

**Clean Energy Alliance - Board of Directors  
Meeting Agenda  
November 5, 2019 - 1:00 p.m.**

**Carlsbad City Hall – City Council Chambers  
1200 Carlsbad Village Drive, Carlsbad, CA 92008**

**SWEARING IN OF BOARD OF DIRECTORS & ALTERNATES**

**CALL TO ORDER & ROLL CALL**

**FLAG SALUTE**

**PUBLIC COMMENT**

*Time is provided so members of the public can address the Board on items that are not listed on the agenda. Speakers are limited to three (3) minutes each. In conformance with the Brown Act, no Board action can occur on items presented during Public Comment. If you desire to speak during Public Comment, fill out a **SPEAKER CARD** and submit it to the Board Secretary. When you are called to speak, please come forward to the podium and state your name.*

**BOARD COMMENTS & ANNOUNCEMENTS**

**NEW BUSINESS**

**Item 1. Elect Board Chair and Vice Chair**

**RECOMMENDATION:**

That the Board elect a Director to serve as Chair and another Director to serve as Vice Chair through Fiscal Year 2019/2020, pursuant to Section 5.2 of the Clean Energy Alliance Joint Powers Agreement.

**Item 2. Appoint Interim Board Secretary**

**RECOMMENDATION:**

That the Board appoint Sheila Cobian, Clerk Services Manager for the City of Carlsbad, as interim Board Secretary, pursuant to Section 5.3 of the Clean Energy Alliance Joint Powers Agreement.

**Item 3. Appoint Interim Board Treasurer/Chief Financial Officer and Auditor**

**RECOMMENDATION:**

That the Board appoint Marie Berkuti, Finance Director/Treasurer of the City of Solana Beach, as interim Treasurer/Chief Financial Officer and Auditor, pursuant to Section 5.4 of the Clean Energy Alliance Joint Powers Agreement.

**Item 4. Chief Executive Officer – Request for Proposals**

**RECOMMENDATION:**

That the Board direct staff to develop and release a Request for Proposals and return to the Board to select a qualified consultant to serve as Chief Executive Officer for Fiscal Year 2019/2020 at the December Board meeting, pursuant to Section 5.5 of the Clean Energy Alliance Joint Powers Agreement.

**Item 5. Appoint CEA General Counsel**

RECOMMENDATION:

That the Board appoint the law firm of Richards, Watson & Gershon as General Counsel, and authorize the Board Chair to execute a Legal Services Agreement in an amount not to exceed \$80,000 for Fiscal Year 2019/2020.

**Item 6. Appoint CEA Regulatory Special Counsel**

RECOMMENDATION:

That the Board appoint the law firm of Tosdal APC as Special Regulatory Counsel, and authorize the Board Chair to execute a Legal Services Agreement in an amount not to exceed \$50,000 for Fiscal Year 2019/2020.

**Item 7. Adopt Resolution No. 19-001 Adopting the Conflict of Interest Code**

RECOMMENDATION:

That the Board adopt Resolution No. 19-001 Adopting the Conflict of Interest Code pursuant to Government Code Section 87300.

**Item 8. Adopt Resolution No. 19-002 Setting the Time and Place for Clean Energy Alliance Board Meetings**

RECOMMENDATION:

That the Board adopt Resolution No. 19-002 Setting the Time and Place for Clean Energy Alliance Board meetings.

**Item 9. Review Proposed Implementation Timeline, Overview of Implementation Plan & Statement of Intent and Confirm Implementation Plan Assumptions**

RECOMMENDATION:

That the Board review the proposed Clean Energy Alliance Implementation Timeline – Action Items (First Six Months) and overview of the CEA Implementation Plan and Statement of Intent and confirm that the plan’s underlying assumptions are consistent with those identified in the CEA Joint Powers Agreement.

**Item 10. Review Draft FY 2019/2020 Initial Budget and Consider Requests for Member Agency Advances to Fund Initial Costs in the Amount of \$450,000**

RECOMMENDATION:

That the Board review the draft Fiscal Year 2019/2020 Clean Energy Alliance initial budget, pursuant to Section 7.3.1 of the CEA Joint Powers Agreement, and consider requesting advances in the amount of \$150,000 from each Member Agency to fund initial costs in the amount of \$450,000, to be repaid from future CEA program revenues, pursuant to Section 7.3.2 of the CEA JPA.

**CLOSING COMMENTS**

**ADJOURN**

**NEXT MEETING – November 19, 2019 – 12:00 p.m.**

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 1: ELECT BOARD CHAIR AND VICE CHAIR**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board elect a Director to serve as Chair and another Director to serve as Vice Chair through Fiscal Year 2019/2020, pursuant to Section 5.2 of the Clean Energy Alliance Joint Powers Agreement.

**BACKGROUND AND DISCUSSION:**

Section 5.2 of the Clean Energy Alliance (CEA) Joint Powers Agreement (JPA) establishes the requirement for the Board to elect a Chair and Vice Chair from the Board of Directors for each fiscal year. The Chair and Vice Chair shall serve with no limit on the number of terms that can be held by the Chair or Vice Chair.

The Chair is the presiding officer of the CEA Board meetings and performs duties as may be required of the Board, with the Vice Chair serving in the absence of the Chair.

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 2: APPOINT INTERIM BOARD SECRETARY**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board appoint Sheila Cobian, Clerk Services Manager for the City of Carlsbad, as interim Board Secretary, pursuant to Section 5.3 of the Clean Energy Alliance Joint Powers Agreement.

**BACKGROUND AND DISCUSSION:**

Section 5.3 of the Clean Energy Alliance (CEA) Joint Powers Agreement (JPA) establishes the requirement for the Board to appoint a Secretary. The Secretary is responsible for keeping the minutes of the Board meetings and all other office records of the JPA.

Until such time as the Board appoints a permanent Secretary, it is recommended that the Board appoint Sheila Cobian, Clerk Services Manager for the City of Carlsbad, as interim Board Secretary. Ms. Cobian meets all the qualifications necessary to serve as Board Secretary.

Section 5.3 of the CEA JPA provides if the appointed Secretary is an employee of any Party to the JPA (as defined in the JPA), that Party is entitled to reimbursement of any documented out of pocket expenses incurred in connection with performing the duties of Secretary, as well as full cost recovery for any documented hours of service provided by the employee during such Party's normal working hours.

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 3: APPOINT INTERIM BOARD TREASURER/CHIEF FINANCIAL OFFICER and  
AUDITOR**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board appoint Marie Berkuti, Finance Director/Treasurer of the City of Solana Beach, as interim Board Treasurer/Chief Financial Officer and Auditor, pursuant to Section 5.4 of the Clean Energy Alliance Joint Powers Agreement.

**BACKGROUND AND DISCUSSION:**

Section 5.4 of the Clean Energy Alliance (CEA) Joint Powers Agreement (JPA) establishes the requirement for the Board to appoint a Board Treasurer/Chief Financial Officer and Auditor (CFO). The CFO shall strictly comply with the statutes related to the duties and responsibilities specified in Sections 6505.5 of the California Government Code related to accounting for JPA funds. The Board CFO is responsible for the cash management, financial transactions and audits for CEA activity, including being the depository and maintaining custody of all money of CEA, making disbursements as approved by the Board, causing an independent audit of the finances of CEA, as well as the duties and responsibilities outlined in Section 7 of the JPA.

Until such time as the Board appoints a permanent CFO, it is recommended that the Board appoint Marie Berkuti, Finance Manager/Treasurer of the City of Solana Beach, as interim Board CFO. Ms. Berkuti meets all the qualifications necessary to serve as CFO.

Section 5.3 provides if the appointed Treasurer/Chief Financial Officer and Auditor is an employee of any Party to the JPA (as defined in the JPA), that Party is entitled to reimbursement of any documented out of pocket expenses incurred in connection with performing the duties of the CFO, as well as full cost recovery for any documented hours of service provided by the employee during such Party's normal working hours.

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 4: CHIEF EXECUTIVE OFFICER – REQUEST FOR PROPOSALS**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board direct staff to develop and release a Request for Proposals (RFP) and return to the Board to select a qualified consultant to serve as Chief Executive Officer (CEO) for Fiscal Year 2019/2020 at the December Board meeting, pursuant to Section 5.5 of the Clean Energy Alliance (CEA) Joint Powers Agreement (JPA).

**BACKGROUND AND DISCUSSION:**

Section 5.5 of the CEA JPA establishes the requirement for the Board to appoint a CEO. The CEO is responsible for the day-to-day operation and management of the JPA and the community choice aggregation program.

Staff is recommending that the Board consider contracting with a qualified consultant to fill the CEO role during Fiscal Year 2019/2020. Staff does not believe that hiring a full time, permanent employee at this stage of development would be financially prudent or operationally necessary to accomplish the tasks for the remainder of the fiscal year. By utilizing a combination of consultant and member agency staff support, CEA will operate in a lean, fiscally prudent manner to ensure operational efficiency and effectiveness to the benefit of its customers.

Should the Board engage a consultant to serve as CEO, staff recommends that the Board retain its ability to determine at any time that the hiring of a permanent staff member is necessary for the ongoing administration of CEA. As such, staff recommends that any consultant CEO agreement include an immediate termination clause to facilitate such direction.

In the meantime, staff from the founding member agencies will work collaboratively to manage the day-to-day operations and accomplish the tasks that need to be completed until a CEO is engaged.

If approved, staff will collaborate on the development and release of an RFP to solicit proposals from qualified consultants interested in serving as CEO for Fiscal Year 2019/2020. Duties of the CEO are generally expected to include:

- Developing, planning and implementing the work plan necessary to achieve a 2021 launch of the CEA community choice aggregation program;
- Developing and implementing the CEA budget;
- Developing Board agendas, writing staff reports and making presentations to the CEA Board; and
- Other duties as assigned by the CEA Board of Directors.

Should the Board approve the staff recommendation, staff would endeavor to complete the RFP process in time to return to the Board to select a preferred CEO for Fiscal Year 2019/2020 at the December Board meeting.

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 5: APPOINT GENERAL COUNSEL**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board appoint the law firm of Richards, Watson & Gershon (RWG) as General Counsel, and authorize the Board Chair to execute a Legal Services Agreement (Attachment 1) in an amount not to exceed \$80,000 for Fiscal Year 2019/2020.

**BACKGROUND AND DISCUSSION:**

Section 5.6 of the Clean Energy Alliance (CEA) Joint Powers Agreement (JPA) establishes the requirement for the Board to appoint a General Counsel. The General Counsel is responsible for the legal aspects of the day-to-day operations of CEA.

Since April 2019, the law firm of Richards, Watson & Gershon has been engaged by the Cities of Del Mar and Carlsbad to provide joint legal services to assist in negotiating and preparing CCA formation documents. RWG's experience providing legal services to joint powers authorities and Greg Stepanicich's familiarity with the CEA JPA, in particular, support the staff recommendation.

As General Counsel to CEA, RWG shall provide the general legal services typically required by a joint powers authority in addition to those general legal services related more specifically to the operation of a community choice aggregation program as described in the Scope of Services included as Exhibit A to Attachment 1. RWG meets all the qualifications to perform the duties of General Counsel of CEA, and is not a member of the Board, elected official or employee of any of the member cities, in compliance with the CEA Joint Powers Agreement.

**FISCAL IMPACT:**

Staff is recommending that the Board execute a contract with Richards, Watson & Gershon in an amount not to exceed \$80,000 for Fiscal Year 2019/2020 to perform the duties of General Counsel. A Fee Schedule is included as Exhibit B to Attachment 1.

**Attachment**

1. Legal Services Agreement between the Clean Energy Alliance and Richards, Watson & Gershon



**LEGAL SERVICES AGREEMENT BETWEEN  
THE CLEAN ENERGY ALLIANCE AND  
RICHARDS, WATSON & GERSHON,  
A PROFESSIONAL CORPORATION**

THIS AGREEMENT, dated November 5, 2019, is by and between the CLEAN ENERGY ALLIANCE (“Authority”), and RICHARDS, WATSON & GERSHON, a professional corporation, engaged in the practice of law in California, hereinafter referred to as “General Counsel.”

WHEREAS, the Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) with the power to conduct its business and enter into agreements; and

WHEREAS, the Authority has been formed to conduct a community choice aggregation program within the member agencies jurisdictions in San Diego County as authorized by Public Utilities Code Section 366.2; and

WHEREAS, the Authority desires to retain a law firm capable of providing general counsel legal services to it; and

WHEREAS, in reliance upon the representations made by Richards, Watson & Gershon regarding its qualifications, the Authority finds that this law firm has demonstrated the requisite qualifications, experience, training and expertise to perform the requested services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

**1.0. SCOPE OF SERVICES.** General Counsel will perform the legal services to the Authority described in Exhibit “A” to this Agreement.

**1.1 General Counsel Representative.** Gregory W. Stepanicich, Shareholder of General Counsel, shall be responsible for the performance of services hereunder and shall supervise any services performed by other members or employees of General Counsel. Throughout the course of this Agreement and while performing services hereunder, General Counsel shall perform such services as an independent contractor. General Counsel is not an officer, agent or employee of the Authority.

**1.2 Authority’s Authorized Representative.** For the performance of services under this Agreement, General Counsel shall take direction from the Board of Directors and Executive Director of Authority.

**2.0. TIME OF PERFORMANCE.** The term of this Agreement shall be for the period of time from November 5, 2019 to and including June 30, 2020 unless terminated earlier pursuant to Section 5.0 or extended by the mutual written agreement of the parties.

### **3.0 COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENTS.**

**3.1 Compensation.** Fees for all legal services provided hereunder shall be charged in accordance with Exhibit "B" which is attached and incorporated by reference. The total amount of fees and expenses under this Agreement shall not exceed \$80,000. This compensation amount shall not be increased without the prior written approval of the Authority Board of Directors. General Counsel shall notify the Authority prior to incurring billable fees and costs in excess of 95% of the not-to-exceed amount.

**3.2 Reimbursement.** In addition to billing for services based on the hourly rates set forth above, General Counsel is authorized to bill the Authority for reimbursement of its actual costs directly related to the services; provided that the total billing (for hourly services and reimbursable costs) shall not exceed the amount identified in Section 3.1, and provided that General Counsel either: (a) obtains the approval of the Authority's Chief Executive Officer prior to incurring the costs, or (b) the costs fall into one of the following categories:

- (1) Travel expenses to and from Board meetings or other meetings requested by the Authority.
- (2) Court costs, such as filing fees.
- (3) Service of process.
- (4) Court reporter fees.
- (5) Expert witnesses, consultants, or investigators.
- (6) Copying costs, at \$0.10 per page.
- (7) Actual costs of mailing.

Any other expense must be approved in advance by Authority's Chief Executive Officer in writing. No compensation shall be allowed for word processing, normal or overflow secretarial time or overtime, or general or administrative overhead or premiums added to the direct cost of research support or other services.

**3.3 Expense Control.** General Counsel shall use all available means, consistent with sound professional practices and the exercise of reasonable judgment, to limit and minimize expenses incurred during the performance of this Agreement.

**3.4 Method of Billing.** General Counsel shall provide monthly bills in the form specified herein. General Counsel shall endeavor to provide monthly invoices no later than 30 days after the end of each billing cycle (i.e., all services identified on the invoice were performed no more than 60 days prior to the date the Authority received the invoice). The Authority shall have no obligation to pay General Counsel for services to the extent performed more than 90 days prior to the date the Authority receives the invoice for the services. Each bill shall have a cover page summary indicating category totals. Unless otherwise agreed, the following information must be provided in monthly bills in detail:

- A. A detailed description of work, in time increments of .1 hours (one tenth of an hour) for and by each and every individual billing services.

- B. Identification of the lawyer who is in charge of the matter.
- C. Reasonably detailed disbursement breakdowns.
- D. Each billing item will be separately stated on a separate line identifying the attorney, the time spent and the exact nature of the service rendered.

**3.5 Timing of Payment.** The Authority shall pay General Counsel for services rendered and costs incurred hereunder, at the rates and in the amounts provided hereunder, on a timely and periodic basis in accordance with the periodic statements, as approved by the Authority's Chief Executive Officer.

**4.0 ENGAGEMENT OF OTHER COUNSEL, SPECIALISTS OR EXPERTS.** General Counsel will not engage or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with this Agreement without the prior approval of the Authority's Chief Executive Officer.

**5.0 TERMINATION OF AGREEMENT AND LEGAL SERVICES.** The Authority shall have the right, at any time in its best judgment, with or without reason, to terminate this Agreement, and to obtain new General Counsel, or take such other steps as Authority deems proper. In the event that this Agreement is so terminated, Authority shall pay to General Counsel the rates, fees and charges accrued for satisfactory work to the time of termination. Authority shall be entitled to electronic and written copies of files maintained concerning this representation and to the return of all documents submitted to General Counsel. General Counsel shall have the right, with or without reason, to terminate this Agreement upon thirty (30) days written notice to the Authority Attorney.

**6.0 INTEREST OF MEMBERS OF LOCAL PUBLIC AGENCY.** No member of the governing body of the Authority, and no other officer, employee or agent of the Authority who exercises any discretion, function or responsibility in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

**7.0 INTEREST OF COUNSEL.** General Counsel agrees to secure the informed written consent of the Authority's Board of Directors before accepting any representation adverse to the Authority (actual or apparent) during the term of this Agreement, and to forego such representation if the Authority's Board of Directors, in their sole discretion, objects for any reason.

**9.0 CONFLICT OF INTEREST PROHIBITED.** General Counsel (including its employees, members, officers and agents) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. General Counsel shall comply with all requirements of the Political Reform Act (California Government Code sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) General Counsel shall not make or participate in a decision made by the Authority if it is reasonably foreseeable that the decision may have a material effect on General Counsel's economic interest, and (b) if required by law, General Counsel shall file financial disclosure forms with the Authority Clerk. If General Counsel

maintains or acquires a conflicting interest, any contract with the Authority (including this Agreement) involving General Counsel's conflicting interest may be terminated by the Authority.

## **10.0 MAINTENANCE AND INSPECTION OF RECORDS.**

**10.1 Audits.** The Authority and any relevant federal, state or local governmental agency, and any of their authorized auditors or representatives, including the Authority Auditor, shall have access to, and the right to audit and reproduce any of General Counsel's records to the extent the Authority or such other governmental agency deems necessary to ensure that Authority is paying only the amounts to which General Counsel is properly entitled or for other purposes relating to the Agreement.

**10.2 Records.** General Counsel shall maintain and preserve all such records for at least three (3) years after termination of the Agreement or until an audit has been completed and accepted in writing by Authority. Upon written notice by the Authority, the General Counsel shall promptly make all such records available to auditors or other representatives of the Authority or other governmental agencies.

**11.0 INSURANCE.** General Counsel shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of the Agreement, including any extensions thereto. The Authority and each of its members, their officials, employees, agents and volunteers are to be covered as additional insureds under the policies except for the Professional Liability policy. The policies shall state that they afford primary coverage. Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, General Counsel shall immediately notify Authority and cease all performance under this Agreement until further directed by the Authority.

**11.1 General Liability.** General Liability with minimum limits of at least \$1,000,000 combined single limits written on an Insurance Services Office (ISO) Comprehensive General Liability "occurrence" form or its equivalent for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage is required.

**11.2 Professional Liability.** Professional errors and omissions coverage in a sum of at least \$1,000,000. If a claims-made policy is required, a "tail" of at least three years shall be purchased if non-renewed within three (3) years of completion of performance under this Agreement.

**11.3 Workers' Compensation.** General Counsel shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job.

**12.0 INDEMNIFICATION.** General Counsel shall indemnify, hold harmless, and defend the Authority and its members (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees), arising from or related to General Counsel's performance of this Agreement to the extent caused by General Counsel's negligent acts, omissions or willful misconduct under this Agreement.

**13.0 DEFAULT.** If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

**14.0 NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered or mailed to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party’s Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: Clean Energy Alliance  
Attn: Chief Executive Officer  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008  
[sheila.cobian@carlsbadca.gov](mailto:sheila.cobian@carlsbadca.gov)

To: Richards, Watson & Gershon  
Attn: Gregory W. Stepanicich  
44 Montgomery Street, Suite 3800  
San Francisco, CA 94104  
[gstepanicich@rwglaw.com](mailto:gstepanicich@rwglaw.com)

**15.0 NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY.**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated \_\_\_\_\_ 2019, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. General Counsel shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority’s constituent members in connection with this Agreement.

**16.0 HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

**17.0 SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties’ intent under this Agreement.

**18.0 GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws

of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Diego.

**19.0 ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the General Counsel’s duties be delegated, without the written consent of the Authority. Any attempt to assign or delegate this Agreement without the written consent of the Authority shall be void and of no force or effect. A consent by the Authority to one assignment shall not be deemed to be a consent to any subsequent assignment.

**20.0 MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

**21.0 WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

**22.0 ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

**23.0 EACH PARTY’S ROLE IN DRAFTING THE AGREEMENT.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

**24.0 SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, and legal authority to enter into and to execute this Agreement on behalf of the respective legal entities of the General Counsel and the Authority. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF,** Authority and General Counsel have executed this Agreement.

**CLEAN ENERGY ALLIANCE**  
A Joint Powers Authority

**RICHARDS, WATSON & GERSHON**  
A Professional Corporation

\_\_\_\_\_  
Chair, Board of Directors

By \_\_\_\_\_  
Gregory W. Stepanicich, Shareholder

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT A**

**SCOPE OF SERVICES**

As General Counsel for the Authority, Richards, Watson & Gershon shall provide the general legal services typically required by a joint powers authority in addition to those general legal services related more specifically to the operation of a community choice aggregation program as described below. These legal services shall include the following:

- Advice and preparation of documents in connection with the start-up of operations for the Authority including but not limited to the following:
  - Prepare required filings with the Secretary of State and State Controller
  - Prepare conflict of interest code
  - Prepare Bylaws
- Attendance at Authority Board of Directors ("Board") meetings and any special meetings and workshops as requested by the Chief Executive Officer or Chair of the Board
- Brown Act, Conflict of Interest and Public Records Act advice and representation
- Preparation or review of consultant and vendor contracts
- Advice and preparation of documents related to personnel matters
- Advice to the Chief Executive Officer and designated staff on administrative and operational matters
- Research and advice on legal questions asked by the Board, Chief Executive Officer and designated staff
- Advice and assistance on other legal matters as may be assigned by the Chief Executive Officer

Legal services will not include matters in which Richards, Watson & Gershon has a conflict of interest that precludes the law firm from representing the Authority. General Counsel services also will not include energy contracts or regulatory matters before the CPUC that require specialized legal services in these areas of law.

**EXHIBIT B**  
**FEE SCHEDULE**

**HOURLY RATES**

Shareholders	\$335 per hour
Associates	\$275 per hour
Paralegals	\$175 per hour



CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 6: APPOINT SPECIAL REGULATORY COUNSEL**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board appoint the law firm of Tosdal APC as Special Regulatory Counsel, and authorize the Board Chair to execute a Legal Services Agreement (Attachment 1) in an amount not to exceed \$50,000 for Fiscal Year 2019/2020.

**BACKGROUND AND DISCUSSION:**

Implementation and operations of a community choice aggregation program, such as the Clean Energy Alliance (CEA), requires the services of a special regulatory counsel to ensure the program is compliant with all regulatory filings, as well as to monitor and participate in energy related matters before the California Public Utilities Commission (CPUC), California Energy Commission (CEC) and California Independent System Operator (CAISO) as well as related issues facing community choice aggregators.

Pursuant to the Scope of Services included as Exhibit A to Attachment 1, CEA is engaging Tosdal APC to provide legal services only in connection with specific matters that it authorizes in advance, and the engagement is limited to performance of services related to those matters.

Tosdal APC has been providing Special Regulatory Counsel services for Solana Energy Alliance since 2017, and the firm's experience in monitoring and reporting on regulatory proceedings, supporting CCA program regulatory compliance, and advocating on CCA-specific matters before the CPUC, CEC, CAISO and other regulatory agencies support the staff recommendation.

**FISCAL IMPACT:**

Staff is recommending that the Board execute a contract with Tosdal APC in an amount not to exceed \$50,000 for Fiscal Year 2019/2020 to perform special regulatory counsel services. A Fee Schedule is included as Exhibit B to Attachment 1.

**Attachment**

1. Legal Services Agreement between the Clean Energy Alliance and Tosdal APC

**LEGAL SERVICES AGREEMENT BETWEEN  
THE CLEAN ENERGY ALLIANCE AND  
TOSDAL APC  
A PROFESSIONAL CORPORATION**

THIS AGREEMENT, dated November 5, 2019, is by and between the CLEAN ENERGY ALLIANCE (“Authority”), and TOSDAL APC, a professional corporation, engaged in the practice of law in California, hereinafter referred to as “Special Counsel.”

WHEREAS, the Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) with the power to conduct its business and enter into agreements; and

WHEREAS, the Authority has been formed to conduct a community choice aggregation program within the member agencies jurisdictions in San Diego County as authorized by Public Utilities Code Section 366.2; and

WHEREAS, the Authority desires to retain a law firm capable of providing special counsel legal services to it; and

WHEREAS, in reliance upon the representations made by Tosdal APC regarding its qualifications, the Authority finds that this law firm has demonstrated the requisite qualifications, experience, training and expertise to perform the requested services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

**1.0. SCOPE OF SERVICES.** Special Counsel will perform the legal services to the Authority described in Exhibit “A” to this Agreement.

**1.1 Special Counsel Representative.** Ty Tosdal, Chief Executive Officer of Special Counsel, shall be responsible for the performance of services hereunder and shall supervise any services performed by other members or employees of Special Counsel. Throughout the course of this Agreement and while performing services hereunder, Special Counsel shall perform such services as an independent contractor. Special Counsel is not an officer, agent or employee of the Authority.

**1.2 Authority’s Authorized Representative.** For the performance of services under this Agreement, Special Counsel shall take direction from the Board of Directors and Executive Director of Authority.

**2.0. TIME OF PERFORMANCE.** The term of this Agreement shall be for the period of time from November 5, 2019 to and including June 30, 2020 unless terminated earlier pursuant to Section 5.0 or extended by the mutual written agreement of the parties.

### 3.0 COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENTS.

**3.1 Compensation.** Fees for all legal services provided hereunder shall be charged in accordance with Exhibit "B" which is attached and incorporated by reference. The total amount of fees and expenses under this Agreement shall not exceed \$50,000. This compensation amount shall not be increased without the prior written approval of the Authority Board of Directors. Special Counsel shall notify the Authority prior to incurring billable fees and costs in excess of 95% of the not-to-exceed amount.

**3.2 Reimbursement.** In addition to billing for services based on the hourly rates set forth above, Special Counsel is authorized to bill the Authority for reimbursement of its actual costs directly related to the services; provided that the total billing (for hourly services and reimbursable costs) shall not exceed the amount identified in Section 3.1, and provided that Special Counsel either: (a) obtains the approval of the Authority's Chief Executive Officer prior to incurring the costs, or (b) the costs fall into one of the following categories:

- (1) Travel expenses to and from Board meetings or other meetings requested by the Authority.
- (2) Court costs, such as filing fees.
- (3) Service of process.
- (4) Court reporter fees.
- (5) Expert witnesses, consultants, or investigators.
- (6) Copying costs, at \$0.10 per page.
- (7) Actual costs of mailing.

Any other expense must be approved in advance by Authority's Chief Executive Officer in writing. No compensation shall be allowed for word processing, normal or overflow secretarial time or overtime, or general or administrative overhead or premiums added to the direct cost of research support or other services.

**3.3 Expense Control.** Special Counsel shall use all available means, consistent with sound professional practices and the exercise of reasonable judgment, to limit and minimize expenses incurred during the performance of this Agreement.

**3.4 Method of Billing.** Special Counsel shall provide monthly bills in the form specified herein. Special Counsel shall endeavor to provide monthly invoices no later than 30 days after the end of each billing cycle (i.e., all services identified on the invoice were performed no more than 60 days prior to the date the Authority received the invoice). The Authority shall have no obligation to pay Special Counsel for services to the extent performed more than 90 days prior to the date the Authority receives the invoice for the services. Each bill shall have a cover page summary indicating category totals. Unless otherwise agreed, the following information must be provided in monthly bills in detail:

- A. A detailed description of work, in time increments of .1 hours (one tenth of an hour) for and by each and every individual billing services.

- B. Identification of the lawyer who is in charge of the matter.
- C. Reasonably detailed disbursement breakdowns.
- D. Each billing item will be separately stated on a separate line identifying the attorney, the time spent and the exact nature of the service rendered.

**3.5 Timing of Payment.** The Authority shall pay Special Counsel for services rendered and costs incurred hereunder, at the rates and in the amounts provided hereunder, on a timely and periodic basis in accordance with the periodic statements, as approved by the Authority's Chief Executive Officer.

**4.0 ENGAGEMENT OF OTHER COUNSEL, SPECIALISTS OR EXPERTS.** Special Counsel will not engage or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with this Agreement without the prior approval of the Authority's Chief Executive Officer.

**5.0 TERMINATION OF AGREEMENT AND LEGAL SERVICES.** The Authority shall have the right, at any time in its best judgment, with or without reason, to terminate this Agreement, and to obtain new Special Counsel, or take such other steps, as Authority deems proper. In the event that this Agreement is so terminated, Authority shall pay to Special Counsel the rates, fees and charges accrued for satisfactory work to the time of termination. Authority shall be entitled to electronic and written copies of files maintained concerning this representation and to the return of all documents submitted to Special Counsel. Special Counsel shall have the right, with or without reason, to terminate this Agreement upon thirty (30) days written notice to the Authority General Counsel.

**6.0 INTEREST OF MEMBERS OF LOCAL PUBLIC AGENCY.** No member of the governing body of the Authority, and no other officer, employee or agent of the Authority who exercises any discretion, function or responsibility in connection with the carrying out of any project, to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

**7.0 INTEREST OF COUNSEL.** Special Counsel agrees to secure the informed written consent of the Authority's Board of Directors before accepting any representation adverse to the Authority (actual or apparent) during the term of this Agreement, and to forego such representation if the Authority's Board of Directors, in their sole discretion, objects for any reason.

**9.0 CONFLICT OF INTEREST PROHIBITED.** Special Counsel (including its employees, members, officers and agents) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Special Counsel shall comply with all requirements of the Political Reform Act (California Government Code sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Special Counsel shall not make or participate in a decision made by the Authority if it is reasonably foreseeable that the decision may have a material effect on Special Counsel's economic interest, and (b) if required by law, Special Counsel shall file financial disclosure forms with the Authority Clerk. If Special Counsel maintains

or acquires a conflicting interest, any contract with the Authority (including this Agreement) involving Special Counsel's conflicting interest may be terminated by the Authority.

## **10.0 MAINTENANCE AND INSPECTION OF RECORDS.**

**10.1 Audits.** The Authority and any relevant federal, state or local governmental agency, and any of their authorized auditors or representatives, including the Authority Auditor, shall have access to, and the right to audit and reproduce any of Special Counsel's records to the extent the Authority or such other governmental agency deems necessary to ensure that Authority is paying only the amounts to which Special Counsel is properly entitled or for other purposes relating to the Agreement.

**10.2 Records.** Special Counsel shall maintain and preserve all such records for at least three (3) years after termination of the Agreement or until an audit has been completed and accepted in writing by Authority. Upon written notice by the Authority, the Special Counsel shall promptly make all such records available to auditors or other representatives of the Authority or other governmental agencies.

**11.0 INSURANCE.** Special Counsel shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of the Agreement, including any extensions thereto. The Authority and each of its members, their officials, employees, agents and volunteers are to be covered as additional insureds under the policies except for the Professional Liability policy. The policies shall state that they afford primary coverage. Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Special Counsel shall immediately notify Authority and cease all performance under this Agreement until further directed by the Authority.

**11.1 General Liability.** General Liability with minimum limits of at least \$1,000,000 combined single limits written on an Insurance Services Office (ISO) Comprehensive General Liability "occurrence" form or its equivalent for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage is required.

**11.2 Professional Liability.** Professional errors and omissions coverage in a sum of at least \$1,000,000. If a claims-made policy is required, a "tail" of at least three years shall be purchased if non-renewed within three (3) years of completion of performance under this Agreement.

**11.3 Workers' Compensation.** Special Counsel shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job.

**12.0 INDEMNIFICATION.** Special Counsel shall indemnify, hold harmless, and defend the Authority and its members (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees), arising from or related to Special Counsel's performance of this Agreement to the extent caused by Special Counsel's negligent acts, omissions or willful misconduct under this Agreement.

**13.0 DEFAULT.** If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

**14.0 NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered or mailed to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party’s Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: Clean Energy Alliance  
Attn: Chief Executive Officer  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008  
[Sheila.Cobian@carlsbadca.gov](mailto:Sheila.Cobian@carlsbadca.gov)

To: Tosdal APC  
Attn: Ty Tosdal  
777 South Highway 101, Suite 215  
Solana Beach, CA 92075  
[ty@tosdallaw.com](mailto:ty@tosdallaw.com)

**15.0 NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY.**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated \_\_\_\_\_ 2019, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Special Counsel shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority’s constituent members in connection with this Agreement.

**16.0 HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

**17.0 SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties’ intent under this Agreement.

**18.0 GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws

of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Diego.

**19.0 ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Special Counsel’s duties be delegated, without the written consent of the Authority. Any attempt to assign or delegate this Agreement without the written consent of the Authority shall be void and of no force or effect. A consent by the Authority to one assignment shall not be deemed to be a consent to any subsequent assignment.

**20.0 MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

**21.0 WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

**22.0 ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

**23.0 EACH PARTY’S ROLE IN DRAFTING THE AGREEMENT.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

**24.0 SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, and legal authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Special Counsel and the Authority. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF,** Authority and Special Counsel have executed this Agreement.

**CLEAN ENERGY ALLIANCE**  
A Joint Powers Authority

**TOSDAL APC**  
A Professional Corporation

\_\_\_\_\_  
Chair, Board of Directors

By \_\_\_\_\_  
Ty Tosdal, Chief Executive Officer

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT A****SCOPE OF SERVICES**

The scope of Consultant's engagement will be to provide advice and representation in connection with energy regulatory matters and related issues facing Community Choice Aggregators, also known as Community Choice Energy (CCE) programs primarily before the California Public Utilities Commission, but also before the California Energy Commission and California Independent System Operator (CAISO), as more specifically set forth below. The Joint Powers Authority (JPA) is engaging the Consultant to provide legal services only in connection with specific matters that it authorizes in advance, and the engagement is limited to performance of services related to those matters.

**Monitoring and Reporting**

When approved in advance, monitoring and reporting about developments in regulatory proceedings before the California Public Utilities Commission or other regulatory agencies that may be necessary to make informed decisions at the program level. This task involves review of various documents, including notices, advice letters, comments and briefs, and Commission decisions. If approved in advance, these materials may be summarized in a digestible written format and relayed to the program. Monitoring and reporting of regulatory activities are the primary responsibilities of legal assistants with oversight from attorneys.

**Regulatory Compliance Support**

CCE programs have authority to set rates and administer customer offerings, but the Public Utilities Commission and other regulatory agencies retain jurisdiction over certain aspects of the programs, mostly related to energy procurement. When approved in advance, regulatory compliance support entails interpretation and analysis of these rules, review of best practices, and collaboration with staff and consultants to apply the rules to the program. This is a support role only, and primary compliance tasks, such as data collection and the preparation of compliance reports, are not included as they are performed by internal procurement staff or other staff or consultants. Regulatory compliance support is typically carried out equally by attorneys and legal assistants, with support from paralegals as needed.

**Direct Advocacy**

When approved in advance, direct advocacy in regulatory proceedings may be necessary in order to achieve certain goals. Active participation is work intensive, and requires document review, consultation with clients, development of strategy, and the preparation of comments and briefs. Depending on the proceeding, this task may also involve collaboration with technical experts, development and review of testimony, and questioning and defending witnesses at hearings. Because the Public Utilities Commission is located in San Francisco, where meetings and hearings are held, travel may be required. CEA will not pay the Consultant for travel time. If authorized in advance, the CEA will reimburse the Consultant for the actual costs incurred for travel (including mileage, ground transport, parking, air or rail fare, lodging, meals). Given the complexity and prevalence of legal issues, direct advocacy is performed largely by attorneys with support from legal assistants and paralegals as needed.



**EXHIBIT B**  
**FEE SCHEDULE**

**Rates**

Ty Tosdal will be the attorney responsible for this engagement, and some of the work may be performed by other attorneys at the firm, paralegals, legal assistants and support personnel, as necessary. The discounted hourly rates for the Joint Powers Authority (JPA) are as follows:

<b>Staffing Level</b>	<b>Rate</b>
Shareholder or Lead Counsel	\$305
Senior Associates	\$215
Junior Associates	\$150
Legal Assistants	\$110
Paralegals	\$85

Travel time will not be billed.

**Costs and Expenses**

Consultant's bills will include charges for the actual costs and expenses incurred in performing services on the JPA's behalf, such as printing and copying, mail and delivery services, use of legal research and other databases, travel if approved in advance (including mileage, ground transport, parking, air or rail fare, lodging, meals), telephone, filing fees and other legal support services. Consultant will not engage expert witnesses, nor outside consultants, nor incurred any fees or expenses related thereto, without making arrangements with the JPA in advance and obtaining express written consent.

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 7: ADOPT RESOLUTION NO. 19-001 ADOPTING A CONFLICT OF INTEREST**

DATE: **CODE** November 5, 2019

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**RECOMMENDATION:**

That the Board adopt Resolution No. 19-001 Adopting a Conflict of Interest Code.

**BACKGROUND AND DISCUSSION:**

California Government Code Section 87300 requires the Clean Energy Alliance (CEA) to adopt and promulgate a Conflict of Interest Code (Code) that applies to those officials and designated positions who are involved in CEA decision making. The proposed Code applies to the designated economic interests that exist within the jurisdiction of CEA and not just the jurisdiction of each of the Member Agencies.

An agency may choose to adopt the Model Conflict of Interest Code prepared by the Fair Political Practices Commission and codified in Section 18730 of Title 2 of the California Code of Regulations. The code must list the positions within CEA that are considered “designated positions” and must identify the “disclosure categories” applicable for each designated position. The Code as proposed includes two appendices, which list CEA’s designated positions and identifies the applicable disclosure categories for each designated position.

Only persons holding designated positions listed in Appendix A to the Conflict of Interest Code need to file Statements of Economic Interest (Form 700s). At this time, CEA’s designated officers and employees include Board members and alternates, the Interim Executive Director, the General Counsel, Interim Treasurer and specified Consultants. All persons holding a designated position must file an initial Form 700 no later than 30 days after CEA’s adoption of the Conflict of Interest Code.

The Secretary of the Board will coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years, or within 90 days of the creation of a new position that must file a Form 700, in accordance with the requirements of Government Code Sections 87306 and 87306.5. The revised Code should reflect any changes in employee designations. If in an even-numbered year no revisions to the Code are required, the Secretary of the Board shall submit a report no later than October 1<sup>st</sup> of the same year, stating that amendments to the Code are not required.

Government Code Section 82011(b) requires the San Diego County Board of Supervisors to be the code reviewing body for CEA's Conflict of Interest Code. If the Board of Directors adopts the Code, staff will forward the resolution and CEA's Conflict of Interest Code to San Diego County for review and approval. The Board of Supervisors is required to act upon the Conflict of Interest Code within ninety (90) days after receiving the Code for review. The Board of Supervisors may approve the Code as submitted, make revisions, or return the proposed Code to CEA's Board of Directors for review and resubmission back to the Board of Supervisors for approval.

**Attachments**

1. Resolution No. 19-001 Adopting the Conflict of Interest Code

**CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2019-001**

**A RESOLUTION OF THE CLEAN ENERGY ALLIANCE  
ADOPTING A CONFLICT OF INTEREST CODE**

WHEREAS, Government Code Section 87300 requires state and local government agencies to adopt and promulgate conflict of interest codes; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730), which contains the terms of a standard conflict of interest code, which may be incorporated by reference in an agency's code and, after public notice and hearing, may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act; and

WHEREAS, the Clean Energy Alliance ("Alliance") is a joint powers agency subject to the requirement of Government Code Section 87300 to adopt a local conflict of interest code; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Board of Directors of, the proposed Conflict of Interest Code for the Clean Energy Alliance was duly provided and publicly posted for review at the offices of the Alliance; and

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 ("Board") hereby adopts the Conflict of Interest Code including its Appendices of Designated Positions and Disclosure Categories, attached hereto.

Section 2. The Conflict of Interest Code shall be submitted to the Board of Supervisors of San Diego County for approval and said Code shall not become effective until the Board of Supervisors approves the proposed Conflict of Interest Code as submitted or revised.

Section 3. Persons holding designated positions listed in the Conflict of Interest Code shall file with the Secretary of the Alliance Statements of Economic Interests on Fair Political Practices Commission forms, in conformance with the individual disclosure categories and State law.

Section 4. The Secretary of the Alliance is directed to provide, upon request, copies of this Resolution and the Conflict of Interest Code to any officer, employee, and consultant designated in the Code, and to make copies of the Code available to any interested party who requests a copy.

Section 5. Any violation of any provision of the Conflict of Interest Code is subject to the administrative, criminal, and civil sanctions provided in the Political Reform Act, Government Code Section 81000 *et seq.*

The foregoing Resolution was passed and adopted this 5th day of November, 2019, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED:

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Chairperson

ATTEST:

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Secretary

**CONFLICT OF INTEREST CODE OF THE  
CLEAN ENERGY ALLIANCE**

Incorporation of FPPC Regulation 18730  
(2 California Code of Regulations, Section 18730) by Reference

The Political Reform Act (Government Code § 81000, *et seq.*) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code Regs § 18730) that contains the terms of a standard conflict of code which can be incorporated by reference in an agency's code. After public notice and hearing, Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference. This incorporation page, Regulation 18730 and the attached Appendices designating positions and establishing disclosure categories, shall constitute the Conflict of Interest Code of the Clean Energy Alliance ("Alliance").

The most current version of 2 Cal. Code of Regulations Section 18730 is available on the website of the Fair Political Practices Commission.

All Officials and Designated Positions required to submit a statement of economic interests shall file their statements with the Secretary, as the Alliance's Filing Officer. The Alliance's Filing Officer shall retain the originals of the statements of all Officials and Designated Positions and shall make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

**CLEAN ENERGY ALLIANCE  
CONFLICT OF INTEREST CODE**

**APPENDIX "A"**

**DESIGNATED POSITIONS**

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Board of Directors	1
Board of Directors (Alternates)	1
Executive Director	1
Treasurer and Chief Financial Officer	1
General Counsel	1
Consultants and New Positions	3

**CLEAN ENERGY ALLIANCE  
CONFLICT OF INTEREST CODE**

**APPENDIX “B”**

**DISCLOSURE CATEGORIES**

Designated positions must report financial interests in accordance with the assigned disclosure categories.

**CATEGORY 1:** Persons in this category shall disclose:

(a) investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority; and

(b) all interests in real property located in whole or in part within the jurisdiction of the Clean Energy Alliance, or within two miles of the borders of any of the parties to the Joint Powers Agreement for the Authority, or within two miles of any land owned or used by the Authority.

Persons not required to disclose a residence, such as a home or vacation cabin, used exclusively as a personal residence; however, a residence in which a person rents out a room or for which a person claims a business deduction may be reportable.

**CATEGORY 2:** Persons in this category shall disclose investments and business positions in business entities and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority.

**CATEGORY 3:** Individuals providing services as a Consultant as defined by the Political Reform Act, or in a new position created since this Code was last approved that makes or participates in making decisions that may foreseeably have a material effect on any financial interest of the position-holder shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitations:

The Chief Executive Officer or his or her designee may determine in writing that a particular consultant or new position, although a “designated position”, is hired to perform a range of duties that is limited in scope and thus not required to fully comply with disclosure



requirements in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Section 81008.)

Within 90 days of the creation of a new position that must file Statements of Economic Interests, the Authority shall update this conflict of interest code to add the actual position title in its list of designated positions, and submit the amended conflict of interest code to the County of San Diego for code-reviewing body approval by the County Board of Supervisors. (Gov. Code Section 87306.)

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 8: ADOPT RESOLUTION NO. 19-002 SETTING THE TIME AND PLACE  
FOR CLEAN ENERGY ALLIANCE BOARD MEETINGS**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board adopt Resolution No. 19-002 Setting the Time and Place for Clean Energy Alliance Board meetings.

**BACKGROUND AND DISCUSSION:**

Pursuant to Section 4.8 of the Clean Energy Alliance Joint Powers Agreement, the Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board. The location of regular meetings may rotate for the convenience of the Parties, subject to Board approval and availability of appropriate meeting space.

Adopting the Board meeting calendar by resolution meets Brown Act requirements (Government Code §54954) and provides the CEA Board the opportunity to notify the public of its scheduled regular meetings. Special meetings can still be called as needed by providing 24-hour notice before the time of the special meeting.

For the remainder of Fiscal Year 2019/2020, staff is proposing one regular meeting per month at which the Board will consider routine agenda items such as consent calendar items, resolutions, public hearings and staff reports. Except for the November regular meeting, which will be held at 10 a.m. on Tuesday, November 19, all meetings will be scheduled to take place on the third Thursday of the month at 12 p.m.

The location of the Board's regular meetings is proposed to be Carlsbad City Hall (1200 Carlsbad Village Drive, Carlsbad, CA 92008).

**Attachment**

1. Resolution No. 19-002 Setting the Time and Place for Clean Energy Alliance Board Meetings

**CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2019-002**

**A RESOLUTION OF THE CLEAN ENERGY ALLIANCE  
SETTING THE TIME AND PLACE FOR CLEAN ENERGY ALLIANCE BOARD MEETINGS**

WHEREAS, the Clean Energy Alliance Board of Directors has determined it will establish its scheduled regular meetings annually by resolution; and

WHEREAS, the Ralph M. Brown Act (Government Code §54954) provides for the establishment of an annual regular meeting calendar procedure; and

WHEREAS, special meetings of the Board of Directors will be called as necessary following the requirements of the Brown Act (Government Code §54956).

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

Section 1. That the Board of Directors of the Clean Energy Alliance (“Board”) hereby establishes the following dates and times for regular Board meetings during Fiscal Year 2019/2020:

November 19, 2019	10 a.m.
December 19, 2019	12 p.m.
January 16, 2020	12 p.m.
February 20, 2020	12 p.m.
March 19, 2020	12 p.m.
April 16, 2020	12 p.m.
May 21, 2020	12 p.m.
June 18, 2020	12 p.m.

Section 2. That the 2020 meeting calendar will be posted to the Clean Energy Alliance website.

Section 3. That the location of regular Board meetings during Fiscal Year 2019/2020 is Carlsbad City Hall (1200 Carlsbad Village Drive, Carlsbad, CA 92008).

The foregoing Resolution was passed and adopted this 5th day of November, 2019, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED:

---

Chairperson

ATTEST:

---

Secretary

CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 9: REVIEW PROPOSED IMPLEMENTATION TIMELINE, OVERVIEW OF IMPLEMENTATION PLAN & STATEMENT OF INTENT AND CONFIRM IMPLEMENTATION PLAN ASSUMPTIONS**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board review the proposed Clean Energy Alliance (CEA) Implementation Timeline – Action Items (First Six Months) and overview of the CEA Implementation Plan and Statement of Intent and confirm that the plan’s underlying assumptions are consistent with those identified in the CEA Joint Powers Agreement:

- Default energy product from a minimum 50% renewable sources;
- Offer a 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 comparable service offerings.

**BACKGROUND AND DISCUSSION:**

Staff is presenting a proposed implementation timeline for action items to be completed during CEA’s first six months (Attachment 1) and an overview of the CEA Implementation Plan and Statement of Intent. The Board is asked to confirm the underlying assumptions being used to develop the draft CEA Implementation Plan, which will be presented to the Board at its next meeting.

**IMPLEMENTATION TIMELINE**

There are several tasks that CEA will have to accomplish over the next six months in order to meet the goal of a 2021 launch. Staff has completed the attached timeline of pertinent action items to ensure all tasks are being completed on time and in compliance with regulatory requirements. These are high level tasks that do not include the detail of necessary steps that must be taken to accomplish the task. These are grouped into three general categories:

- Administrative
- Implementation Plan Related
- Regulatory Compliance

Administrative tasks include actions specific to the operations of the JPA, such as appointment of interim staff and adoption of policies and procedures.

Implementation Plan Related tasks include 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 include 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 San Diego Gas & Electric Service Agreement.

Regulatory Compliance tasks include actions such as preparation and filing of an initial Renewable Portfolio Standards Procurement Plan and participation in the year-ahead Resource Adequacy process.

Staff will continually monitor and update the timeline to ensure CEA meets all needed milestones and compliance obligations to begin serving customers in 2021.

### **CEA IMPLEMENTATION PLAN**

Public Utilities Code Section 366.2(c)(3) (Code) establishes the requirements related to the filing of an Implementation Plan (Plan) for a community choice aggregation program.

The Plan is a regulatory compliance document that:

- Must be considered and adopted at a noticed Public Hearing;
- Must contain the following sections:
  - Organization structure, operations & funding
  - Ratesetting
  - Methods for entering and terminating agreements with other entities
  - Rights & responsibilities of program participants
  - Termination of program
  - Energy suppliers

Code Section 366.2(c)(3) also requires a Statement of Intent that addresses:

- Universal access
- Reliability
- Equitable treatment of customer classes
- Compliance with requirements of state law or commission concerning greenhouse gas emission performance standards

The Statement of Intent will be included as part of the Implementation Plan that is presented to the Board for consideration.

In addition to the statutory requirements, the Plan will discuss the goals and purpose of the Clean Energy Alliance, such as CEA's renewable energy standards and rate discount targets, as identified in the JPA documents, including:

- Offering an energy mix for its default service that provides a cleaner power portfolio than that of San Diego Gas & Electric (SDG&E) and from a minimum 50% renewable sources;
- Offering a voluntary opt-up service at 100% renewable content that customers may elect to participate in;
- Achieving – and sustaining – the Climate Action Plan goals of the Member Agencies; and
- Setting rates with a target generation rate at least 2 percent below that of SDG&E's base product generation rate.

To meet these goals, the Plan assumes an energy mix for its default service that is a minimum 50% renewable energy sourced, increasing to the goal of 100% by no later than 2035, at an assumed target rate 2% below that offered by SDG&E for its base energy product.

The Plan will be written to meet all the requirements to be certified, while providing the Board the greatest flexibility as it considers program design and options in establishing its CCA program to meet the program goals. The Plan should be considered a statutory requirement and not a detailed business plan, that sets program targets and goals but does not lock the Board in to specific details that have not been fully reviewed or analyzed for feasibility.

Pursuant to CPUC Resolution E-4907 the Implementation Plan must be submitted to the CPUC no later than January 1, 2020 for CEA to be eligible to serve customers in 2021. The CPUC has 90 days to review and certify that the Implementation Plan meets the requirements set forth in the Code, unless the CPUC staff responds with questions or requests additional information. The Plan being developed is modeled after implementation plans that have successfully been through the CPUC review and certification process, and as result, questions from CPUC staff are not anticipated.

At this time, staff is seeking confirmation of the Plan assumptions and will be bringing the draft Plan for Board review at its next Board meeting, with the public hearing for adoption to be scheduled in December 2019.

Attachment:

1. Clean Energy Alliance Implementation Timeline – Action Items (First Six Months)

**Clean Energy Alliance  
Implementation Timeline - Action Items  
First Six Months**

		Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20
1	11/5/2019	Authorize RFP for Executive Director					
2	11/5/2019	Appoint Board Treasurer/CFO					
3	11/5/2019	Appoint Board Secretary					
4	11/5/2019	Appoint Board General Counsel					
5	11/5/2019	Appoint CEA Regulatory Counsel					
6	11/5/2019	Approve Conflict of Interest Policy					
7	11/5/2019	Determine Meeting Schedule & Locations					
8	11/5/2019	Board Direction on Staffing					
9	11/5/2019	Board Confirm Default RPS and Rate Discount					
10	11/19/2019	Board Approve Cost Reimbursement Agreement for Member Agency Support					
11	11/19/2019	Draft Implementation Plan & Statement of Intent					
12	12/19/2019	Appoint Executive Director					
13	12/31/2019	Approve & File Implementation Plan & Statement of Intent					
14	1/16/2020	Approve FY 19/20 Budget					
15	1/16/2020	Select Financial Institution & Approve Financing Plan					
16	1/16/2020	Select Technical Consultant to Assist with Regulatory Filings					
17	1/16/2020	Select Data Manager					
18	2/20/2020	Develop Draft Customer Notice for Submittal to CPUC					
19	2/20/2020	Secure CEA Website Domain (by 12/1/19); create website; create CEA logo					
20	2/20/2020	Develop RPS Procurement Plan					
21	3/19/2020	Post CCA Bond with CPUC					
22	3/19/2020	Execute Service Agreement with SDG&E					
23	4/23/2020	Resource Adequacy Compliance Filing					

Key:

	Administrative
	Implementation Plan Related
	Regulatory Compliance



CLEAN ENERGY ALLIANCE  
STAFF REPORT

TO: Clean Energy Alliance Board of Directors

**ITEM 10: REVIEW DRAFT FY 2019/2020 INITIAL BUDGET AND CONSIDER REQUESTS FOR MEMBER AGENCY ADVANCES TO FUND INITIAL COSTS IN THE AMOUNT OF \$450,000**

DATE: November 5, 2019

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**RECOMMENDATION:**

That the Board review the draft Fiscal Year 2019/2020 Clean Energy Alliance (CEA) initial budget, pursuant to Section 7.3.1 of the CEA Joint Powers Agreement (JPA), and consider requesting advances in the amount of \$150,000 from each Member Agency to fund initial costs in the amount of \$450,000, to be repaid from future CEA program revenues, pursuant to Section 7.3.2 of the CEA JPA.

**BACKGROUND AND DISCUSSION:**

Section 7 of the JPA addresses the Financial Provisions for CEA, including specifying a fiscal year that shall commence July 1 and end June 30, establishing an initial budget and funding of the initial costs.

The activities of the Alliance through June 30, 2020 will be focused on meeting the requirements related to certification of the CEA Implementation Plan as well as completion of the CCA registration process. These activities and timeline were set forth in California Public Utilities Commission (CPUC) Resolution E-4907, approved by the CPUC February 8, 2018. These activities include:

- Development and submission of a draft customer notice
- Payment of the CCA Financial Security Requirement
- Filing of an Initial Renewable Portfolio Standards Procurement
- Participation in Initial Year-Ahead Resource Adequacy process

Costs related to the activities necessary to ensure compliance with all CCA certification and registration requirements, as well as to ensure a successful launch in 2021, are estimated to be \$450,000 for the fiscal year ending June 30, 2020. These costs are to be shared equally among the Member Agencies, pursuant to JPA Section 7.3.2, and subject to reimbursement from future CEA program revenues.

The draft FY 2019/2020 initial budget (Attachment 1) addresses the need for consulting services to perform the duties necessary for a successful 2021 CCA launch; technical consultants for regulatory compliance activity; legal services for both general counsel and special regulatory counsel; professional services for tasks such as graphic design services and website development, and membership in California Community Choice Association as an affiliate member. The draft budget includes line items that, depending on the direction from the Board, could be funded through traditional bank financing, deferred fees and/or partner support, thereby reducing the amount of funds required from each Member Agency to provide for pre-launch costs.

If approved by the Board, staff will prepare a Cost Reimbursement for Member Agency Support Agreement for consideration at the next Board meeting. Following funding approvals by Member Agency City Councils, staff will present a resolution for final Board approval of the FY 2019/2020 CEA budget. Such action is expected to occur at the January Board meeting.

A preliminary estimate of the Fiscal Year 2020/2021 budget for non-power related costs is also provided at \$1,459,500. Staff will return to the Board prior to FY 2020/2021 to secure the necessary budget approvals, and with a discussion of potential funding strategies, which again, may include the use of traditional bank financing, deferred fees and/or partner support. The preliminary budget does not include the costs for power procurement services (portfolio and rate design, scheduling coordinator, Integrated Resource Planning, etc.) or data management/call center/billing services as these would be paid for through CEA operating revenues (post-launch).

Attachment:

1. Clean Energy Alliance Draft FY 2019/2020 Initial Budget

**Clean Energy Alliance  
 DRAFT FY 2019/2020 Initial Budget  
 and Preliminary FY 2020/2021 Budget**

INITIAL BUDGET	FY 19/20	NOTES
Staffing/Consultants	\$ 50,000.00	FY 19/20 Partial Year, Part Time CEO and Administrative Support
Legal Services	130,000.00	General Counsel & Special Counsel
Professional Services	115,000.00	Website Development; Technical Support
CCA Bond	147,000.00	Required to be paid by March 2020
CalCCA Membership & Dues	1,500.00	Affiliate Membership 19/20
Graphic Design Services/Marketing	\$6,500	Logo/Mailers
<b>TOTAL PROJECTED BUDGET</b>	<b>\$ 450,000.00</b>	

PRELIMINARY BUDGET	FY 20/21	NOTES
Staffing/Consultants	\$ 235,000.00	FY 20/21 Full Year, Full Time CEO and Administrative Support
Legal Services	200,000.00	General Counsel & Special Counsel
Professional Services	200,000.00	Technical Support, Load Forecasting, Regulatory Compliance
CAISO Fee	500,000.00	Required Participation in Congestion Revenue Rights
CalCCA Membership & Dues	130,000.00	Operational Membership FY 20/21
Print/Mail Services	132,000.00	Required mailers
Advertising	10,000.00	Public Hearing Notices
Graphic Design Services	10,000.00	Logo/Mailers
Website Maintenance	2,500.00	
Audit Services	40,000.00	Annual Financial and Privacy & Power Source Disclosure
<b>TOTAL PROJECTED BUDGET</b>	<b>\$ 1,459,500.00</b>	

Costs could be funded through traditional bank financing and/or deferred fees/partner support
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