the date hereof;

(b) No Event of Default has occurred and is continuing;

(c) No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect.

5. The undersigned hereby confirms that the Borrower has submitted a Standby Letter of Credit Application, a form of which is on file with the Borrower and the Lender.

CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

EXHIBIT D-2

SHORT FORM LETTER OF CREDIT APPLICATION

TO BE PROVIDED UNDER SEPARATE COVER BY THE LENDER.

EXHIBIT D-3

**FORM OF COMMERCIAL & STANDBY LETTERS OF CREDIT
BETWEEN CLEAN ENERGY ALLIANCE AND JPMORGAN CHASE BANK, N.A.
(FOR CREDITS ISSUED UNDER A CREDIT AGREEMENT)**

To induce JPMorgan Chase Bank, N.A. and/or any of its domestic or foreign subsidiaries or affiliates (individually and collectively, "*Bank*"), to issue for the account of Applicant or for the account of the Account Party named in the Application, one or more standby or commercial letters of credit or other independent undertakings, from time to time at the request of the undersigned (individually and collectively, "*Applicant*"; jointly and severally, if more than one), Applicant agrees as to each letter of credit or undertaking (together with any replacements, extensions or modifications, a "*Credit*," collectively, "*Credits*") as follows:

All Credits issued pursuant to this Continuing Agreement (as amended, supplemented or otherwise modified, the "*Agreement*") are issued under and pursuant to the terms and conditions of the Revolving Credit Agreement (as amended, extended, restated or otherwise modified from time to time, and including any successor agreement to which the Bank is a party (as a letter of credit issuing bank) which refinances or otherwise governs the Credits, the "*Credit Agreement*") dated as of among Marin Clean Energy and JPMorgan Chase Bank, N.A. as Lender. Capitalized terms used herein and not otherwise defined have the meaning assigned to them in the Credit Agreement. If the Credit Agreement is terminated or expires, references in this Agreement to the Credit Agreement shall refer to the Credit Agreement in the form it was in immediately prior to such termination or expiration, unless otherwise agreed by Bank and Applicant. In the event of any inconsistency between the terms and conditions of the Credit Agreement and the terms and conditions of this Agreement, the terms and conditions of the Credit Agreement shall control, except that provisions relating to indemnification and limitation of Bank's liability as set forth in this Agreement shall also apply.

SECTION 1. DEFINITIONS.

The following terms shall have the meanings set forth below:

"*Application*" means an irrevocable request to issue a Credit, in a form acceptable to the Bank.

"*Costs*" means any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including reasonable and documented expert witness fees and legal fees, charges and disbursements of any counsel for any Indemnified Person.

"*Drawing Document*" means any document presented for purposes of drawing under a Credit.

"*Good Faith*" means honesty in fact in the conduct of the transaction concerned.

“Instructions” means each Application, any inquiries, communications and instructions (in any form, whether oral, telephonic, written, electronic mail or transmission or facsimile) regarding a Credit. Bank’s records of the content of any Instruction shall be conclusive absent manifest error.

“ISP” means International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by Bank on the date such Credit is issued.

“LOIs” means steamship guarantees, releases or letters of indemnity in favor of a carrier issued by Bank upon Instruction of Applicant as set forth on Annex I.

“Obligations” means all obligations and liabilities of Applicant to Bank in respect of any and all Credits and LOIs issued hereunder (if any), whether matured or unmatured, absolute or contingent, now existing or hereafter incurred.

“Property” means all property of any kind whatsoever (now existing or hereafter acquired) referred to, or relating to, an applicable Credit including, without limitation, any and all right, title and interest of Applicant in any goods, equipment, inventory, money, documents, letters of credit, warehouse receipts, instruments, securities, security entitlements, financial assets, investment property, precious and base metals, chattel paper, electronic chattel paper, accounts, commercial tort claims, deposit accounts, general intangibles (including any claims for breach of contract, breach of warranty claims and any insurance policies and proceeds), letter of credit rights, choses in action and the proceeds of any and all thereof (including any and all of the aforesaid referred to in any Credit or the Drawing Documents relating thereto).

“Released Merchandise” means, with respect to a Credit, all Property released (including pursuant to a forwarders cargo receipt or by any other means whatsoever) or consigned to Applicant or any Person designated by Applicant in connection with such Credit or related LOI.

“Standard Letter of Credit Practice” means, for Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Bank issued the applicable Credit or for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Credit, as the case may be. Such practices shall be (i) of banks that regularly issue Credits in the particular city and (ii) required or permitted under the UCP or the ISP, as chosen in the applicable Credit.

“UCP” means Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adhered to by Bank on the date such Credit is issued.

“UN Convention” means the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

SECTION 2. LIMITATION OF LIABILITY; INDEMNIFICATION.

(a) Without limiting any provision of the Credit Agreement covering the limitation of liability of the issuing bank (including any exception set forth therein), Bank and each other Indemnatee shall not be responsible to Applicant for, and Bank's rights and remedies against Applicant and Applicant's obligation to reimburse Bank under the Credit Agreement shall not be impaired by: (i) honor of a presentation under any Credit which on its face substantially complies with the terms of such Credit; (ii) honor of a presentation of any Drawing Documents which appear on their face to have been signed, presented or issued (X) by any purported successor or transferee of any beneficiary or other party required to sign, present or issue the Drawing Documents or (Y) under a new name of the beneficiary; (iii) acceptance as a draft of any written or electronic demand or request for payment under a Credit, even if nonnegotiable or not in the form of a draft, and may disregard any requirement that such draft, demand or request bear any or adequate reference to the Credit; (iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness, or legal effect of any presentation under any Credit or of any Drawing Documents; (v) disregard of any non-documentary conditions stated in any Credit; (vi) acting upon any Instruction which it, in Good Faith, believes to have been given by a Person or entity authorized to give such Instruction; (vii) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation; (viii) any delay in giving or failing to give any notice; (ix) any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated Person or any other Person; (x) any breach of contract between the beneficiary and Applicant or any of the parties to the underlying transaction; (xi) assertion or waiver of any provision of the UCP or ISP which primarily benefits an issuer of a letter of credit, including, any requirement that any Drawing Document be presented to it at a particular hour or place; (xii) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under the Standard Letter of Credit Practice applicable to it; or (xiii) acting or failing to act as required or permitted under Standard Letter of Credit Practice (or in the case of other independent undertakings or guarantees, the UN Convention) applicable to where it has issued, confirmed, advised or negotiated such Credit, as the case may be.

(b) Without limiting any provision in the Credit Agreement covering the indemnification of the issuing bank by the Applicant (including any limitation or exception set forth therein) ("*Indemnity Provisions*"), such Indemnity Provisions shall apply to Bank and each related Indemnatee notwithstanding the occurrence of any of the events specified in clause (a) of this Section 2.

(c) If a Credit is to be governed by a law other than that of the State of New York, Bank shall not be liable for any Costs resulting from any act or omission by Bank in accordance with the UCP or the ISP, as applicable, and Applicant shall indemnify Bank for all such Costs.

SECTION 3. FOREIGN CURRENCY.

Unless otherwise previously agreed by the Bank, if an amount drawn under any Credit is in non-United States dollar ("*foreign currency*"), Applicant shall reimburse Bank, on demand, the

United States dollar equivalent of such drawn amount based on the Bank's actual cost of settlement of its obligation. Applicant's obligation to make payments in any currency (the "*Contract Currency*") shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment or otherwise, that is expressed in or converted into any currency other than the Contract Currency, except to the extent that such tender or recovery results in the actual receipt by Bank at its designated office of the full amount of the Contract Currency specified to be payable hereunder. Applicant's obligation to make payments in the Contract Currency shall be enforceable as an alternative or additional cause of action to the extent that such actual receipt is less than the full amount of the Contract Currency specified to be payable hereunder, and shall not be affected by judgment being obtained for other sums due hereunder. Applicant shall indemnify Bank for any shortfall in such actual receipt.

SECTION 4. REPRESENTATIONS AND WARRANTIES.

Applicant hereby represents and warrants on and as of the date hereof, and the date of each issuance, amendment, renewal and extension of a Credit, as applicable, that (i) this Agreement constitutes the legal, valid and binding obligation of Applicant enforceable against it in accordance with its terms; (ii) the representations and warranties set forth in the Credit Agreement are true and correct; and (iii) if applicable, no goods or vessels used to transport goods related to such Credit will be the subject of any Sanctions.

SECTION 5. REMEDIES.

If at any time there shall occur and be continuing any action for a temporary restraining order, preliminary or permanent injunction, beneficiary wrongful dishonor action or the issuance or commencement of any similar order, action or event in connection with any Credit or any Drawing Document or this Agreement, which order, action or event may apply, directly or indirectly, to Bank or which otherwise threatens to extend or increase Bank's contingent liability beyond the time, amount or other limit provided in such Credit or this Agreement then, Applicant shall, upon Bank's demand, deliver to Bank, as additional security for the Obligations, cash in an amount required by Bank.

SECTION 6. ASSERTION OF RIGHTS

To the extent Bank honors a presentation for which Bank remains unpaid, Bank may assert rights of Applicant and Applicant shall cooperate with Bank in its assertion of Applicant's rights, if any, against the beneficiary, the beneficiary's rights against Applicant and any other rights that Bank may have by subordination, subrogation, reimbursement, indemnity or assignment.

SECTION 7. NOTICES, S.W.I.F.T., ELECTRONIC TRANSMISSIONS.

(a) *Notices.* Unless otherwise provided in the Credit Agreement, notices to Bank shall be sent to the address of Bank as set forth in the Credit and shall be delivered by hand, overnight courier or certified mail, return receipt requested. Notices to Applicant shall be sent to the address set forth in the Application unless advised otherwise in writing.

(b) *S.W.I.F.T.* Bank may transmit a Credit and any amendment thereto by S.W.I.F.T. message and thereby bind Applicant directly and as indemnitor to the S.W.I.F.T. rules.

(c) *Electronic Transmissions.* Bank is authorized to accept and process any Application and any amendments, transfers, assignments of proceeds, Instructions, consents, waivers and all documents relating to the Credit or the Application which are sent by electronic transmission using the system provided by Bank, including S.W.I.F.T., electronic mail, facsimile or other computer generated telecommunications ("*Electronic Transmission*") and such Electronic Transmission shall have the same legal effect as an original and shall be binding upon and enforceable against Applicant. Bank may, but shall not be obligated to, require authentication of such Electronic Transmission or receipt of original documents prior to acting on such Electronic Transmission. If it is a condition of the Credit that payment may be made upon receipt by Bank of an Electronic Transmission advising negotiation, Applicant hereby agrees to reimburse Bank on demand for the amount indicated in such Electronic Transmission advice, and further agrees to hold Bank harmless if the documents fail to arrive, or if, upon the arrival of the documents, Bank should determine that the documents do not comply with the terms and conditions of the Credit.

SECTION 8. COMMERCIAL CREDITS.

(a) *Pledge of Underlying Goods and Title Documents.* As security for the payment and performance of all obligations and liabilities of Applicant to Bank in respect of any and all commercial Credits and LOIs issued hereunder (if any) and under this Agreement, Applicant hereby grants to Bank a continuing lien and security interest in all of Applicant's right, title and interest in, to and under all the underlying goods relating to the commercial Credits and the title documents evidencing such goods and all products and proceeds of the foregoing (whether now existing or hereafter created or acquired) which have been or at any time shall be delivered to, received by or otherwise come into the possession or control of Bank, its correspondents or Applicant in connection with each Credit.

(b) *Acceptance of Drawing Documents; No Waiver.* Applicant's acceptance or retention of a Drawing Document presented under or in connection with any Credit (whether or not the document is genuine) or of any Released Merchandise shall ratify Bank's honor of the presentation and preclude Applicant from raising a defense, set-off or claim with respect to Bank's honor of such Credit. Bank shall not be required to seek any waiver of discrepancies from Applicant or to grant any waiver of discrepancies which Applicant approves or requests.

(c) *Possession of Drawing Documents.* If Bank shall agree to honor (accept) Drawing Documents under a Credit on a time draft or deferred payment basis, Applicant shall not take possession of the Drawing Documents or the underlying Property except for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with such Property in a manner preliminary to its sale or exchange. An Instruction to release any such Drawing Document or Property shall be deemed a representation by Applicant to Bank that Applicant seeks such release for one of said purposes. In each such case, Applicant shall apply the proceeds of Property to the Obligations relating to the applicable Credit.

(d) *Absence of Written Instructions.* In the absence of written instructions to the contrary, Applicant agrees that (i) if the Credit authorizes drawings and/or shipments in installments and any installment is not drawn and/or shipped within the period allowed for that installment but Applicant waives such discrepancy, Bank is authorized to honor any subsequent installments so long as documents for such installments are presented within the period allowed for such installments; and (ii) each negotiated Credit shall expire at the counters of the nominated person even if notice of the presentation or any documents contained in the presentation is not received by Bank until after the expiry date of the Credit or any installment thereof.

(e) *Release of Documents or Claiming of Goods from the Carrier.* In the event Bank, upon Applicant's request, agrees to deliver to Applicant, a customs broker or any other person designated by Applicant, any of the documents of title relating to the Credit, prior to having received payment in full of all the Obligations, Applicant agrees to obtain possession of any goods represented by such documents within twenty-one days after the date of delivery of such documents, and if Applicant fails to do so, Applicant agrees to return such documents or to have them returned to Bank prior to the expiration of the twenty-one day period. Applicant further agrees to execute and deliver to Bank receipts for such documents and the goods represented thereby identifying and describing such documents and goods. If Applicant claims from the carrier any goods identified in the shipping documents required under the Credit (by virtue of a steamship release, air release, letter of indemnity or any other means), with or without the assistance of Bank, and such goods have been released to Applicant or a customs broker or agent acting on Applicant's behalf, Applicant hereby authorizes Bank to immediately, and without further inquiry and consideration, debit any account of Applicant in an amount equal to the fair market value of such goods, that have been released, together with any out-of-pocket charges or expenses owing to Bank.

SECTION 9. STANDBY CREDITS.

(a) *Installments.* If the Credit is issued subject to UCP 600, unless otherwise agreed, in the event that any installment of the Credit is not drawn within the period allowed for that installment, the Credit may continue to be available for any subsequent installments in the sole discretion of Bank, notwithstanding Article 32 of UCP 600.

(b) *Auto Extend Notice.* If the Credit provides for automatic extension without amendment, Applicant agrees that it will notify Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which Bank must give notice of nonextension if Applicant wishes the Credit not to be extended. Any decision to extend or not extend the Credit shall be in Bank's sole discretion and judgment. Applicant hereby acknowledges that in the event Bank notifies the beneficiary of the Credit that it has elected not to extend the Credit and the beneficiary draws on the Credit after receiving the notice of non-extension, Applicant acknowledges and agrees that Applicant shall have no claim or cause of action against Bank or defense against payment under the Agreement for Bank's discretionary decision to extend or not extend the Credit.

(c) *Pending Expiry Notice.* If a Credit's terms and conditions provide that Bank give beneficiary a notice of pending expiration, Applicant agrees that it will notify Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which Bank must give such

notice of the pending expiration date. In the event Applicant fails to so notify Bank and the Credit is extended, Applicant's Obligations under this Agreement shall continue in effect and be binding on Applicant with regard to the Credit as so extended.

SECTION 10. WAIVER OF DEFENSE; JOINT AND SEVERAL LIABILITY.

Applicant waives any defense whatsoever which might constitute a defense available to, or discharge of, a surety or a guarantor. If more than one Person signs this Agreement or an Application hereunder, each of them shall be jointly and severally liable hereunder and thereunder and all the terms and provisions regarding liabilities, obligations and Property of such Persons shall apply to any liabilities, obligations and Property of any and all of them.

SECTION 11. TERMINATION.

This Agreement is a continuing agreement and may not be terminated by Applicant except upon (i) thirty (30) days' prior written notice of such termination by Applicant to Bank at the address of Bank set forth on the most recent Credit issued hereunder, (ii) payment of all Obligations and (iii) the expiration or cancellation of all Credits issued hereunder. Notwithstanding the foregoing sentence, if a Credit is issued in favor of a sovereign or commercial entity, which is to issue a guarantee or undertaking on Applicant's behalf in connection therewith, or is issued as support for such a guarantee, Applicant shall remain liable with respect to such Credit until Bank is fully released in writing by such entity.

SECTION 12. AMENDMENT; WAIVER.

Bank shall not be deemed to have amended or modified any term hereof, or waived any of its rights unless Bank consents in writing to such amendment, modification or waiver. No such waiver, unless expressly stated therein, shall be effective as to any transaction which occurs subsequent to such waiver, nor as to any continuance of a breach after such waiver. Bank's consent to any amendment, modification or waiver does not mean that Bank shall consent or has consented to any other or subsequent Instruction to amend, modify, or waive a term of this Agreement or any Credit.

SECTION 13. COMMENCEMENT OF ACTION.

Any action or proceeding in respect of any matter arising under or in connection with Credits, the Applications or this Agreement must be brought by Applicant against Bank within the time period specified in Section 5-115 of the Uniform Commercial Code.

SECTION 14. JURISDICTION; WAIVER OF JURY TRIAL; GOVERNING LAW.

Applicant agrees to be bound by the provisions in the Credit Agreement relating to jurisdiction, venue, and waiver of jury trial and that such provisions shall also apply to this Agreement. This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

SECTION 15. SUCCESSORS AND ASSIGNS.

The provisions of this Agreement shall be binding upon and inure to the benefit of Bank and Applicant and their respective successors and assigns permitted hereby, except that Applicant may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Bank. Nothing in this Agreement, expressed or implied, shall be construed to confer any right or benefit upon any Person (other than the parties hereto, the Indemnified Persons and their respective successors and permitted assigns).

SECTION 16. COUNTERPARTS; INTEGRATION; ELECTRONIC EXECUTION.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the Credit Agreement constitute the entire contract and final agreement among the parties relating to the subject matter and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 17. SURVIVAL.

The provisions of Sections 2, 8(a), 11, 14 and 17 shall survive and remain in full force and effect regardless of the consummation of any transactions contemplated hereby, the reimbursement or repayment of any drawings or Obligations, the expiration or termination of the Credits or LOIs or the termination of this Agreement or any provision hereof.

IN WITNESS WHEREOF, the Applicant hereto has caused this Agreement to be duly executed and delivered by its respective authorized officer as of the day and year written below.

APPLICANT/OBLIGOR:

MARIN CLEAN ENERGY

By: _____
Name: _____
Title: _____

ANNEX I TO CONTINUING AGREEMENT

If Bank issues an LOI or endorses a bill of lading at the instruction of Applicant or otherwise pursuant hereto, Applicant agrees as follows:

Except as otherwise set forth in this Annex I or expressly set forth elsewhere in this Agreement, an LOI shall be deemed issued by Bank subject to the same terms and conditions set forth herein for Credits, including, without limitation, payment obligations, indemnification provisions and limitations of liability benefiting Bank and other Indemnified Persons. Applicant shall be liable for payments made under any LOI on demand and otherwise in accordance with its absolute obligation to reimburse the Bank set forth in the Credit Agreement. Bank shall have the right in its sole discretion and without notice to or approval of Applicant, to pay, settle or adjust any claim or demand made against or upon Bank in connection therewith without inquiry or determination, on Bank's part, of the circumstances, merits or validity of any claim or demand. Applicant shall take whatever steps are necessary to obtain the shipping documents concerning the Released Merchandise. Upon Applicant's receipt of such shipping documents, Applicant shall deliver them to the carrier, duly endorsed by all parties whose endorsement is required by the carrier, and obtain from the carrier and deliver to Bank, the LOI and a release of Bank's liability to the carrier. Bank may make payments against any drawing under the Credit related to an LOI, whether or not the drawing shall comply with the terms and conditions of such Credit, without any liability whatsoever to Bank. Applicant expressly acknowledges that Applicant may be required to reimburse Bank for payments made by Bank under both the LOI and such Credit with respect to the same Released Merchandise. Applicant shall account by delivering to Bank, immediately upon the receipt thereof by Applicant, the proceeds of the sale of the Released Merchandise or the documents related thereto in whatever form received (with Applicant's endorsement where necessary) to be applied by Bank to the payment of any drawing under the Credit. If any proceeds shall be notes, accounts, acceptances, or in any form other than cash, they shall not be applied by Bank until paid in cash. Bank shall have the option at any time to sell or discount these items and so apply the net proceeds, conditionally upon final payment of these items. Applicant shall pay all charges in connection with the Released Merchandise and shall at all times hold it separate and apart from the Property of Applicant and shall definitively show such separation in all its records and entries. Applicant shall at all times keep the Released Merchandise fully insured at Applicant's expense in favor of, and to the satisfaction of, Bank against loss by fire, theft, and any other risk to which it may be subject. Applicant shall deposit the insurance policies with Bank upon its demand. If for any reason any of such policies fail to provide for payment of the loss thereunder to Bank as its interest may appear, Applicant hereby (1) assigns and makes the loss payable under any of such policies payable to Bank as its interest may appear, (2) assigns to Bank all of the avails and proceeds of any and all of such policies, and (3) agrees to accept such avails and proceeds in trust for Bank and to forthwith deliver the same to Bank in the exact form received (with the endorsement of Applicant where necessary). Bank shall have no responsibility for the existence, quantity, quality, condition, value or delivery of any Released Merchandise or the correctness, validity or genuineness of the documents purporting to represent Released Merchandise.

FEE AGREEMENT

This FEE AGREEMENT dated February __, 2021 (as amended, modified or restated from time to time, this "*Fee Agreement*"), is by and between the CLEAN ENERGY ALLIANCE, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 *et. seq.* (together with its successors and assigns, "*Borrower*"), and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the "*Lender*").

Reference is made to the Revolving Credit Agreement, dated as of February __, 2021 (as amended, modified, extended or restated from time to time, the "*Agreement*"), entered into between the Borrower and the Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between the Borrower and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

ARTICLE I**FEEs**

Section 1.1. Undrawn Fees. The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the "*Commitment End Date*"), and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the Commitment End Date, and on the Commitment End Date (each, a "*Payment Date*"), a non-refundable undrawn fee (the "*Undrawn Fee*") in an amount equal for each day during such calculation period to the product of (x) two hundred fifteen basis points (2.150%) per annum (the "*Undrawn Fee Rate*"), (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The term "Unutilized Commitment" as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day.

The Undrawn Fee shall be calculated from and including one Payment Date (or, in the case of the first Undrawn Fee payment, the Closing Date) to but excluding the next Payment Date (each, a "*Payment Period*"), and the Lender shall provide the Borrower with an invoice for each Undrawn Fee; *provided, however*, that the failure of the Lender to do so shall not relieve the Borrower from its obligation to pay such Undrawn Fee.

Section 1.2. Letter of Credit Fees. The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the “*LC Termination Date*”), and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the LC Termination Date, and on the LC Termination Date (each, a “*LC Payment Date*”), a non-refundable undrawn fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period to the product of (x) a percentage to be agreed upon in writing between the Borrower and the Lender, (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The LC Facility Fee shall be calculated from and including one LC Payment Date (or, in the case of the initial LC Facility Fee payment in respect of a Letter of Credit, the date such Letter of Credit is issued (unless such date of issuance is a LC Payment Date)) to but excluding the next LC Payment Date (each, a “*LC Payment Period*”), and the Lender shall provide the Borrower with an invoice for each LC Facility Fee; *provided, however*, that the failure of the Lender to do so shall not relieve the Borrower from its obligation to pay such LC Facility Fee.

Section 1.3. Issuance or Drawing Fees. The Borrower agrees to pay to the Lender a non-refundable fee of \$500 for each issuance or drawing under a Letter of Credit, which fee shall be earned on the issuance or drawing date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date).

Section 1.4. Amendment Waiver or Consent Fees. The Borrower agrees to pay to the Lender on the date on which the Borrower requests from the Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by the Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of \$3,000, plus, in each case, the reasonable fees and expenses of legal counsel to the Lender; *provided, however*, that in the case of a simple extension with no modifications to any Basic Document, there shall be no fee of the Lender required hereunder, though reasonable fees and expenses of legal counsel to the Lender shall still be applicable.

Section 1.5. Termination Fee; Reduction Fee. (a) The Borrower hereby agrees to pay to the Lender a termination fee in connection with any termination of the Commitment by the Borrower [prior to the date that is half-way between the Closing Date and the Maturity Date (such date, the “*Mid-Point Date*”), in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such termination, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit or LC Disbursements) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the Maturity Date, and the denominator of which is 360]¹ (the “*Termination Fee*”), which Termination Fee shall be paid on or before the date of such termination. No termination in full of the Commitment

¹ TBD

shall become effective unless and until all amounts payable by the Borrower to the Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.5(a)) have been paid in full.

(b) The Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Closing Date prior to [the Mid-Point Date]², without the payment by the Borrower to the Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to [the product of (1) the Undrawn Fee Rate in effect on the date of such permanent reduction, (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to the Maturity Date, and the denominator of which is 360]³. Under no circumstances shall the Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction the Borrower reduces the Revolving Credit Exposure (whether by prepayment of Loans or return and cancellation of Letters of Credit) so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

Section 1.6. Applicable Margin. As used in the Agreement and this Fee Agreement, the “Applicable Margin” means (i) with respect to a Base Rate Borrowing, two hundred forty-five basis points (2.450%) and (ii) with respect to any other Borrowing, three hundred forty-five basis points (3.450%).

Section 1.7. Default Rate. For purposes of this Fee Agreement and the Agreement, “*Default Rate*” means, with respect to any Loans (but not Letters of Credit), the then applicable Adjusted LIBO Rate or Base Rate plus the Applicable Margin plus three percent (3%), and with respect to any Letter of Credit that has not triggered a Reimbursement Loan, the then applicable LC Facility Fee Rate plus three percent (3%).

ARTICLE II

MISCELLANEOUS

Section 2.1. Legal Fees. On the Closing Date, the Borrower shall pay the reasonable legal fees and expenses of the Lender incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Basic Documents in an amount not to exceed \$50,000 plus disbursements.

Section 2.2. Amendments. No amendment to this Fee Agreement will become effective without the prior consent of the Borrower and the Lender, which consent must be in writing and signed by the Lender and an Authorized Representative of the Borrower.

² TBD

³ TBD

Section 2.3. Governing Law. THIS FEE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF THE LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

Section 2.4. Counterparts. This Fee Agreement may be executed in counterparts in accordance with Section 7.11 of the Agreement, which Section 7.11 is incorporated herein by reference.

Section 2.5. Severability. Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[Signature Pages To Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, N.A.

By: _____
Name: Allyson Goetschius
Title: Executive Director

STRICTLY PRIVATE AND CONFIDENTIAL

Clean Energy Alliance
JOINT POWERS AUTHORITY

CLEAN ENERGY ALLIANCE

REQUEST FOR PROPOSALS FOR CREDIT AND BANKING SERVICES

~~April 24, 2020~~ November 3, 2020

Disclaimer

This proposal is intended only as an outline of certain indicative terms of the facility described herein (the “Facility”) and does not purport to be an exhaustive or all-inclusive summary of the conditions, covenants, representations, warranties and other provisions that would be contained in definitive documentation for the Facility. The final documentation may include terms and conditions required by JPMorgan Chase Bank, National Association (together with its affiliates, “JPMorgan”) that are not included in this proposal. This proposal is non-binding, is not a commitment and is subject to final credit approval.

Clean Energy Alliance (“CEA”) acknowledges and agrees that: (i) JPMorgan does not have an advisory or fiduciary relationship with CEA and nothing in this proposal or our services in connection therewith or otherwise will be deemed to create an advisory or fiduciary relationship (irrespective of whether JPMorgan or any of its affiliates has provided other services or is currently providing other services to CEA on other matters); (ii) JPMorgan has no obligations to CEA with respect to the transaction contemplated hereby unless and except to the extent expressly stated in this proposal; and (iii) CEA has consulted with and is relying on its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

This proposal from JPMorgan for the Facility is entirely independent from any proposal or other agreement from any other affiliate of JPMorgan to provide other services.

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1. Cover Letter

~~April 24, 2020~~ November 3, 2020

Delivery via e-mail

Barbara Boswell
Interim Chief Executive Officer
Email: CEO@TheCleanEnergyAlliance.org

Marie Berkuti
Interim Treasurer
MBerkuti@cosb.org

Dear Ms. Boswell and Ms. Berkuti,

On behalf of JPMorgan Chase Bank, N.A. ("JPMorgan" or the "Bank"), we are pleased to submit this proposal to Clean Energy Alliance ("CEA" or the "Authority") in response to its solicitation for a bank credit facility to finance start up costs, working capital and posting of liquidity for power procurement contracts. Based on our strong familiarity with the California Community Choice Aggregation ("CCA") space, we are pleased to be able to provide a multi-use Revolving Line of Credit for up to \$15,000,000 and a tenor of up to ~~three (3)~~ five (5) years.

Since CEA is at the early stages of its launch, we believe that it will benefit greatly by working with a firm with direct experience in the CCA financing space, a large and strongly rated balance sheet (Aa2/A+/AA), clear name recognition for CEA's future partners (power providers, developers) and a full suite of treasury products and banking services (as further described under separate cover in the Banking Services response, an independent proposal) all under one institution. We currently have an aggregate of \$115 million of exposure to California CCAs which include a \$40 million three (3) year credit facility to Marin Clean Energy and a \$75 million five (5) year credit facility to CleanPowerSF, San Francisco PUC's CCA program. We believe that there is great insight gained from our involvement with Marin Clean Energy and CleanPowerSF and we can provide this direct experience for the benefit of CEA.

Accordingly, based on the Bank's review of the provided financial projections and its understanding that each currently committed member plans on committing an additional ~\$450,000 to finance start-up costs of CEA, in our proposal herein we have endeavored to create a structure which we believe will provide the lowest all-in cost to the Authority.

- **Strength:** We are the largest (by balance sheet) and strongest rated (external bank ratings) bank responding to this RFP. By working with JPM rather than a non-rated bank, there is no need to wrap any future Standby Letters of Credit and pay superfluous letter of credit fees for doing so. Furthermore, our strong ratings (Aa2/A+/AA) should further strengthen any ongoing negotiations CEA is having or will have with PPA providers. Having a highly rated credit provider will also be important in the future should CEA seek to get external ratings, similar to Marin Clean Energy and Peninsula Clean Energy, and ultimately seek to develop standalone renewable resources.
- **Size/Flexibility:** We are not capital or tenor constrained unlike some of our smaller colleagues responding to this RFP - our financing approach is designed to grow with the program and we therefore have the ability to upsize credit exposure overtime. Our proposal herein includes capacity for start up needs, Letters of Credit, and an option to upsize when CEA launches to customers. We additionally provide the flexibility to have up to a 5 year tenor if advantageous in the negotiations with PPA providers. We are able to provide a full suite of services for credit and banking needs which would eliminate the need to deal with multiple banks - we are happy to provide banking services but we are not tying the business to credit. Lastly, we provide flexibility to use the facility in the future to repay the City's funded start up costs subject to the Bank's approval.
- **Confidence:** There are many moving pieces in getting a CCA program up and running. It starts with the age old conundrum of how do you get customers without power and

how do you get power without customers. The answer is that CEA procures power first using a credit facility backed by our strong ratings and strong balance sheet. We believe it is important for JPMorgan to work with CEA to significantly refine its financing plan and capital requirements not only now but over time. Because of where CEA is in its growth cycle, the amount of capital it seeks to obtain at each stage will affect the cost of that capital much more significantly than when CEA is earning revenue. We have already met with our credit committee regarding this proposal and have received preliminary credit approval.

Notwithstanding the foregoing, please note that this proposal is subject to normal due diligence, formal credit approval, satisfactory documentation and agreement on terms and conditions, and is not a commitment at this time. Nothing expressed or implied herein constitutes any commitment of JPMorgan, or any of its affiliates, to lend or provide any other financial services in connection with the transaction; such obligations would arise only under separate written agreement(s) mutually acceptable to CEA and JPMorgan. Although this is not a formal commitment, if JPMorgan is mandated to provide the Facility, we will seek credit approval promptly and expect to have no issues meeting CEA's anticipated financing timeline.

Yours sincerely,



Allyson Goetschius, *Executive Director*
JPMorgan Chase Bank, N.A.

Cc: Will Frymann, *Executive Director*, JPMorgan Securities LLC
Janice Fong, *Associate*, JPMorgan Chase Bank, N.A.
Yolanda Mates, *Vice President*, JPMorgan Chase Bank, N.A.
Sean Haugh, *Vice President*, JPMorgan Chase Bank, N.A.
William O'Brien, *Associate*, JPMorgan Chase Bank, N.A.

2. Overview of the Firm

a) *Provide a brief description of your firm.*

JPMorgan has been a market leader in providing public finance issuers with liquidity and credit products for over 35 years. Our firm's Public Finance Credit Origination Group, which sits within the Investment Banking Division and the Public Finance Group, currently manages approximately \$203 billion of credit commitments across more than 160 clients of which \$1.46 billion is outstanding to issuers in California and \$115 million is outstanding to CCAs.

b) *Provide your firm's total capital and total net assets for 2019, 2018 and 2017 year-ending.*

With more than \$264.3 billion in total capital as of September 30, 2019, JPMorgan Chase & Co. is one of the largest financial institutions in the world. Below we have outlined our annual capital position, which demonstrates our strength and stability. Our significant balance sheet allows the Public Finance Credit Origination Team to provide proposals that our competitors often cannot match in terms of both size and tenor.

(\$mm)	JPMorgan Chase & Co.				
	Q3-2019	Q2-2019	Q1-2019	2018	2017
Total Capital	264,348	263,215	259,837	256,515	255,693
Equity Capital	235,985	236,222	232,844	230,447	229,625
Net Capital	-*	-*	-*	-*	-*
Excess Net Capital	-*	-*	-*	-*	-*
Total Net Assets	264,348	263,215	259,837	256,515	255,693

Source: JPM 10K and 10Q. As of September 30, 2019; *JPMorgan Chase & Co. does not disclose net capital and excess net capital.

c) *Provide your firm's current Long-term and Short-term credit ratings as well as Outlooks, if available.*

As a highly rated credit provider, JPMorgan has the ability to offer a full suite of credit products including Lines of Credit, Term Loans, Standby Letters of Credit for energy procurement collateral support, as well as Construction Loans and Tax Equity for renewable energy projects.

JPMorgan Chase Bank N.A.'s credit ratings and outlooks by Moody's, S&P, and Fitch are as follows:

Credit Ratings			
Rating Agency	Long-Term	Short-Term	Outlook
Moody's	Aa2	P-1	Stable
S&P	A+	A-1	Stable
Fitch	AA	F1+	Stable

d) *Provide your firm's credit rating, if available.*

Please reference Section (c).

e) *Submittal of Proposals Acknowledgment.*

JPMorgan acknowledges California Government Code Section 4552: In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

JPMorgan expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), CEA will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Contractor may be subject to criminal prosecution.

JPMorgan certifies that it is, at the time of bidding, and shall be throughout the period of the contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents. Bidder further certifies that it is regularly engaged in the general class and type of work called for in the Bid Documents.

3. Qualifications

a) Provide a description of your firm's experience in the government sector. What, if any, experience does your firm have with the members of CEA?

JPMorgan is an experienced and well capitalized credit provider with approximately \$203 billion of commitments outstanding from the Public Finance credit book including \$1.46 billion of credit commitments to California issuers.

Please note the list below is as of February 7, 2020.

Size (mm)	Pricing Date	Issuer	Series	JPM Role
313.2	09/22/2010	San Diego County Regional Airport Authority	Series 2010A	Co
44.1	09/22/2010	San Diego County Regional Airport Authority	Series 2010B	Co
215.4	09/22/2010	San Diego County Regional Airport Authority	Series 2010C BABs	Co
98.0	07/27/2011	San Diego County Water Authority	Water Revenue Refunding Bonds, Series 2011A	
94.5	09/07/2011	San Diego County Water Authority	Series 2011B	Co
65.4	03/01/2012	San Diego Unified School District	GO Series 2012R1	Co
150.0	05/09/2012	San Diego Unified School District	2012 General Obligation Bonds	Co
420.6	05/23/2012	San Diego County Regional Transportation Commission	Sales Tax Revenue Bonds 2012A	Co
203.2	12/13/2012	San Diego County Water Authority	Series 2012 Pipeline Bonds	Lead
530.3	12/13/2012	San Diego County Water Authority	Series 2012 Plant Bonds	Lead
107.3	01/16/2013	San Diego County Regional Airport Authority	Series 2013A (Non AMT)	Co
272.3	01/16/2013	San Diego County Regional Airport Authority	Series 2013B (AMT)	Co
299.1	02/13/2013	San Diego County Water Authority	2013A Water Revenue Refunding	Lead
52.5	04/02/2013	San Diego Unified School District	Election of 2012, Series A	Co
60.5	04/02/2013	San Diego Unified School District	Election of 2012, Series B	Co
3.0	04/18/2013	San Diego Unified School District	Election of 2012, A-1 Taxable	Co
414.0	04/18/2013	San Diego Unified School District	Election of 2012, Series C	Co
29.4	02/05/2014	San Diego County Regional Airport Authority	Series 2014A Bonds	Co
275.9	02/05/2014	San Diego County Regional Airport Authority	Series 2014B Bonds	Co
91.7	08/19/2014	County Of San Diego	2014A	Co
2.1	08/19/2014	County Of San Diego	2014B	Co
350.0	08/20/2014	San Diego Association Of Governments	2014 Series A	Co
75.4	09/30/2015	San Diego Unified School District	Series D (Federally Taxable)	Co
79.0	09/30/2015	San Diego Unified School District	Series E	Co
370.6	11/18/2015	San Diego Unified School District	Series F	Co
100.0	11/18/2015	San Diego Unified School District	Series G (Green Bonds)	Co
30.0	2/24/2016	Carlsbad Municipal School District No. 20	2016	Co
56.2	03/22/2016	California Public Works Board	Lease Revenue Refunding Bonds (Department of General Services), 2016 Series B (San Diego Office Building Complex)	Lead
126.1	04/20/2016	San Diego Unified School District	Series R-5	Lead
39.4	05/05/2016	San Diego Unified School District	Series J-2	Lead
5.6	05/06/2016	San Diego Unified School District	Series J-1	Co
325.0	08/03/2016	San Diego Association Of Governments	Sales Tax Revenue Bonds 2016A	Co
441.0	10/18/2017	San Diego Unified School District	2017 GO Bonds Series I	Co
59.0	10/18/2017	San Diego Unified School District	2017 GO Green Bonds Series J	Co
194.1	11/08/2017	San Diego Association Of Governments	2017 Series A	Lead
183.2	01/29/2019	San Diego County Water Authority	Series 2019 Pipeline Bonds	Lead
85.0	6/27/2019	Carlsbad Unified School District	2018A	Lead
210.0	07/30/2019	San Diego Association Of Governments	Series 2019A (Green Bonds)	Co
125.0	07/30/2019	San Diego Association Of Governments	Series 2019B (Green Bonds)	Co
19.7	08/27/2019	County Of San Diego	Certificates of Participation, Series 2019 (Justice Facilities Refunding)	Co

On the credit side, JPMorgan has provided a \$1.0 million working capital facility to Poseidon Water LLC, the developer and facility manager of the Claude "Bud" Lewis Carlsbad Desalination Plant, since 2017.

b) Provide a description of your firm's experience in the CCA sector.

In November 2019, JPMorgan closed on a \$40 million three (3) year multi-use revolving line of credit with Marin Clean Energy. This program provides the flexibility to draw for working capital and capital expenditures related to development or acquisition of new assets, as well as to issue Standby Letters of Credit to secure power purchase agreements. Additionally, in

2018, JPMorgan closed on a \$75 million five (5) year facility with a similar structure with CleanPowerSF, San Francisco PUC's CCA program, in support of its Phase 2 expansion plan. This program is a new enterprise fund for SFPUC and we have currently issued 5 different Standby Letters of Credit to secure power obligations on behalf of CleanPowerSF. We also initially provided a Standby Letter of Credit (\$13.9 million) to the SFPUC under its Power Enterprise which was used to support CleanPower's Phase 1 expansion plan.

JPMorgan's strong balance sheet gives the Bank flexibility to grow its credit capacity overtime as a CCA's financing needs increase whether due to customer growth, increased contracting needs, or a transition to standalone power resources development. Public Finance also has the ability to provide project level financing for greenfield and brownfield renewable assets in support of a CCA's transition to power project development and ownership.

We are keen to continue to expand our footprint in the Community Choice Aggregation market and the broader renewables space and have been actively monitoring the development of CCAs across the U.S. and in California particularly. It is also important to note that Public Finance Credit Origination and its credit risk team are extremely familiar with CCAs and have received credit risk approval to provide credit proposals for other non-rated CCAs including San Diego Energy District, Silicon Valley Clean Energy Authority, East Bay Community Energy Authority, San Jose Community Energy, and Clean Power Alliance.

c) *For firms without direct experience in the CCA sector, please provide your experience in related sectors or with other unrated entities.*

Please see (b) above.

d) *What assurances can you provide CEA on your firm's ability to transact organizationally?*

Please see (b) above.

e) *Provide any other qualifications you believe are relevant to CEA related to the Scope.*

JPMorgan's Public Finance Credit Origination team has extensive experience extending credit to non-rated entities especially in the project finance, infrastructure and high-yield spaces. Our group has provided non-rated loans for projects in renewable energy, healthcare and stadium financing. Across all of these transactions, our group has also either acted as lead arranger or agent bank and in some circumstances construction monitoring agent.

- \$460.0 million bridge loan commitment for a municipal electric utility to purchase a biomass fired plant
- \$400.0 million line of credit for a non-rated windstorm insurance company
- \$300.0 million construction term loan for a non-rated performance venue
- \$224.7 million direct purchase of bonds for a managed toll lane project
- \$149.7 million term loan for a non-rated wood pellet facility
- \$150.0 million working capital facility for a rail transit project
- \$125.0 million construction term loan for a non-rated arena financing
- \$100.0 million line of credit for a non-rated windstorm insurance company
- \$86.6 million exit facility for a formerly bankrupt toll road
- \$81.8 million term loan for a non-rated bridge
- \$75.2 million construction loan for a non-rated proton therapy center
- \$75.0 million revolving line of credit for a non-rated airport terminal improvement project
- \$40.0 million construction loan for a non-rated arena financing
- \$36.5 million construction loan for a non-rated soccer stadium financing

- \$19.5 million term loan for a non-rated biofuel plant
- \$12.1 million term loan for the construction of a gas plant

4. Key Personnel

Bid responses shall identify the lead contact and include a complete list of all key personnel associated with the RFP. This list must include all key personnel who will provide services/training to CEA staff and all key personnel who will provide credit and support services. For each person on the list, the following information shall be included:

- a) The person's relationship with the Bidder, including job title and years of employment with Bidder;*
- b) The role that the person will play in connection with the RFP;*
- c) Address, telephone, fax numbers, and e-mail address; and*
- d) Person's relevant experience, certifications, and/or merits.*

Credit Underwriting and Provision of Balance Sheet Support

Allyson Goetschius, Executive Director

383 Madison Avenue, 3rd Floor
 New York, NY 10179
 Phone: (212) 270-0335
 Facsimile: (917) 849-0272
 Email: allyson.l.goetschius@jpmorgan.com

Allyson Goetschius joined JPMorgan in 2010 and has over 10 years of experience in the financial services industry. Allyson is responsible for originating, structuring, and executing credit transactions with municipalities and not-for-profit issuers across the U.S. and specifically focuses on infrastructure, renewables and more structured project finance transactions. She has worked closely with numerous municipal clients across the country on direct loan, letter of credit, line of credit, and construction financing facilities. Allyson received her BS in Economics with Concentrations in Finance, Real Estate and Spanish at The Wharton School at the University of Pennsylvania.

Allyson will lead the pitching and transaction execution credit process for CEA, including structuring and documentation.

Janice Fong, Associate

383 Madison Avenue, 3rd Floor
 New York, NY 10179
 Phone: (212) 270-3762
 Facsimile: (917) 464-0884
 Email: janice.r.fong@jpmorgan.com

Janice Fong joined JPMorgan in 2013. Janice is primarily responsible for supporting Credit Origination coverage of municipal and not for profit issuers across the country. Janice received a B.A. in Economics from Barnard College.

Janice will provide support throughout the life of the credit process with CEA.

Day to Day Treasury/Banking Services

Yolanda Mates, Vice President

300 S Grand Avenue, 3rd Floor
 Los Angeles, CA 90071
 Phone: (213) 621-8335
 Email: yolanda.a.mates@jpmorgan.com

As a Government Banker in the Pacific-West region, Yolanda coordinates the delivery of the Bank's treasury management, liquidity and investment management, equipment financing, credit and merchant services solutions based on the client's goals, priorities and objectives. Yolanda has 14 years of experience in the financial and banking industry, with 10 years directly serving Government agencies. Yolanda is an active member of the California Municipal Treasurers Association, California Society of Municipal Finance Officers, and Women in Public Finance.

Yolanda will lead CEA's relationship team focusing on the quality and delivery of our treasury services. She will be responsible for the overall satisfaction of the banking relationship. She will:

- Serve as your primary point of contact for the bank's full treasury services capabilities
- Recommend products and services that meet CEA's needs and goals, including treasury management and other banking services
- Oversee delivery of products and services including treasury services and other financial services
- Address your overall satisfaction with the JPMorgan banking relationship

Sean Haugh, Vice President

8181 Communications Parkway
 Building B, 6th Floor
 Plano, TX 75024
 Phone: (214) 965-3186
 Email: sean.haugh@jpmorgan.com

Sean Haugh supports public sector entities on the West Coast. He has over 15 years of diverse experience in the financial industry, focusing on relationship management and financial strategy. His focus is to deliver solutions to clients across government agencies to ensure the proper alignment of strategies and credit capacity for all treasury services products.

Sean holds both a Bachelor of Business Administration in Finance and an MBA in Strategic Management.

Sean will assist CEA in resolving working capital and efficiency challenges by providing information and offering ideas from the JPMorgan's Treasury Services team. He will:

- Recommend cash flow optimization strategies, including ways to streamline financial processes
- Assist CEA in realizing day-to-day operational efficiencies in alignment with your treasury goals
- Provide targeted information to you about new products, market developments and industry trends
- Monitor CEA's implementation for successful service delivery

Marilyn Hardney, Senior Client Service Professional

201 North Central Avenue, 21st Floor
 Phoenix, AZ 85004
 Phone: (602) 221-1036
 Facsimile: (866) 917-3954
 Email: marilyn.k.hardney@jpmorgan.com

Marilyn Hardney has over 20 years of experience with JPMorgan and has held several positions across the organization. She is committed to providing value-added service and has effective problem-solving skills. Additionally, her knowledge of fraud prevention products will provide you with excellent direction on how best to protect your company. Marilyn is a graduate of LeTourneau University and holds a bachelor's degree in Business Management.

Marilyn will serve as the primary point of contact and as a proactive resource for CEA's banking needs. With her understanding of all aspects of JPMorgan's Treasury Services' product functionality and technology, Marilyn will facilitate the timely resolution of all service issues. For day-to-day matters, she will:

- Resolve CEA's inquiries including credit/debit confirmations, cancellations of payments, amendments of payment instructions, funds transfer inquiries and other treasury services matters
- Identify and resolve operational issues in a timely manner
- Share her specialized knowledge of fraud prevention tools and provide advice on asset and data protection strategies
- Facilitate the opening of additional accounts
- Marilyn works with a team of client service professionals who will provide consistent, reliable and timely service support.

Investment Banking Coverage

Will Frymann, *Executive Director*

500 Mission Street, 3rd Floor
 San Francisco, CA 94105
 Phone: (415) 315-3901
 Facsimile: (415) 692-4653
 Email: will.frymann@jpmorgan.com

Will Frymann works closely with many of JPMorgan's municipal clients throughout the country, with particular emphasis on public power clients. Will joined JPMorgan's Public Finance department in September 2015 and has spent more than 12 years working with municipal water, wastewater, power and gas utility clients throughout the US and has focused particularly on California.

At JPMorgan, Will works as part of the firm's Infrastructure Group and is focused on power enterprises, structured financings, project finance and public private partnerships. Prior to joining JPMorgan, Will was a financial advisor on over \$15 billion in financings. He has worked closely with the Los Angeles Department of Water and Power, Metropolitan Water District, Southern California Public Power Authority, Northern California Power Agency, Anaheim Public Utilities, San Francisco Public Utilities Commission, CPS Energy, Sacramento Municipal Utility District, and the City of Redding, among others. Will graduated from UCLA with a BS in Cognitive Science and from UC Berkeley with an MBA.

5. Banking Services Proposal

Provide a proposal which details the costs, terms and conditions for providing the Banking services as outlined in the Scope of Services above in the RFP.

Please reference the Banking Services Proposal, sent under the same cover.

Please note that it is an independent proposal and not tied to the credit proposal.

Please note: While the Commercial Bank (see separate Banking Services response) cannot act as collateral agent – the Investment Bank (credit provider) does have the ability to act as collateral agent on collateral accounts.

6. Credit Proposal

Terms and Conditions for a Revolving Line of Credit Proposal

Borrower: Clean Energy Alliance (“CEA”), which currently includes the City of Solana Beach, the City of Del Mar, and the City of Carlsbad (together, the “Member Agencies”).

Facility Provider: JPMorgan Chase Bank, N.A. (“JPMorgan” or the “Bank”).

Facility: Revolving Line of Credit Agreement (the “Revolving Line” or the “Facility”) to be used for general corporate purposes of CEA including start-up costs and working capital (collectively referred to as the “Loans”) as well as to provide liquidity support and/or collateral support for energy procurement contracts. Under the Facility, CEA can request the Bank to issue Standby Letters of Credit (“LOCs”) for power contracts or post cash collateral for power contracts. Loan amounts repaid may be re-borrowed again prior to the maturity date of the Facility.

Closing Date: ~~TBD. On or around late June/ early July 2020.~~
On or around February 1, 2021.

Facility Amount: Up to \$15.0 million total commitment which will be made available under a ‘phase-in’ approach as requested by CEA, further detailed below:

- Up to \$10.0 million at financial closing split into two sublimits:
 - \$5.0 million immediately available for start-up and working capital costs, and
 - \$5.0 million to be made available (subject to credit approval) upon formal request to provide liquidity support either via Standby Letters of Credit or cash postings exclusively for power contracts.
- An additional \$5.0 million may be made available (subject to credit approval) upon launch to customers (on or around May 2021) for additional working capital or liquidity support for power purchase agreements.

Note: The Bank is also open to discussing other sizing amounts with CEA overtime should it end up adding additional members under the JPA.

Facility Term: The Facility will have a final maturity date that is either one (1), two (2), ~~or three (3)~~, four (4), or five (5) years from the Closing Date at CEA’s election (the “Maturity Date”). Loan amounts repaid may be re-borrowed again prior to the Maturity Date of the Facility.

Security: The Revolving Line will be a special limited obligation of CEA only and therefore nonrecourse to the (general fund of the) Member Agencies, or any other members of CEA. The Revolving Line will be secured by a net revenue pledge of CEA.

The Bank understands the CEA’s desire that any initial extension of credit prior to the estimated May 2021 launch will be unsecured until revenues are generated/collected. Our ability to meet this desired structure will require additional due diligence as set forth on Page 13-14.

The Revolving Line will be senior to the Member Agencies' or Calpine Subordinate Loan (the "Subordinate Loan") to CEA of \$450,000.

Upfront Fee:

None.

Undrawn Fee:

CEA agrees to pay to JPMorgan a nonrefundable undrawn fee (the "Undrawn Fee") during the period from and including the effective date of the Facility, to and including the Maturity Date or termination date of the Facility (calculated on the basis of a 360 day year and actual days elapsed) at a rate per annum equal to the Undrawn Fee (shown in the table below) on the Undrawn Facility Amount. The Undrawn Fee shall be payable quarterly in arrears and on the expiration date or termination date of the Facility.

Facility Term	Undrawn Fee
One (1) Year	1.750%
Two (2) Years	1.850%
Three (3) Years	1.950%
<u>Four (4) Years</u>	<u>2.050%</u>
<u>Five (5) Years</u>	<u>2.150%</u>

For clarification – the Undrawn Fee will only be calculated on the undrawn portion of the initial up to \$5 million.

"Undrawn Facility Amount" means the Facility Amount minus the sum of (a) the aggregate amount of Loans and (b) the aggregate amount of Letters of Credit issued under the Facility and (c) the aggregate amount of LOC disbursements, if any.

Interest Rate on Loans:

Prior to the Maturity Date, subject to no Default or Event of Default having occurred or being then continuing and all representations and warranties of CEA then being true and correct, all Loans will accrue interest at a rate per annum equal to the one month or three month, at the election of CEA, ("Interest Period") LIBO Rate or a successor reference rate for the Interest Period, subject to availability, plus the Applicable Margin below.

In the event the LIBO Rate is unavailable for any reason, or if CEA so elects, the Loans will bear interest at the Base Rate plus the Applicable Margin set forth in the pricing grid below.

"LIBO Rate" means, for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for U.S. Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on the Reuters pages or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits in the London interbank market with a maturity comparable to such Interest Period. Notwithstanding the foregoing, if the LIBO Rate shall be less than zero, the LIBO Rate used to calculate interest for the Loan(s) shall be zero. The LIBO Rate shall adjust upon the

expiration of each Interest Period. Libor floor to be discussed. Please note that the documentation will contain language regarding the phasing out of LIBOR.

“Base Rate” means, for any given day, the highest of: (i) the Prime Rate, (ii) the Federal Fund Effective Rate plus 0.5% p.a., or (iii) the LIBO Rate plus 1.0%. Notwithstanding the foregoing, the Base Rate shall not be less than zero, plus 0.5% p.a. and (iii) an Adjusted LIBO Rate plus 1.0% p.a.

Applicable Margin: The initial Applicable Margin shall correspond to the selected Facility Term of the Facility as listed below:

Facility Term	Applicable Margin*
One (1) Year	3.250%
Two (2) Years	3.300%
Three (3) Years	3.350%
<u>Four (4) Years</u>	<u>3.400%</u>
<u>Five (5) Years</u>	<u>3.450%</u>

Note: As of April 24~~November 3~~, 2020 the 1-Month LIBO Rate is 0.4414% bps and the 3-Month LIBO Rate is 0.8822% bps.

Standby Letter of Credit Fees: CEA agrees to pay the Bank a Standby Letter of Credit (“Standby LOC”) Fee for any issued Standby LOCs (calculated on the basis of a 360 day year and actual days elapsed), at a rate per annum based on the applicable Standby LOC term listed below. The Standby LOC Fee shall be payable quarterly in arrears and on the expiration or termination date of the representative Standby LOC.

The Standby LOC Fee for any issued LOCs will replace the all-in drawn interest rate under the Facility and not be an additional charge.

Facility Term	Standby LOC Fee
One (1) Year	3.250%
Two (2) Years	3.300%
Three (3) Years	3.350%
<u>Four (4) Years</u>	<u>3.400%</u>
<u>Five (5) Years</u>	<u>3.450%</u>

Standby Letters of Credit Issuance Fees: \$500 per issuance of a Standby Letter of Credit.

Standby LOC Disbursements: If the Bank makes a Standby LOC disbursement (a “LOC Disbursement”) with respect to a Standby LOC, CEA shall reimburse such LOC disbursement immediately on the date such LOC disbursement is made. If the Borrower fails to reimburse the Bank on such disbursement date, the unreimbursed amount shall convert to a LOC Reimbursement Loan, shall bear interest at the applicable rate for Loans, and be due and payable the earlier of the selected Facility Term and the Maturity Date, provided that no Default or Event of Default shall have occurred.

Pricing Grid: None.

Borrowing CEA must provide written notice at least three (3) business days prior

Notice:	to a LIBO Advance.
Repayment of Loans:	Loans shall be due and payable in full, together with all accrued interest thereon, on the Maturity Date of the Facility.
Prepayment Penalty:	None, with respect to Loans if paid on an interest payment date. Standard LIBO Rate breakage provisions would apply to prepayments made on a date other than the last day of any LIBO Rate interest period.
Default Rate:	If at any time an Event of Default shall have occurred and be continuing under the Facility, any outstanding LIBO Rate Loans or Standby LOCs shall immediately bear interest at the Default Rate. The Default Rate will be calculated at a rate per annum equal to the applicable LIBO Rate, plus the Applicable Margin, plus 3% in the case of a LIBO Rate Loan or the Standby LOC Fee plus 3%. Interest accruing at the Default Rate shall be payable on demand.
Termination/Reduction Fee:	Should CEA select a two (2), or three (3) , <u>four (4), or five (5)</u> year facility, in the event CEA elects to terminate the Facility or otherwise permanently reduce the principal amount of the Facility prior to the date that would be the one (1) year anniversary from the Closing Date, CEA will be required to pay JPMorgan a termination or reduction fee equal to the Undrawn Fee which would have accrued on the full Facility Amount, or in the case of a reduction, the amount being permanently reduced, from the date of termination or reduction through the maturity date. All fees and any other amounts owed to the Bank will be due and payable on or prior to the effectiveness of any such termination or reduction, as applicable.
Calculation and Payment of Interest:	<p>All interest on Loans (calculated by reference to the LIBO Rate) shall be calculated on the basis of a year of 360-days and the actual number of days elapsed and will be payable at the end of each LIBO Rate interest period and upon repayment of such Advance.</p> <p>Loans bearing interest with reference to the Base Rate will be calculated on the basis of the actual number of days elapsed in a 365- or 366-day year, and shall be payable monthly in arrears and upon repayment of such Loan (whether at scheduled maturity or otherwise).</p>
Clawback Amounts:	JPMorgan will require the inclusion of a customary clawback provision as protection against the possibility of the interest rate payable on Loans and exceeding the maximum legal rate payable by CEA. Upon termination of the Facility, CEA shall pay to the Bank a fee equal to the amount of all unpaid deferred excess interest.
Extension of Maturity Date / Renewal Provisions:	A renewal request may be made in writing no more than 120 days prior to the then current Maturity Date. A written response will be delivered by the Bank within 30 days of receipt of such request. All renewals will be at the sole and absolute discretion of JPMorgan. A failure of JPMorgan to respond to a request for renewal will constitute a denial of such request.
Conditions Precedent to each Loan / Standby LOC:	Timely delivery of duly completed request for Loans/Standby LOCs, the aggregate outstanding principal amount of the Loans/Standby LOCs will not exceed the amount of the unutilized commitment, no event of default has occurred and is continuing, and the continued

accuracy of all representations and warranties in the revolving credit agreement as of the date of the borrowing.

**Additional
Due Diligence
Requirements /
Conditions
Precedent to
Closing of the
Facility:**

Given the long lead time between the expected financial closing of the Facility and May 2021 launch to customers and the request to provide financing on an unsecured basis during that timeframe, the Bank will need to perform additional diligence as detailed below outside of its customary and usual items which will include the following:

- due diligence call related to the impacts of COVID-19;
- satisfactory review of a final implementation timeline and implementation budget (including startup costs, resource adequacy requirements, etc.);
- receipt/satisfactory review of a near final draw-down schedule for the implementation budget;
- in-person or virtual meeting with CEA and the Member Agencies to discuss its commitment to moving forward with launching CEA in FY2021 and any major risks that could lead the CEA and the Member Agencies to terminate the program pre-launch to customers;
- CEA shall have adopted operating rules and regulations satisfactory to the Bank;
- evidence that CEA shall have established policies around the funding of an operating reserve;
- CEA shall have delivered to the Bank copies of any executed Power Purchase Agreements;
- evidence that the Bank has a security interest in the net revenues, after payments to power providers and O&M payments;
- completion of satisfactory legal documentation,
- delivery of satisfactory opinions of counsel which will include counsel to CEA; and
- Board approval of the Facility and definitive documents.

Documentation:

Documentation will include inter alia, a Revolving Line of Credit Agreement (the “Agreement”) between JPMorgan and CEA. The Agreement will include, but not be limited to, the terms and conditions outlined herein as well as JPMorgan’s standard provisions with respect to representations and warranties, covenants, events of default, remedies, indemnification (gross negligence standard), OFAC, anti-terrorism and anti-corruption, exculpation waiver of jury trial/reference, and full protection against increased costs and changes in capital adequacy requirements (including, without limitation, in connection with the Dodd Frank Act and Basel III).

Covenants:

CEA will be required to comply with the following covenants:

- CEA shall establish an operating reserve sized at a minimum of 90 days of operating costs which will be funded on a TBD schedule overtime (to be further discussed upon finalizing the pro-forma model),
- CEA shall set rates to pay, to the extent not paid from other available monies, any and all amounts CEA is obligated to pay or set aside from revenues by law or contract—cover operating and debt service costs,
- CEA shall be required to maintain a minimum Debt Service

Coverage Ratio of 1.40x, tested quarterly on a rolling last twelve months basis of which such covenant may be waived at any time by the Bank,

- CEA may not issue any new during the term of the Facility other than an upsize of this Facility as referenced in “Facility Amount” above and/or any additional increments above the total Facility Amount to be approved by the Bank debt or other than the Member Agency Subordinate Loans.

“Debt Service Coverage Ratio” or “DSCR” shall be defined as the ratio of (a) Net Revenues divided by (b) total Debt Service (including interest and fees on Loans/LOC issuances as well as a five (5) amortization timeframe for any Loans or LOC Reimbursement Loan). “Net Revenues” shall be defined as gross revenues less operating expenses.

As discussed with CEA on November 3, 2020, JPMorgan is open to discussions about a carve out for a rate subsidy program.

Financial Reporting:

In addition to the delivery of annual audited financial statements, the Bank will require delivery of the following:

Quarterly Unaudited Financial Statements: CEA will covenant to provide quarterly unaudited financial statements prepared by management within 60 days of the end of the first three (3) fiscal quarters of each year.

Monthly Unaudited Operating Report: CEA will covenant to provide monthly operating information within 45 days of the end of the month which will include customer enrollments, opt-outs and total revenues.

Annual Budget: CEA will covenant to provide its annual operating budget for the upcoming fiscal year within 45 days of its adoption but in no event later than the start of the fiscal year.

Legal Fees:

Nathan Odem, Partner, from Chapman and Cutler LLP will serve as bank counsel. Legal fees are estimated at \$50,000. His contact information is below.

Chapman and Cutler LLP
111 West Monroe Street
Chicago, IL 60603

Nathan Odem, Partner
Telephone: (312) 845-3782
Facsimile: (312) 516-1982
Email: naodem@chapman.com

Governing Law:

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California; provided, however, that the obligations of the Bank under the Agreement shall be governed by the laws of the State of New York.

Credit Approval:

JPMorgan has received preliminary credit approval to provide the Facility. Notwithstanding the foregoing, please note that this proposal is subject to normal due diligence, final credit approval, satisfactory documentation and agreement on structure, terms, and conditions, and is not a commitment at this time. Nothing expressed or implied herein constitutes any commitment of JPMorgan, or any of its affiliates, to lend or provide any other financial services in connection

with the transaction; such obligations would arise only under separate written agreement(s) mutually acceptable to CEA and JPMorgan.

If JPMorgan is mandated to provide the Facility, we will seek final credit approval promptly within ten (10) business days of receipt of all necessary information. We expect to close within 4-5 weeks from formal mandate.

Proposal Expiry:

~~May 21, 2020~~November 19, 2020, if not accepted by CEA by this date. Any extensions of this date shall be at the sole and absolute discretion of JPMorgan.

7. References

San Francisco Public Utilities Commission, CleanPowerSF

Richard Morales, Debt Manager
525 Golden Gate Avenue
San Francisco, CA 94102
Phone: (415) 551-2973
Email: rmorales@sfgwater.org

Marin Clean Energy

Vicken Kasarjian, Chief Operating Officer
1125 Tamalpais Avenue
San Rafael, CA 94901
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Email: vkasarjian@mceCleanEnergy.org

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 8: Consideration of Community Advisory Committee Meeting in February 2021

RECOMMENDATION

The Clean Energy Alliance Board:

1. Reschedule Community Advisory Committee (CAC) March 2021 Meeting to February 2021; or
2. Approve CAC Special Meeting in February 2021.
3. Approve Updated CAC member terms to be consistent with CAC Policy.

BACKGROUND AND DISCUSSION:

Pursuant to the Clean Energy Alliance (CEA) Joint Powers Authority (JPA) Agreement authorizing the CEA Board to establish a CAC, the CEA Board approved the CAC Policy (Policy) on July 16, 2020 (Attachment A). The Policy sets forth that the CEA Board appoints the CAC members, sets the meeting schedule and workplan. At its regular meeting October 15, 2020, the CEA Board appointed the CAC Members, the CAC 2021 meeting schedule and 2021 workplan.

The current CAC Members and terms as approved in October are:

NAME	TERM	CITY REPRESENTED	EMAIL
Lee Haydu	2022	City of Solana Beach	lhaydu@me.com
Debra Schade	2021	City of Solana Beach	debrahschade@gmail.com
Dr. Donald Mosier	2022	City of Del Mar	dmosier@scripps.edu
Alan Sweedler	2021	City of Del Mar	asweedler@sdsu.edu
Paige DeCino	2022	City of Carlsbad	pdecino@hotmail.com
Seth Krauss	2021	City of Carlsbad	komet@adelphia.net
Dwight Worden	N/A	City of Del Mar Board Alternate	dworden@delmar.ca.us

It has come to the attention of staff that the October 15, 2020 staff report reflected incorrect terms due to a clerical error. The correct terms pursuant to the Policy are:

NAME	TERM	CITY REPRESENTED	EMAIL
Lee Haydu	2022 2023	City of Solana Beach	lhaydu@me.com
Debra Schade	2021 2022	City of Solana Beach	debrahschade@gmail.com
Dr. Donald Mosier	2022 2023	City of Del Mar	dmosier@scripps.edu
Alan Sweedler	2021 2022	City of Del Mar	asweedler@sdsu.edu
Paige DeCino	2022 2023	City of Carlsbad	pdecino@hotmail.com
Seth Krauss	2021 2022	City of Carlsbad	komet@adelphia.net
Dwight Worden	N/A	City of Del Mar Board Alternate	dworden@delmar.ca.us

The Board approved meeting schedule and associated workplan is shown below:

MEETING DATE	WORK PLAN/TOPICS
December 2020	Overview of Brown Act Requirements and Conflicts of Interest Form 700 Community Choice Aggregation Overview CEA Implementation & Goals
March 2021	Community Outreach Plan to support CEA Implementation
June 2021	CEA FY 21/22 Budget Overview & Goals
September 2021	Overview & Discussion of Member Agency Climate Action Plans & Goals
December 2021	Overview of Programs offered by CCAs throughout the State

In determining the appropriate meeting schedule for the CAC, the Board was concerned about impact to staff and costs related to administering the CAC meetings. In consideration of keeping administration costs to a minimum, and in reflection of the current status of CEA, the Board determined that a quarterly meeting schedule met its needs.

At its inaugural meeting December 3, 2020, the CAC members discussed their role in community outreach in light of the CEA launch and customer noticing schedule. With a May 2021 phase 1 roll out, customers will begin receiving notices advising them of the implementation of CEA in March 2021. The CAC felt that the timing of their next meeting, March 2021, would not provide them the needed information and tools to be effective in supporting customer outreach. As a result of their discussion the CAC recommended that the CAC Chair request the Board consider adding a February 2021 meeting for the CAC. The CAC Chair submitted the attached memo for Board consideration (Attachment B).

In reviewing the CAC schedule, and considering the timing of initiation of customer noticing, staff agrees that a February meeting of the CAC would result in the CAC being armed with communication tools to provide assistance in customer outreach and responding to questions they may be asked regarding CEA.

FISCAL IMPACT

Rescheduling the CAC meeting from March to February does not have a fiscal impact. Adding a special meeting in February would add administrative costs of approximately \$1,500 based on the costs related to the December 2020 meeting.

ATTACHMENTS

Attachment A – Community Advisory Committee Policy

Attachment B – Memo from CAC Board Chair Worden

Clean Energy Alliance

JOINT POWERS AUTHORITY

COMMUNITY ADVISORY COMMITTEE PURPOSE AND SCOPE

Community Advisory Committee (CAC) Authorization

Section 5.9 of the Clean Energy Alliance (CEA) Joint Powers Authority (JPA) Agreement provides the authority for the CEA Board to establish an advisory committee to assist the Board in implementing and operating its CCA program. Pursuant to the JPA Agreement, the committee should have equal representation from the member agencies. The Board may establish criteria to qualify for appointment to the committee, and establish rules, regulations, policies or procedures to govern the committee.

CAC Membership Criteria

- The CAC membership shall consist of two (2) appointees from each CEA member agency and 1 Board Alternate. CAC committee members shall serve staggered three (3) year terms with a two-term limit. In the inaugural year, one appointee seat from each member agency shall serve two (2) years.
- Committee members serve at the pleasure of the Board.
- CAC members will be subject to all applicable conflict of interest laws and may be required to disclose potential conflicts by filing a Form 700. (Information about conflicts of interest and Form 700 can be found here: <http://www.fppc.ca.gov/Form700.html>.)
- Members shall be residents (property owners or renters) or business owners within the service territory of CEA.
- CAC membership will be considered for those that have a relevant background in or expertise related to one or more of the following fields: electricity, community outreach or engagement, or policy advocacy.
- Applicants must be committed to serving on the CAC and attending regular committee meetings, and occasional CEA Board meetings. Committee meetings will be held quarterly unless additional meetings are directed by the Board. Members are expected to maintain a good attendance record. A committee member will be removed from the CAC if the member has two consecutive unexcused absences from CAC meetings or has unexcused absences from more than 25% of the CAC meetings in a calendar year.

- The CAC is subject to Brown Act and all meetings will be publicly noticed and held in public settings pursuant to requirements of the Brown Act.
- CAC meetings, times and location will be determined by the CEA Board.
- The CAC will elect a Chair who will facilitate meetings and provide reports to the Board as needed.

CAC Purpose & Objectives

The purpose of the CAC is to advise the CEA Board of Directors on those matters concerning the operation of its Community Choice Aggregation (CCA) program as directed by the Board of Directors in an annual workplan for the CAC that is adopted by the Board. The objectives of the CAC are to provide feedback to the Board, act as a liaison between the Board and the community and serve as a forum for community input on those matters assigned to the CAC in the annual workplan. The CAC shall not have any decision-making authority but will serve as an advisory body to the Board of Directors.

CAC Member Selection Process

Applicants must complete and submit the Clean Energy Alliance Community Advisory Committee Application (Attachment A). Board Members will nominate two applicants from their respective communities to the full Board for approval. In addition, the full Board will select one Board Alternate to participate on the CAC.

Attachment A
Clean Energy Alliance
Community Advisory Committee Application

CAC Purpose & Objectives

The purpose of the CAC is to advise the CEA Board of Directors on those matters concerning the operation of its Community Choice Aggregation (CCA) program as directed by the Board of Directors in an annual workplan for the CAC that is adopted by the Board. The objectives of the CAC are to provide feedback to the Board, act as a liaison between the Board and the community and serve as a forum for community input on those matters assigned to the CAC in the annual workplan. The CAC shall not have any decision-making authority but will serve as an advisory body to the Board of Directors.

NAME: _____

ADDRESS: _____

PHONE: _____ EMAIL: _____

Are you a resident/business owner of one of the CEA member cities?

If yes, which city: _____

Please attach a current resume and respond to the following questions. Please attach a separate sheet if additional space is needed.

What experience/perspective will you bring to the committee?

Describe any relevant background in or expertise related to one or more of the following fields: electricity, community outreach or engagement, or policy advocacy.

Do you have any interests or associations that might present a conflict of interest? If yes, please explain:

What do you hope to accomplish as a member of the Clean Energy Alliance Community Advisory Committee?

Please provide three references

NAME	Phone Number	Relationship

By signing below I acknowledge that I have sufficient time to actively participate in the Clean Energy Alliance Community Advisory Committee for the benefit of the program and the communities it serves. I understand that committee members are subject to conflict of interest laws and required to disclose potential conflicts by filing Form 700.

Signature: _____

Date: _____

Completed applications should be emailed to: Secretary@TheCleanEnergyAlliance.org

Attachment B

Date: January 9, 2021 for Board Meeting January 21, 2021

To: Clean Energy Alliance Chair Becker, Board Members & Board Alternates, and Staff

From: Dwight Worden CAC Chair

Requested Action Item: That the CEA Board authorize the Community Advisory Committee (CAC) to hold a special meeting in February. Suggested meeting date: February 10, 2021 at 10 am.

Discussion. Section 5.9 of the CEA Joint Powers Agreement authorized the Board to create a Community Advisory Committee (CAC). The CAC was created by the board, two members from each CEA member city were appointed, and the CAC held its first meeting on December 3, 2020. Quarterly meetings are currently scheduled with the next being March 2021. The CAC Mission was defined by the Board as:

The purpose of the CAC is to advise the CEA Board of Directors on those matters concerning the operation of its Community Choice Aggregation (CCA) program as directed by the Board of Directors in an annual workplan for the CAC that is adopted by the Board. The objectives of the CAC are to provide feedback to the Board, act as a liaison between the Board and the community and serve as a forum for community input on those matters assigned to the CAC in the annual workplan. The CAC shall not have any decision-making authority but will serve as an advisory body to the Board of Directors.

The CAC Board approved work plan for 2021 is as follows:

MEETING DATE	WORK PLAN/TOPICS
December 2020	Overview of Brown Act Requirements and Conflicts of Interest Form 700 Community Choice Aggregation Overview CEA Implementation & Goals
March 2021	Community Outreach Plan to support CEA Implementation
June 2021	CEA FY 21/22 Budget Overview & Goals
September 2021	Overview& Discussion of Member Agency Climate Action Plans & Goals
December 2021	Overview of Programs offered by CCAs throughout the State

Outreach. Launch of CEA service to customers is expected in May and/or June of 2021 and customers will soon be weighing their options to stay with CEA or to opt out. The CAC work plan anticipates development of a draft Community Outreach Plan by March 2021. The draft Plan will recommend strategies the board can employ to inform the CEA communities and customers about CEA, its programs, and about customer opt out options. To meet the March schedule the CAC is requesting to hold a special meeting in February. Without a February meeting the CAC's next regular meeting would be in March. It is recommended that the special

CAC meeting be set for February 10 so that, if needed, a report from the CAC can be received by the Board at its regular Board meeting of February 18, 2021.

Agenda for Special Meeting. The goal of the special meeting is to begin discussions about a community outreach plan and to establish subcommittees of less than a quorum of CAC members so these subcommittees can work on a regular basis between the February and March CAC regular meetings. It is hoped this strategy will enable the CAC to report back to the CEA Board in March with useful recommendations for a successful community outreach program.

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 9: Fiscal Year 2021/22 Budget Planning - Review Existing Consulting Services Agreements and Provide Direction Regarding Staffing and Consulting Services

RECOMMENDATION

Provide direction regarding fiscal year 2021/22 staff and consulting services for purposes of budget development.

BACKGROUND AND DISCUSSION

Clean Energy Alliance's (CEA) operational, administrative and technical support is currently provided through a combination of limited member agency support and contracted consulting services. This approach has worked well while CEA has been in its initial formation phase. CEA has not yet established a physical location, and the use of consulting services has provided the Board flexibility in adjusting service levels to meet needs and funding available.

As the budget development for fiscal year 2021/22 begins, staff is seeking Board direction regarding whether the Board is interested in moving to hiring of permanent staff or continuing with the current consulting services-based structure.

Current Services Provided by Member Agencies

CEA has entered into agreements with the cities of Carlsbad, Del Mar and Solana Beach to assist with certain administrative activities. During the past year the level of service provided has diminished as tasks have transitioned to CEA's consulting services team.

Services currently being provided by Member Agencies include:

SERVICE	CITY	FY 2020/21 Services	FY 21/22
Interim Board Secretary	Carlsbad	Interim Board Secretary Board Clerk for meetings and records management	Interim Board Secretary only; CEA to establish its own records management system
Accounting Services	Solana Beach	Solana Beach staff provides accounting assistance with processing payments	Accounting Services – provides internal controls for issuing payments
Hosting of Board Meetings	Carlsbad Del Mar Solana Beach	Cities have assisted with broadcasting and recording of virtual meetings – activities are transitioning to CEA Communications team; In person meetings would require assistance from host city for broadcasting.	Posting of agenda; Assistance with setting up council chambers and broadcasting when in-person meetings resume

CEA staff has reached out to Carlsbad to gauge the capacity for the City to continue to fill the Board Secretary role. CEA has contracted for Interim Board Clerk services which has resulted in minimizing the impact of Carlsbad providing the Interim Board Secretary services as well as reducing the impact to cities of hosting CEA Board meetings. CEA staff plans to include funding in the fiscal year 2021/22 budget for CEA to establish its records management system, which will further reduce Carlsbad staff time in supporting CEA.

Under the current stay-at-home orders, CEA Board meetings are being held virtually with broadcasting and recording being handled remotely. Once CEA returns to in-person Board meetings CEA staff will coordinate with the host cities to determine the process for broadcasting with the goal of minimizing the impact on the host city staff.

Current Consulting Agreements and Term

The following chart lists details on existing consulting services agreements:

CONSULTANT	SERVICE	FY 20/21 NOT TO EXCEED \$	TERM
Administrative Support Services			
Bayshore Consulting Group, Inc.	Interim Chief Executive Officer	\$100,000	Through June 30, 2021; may be extended through mutual agreement
Bayshore Consulting Group	Interim Board Clerk	\$18,000	January – June 2021; may be extend through mutual agreement;
Marie Marron Berkuti	Interim Chief Financial Officer/Treasurer	\$10,000	September 2020 – June 30, 2021; may be extend through mutual agreement
Total Administrative Support Services		\$128,000	
Technical Support Services			
Pacific Energy Advisors	Technical Consultant #1	\$163,200	Through June 30, 2021; may be extended through mutual agreement
Pacific Energy Advisors	Portfolio Management Services	\$120,000	Through June 30, 2023
Total Technical Support Services		\$283,200	
Communications & Marketing Services			
Tripepi Smith	Communications & Marketing Services	\$92,238	September 2020 – June 30, 2021; may be extended through mutual agreement
Legal Services			
Richards, Watson & Gershon	General Counsel	\$120,000	Through June 30, 2021; may be extended through mutual agreement
Tosdal, APC	Special Counsel – Regulatory Affairs	\$100,000	Through June 30, 2021; may be extended through mutual agreement
Total Legal Services		\$220,000	

Service Needs Anticipated for Fiscal Year 2021/22

With the pending launch of CEA in May 2021, CEA will continue to require the services listed above, as well as have additional needs related to moving into its operational phase. It is anticipated that CEA will have need for procurement and contract administration and customer account services. Procurement and contract administration includes working with Pacific Energy Advisors (PEA) in solicitation of energy supply products (long-term and short-term renewable, resource adequacy, and conventional), and CEA handling CEA non-energy procurement activities. Customer account services includes working with CEA's data manager on customer concerns and issues, responding to customer questions, coordinating with the communications and marketing team for on-going customer outreach and any other marketing needs on an as needed basis. These tasks could be filled through additional contractual agreements or hiring of permanent staff.

If the CEA Board desires to hire permanent staff the following staffing plan is recommended:

- Initial recruitments and hiring:
 - Chief Executive Officer
 - Chief Financial Officer/Treasurer
- Subsequent recruitments after CEO and CFO are hired
 - Procurement & Contract Administrator
 - Customer Account Services Coordinator

The services of a professional recruiter would be needed to lead the hiring processes for CEA.

Recent versions of the CEA financial pro-forma, which is currently scheduled to be updated and presented to the Board at its February 18, 2021 meeting, anticipates increasing costs related to the additional services needed to support CEA's operations in fiscal year 2021/22.

Should the CEA Board provide direction to pursue extension of existing consulting services, staff will work with the firms to bring updated terms to the Board for approval at the April 15, 2021 meeting.

FISCAL IMPACT

Direction provided by the CEA Board will be used in developing the proposed FY 2021/22 budget and for preparation of the updated pro-forma to be presented to the Board at its February 2021 meeting.

ATTACHMENTS

None

Staff Report

DATE: January 21, 2021 Type text here

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 10: Review and Update Clean Energy Alliance Board Outreach Assignments Matrix

RECOMMENDATION

Review and update the Clean Energy Alliance Board Outreach Assignments Matrix.

BACKGROUND AND DISCUSSION

Clean Energy Alliance (CEA) continues to be interested in expanding service to local communities within San Diego Gas & Electric territory. In support of that goal, the CEA Board has previously identified board as primary contact for potential new members. The change in the CEA board members results in a need to review and update the matrix.

The current outreach matrix is shown below:

Potential New Member	Board/Alternate Contact	Staff Contact
Escondido San Marcos Vista Oceanside	Mayor Hall	Jason Haber
San Diego County Santee Poway El Cajon	Board Member Becker/Alternate	Greg Wade/Dan King
OC Dana Point San Clemente San Juan Capistrano	Board Member Haviland/Alternate	Clem Brown
Lemon Grove National City	Chair Schumacher	Jason Haber

FISCAL IMPACT

There is no fiscal impact as a result this action.

ATTACHMENTS

None

Staff Report

DATE: January 21, 2021

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Interim Chief Executive Officer

ITEM 11: Approve Clean Energy Alliance Default and Optional Power Supply Product Offerings to be Available at Launch

RECOMMENDATION

1) Approve Clean Energy Alliance (CEA) Default and Optional Power Supply Product Offerings to be Available at Launch:

- Green Impact – 50% Renewable Energy Product as default power supply for CEA
- Name TBD - 50% Renewable/75% GHG-Free Product as an option for Member Agencies to select as default power supply
- Clean Impact – 100% Renewable Energy Product as an option for Member Agencies to select as default power supply and opt-up product for individual customers to select

2) Provide direction on Local Impact program offering and criteria for customer eligibility.

BACKGROUND AND DISCUSSION:

At its December 17, 2020 regular meeting, the CEA Board considered power supply product offerings that it should make available at launch. At that meeting the Board considered the following options:

- Green Impact - 50% renewable energy as the minimum default energy selection for CEA;
- Clean Impact - 100% renewable energy as an option for Member Agencies to select as a default and for customers to voluntarily opt-up;
- Local Impact - Minimum state required renewable energy (36% in 2021 increasing to 39% in 2022) for customers to voluntarily opt-down – open to residential customers enrolled in CARE/FERA and small businesses that meet certain criteria to be determined

The Board also discussed offering an alternative power supply product sourced from 50% renewable/75% greenhouse gas-free energy in consideration of the current default Solana Energy Alliance provides its customers. After discussion, the Board requested that product offering options be presented to the City Councils of the member cities for input. As of posting of this agenda, the City Councils of Carlsbad and Solana Beach had met and received a presentation on the power supply product options the CEA Board is considering and provided input, as summarized below.

City of Carlsbad

The City of Carlsbad supported:

- Green Impact - 50% renewable energy as the minimum default energy selection for CEA;
- Clean Impact - 100% renewable energy as an option for Member Agencies to select as a default and for customers to voluntarily opt-up;
- Option of 50% renewable/75% GHG-Free

The City of Carlsbad did not support the Local Impact program that is proposed to be available for residential CARE/FERA enrolled customers and small business that meet certain criteria.

City of Solana Beach

The City of Solana Beach is interested in seeing the costs to CEA and proposed rates for all four options, as well as impact to CEA's pro forma.

The City of Del Mar City Council meets on January 19 and feedback from that meeting will be provided as additional information on January 20 and presented to the CEA Board at its meeting.

FISCAL IMPACT

At the Boards direction, the power supply product options will be analyzed for impact on the CEA Financial Pro Forma and CEA rates developed, to be presented to the Board at its February 18, 2021 meeting.

ATTACHMENTS

Letter from Sierra Club Dated January 5, 2020



January 5, 2020

CEA Board Members and Staff,

We at the San Diego Sierra Club are encouraged by the progress of the CEA and the inclusion of two product offerings of 50% and 100% renewably sourced energy, labeled Clean Impact and Green Impact respectively. This is consistent with the creation of this CCA and its goals of shifting quickly to "Clean" energy, as your name states.

We are concerned to see the inclusion of a "Local Impact" minimum RPS product offering starting in 2021 using only 36% renewably sourced energy. This product would apparently track the RPS minimum that is raised each year according to CPUC regulations as shown in the table included at the end of this letter. We understand this recommendation was made in the interest of protecting some ratepayers from paying more money; however, given that SDG&E currently delivers 45% renewably sourced energy for its default consumer choice, this offering could potentially make the CEA responsible for an increase in GHG emissions from local electricity usage for the next four years. The inclusion of a 75% GHG Free offering will likely be confusing to the consumer.

The CEA's originating Joint Powers Agreement document claims that a reason for its existence is "addressing climate change by reducing energy-related greenhouse gas emissions." Sierra Club believes that creating the potential for consumers to choose an energy product that is less than the 45% renewable they already use today, until 2025, goes against the spirit of the formation of the CEA. Asking community members who are struggling to make ends meet to either choose to save money or choose to help in the fight against Climate Crisis is wrong. In offering a product with a renewable content that is this low, the CEA would place well intended people and small business owners in an impossible position and counteract one of the main intents of Community Choice Energy.

Sierra Club San Diego urges the Board to reconsider this concept of tracking the minimum RPS and instead let the CARE and FERA programs defray the cost for consumers who are most impacted. We also find the name "Local Impact" a poor choice as it is neither focusing on local renewable power procurement nor meant to impact our local region in any positive way. We should not signal to consumers that making the choice for renewable energy means having to procure energy remotely. If the CEA finds the energy landscape doesn't offer suitable local renewable sources, the Board should seek to invest in locally sourced renewables more quickly through Feed In Tariffs or new local project contracts.

Thank you,

Karl Aldinger
Conservation Organizer
San Diego Sierra Club
(760) 331-7885
karl.aldinger@sierraclub.org

Year	Compliance Period	RPS Percentage	RPS Percentage (%)
2011	1	0.200000	20.0000
2012	1	0.200000	20.0000
2013	1	0.200000	20.0000
2014	2	0.217000	21.7000
2015	2	0.233000	23.3000
2016	2	0.250000	25.0000
2017	3	0.270000	27.0000
2018	3	0.290000	29.0000
2019	3	0.310000	31.0000
2020	3	0.330000	33.0000
2021	4	0.358000	35.8000
2022	4	0.385000	38.5000
2023	4	0.413000	41.3000
2024	4	0.440000	44.0000
2025	5	0.470000	47.0000
2026	5	0.492000	49.2000
2027	5	0.520000	52.0000
2028	6	0.546000	54.6000
2029	6	0.572000	57.2000
2030	6	0.600000	60.0000