



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: October 19, 2021

Agenda Item BB

Approvals:

City Manager CS JS

Dept. Head _____

Attorney _____

Finance _____

Department: City Manager's Office
Prepared By: Jennifer Savage, Assistant to the City Manager

Subject: *COMMUNITY CHOICE ENERGY FEASIBILITY STUDY – PHASE I*

Fiscal Impact: Yes. Phase I of the feasibility study is \$5,000 and funded from account #001-151-43890. If Council directs further study, future phases would cost up to \$40,000 and require a supplemental appropriation from the General Fund assigned fund balance to account #001-151-43890.

Summary: Phase I of a Community Choice Energy (CCE) Feasibility Study discusses the various options for a CCE in the City of San Clemente, including risks and benefits.

Background: On August 17, 2021, City Council authorized Phase I of a CCE Feasibility Study. The Phase I report is included as Attachment 1.

Discussion: The report (Attachment 1) provides a broad overview of CCE also known as Community Choice Aggregation (CCA). The report compares risks and benefits between options for San Clemente to form or join a CCE:

- Forming a stand-alone enterprise-based entity
- Forming a San Clemente CCE and joining CCEA JPA for management and administrative services
- Joining an existing CCE JPA

If, after reviewing the options, City Council is interested in forming or joining a CCE, Council should determine what option to pursue and determine whether to amend the Professional Services Agreement with the consultant (Attachment 2) for Phases II and III, which can be performed in sequence or concurrently:

- II. Detailed review of one particular CCE – This task provides a detailed analysis of a CCE's proposals, Joint Powers Agreement, Implementation Plan, Integrated Resource Plan, and other documents. This phase would cost \$10,000.
- III. Financial feasibility of one particular CCE – This task provides a load forecast, SDG&E rate forecast, power procurement portfolio, and pro forma analysis. This task models the financial feasibility of a particular CEE with various price and cost assumptions. This phase would cost \$30,000.

Recommended

Action: STAFF RECOMMENDS THAT the City Council:
1. Determine what Community Choice Energy option to pursue.
2. Authorize staff to request usage data from SDG&E.

3. Take one of the following actions:
 - a) Approve, and authorize the City Manager to execute, Amendment No. 1 to contract AC-1001, by and between the City of San Clemente and MRW & Associates, providing for Phase II of the feasibility analysis relating to Community Choice Energy. This amendment increases the contract amount from \$5,000 to \$15,000, an increase of \$10,000. In addition, appropriate \$10,000 from the General Fund unassigned fund balance, account 001-000-23430 into account 001-151-43890.
 - b) Approve, and authorize the City Manager to execute, Amendment No. 1 to contract AC-1001, by and between the City of San Clemente and MRW & Associates, providing for Phases II and III of the feasibility analysis relating to Community Choice Energy. This amendment increases the contract amount from \$5,000 to \$45,000, an increase of \$40,000. In addition, appropriate \$40,000 from the General Fund unassigned fund balance, account 001-000-23430 into account 001-151-43890.

Attachments:

1. CCA Options, Risks and Benefits for the City of San Clemente prepared by MRW & Associates
2. Professional Services Agreement

Notification: None.

CCA Options, Risks and Benefits for the City of San Clemente

Prepared by:



MRW & Associates, LLC
1736 Franklin Street, Ste 700
Oakland, CA 94612

October 2021

This report was prepared by MRW & Associates. MRW has been working on Community Choice Aggregation (CCA) issues since they were authorized by the California State Legislature in 2002. MRW has prepared and critiqued numerous CCA feasibility plans and is providing rate forecasting and other ongoing support to CCAs throughout the state.

This Study is based on the best information available at the time of its preparation, using publicly available sources for all assumptions to provide an objective assessment regarding the prospects of CCA operation in the City. It is important to keep in mind that the findings and recommendations reflected herein are substantially influenced by current market conditions within the electric utility industry and state regulations, both of which are subject to sudden and significant changes.

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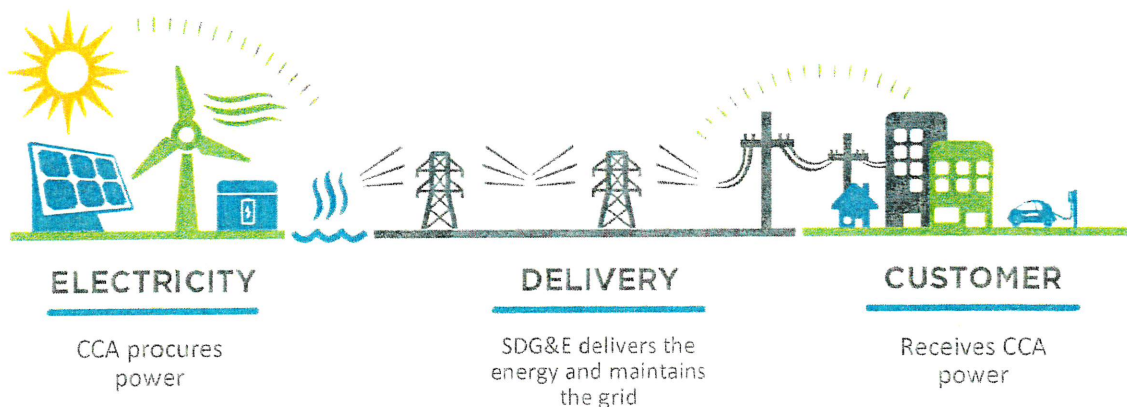
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Executive Summary

The City of San Clemente has retained MRW & Associates (MRW) to outline the Community Choice Aggregation (CCA)¹ options available to the City. More specifically, this report discusses options for the City of joining an existing Joint Powers Authority (JPA) based CCA or forming a San Clemente-only CCA, as well as the benefits and risks associated with these choices.

What is CCA?

California Assembly Bill 117, passed in 2002, established Community Choice Aggregation in California, for the purpose of providing the opportunity for local governments or special jurisdictions to procure or provide electric power for their residents and businesses. San Diego Gas & Electric (SDG&E) must provide transmission and distribution system services to deliver the electricity supplied by a CCA to the CCA's customers at the same price and at the same level of reliability to customers taking CCA service as it does for its own full-service customers. By state law, SDG&E also must provide all metering and billing services. That is, CCA customers receive a single electric bill each month from SDG&E, which differentiates the charges for generation services provided by the CCA from the charges for SDG&E delivery services.



Per California law, when a CCA is formed, all of the residential electric customers within its boundaries are placed, by default, onto CCA service. However, customers retain the right to return to their incumbent utility's service at will, subject to whatever administrative fees the

¹ Also sometimes referred to as Community Choice Energy or CCE.

CCA may choose to impose. The CCA may offer service to commercial and industrial customers too, but also on the same “opt-out” basis.

CCA Options Available to San Clemente

San Clemente’s three primary options for CCA are: joining an existing CCA; forming a stand-alone San Clemente-only enterprise-based CCA; or forming a San Clemente CCA and joining the CalChoice Energy Authority (CCEA).

- Joining an existing CCA. If the City decides to join an existing CCA, the Clean Energy Alliance (CEA) or Orange County Power Authority (OCPA) would be the most reasonable options due to the geographic proximity of their service territories to the City of San Clemente.
- Forming a stand-alone enterprise-based CCA.
- Forming a stand-alone CCA and joining CCEA.

CCEA is a “hybrid” JPA, where the JPA provides services to its member CCAs but does not control any of its general policies or programs.² The primary benefits of either of the San Clemente-only CCA options are more local control over procurement practices and budgets and services better tailored to San Clemente. Joining with CCEA greatly reduces the administrative burden relative to keeping all the CCA activities in-house for San Clemente. The primary benefits of joining with an existing CCA are foregoing the need to provide upfront financing for the CCA’s startup process (which could be \$500,000 or more), less potential financial exposure to the City as the JPA will be a financially distinct entity, economies of scale which can translate into lower average operating costs and reduced administrative burdens.

Table ES-1 qualitatively shows how these CCA options compare across a few key metrics.

² See, <https://californiachoicenergyauthority.com/> CCEA was formed by the city of Lancaster, the first City enterprise CCA in the State and the first CCA in California. Lancaster found that it was receiving so many inquiries from other Southern California cities about CCA that it formed CCEA to serve other smaller cities seeking CCA formation. CCEA, just like Lancaster Choice energy, is governed by the Lancaster City Council.

Table ES-1: Comparison of San Clemente CCA Options

| Criterion | Join Existing CCA | Use CCEA JPA | Stand-alone Enterprise | Stay with SDG&E |
|-----------------------------|---------------------------|---------------------------|---------------------------|-----------------|
| Rates | Comparable/modestly lower | Comparable/modestly lower | Comparable/modestly lower | Base |
| GHG Reduction Potential | Some | Some | Some | Base |
| Local Control/Governance | Some | Greater | Greatest | None |
| Local Economic Benefits | Some | Greater | Greatest | Minimal |
| Start Up Costs/Cost to Join | None | Some | Greatest | None |
| Level of Effort | Minimal | Some | Greatest | None |
| Timing (earliest) | 2024 | 2024 | 2024 | N/A |

Is San Clemente too small to form its own CCA?

Currently, there are at least eight established city-only CCAs with under 100,000 residents in California. San Clemente, with a population of around 68,000, would represent one of the larger city-only CCAs within this population grouping, as well as the first of its size in SDG&E territory. Among the city-only CCAs of similar size to San Clemente, only one is not a CCEA member: King City. This situation highlights the value that CCEA is able to provide city-only CCAs who may not have the resources or personnel to operate a city-only CCA alone. Although King City is not a CCEA member, it fully outsources all of its operations to a contractor.

Introduction and Background

The City of San Clemente has retained MRW & Associates (MRW) to outline the Community Choice Aggregation (CCA) options available to the City. More specifically, this report discusses options for the City of joining an existing Joint Powers Authority (JPA) or forming a San Clemente-only CCA, as well as the benefits and risks associated with these choices.

CCA Background

What is a CCA?

California Assembly Bill 117, passed in 2002, established Community Choice Aggregation in California, for the purpose of providing the opportunity for local governments or special jurisdictions to procure or provide electric power for their residents and businesses.

Under existing rules administered by the California Public Utilities Commission (CPUC), an investor-owned utility (IOU) must use its transmission and distribution system to deliver the electricity supplied by a CCA in a non-discriminatory manner. That is, it must provide these delivery services at the same price and at the same level of reliability to customers taking their power from a CCA as it does for its own full-service customers. By state law, an IOU also must provide all metering and billing services, its customers receiving a single electric bill each month from the IOU, which would differentiate the charges for generation services provided by the CCA as well as charges for IOU delivery services. Money collected by the IOU on behalf of the CCA is remitted in a timely fashion (e.g., within 3 business days).

As a power provider, the CCA must abide by the rules and regulations placed on it by the state and its regulating agencies, such as maintaining demonstrably reliable supplies and fully cooperating with the State's power grid operator. However, the State has no rate-setting authority over the CCA; the CCA may set rates as it sees fit so as to best serve its constituent customers.

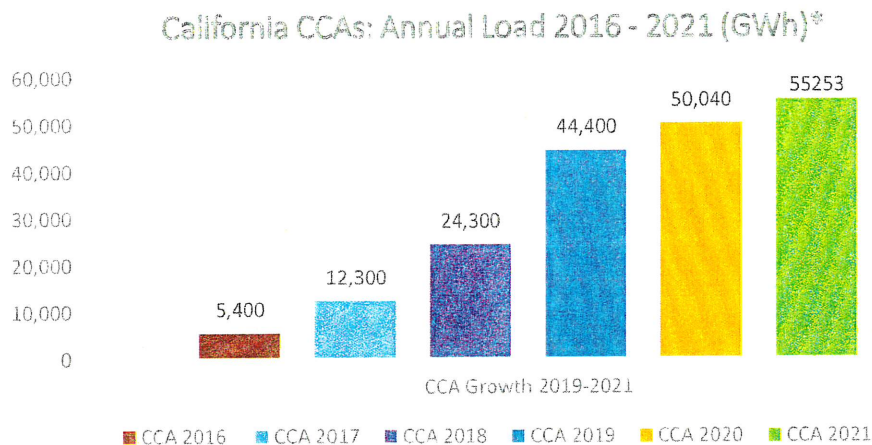
Per California law, when a CCA is formed, all of the residential electric customers within its boundaries will be placed, by default, onto CCA service. The CCA may offer service to commercial and industrial customers, too, but also on the same "opt-out" basis. However, customers retain the right to return to their incumbent utility's service at will, subject to whatever administrative fees the CCA may choose to impose.

Status of CCAs in California

Even though the enabling legislation was enacted in 2002, the first CCA to provide power, Marin Clean Energy (MCE), did not enroll customers until 2010. For the next five years, others investigated CCA formation, with a few early adopters stepping up in 2014 through 2016. As shown in Figure 1, once these early adopters showed that CCAs could work, the flood gates opened in 2017. As shown in the figure below, by the end of 2021, CCAs are expected to serve

over 55,000 GWhs,³ with some projecting that by the mid-2020s, between 50 to 80 percent of the load in the three main IOU service territories will be served by non-utility entities (CCAs and Direct Access providers).

Figure 1. California CCA Load Growth⁴



*Figures for 2020/2021 are projections based on expected launches

Table 1 lists the active or established CCAs in California, including those which have announced intended launches, along with their location and governance structure. As the table shows, most of the current CCAs are located in PG&E’s service area, but the growth in 2021-2022 will come from new CCAs in Southern California Edison’s (SCE) territory. Currently there are two CCAs in San Diego Gas & Electric’s (SDG&E) territory: Clean Energy Alliance and San Diego Community Power.

The table also shows that the majority of CCAs are organized as JPAs. There are also many smaller cities in SCE’s area that use the “JPA Light” model, in which the CCA is technically a city enterprise that relies upon the California Choice Energy Authority (CCEA) to provide the technical operations. There are also three fully stand-alone city CCA enterprises: San Francisco, San Jose, and King City.

³ 55 GWh roughly corresponds to the electricity use of 750,000 homes.

⁴ Figure courtesy of CalCCA.

Table 1. CCAs in California

| CCA | IOU | Type | Formed | Load, GWh ⁵ |
|---|-------|------------|-------------------|------------------------|
| <u>CCAs delivering power in California</u> | | | | |
| Clean Power San Francisco | PG&E | City | May-16 | 3,083 |
| East Bay Community Energy | PG&E | JPA | Jan-18 | 5,951 |
| Marin Clean Energy | PG&E | JPA | May-10 | 5,879 |
| Central Coast Community Energy | PG&E | JPA | Mar-18 | 4,507 |
| Peninsula Clean Energy | PG&E | JPA | Oct-16 | 3,290 |
| Pioneer Community Energy | PG&E | JPA | 2018 | 1,187 |
| Redwood Coast Energy Authority | PG&E | JPA | May-17 | 631 |
| San Jose Clean Energy | PG&E | City | Sep-18 | 4,462 |
| Silicon Valley Clean Energy | PG&E | JPA | Apr-17 | 3,991 |
| Sonoma Clean Power | PG&E | JPA | May-14 | 2,335 |
| Valley Clean Energy Alliance | PG&E | JPA | Dec-16 | 737 |
| King City Community Power | PG&E | City | Jul-18 | 486 ⁶ |
| Clean Power Alliance | SCE | JPA | Feb-18 | 11,113 |
| Apple Valley Choice Energy | SCE | City; CCEA | Apr-17 | 235 |
| Lancaster Choice Energy | SCE | City; CCEA | May-15 | 551 |
| Pico Rivera Innovative Municipal Energy | SCE | City; CCEA | Sep-17 | 243 |
| Rancho Mirage Energy Authority | SCE | City; CCEA | May-18 | 266 |
| San Jacinto Power | SCE | City; CCEA | Apr-18 | 160 |
| Baldwin Park | SCE | City; CCEA | 2020 ⁷ | 253 ⁸ |
| Desert Community Energy | SCE | JPA | Apr-20 | 1,433 |
| San Diego Community Power | SDG&E | JPA | Mar-21 | 3,227 ⁹ |
| Clean Energy Alliance | SDG&E | JPA | May-21 | 144 ¹⁰ |
| <u>Planned Launch</u> | | | | |
| Butte County | PG&E | JPA | 2024 | 1,080 |
| Hanford | SCE | City; CCEA | TBD | 285 |

⁵ 2019 Load (GWh) reported by CalCCA: <https://cal-cca.org/cca-impact/> Note: Clean Energy Alliance’s Load is based on the 2021 from its Integrated Resource Plan.

⁶ [King Power Community Power Label](#)

⁷ [FAQ \(baldwinpark.com\)](#)

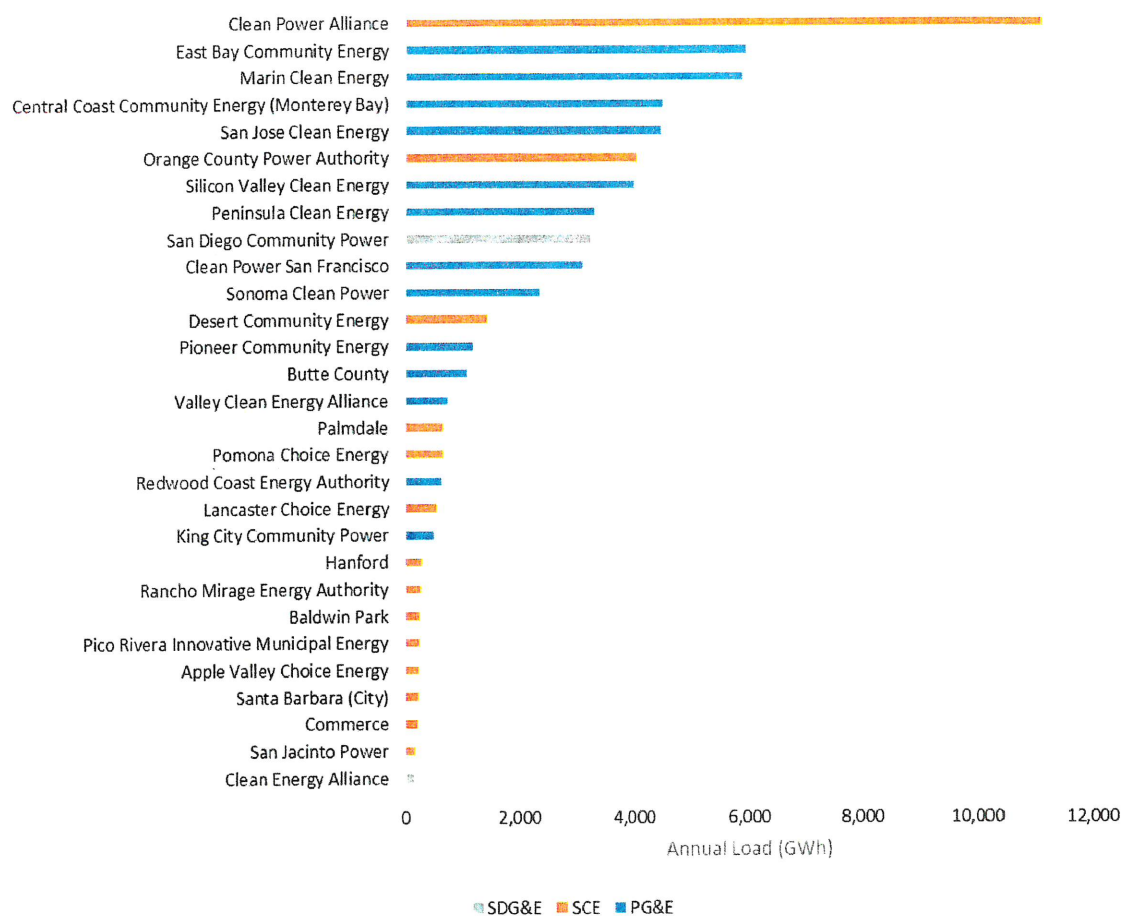
⁸ [Community Choice Aggregation \(baldwinpark.com\)](#)

⁹ [San Diego Community Power IRP](#)

¹⁰ [Clean Energy Alliance IRP \(in 2021\)](#)

| CCA | IOU | Type | Formed | Load, GWh ⁵ |
|-------------------------------|-----|------------|----------------------|------------------------|
| Santa Barbara (City) | SCE | City; CCEA | 2021 | 211 ¹¹ |
| Palmdale | SCE | City; CCEA | TBD | 655 |
| Orange County Power Authority | SCE | JPA | 2022 | 4,052 |
| Commerce | SCE | City; CCEA | TBD | 213 ¹² |
| Pomona Choice Energy | SCE | City; CCEA | Oct-21 ¹³ | 654 ¹⁴ |

Figure 2. Active and Expected California CCA Loads (GWhs) (2021)



¹¹ [Santa Barbara Implementation Plan](#)

¹² [Commence IRP](#)

¹³ [FAQs | Pomona Choice Energy](#)

¹⁴ [Pomona-Implementation-Plan-Adopted-with-Reso.pdf \(pomonachoiceenergy.org\)](#)

CCA Evolution

Over the first years of operation, many California CCAs have been evolving from a simple commodity procurement entity—providing power, albeit greener, at a competitive rate. After a year or two (or more), many CCAs have expanded into providing targeted and specialized customer programs that while customized for their communities, are variations of services provided by their incumbent utility or are generally proven in the industry. Examples of this include offering rooftop solar programs and feed-in-tariffs for local renewable generation projects that connect “in front of” the customer meter or installing additional electric vehicle (EV) charging stations and encouraging EV purchasing and leasing.


The third phase in evolution observed with California CCAs is moving into innovative and less common power-related programs and services. These are programs that are not common in California or elsewhere and may be more in the “demonstration” part of the program/technology lifecycle. Many of these programs emphasize community economic development, local renewable generation, or grid resiliency. Examples of these programs include Sonoma Clean Power’s efforts to electrify the areas that were destroyed in wildfires (i.e., work with PG&E to perhaps not provide gas service to these areas) or the microgrid programs being pursued by Redwood Coast Energy Authority.

Table 2, below, shows a range of the programs being pursued by some California CCAs.¹⁵ These non-commodity program offerings are becoming the focus of CCAs in the state. At the Business of Local Energy Symposium, a large CCA-oriented conference held in June 2019 in Irvine, CA, the speakers, panels and presentations overwhelmingly focused on innovation that CCAs can do and are doing.¹⁶ None addressed power procurement or cost competitiveness.

¹⁵ <https://cal-cca.org/cca-programs/> The Table is from The California Community Choice Association, the trade group representing CCAs in the state. It was prepared in 2020 and as such does not include OCPA, as it is not operational, nor CEA, which was formed in 2021.


¹⁶ <https://theclimaticenter.org/the-business-of-local-energy-symposium-2019-presentations/>

Table 2. Sample California CCA Program Offerings¹⁷

| | Apple Valley Choice Energy | Central Coast Community Energy | Clean Power Alliance | ClearPower51 | East Bay Community Energy | King City Community Power | Kaiser Choice Energy | MOE | Penninsula Clean Energy | Powert | PRIME | Kernco Energy Authority | Redwood Coast Energy Authority | San Jacinto Power | San Jose Clean Energy | Silicon Valley Clean Energy | Solera Energy Alliance | Sunrise Clean Power | Valley Clean Energy |
|---|----------------------------|--------------------------------|----------------------|--------------|---------------------------|---------------------------|----------------------|-----|-------------------------|--------|-------|-------------------------|--------------------------------|-------------------|-----------------------|-----------------------------|------------------------|---------------------|---------------------|
|  CALCCA CALIFORNIA LOCAL ENERGY PARTNERSHIP | | | | | | | | | | | | | | | | | | | |
| Budget Billing | | | | | | | | | | | | | | | | | | | |
| Battery Storage Rate | | | | | | | | | | | | | | | | | | | |
| Battery Storage Incentives | | | | | | | | | | | | | | | | | | | |
| Demand Response | | | | | | | | | | | | | | | | | | | |
| EV Rate | | | | | | | | | | | | | | | | | | | |
| EV Buy Program | | | | | | | | | | | | | | | | | | | |
| EV Incentives (vehicles and/or charging) | | | | | | | | | | | | | | | | | | | |
| EV Load Shifting | | | | | | | | | | | | | | | | | | | |
| Energy Efficiency | | | | | | | | | | | | | | | | | | | |
| Energy Efficiency Data Sharing | | | | | | | | | | | | | | | | | | | |
| Fee-to-Tariff | | | | | | | | | | | | | | | | | | | |
| Building Electrification | | | | | | | | | | | | | | | | | | | |
| Low-Income & Multifamily EF | | | | | | | | | | | | | | | | | | | |
| Solar Incentives | | | | | | | | | | | | | | | | | | | |
| On-Bill Repayment | | | | | | | | | | | | | | | | | | | |
| Education, Outreach, and/or Innovation Grants | | | | | | | | | | | | | | | | | | | |
| Low-Income Solar Incentives | | | | | | | | | | | | | | | | | | | |

¹⁷ <https://cal-cca.org/cca-programs/>

CCA Options for San Clemente

|  | Apple Valley Energy | Central Coast Community Energy | Clean Power Alliance | CleanPower360 | East Bay Community Energy | King City Community Power | Lancaster Choice Energy | MCE | Penninsula Clean Energy | Panacer | PRIME | Sancho Energy Authority | Redwood Coast Energy Authority | San Joaquin Power | San Jose Clean Energy | Sierra Valley Clean Energy | Solana Energy Alliance | Southern Clean Power | Valley Clean Energy |
|---|---------------------|--------------------------------|----------------------|---------------|---------------------------|---------------------------|-------------------------|-----|-------------------------|---------|-------|-------------------------|--------------------------------|-------------------|-----------------------|----------------------------|------------------------|----------------------|---------------------|
| Customer Load Shifting | | | | | | | | | | | | | | | | | | | |
| Microgrid Development | | | | | | | | | | | | | | | | | | | |
| Citizen Sourcing | | | | | | | | | | | | | | | | | | | |
| Energy Education in Local Schools | | | | | | | | | | | | | | | | | | | |
| Dividend Program | | | | | | | | | | | | | | | | | | | |
| Solar Referral Service | | | | | | | | | | | | | | | | | | | |
| Solar-Storage Offerings | | | | | | | | | | | | | | | | | | | |
| Advancing Resilient Codes | | | | | | | | | | | | | | | | | | | |
| Advanced Energy Rebuild | | | | | | | | | | | | | | | | | | | |
| TOU Rates | | | | | | | | | | | | | | | | | | | |
| Customer Call Clean Power Offerings | | | | | | | | | | | | | | | | | | | |
| Workforce Education & Training | | | | | | | | | | | | | | | | | | | |
| Emissions Inventory Support for Member Agencies | | | | | | | | | | | | | | | | | | | |
| Property Assessed Clean Energy (PACE) | | | | | | | | | | | | | | | | | | | |

Why Does San Clemente Want to Form or Join a CCA?

Before San Clemente can decide which CCA option is best for the city (if any), City decision-makers should understand why the City may want to form a CCA. This section lays out the typical CCA goals and objectives and how they might apply to San Clemente.

Rate Competitiveness and Financial Stability

A CCA serving San Clemente should expect to offer rates that are “competitive” with those offered by the incumbent electric utility, San Diego Gas & Electric (SDG&E). If they could not, it is not reasonable to assume that a CCA would be formed. “Competitive” here means that the CCA, over the long run, could offer rates that are equal to or less than those offered by SDG&E. It does not mean that in each and every year a specific rate savings is offered. In fact, many CCAs current rates are slightly higher than those offered by their host utilities.

In addition, the CCA would be committed to providing equitable treatment of all classes of customers without undue discrimination in setting rates. At the same time, the rates would have to generate sufficient revenue to the CCA, so that all liabilities are covered in a manner consistent with an investment-grade entity. The CCA should not move forward unless there is confidence that both rate competitiveness and financial stability can be achieved.

The CCA would also intend to offer long-term rate stability to its customers as well as maintain its own financial condition. This could be accomplished through conservative phasing in of customers and projects; establishing and maintaining appropriate lines of credit and financial reserves; and contracting with only experienced and financially solid providers of goods and services.

Contribute to Climate Objectives

The prime motivation of some CCAs is meeting local climate action goals and the reduction of greenhouse gas emissions. In considering how climate goals can fit into a CCA, it must be noted that California is also moving toward a similar carbon-free electricity policy. Senate Bill 100, which was signed into law by Governor Brown on September 17, 2018, increases the renewable power content requirement of all retail power

CCA and SDG&E Rates

A CCA provides only generation services: the actual power that CCA customers use. The incumbent utility, SDG&E, would still deliver the power to the home or business, even though the CCA is providing the power.

Therefore, the CCA customer would still pay the SDG&E delivery rates, but instead of paying SDG&E’s generation rates, they would pay the CCA’s generation rates. CCA customers also pay an additional fee so that the remaining SDG&E customers are not harmed by the CCA (the “PCIA” charge).

Because a customer pays the same delivery rates no matter who provides their power, the rate comparisons here focus on the CCA rate (plus the PCIA charge) versus SDG&E’s generation rate.

providers, including utilities and CCAs, from 50% to 60% by 2030. The bill also says, “that it is the policy of the state that eligible renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045,” and that all state agencies regulating electricity build this goal into their planning. This effectively means that the difference between the electricity carbon content of the CCA and remaining with status quo utility service may not be significant.

Additional Objectives

CCAs can also serve as a vehicle to pursue other objectives that benefit the City, its residents, and businesses. Examples of additional objectives could include the following:

Economic development. A CCA can potentially contribute to local economic development in two ways. First, if the CCA offers reduced electricity rates, additional dollars can flow into the local economy as households and businesses spend their incomes on items and services other than electricity. Second, the CCA can offer programs that allow households and businesses to reduce their power consumption, such as energy efficiency and distributed energy resources.

Local jobs and employment. Beyond the potential jobs that could result from the economic stimulus of possibly lower rates, the CCA can more directly incentivize and support local job creation. This includes employing residents in CCA administration, using local contractors for energy efficiency programs, and distributed energy generation (e.g., rooftop solar installers and maintainers). The CCA can also partner with local community colleges and/or trades apprenticeship programs to support quality local job opportunities.

Prioritization of renewable power development. Beyond support of locally sited distributed energy generation (“DEG,” e.g., rooftop solar), a CCA may prioritize siting larger, grid connected DEG and utility-scale renewable project locally.

Local citizen input and participation. A primary purpose of a CCA is to better reflect its community’s interests and values than an investor-owned utility like SDG&E can. For example, a CCA can commit to providing opportunities for citizens to provide input into its programs and policies, such as having a citizens’ advisory board or having a non-voting, at-large community seat on the CCA’s board of directors.

CCA Options Available to San Clemente

San Clemente's three primary options for community choice aggregation (CCA) are: joining an existing CCA, specifically the Clean Energy Alliance (CEA) or the Orange County Power Authority (OCPA); forming a stand-alone San Clemente-only enterprise-based CCA; or forming a San Clemente CCA and joining the CalChoice Energy Authority.

Forming a Single City Agency

In a sole jurisdiction approach, the City establishes the CCA as an enterprise and maintains full flexibility—and responsibility—for developing policies and procedures. This means that they can be specifically tailored to and responsive to the City's stakeholders and constituents and based upon their own objectives. The City would be responsible for setting policy priorities in general and making specific decisions about power generation, staffing policies, local economic development activities and strategies, formulation of financial and debt policies, and development of customer-focused programs, such as those promoting energy efficiency, electric vehicles (EV), and distributed generation (e.g., rooftop solar PV). Along with greater autonomy, the City would assume all risk, liability, and costs associated with operating the CCA. In this case, the likely path would be for the City to establish the CCA as an enterprise and work with appropriate legal counsel to explore options for controls and structural safeguards to financially insulate the CCA and minimize risk to the City's general fund.

Enterprises are commonly used for public utilities such as electric, water and wastewater, or other city functions where a public service is operated and provided in a manner similar to a separate business enterprise. Fees and charges are collected for services provided and accounting and budgeting are separate from a city's general fund. Establishing an enterprise provides management and CCA customers with visibility and accountability, and the ability to more easily separate and measure performance, analyze the impact of management decisions, determine the cost of providing electric service, and use this information to develop electric rates and services. Enterprise accounting would allow the City to demonstrate to customers, the public, and other stakeholders that the cost of power is being recovered through its rates, and not being subsidized or comingled with other City funds or functions.

Within the city-only option, the San Clemente CCA would have to determine if it is to be a fully in-house operation with existing or added City staff, or if the City would outsource some of or all of the activities, with the City only administering contracts and managing vendors. Examples of some of the categories of operating activities that would need to be performed in-house or outsourced include:

- Power procurement and operations
- Finance, budgeting, and accounting
- Coordinating with SDG&E on billing
- Customer service
- Communications, outreach, and public relations
- Customer service programs (EE, EV, or rooftop solar PV)

- Regulatory monitoring and compliance (e.g., CPUC filings)

The likely best short-term option would be to outsource the highly technical functions and maintain some of the management, planning, and other public-facing functions, like communications, in-house. The range of options depends upon the degree of operating control the City wishes to maintain, the costs associated with maintaining those functions, and the degree of risk it is willing to accept on its own, or delegate to third-party providers to assume these responsibilities.

Forming a stand-alone CCA also requires financial support from the City. The City would need to fund initial feasibility studies, a business plan, and implementation plan, as well as the initial start-up capital to get the CCA going. For example, the City of Irvine funded the initial feasibility study and implementation activities of OCPA, along with a working capital loan of \$2 million, which is slated to be repaid over the first few years of OCPA operation.¹⁸ If San Clemente were to form a city-only CCA, it should expect to have to supply a loan to the CCA on the order of \$300,000 to \$500,000, which would be paid back during the first 2 to 5 years of operation.

If the San Clemente CCA were to pursue additional services, it would require at least one or two managers, supported by analyst professionals, some of whom could be shared with other San Clemente departments.

There are currently three fully stand-alone city enterprise CCAs in California: San Francisco, San Jose, and King City. Being relatively large, San Francisco and San Jose perform most of the CCA functions in-house using city staff. King City, being one of the smallest CCAs (by load served), fully outsources its CCA operations, with one staff member—the city manager—acting as the link between King City and the contractor. Before forming CEA, the City of Solana Beach also operated in this fully-outsourced model.

Joining CalChoice Energy Authority

CalChoice Energy Authority (CCEA) is described as a “hybrid” JPA, where the JPA provides requested services to its member CCAs but does not control any of its general policies or programs.¹⁹ More specifically, CCEA provides to its members, as desired:

- Power, including contract procurement, portfolio management, load forecasting and scheduling, and complying with and demonstrating procurement-related regulatory requirements (e.g., resource adequacy, renewables, etc.).
- Regulatory and compliance support, including preparing and filing compliance reports to the California Public Utilities Commission, the California Energy Commission, and the California Independent System Operator; and general regulatory advocacy.

¹⁸ Per initial JPA Agreement, Irvine provide a \$2 million loan. Due to tight credit markets and low CCA margins, OCPA’s banker has requested Irvine provide an addition \$5 million of load guarantees.

¹⁹ See, <https://californiachoiceenergyauthority.com/>

- Billing and data management, including interface with SDG&E and call center operations.
- Treasury, including CAISO invoice validation, rate design development, and risk management.

Thus, CCEA is effectively a non-profit outsource for all of the detailed activities of a CCA. This is a good match for smaller cities such as San Clemente who are interested in the local control of the CCA but not interested in performing the day-to-day management needed to operate a CCA.

CCEA members that are providing power are: Lancaster Choice Energy, San Jacinto Power, Pico Rivera Innovative Municipal energy, Rancho Mirage Energy Authority, and Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, City of Commerce, and Pomona Choice Energy. The cities Palmdale and Santa Barbara are recent members and plan to offer service to customers in October 2022 and October 2021, respectively.

All of the city-only CCAs in SCE's territory are CCEA members. This makes sense in that they are all small. It also presents a potential obstacle to San Clemente joining CCEA, as it is located in SDG&E's territory. CCEA would thus need to expand its services to interact with SG&E.

Were it to join CCEA, San Clemente would be responsible for setting policies, setting rates, marketing and customer outreach, and the implementation of any desired local programs. **It would also still have to provide any start-up loans and any collateral or loan guarantees needed to acquire financing.**

The CCEA Board of Directors is the Lancaster City Council. The actual services provided by CCEA are via contractors and consultants supervised by City of Lancaster personnel (e.g., Lancaster City Manager, Lancaster Choice Energy's Executive Director.) Thus, CCEA's administrative simplicity (the city not having to acquire expertise or expert contractors) is a traded off against the fact that San Clemente would have to accept the contractors and service providers selected by CCEA. The bottom line is that CCEA is by design more of a client; San Clemente would remain fully in control of the power that the JPA purchased on its behalf as well as which services the JPA provides to the City.

Forming/Joining a Joint Powers Agency (Generically)

The second option would be the formation of a JPA, where the JPA is an independent agency that operates on behalf of the public agencies which are party to its creation. In this approach, the City effectively shares responsibility with the other agencies participating in the JPA. The divisions of these responsibilities and the sharing of decision-making authority would be determined at the time the JPA is created. Other critical 'ground rules' are negotiated and memorialized, such as financial and possibly staffing commitments of each participating agency, and the composition of the board and voting procedures.

The JPA structure reduces the risks of implementing a CCA program for the City by completely separating its books from the financial assets and liabilities of the City and the other

participating agencies, and distributing the risks and costs associated with the CCA among the participating entities. It could also provide the benefits of scale and economy for certain aspects of CCA operation, such as power procurement or back office billing and accounting functions.

Key tradeoffs to the benefits of a JPA are that decision making is allocated amongst the parties and management independence is diminished. Objectives of participating agencies will likely differ and reduced autonomy can manifest when setting priorities for local generation, economic development activities, and importance of support programs.

As described in detail in the next section, the JPAs that the City of San Clemente would likely join due to geographic proximity would be OCPA or CEA. If the City of San Clemente were to join OCPA, it would be the only member city within that JPA that is located in SDG&E service territory. There is one other CCA that have member cities served by two or more different utilities: Central Coast Community Power, whose communities are all in PG&E's area except for southern Santa Barbara County, which is in SCE's.

CCA Failures

To date there has been only one CCA failure: Western Community Energy (WCE) in Riverside County, which was comprised of the cities of Eastvale, Norco, Hemet, Jurupa Valley, Perris, and Wildomar. WCE was formed in 2018 and began servicing member cities in spring 2020. On May 17, 2021, WCE filed a declaration of emergency and authorized the filing for Chapter 9 bankruptcy protection. WCE cited several contributing factors that impacted its financial wellness, including non-payment from customers due to COVID-19, a power price spike in August 2020, and insufficient hedging and power price risk management. While other CCAs experienced similar challenges, they were able to rely on reserves accumulated over years of operation. WCE, beginning service April and May 2020, had no reserves to fall back on, a contributing factor to its decision to file for bankruptcy.

Other cities of chosen to “decertify,” that is, chosen not to move forward with CCA after having submitted a CCA implementation plan to the California Public Utilities Commission. These cities include Hanford, Industry and Palmdale. One city, Baldwin Park, is instituting decertification and ceasing serving its residents and businesses because of the current challenges of offering rates lower than those of its incumbent utility, Southern California Edison.²⁰

²⁰ http://baldwinpark.granicus.com/GeneratedAgendaViewer.php?view_id=10&clip_id=2730 Agenda Item 18.

Review of Existing CCA Options

Orange County Power Authority

In this section, we outline the composition, governance, and voting structure of Orange County Power Authority (OCPA). This section highlights where the OCPA JPA differs from, or is consistent with, other CCA JPAs.

Size and Members

OCPA is composed of four member agencies: the Cities of Huntington Beach, Irvine, Buena Park, and Fullerton. These cities are all located within SCE's service territory. The CCA estimates that it will have to serve an estimated load of 4,052 GWh.

If San Clemente were to join OCPA, it would only marginally increase OCPA's load, but it would be the only SDG&E member of OCPA. This would make OCPA one of the few CCAs to have members who are not all part of the same utility jurisdiction. Having customers in two different utility service territories would add complexity to OCPA's operations and remove some of the economies of scale that are achieved in the formation of the JPA. Specifically, OCPA would have to implement systems to interface not only with Southern California Edison (SCE) (which currently serves the OCPA cities) but also San Diego Gas & Electric (SDG&E) which serves San Clemente. OCPA would also have to create specific rates for San Clemente, as SCE and SDG&E's rate structures are not the same.

Board of Directors and Voting

The OCPA is governed by a Board of Directors, with one director appointed by each JPA member²¹, except for the City of Irvine, which would initially have two directors but would drop down to one director once Irvine's loan to the OCPA is paid off.²² This structure is unique; all other California CCA JPA agreements that MRW has seen specify that each member community would have one member on its JPA Board.

The JPA also provides for a second "Voting Shares Vote."²³ The JPA states that during the same Board Meeting after an affirmative or tie vote, two or more Directors may request a "voting share vote" to reconsider the action approved by a first vote. (Both Directors cannot be from Irvine.) The voting shares are proportional to the annual energy use of the community.

This voting shares vote option is common. East Bay Community Energy (EBCE), Marin Clean Energy (MCE), Clean Power Alliance, Peninsular Clean Energy, Sonoma Clean Energy, and Silicon Valley Clean Energy are all major CCAs that allow for a "voting shares vote" for a

²¹ The OCPA JPA Agreement states that the director (and alternative director) shall be a member of the governing body of the Party (jurisdiction) when appointed (Section 3.2).

²² OCPA JPA Agreement, Section 3.1

²³ OCPA JPA Agreement, Section 3.9.2

particular matter if requested by a certain number of board directors. MRW is not aware of any CCA Board of Directors exercising a Voting Share Vote.

The OCPA JPA Agreement also explicitly states that membership does not require any financial obligations: “Parties are not required under this Agreement to make any financial contributions or payments to the Authority, and the Authority shall have no right to require such a contribution or payment.”²⁴ Instead, the City of Irvine is providing the initial capital loan and collateral to the OCPA. However, the Board may adopt a membership fee that additional (new) parties would be required to pay upon entering into a JPA agreement with OCPA.²⁵

Financial Exposure

Generally, all CCAs have similar stipulations in their JPA agreement to those of OCPA regarding the financial obligations of their members. Individual member jurisdictions are not held responsible for the debts, liabilities, or obligations of a JPA unless the governing board of each member jurisdiction (i.e., its City Council) agrees to assume a debt, liability, or obligation. Additionally, CCAs typically indemnify and hold harmless member jurisdictions and their associated staff from any claims, losses, damages, costs, injuries, and liabilities arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the JPA. For those JPAs that allow for members to be required to make contributions or pledge assets as a condition of continued participation in a CCA program, the JPA agreement requires a vote of at least 75% of all directors and the approval of the governing boards of each member jurisdictions who are being asked to contribute.

The establishment of many JPAs necessitated that the initial implementation costs of a CCA Program be funded by an initial member jurisdiction. In these situations, the member jurisdiction providing the initial funding was not entitled to any reimbursement of these cost if the CCA program did not become operational.

OCPA’s initial members are each known as “Founding Party” members, while members who join the JPA after 2021 become an “Additional Party.”²⁶ Being a Founding Party automatically places the new member’s Director on the JPA’s Executive Committee. The benefits and obligations of being a member of the Executive Committee are laid out in the JPA. The Executive committee would be formed if the Authority’s membership reaches nine or more members. San Clemente would join as an Additional Party and potentially be subject to a membership fee upon joining.²⁷ This tiered membership, which provides privileges to the initial members, is unique among CCAs.

²⁴ OCPA JPA Agreement, Section 5.6.

²⁵ OCPA JPA Agreement, Section 5.6.

²⁶ OCPA JPA Agreement, Preamble.

²⁷ OCPA JPA Agreement, Section 5.6.

Withdrawing from the JPA

The JPA agreement also provides for the right to withdraw from JPA membership. If a member party withdrew from the JPA agreement before April 1, 2021, it would withdraw without liability or cost upon providing the Authority fifteen (15) days advance written notice.²⁸ After April 1, 2021, any current member city (or new member city) could withdraw from the JPA effective at the beginning of an OPCA's fiscal year by providing no less than 180 days written notice. A member city who exercises this latter withdrawal option may be responsible for the various damages and losses its withdrawal might cause to the JPA.²⁹ These damages would likely be associated with the value of power purchase contracts entered into by the OCPA on the member city's behalf which the OCPA could not liquidate.

Other CCA JPAs allow member jurisdictions to withdraw from the authority after giving a certain amount of notice in advance, usually 180 days. Like OCPA, some JPAs also require an affirmative vote from the governing board of the departing jurisdiction (i.e., City Council) before the jurisdiction can withdraw. However, JPAs will typically hold departing jurisdictions responsible for certain continuing liabilities or financial obligations, such as power purchase agreements. These liabilities and obligations are typically costs incurred by the JPA on behalf of the departing jurisdiction.

Clean Energy Alliance

In this section, we outline the composition, governance, and voting structure of Clean Energy Alliance (CEA). This section highlights where the CEA JPA differs from, or is consistent with, other CCA JPAs.

Size and Members

Three member cities make up CEA: Solana Beach, Carlsbad, and Del Mar. Like San Clemente, all these member cities fall under SDG&E's jurisdiction. The CEA estimates that it will have to serve an estimated load of 969 GWh in 2022 associated with an estimated 58,000 customer accounts.³⁰

Board of Directors and Voting

The CEA is governed by a Board of Directors, with one director appointed by each JPA member.³¹ Each director must be a member of the city council of the appointing party.

In general, Board action requires the affirmative votes of a majority of the Directors on the entire Board, with a tie vote resulting in no action being taken. For any matter related to the issuing of bonds or other forms of debt, adding or removing member cities, removing Directors, adopting or amending most bylaws of the JPA, or amending or terminating the JPA agreement,

²⁸ OCPA JPA Agreement, Section 6.1.

²⁹ OCPA JPA Agreement, Section 6.3.

³⁰ CEA Implementation Plan, pp. 22-23.

³¹ CEA JPA Agreement, Section 4.11.

a special voting structure is instituted that requires the affirmative vote of two-thirds of the directors of the entire Board. Any actions on Eminent Domain requires the affirmative vote of three-fourths of the entire Board, with no eminent domain action being approved without the affirmative vote of the Director representing the member city being directly affected. Lastly, a unanimous vote is required from the Board to amend JPA agreement provisions pertaining to the Purpose of the Agreement, Compliance with Local Zoning, Voting Requirements, Eminent Domain, Power Supply Requirements, and the Solana Energy Alliance Transition.³²

The CEA JPA Agreement also explicitly states that members are not required to make any financial obligations: “Parties are not required under this Agreement to make any financial contributions or payments to the Authority, and the Authority shall have no right to require such a contribution or payment.”³³ The initial start-up costs of the CCA were divided equally between the three founding members of CEA, with the founding members not being entitled to any reimbursement of these cost if the CCA program did not become operational.³⁴

Financial Exposure

Under the CEA JPA agreement, individual member jurisdictions are not held responsible for the debts, liabilities, or obligations of the JPA unless the governing board of each member jurisdiction (i.e., its City Council) agrees to assume a debt, liability, or obligation. Additionally, CEA indemnifies member jurisdictions and their associated staff from any liabilities arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the JPA. The JPA agreement states that the JPA does not require members to make any financial contributions or payments to the Authority nor may the JPA require a contribution or payment.³⁵ However, the JPA agreement does allow for member jurisdictions to voluntarily enter into an agreement with the JPA for contributions of public funds, advance of public funds, and personnel, equipment, or property in lieu of other contributions and advances.³⁶ Additionally, the JPA may require a new member to pay a membership fee to cover costs associated with adding a new jurisdiction.³⁷

It is important to note that one of CEA’s founding member jurisdictions, the City of Solana Beach, had been operating a city-only CCA, known as Solana Energy Alliance, since 2018. By joining CEA, the City of Solana Beach agreed to transfer its CCA customers to CEA. The CEA JPA agreement stipulates that other CEA member jurisdictions are not held responsible for the debts, liabilities, and obligations of Solana Energy Alliance.

³² CEA JPA Agreement, Section 4.12

³³ CEA JPA Agreement, Section 7.3.5

³⁴ CEA JPA Agreement, Section 7.3.2

³⁵ CEA JPA Agreement, Section 7.3.5

³⁶ CEA JPA Agreement, Section 7.3.5

³⁷ CEA JPA Agreement, Section 2.4.3

Withdrawing from the JPA

The JPA agreement provides for the right to withdraw from JPA membership. Any member city can withdraw from the JPA effective at the beginning of a CEA fiscal year by providing no less than one year advance written notice. A member city who exercises this withdrawal option may be responsible for the various damages and losses its withdrawal might cause to the JPA.³⁸ Similar to other CCAs, CEA's JPA agreement allows for involuntary termination of a member city's membership with the CCA after a two-thirds vote of the entire Board excluding the vote of the member subject to the termination.³⁹

³⁸ CEA JPA Agreement, Section 8.1.3.

³⁹ CEA JPA Agreement, Section 8.3.

Are There Operating City-Only CCAs Similar to San Clemente?

Currently, there are at least eight established city-only CCAs with under 100,000 residents in California. Most of these CCAs are located in SCE territory. San Clemente would represent one of the larger city-only CCAs within this population grouping, as well as the first of its size in SDG&E territory. Climatologically, San Clemente would be one of the few of these city-only CCAs with a Mild Coastal climate. Under this climate type, the city would likely not require large amounts of air-conditioning relative to inland cities due to the City's mild climate. Therefore, a city-only CCA in San Clemente would not likely need to procure large amounts of generation capacity due to the expected lack of air-conditioning load in the City. Among the city-only CCAs of similar size to San Clemente, only one CCA is not a CCEA member (King City). This situation highlights the value that CCEA is able to provide city-only CCAs who may not have the resources or personnel to operate a city-only CCA alone. Table 3 below outlines the different city-only CCAs similar in size to San Clemente.

Table 3. City-Only CCAs with under 100,000 residents

| City | Population ⁴⁰ | Climate | Territory | CCEA member? |
|---------------------|--------------------------|---------------------|------------------|--------------|
| San Clemente | 64,551 | Mild Coastal | SDG&E | |
| Santa Barbara | 90,254 | Mild Coastal | SCE | Yes |
| Baldwin Park | 74,480 | Moderate Inland | SCE | Yes |
| Apple Valley | 74,061 | Semi Desert | SCE | Yes |
| Pico Rivera | 61,338 | Moderate Inland | SCE | Yes |
| San Jacinto | 51,122 | Semi Desert | SCE | Yes |
| Rancho Mirage | 18,954 | Desert | SCE | Yes |
| Commerce | 12,450 | Moderate Inland | SCE | Yes |
| King City | 13,968 | Moderate Inland | PG&E | No |

Table 4 below shows the rate differential for residential service between particular CCAs and the incumbent utility. These rate differentials were calculated based on the most current rates for each CCA and associated utility. A rate differential that results in a bill savings signifies a lower CCA rate than the rate offered by the utility for a comparable rate product, while a bill premium signifies a higher CCA rate than the utility rate. The table feature two sets of rate differentials, with one set comparing a CCA's most basic Green energy offering (least

⁴⁰ Population values based on 2020 US Census data estimates. <https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates/2020-evaluation-estimates/2010s-cities-and-towns-total.html>

renewables) with the utility’s basic Green energy offering (typically 50% renewables) and the second set comparing the CCA’s 100% renewable Green energy product with the utility’s 100% renewable product. As shown in the table, several city-only CCAs cannot currently offer any bill savings compared to the incumbent utility for either Basic Green energy products or 100% Renewable energy products. However, some CCAs, such as CEA and Baldwin Park, currently offer rates that are competitive with or provide bill savings relative to the local utility. Although the current rate differential situation among CCAs is likely to improve in the near future, some CCAs have still been able to provide competitive rates despite current market conditions. If San Clemente were to join CEA, it is likely that this CCA would be able to provide the City’s residents with competitive rates relative to SDG&E’s rates. Unfortunately, OCPA has not published any rates at this time (OCPA is expected to start operations in 2022) and therefore we are unable to provide a rate comparison for this CCA at this time.

Table 4. Residential Rate Bill Savings/Premiums for Comparable Cities

| CCA | Territory | Residential Rate Differential (Basic) | Residential Rate Differential (100% Renewable) |
|-------------------------------------|-----------|---------------------------------------|--|
| OCPA | SCE | T.B.D. | T.B.D. |
| CEA | SDG&E | 0.1% Bill Premium | 14% Bill Savings |
| Pico Rivera (PRIME) | SCE | 0.8% Bill Premium | 2.9% Bill Premium |
| Baldwin Park (BPROUD) ⁴¹ | SCE | 2.6% Bill Savings | 2.9% Bill Savings |
| San Jacinto Power | SCE | 3.4% Bill Premium | 7.5% Bill Premium |
| Apple Valley (AVCE) | SCE | 2.2% Bill Premium | N/A |
| Clean Power Alliance | SCE | 4.9% Bill Premium | 6.6% Bill Premium |

The fact that all of the CCAs in Table 4 but Baldwin Part are currently offering service at a premium is unusual. Prior to late 2020, all CCAs had offered residential rates that were equal to or lower than those of their incumbent utility. The change in late 2020 was primarily due to a temporary spike in the exit fee (Power Cost Indifference Amount or “PCIA”). When MRW performed a similar survey in early 2020, CCAs were typically offering savings of 1-3%, with only two environmentally focused Northern California CCAs having rates higher than their incumbent utilities.

⁴¹ BPROUD has not changed its rates since beginning service in October 2020. Rather than increasing rates to cover its projected costs, the City of Baldwin Park is choosing to discontinue CCA service. (See footnote 20.)

Comparison of San Clemente Options

Table 5 below qualitatively compares San Clemente’s three CCA options against remaining with SDG&E. First, MRW cannot project any quantifiable difference in rate or GHG savings between the three CCA options. The stand-alone and CCEA options offer greater flexibility and control, but at the price of higher start-up costs, greater staff effort, and higher financial risk. Lastly, joining an existing CCA like OCPA or CEA is the quickest option, allowing for CCA formation at least one year sooner than the other two options.

Table 5. Comparison of San Clemente CCA Options

| Criterion | Join Existing CCA | Use CCEA JPA | Stand-alone Enterprise | Stay with SDG&E |
|---|---------------------------|---------------------------|---------------------------|-----------------|
| Rates | Comparable/modestly lower | Comparable/modestly lower | Comparable/modestly lower | Base |
| GHG Reduction Potential Over Forecast Period | Some | Some | Some | Base |
| Local Control/Governance | Some | Greater | Greatest | None |
| Local Economic Benefits | Some | Greater | Greatest | Minimal |
| Start Up Costs/Cost to Join | None | Some | Greatest | None |
| Level of Effort | Minimal | Some | Greatest | None |
| Timing (earliest) | 2023 | 2024 | 2024 | N/A |

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 27th day of August, 2021, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio, San Clemente, California, 92673 ("City") and MRW & Associates, a LIMITED LIABILITY COMPANY, with its principal place of business at 1736 Franklin Street, Suite 700, Oakland, CA 94612 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional **Community Choice Energy (CCE) consulting services** required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional CCE consulting services to public clients, is licensed in the State of California, if applicable, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional CCE consulting services for the **Qualitative Review and Comparison of CCE Options** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional CCE consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **August 27, 2021 to completion of services**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this

Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Endorsement on PS&E/ Other Data. Consultant shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by Consultant, and where appropriate will indicate Consultant's authorized signature and professional registration number.

3.2.4 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.5 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Mark E. Fullmer.**

3.2.6 City's Representative. The City hereby designates **Jennifer Savage, Assistant to the City Manager**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.7 Consultant's Representative. Consultant hereby designates **Mark E.**

Fullmer, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.8 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.9 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.10 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety

measures.

3.2.12 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "C" attached hereto and by this reference incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that the Consultant is required to maintain, unless otherwise approved in writing by the City.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed **five thousand dollars (\$5,000)** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "D" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "D" may be adjusted each year at the time of renewal as set forth in Exhibit "D."

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. IF the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and IF the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the

project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code sections 1725.5 and 1771.1 shall not apply to Services performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code sections 1725.5 and 1771.1.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: **MRW & Associates**
1736 Franklin Street Suite 700
Oakland, CA 94612
ATTN: Mark E. Fullmer, Principal and President

City: **City of San Clemente**
910 Calle Negocio
San Clemente, CA 92673
ATTN: Jennifer Savage, Assistant to the City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall

indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ

other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to

initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite of their signatures.

CITY OF SAN CLEMENTE

By: [Signature]

Its: CITY MANAGER

Dated: 9/2, 2021

ATTEST:

[Signature]
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

[Signature]
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING:

[Signature]
Finance Authorization

MRW & Associates LLC
[Signature]
("CONSULTANT")

By: MARK FOLMER

Its: President

Dated: Aug 27, 2021

EXHIBIT "A"
SCOPE OF SERVICES

QUALITATIVE REVIEW AND COMPARISON OF THE CCE OPTIONS

MRW WILL INFORM SAN CLEMENTE OF THE CCE OPTIONS IT HAS AVAILABLE AND COMPARE THE OPTIONS. THESE OPTIONS INCLUDE JOINING OCPA, JOINING AN EXISTING CCE IN SAN DIEGO COUNTY, FORMING A NEW JPA WITH NEIGHBORING SOUTH ORANGE COUNTY CITIES, AND FORMING A SAN CLEMENTE ONLY CCE. THIS REVIEW WILL COMPARE AND CONTRAST THE BENEFITS AND DRAWBACKS OF EACH GOVERNANCE MODEL, NOTING THE RISKS—AND POTENTIAL REWARDS—TO THE CITY AND THE SAN CLEMENTE COMMUNITY. MRW WILL INCLUDE A GENERAL PRIMER ON CCE IN THE STATE TO PROVIDE HISTORY AND CONTEXT.

THE WORK PRODUCTS INCLUDE:

- 1) A MEMORANDUM SUMMARIZING MRW'S FINDINGS.**
- 2) A PRESENTATION TO THE CITY COUNCIL OF MRW'S FINDINGS.**
- 3) ANSWERING ANY QUESTIONS FROM THE COUNCIL ON CCE FORMATION AND ADVISEMENT ON POSSIBLE NEXT STEPS.**

MRW WILL ALSO IDENTIFY ORANGE COUNTY AND SAN DIEGO COUNTY CITIES THAT UTILIZE CCES, AND IDENTIFY CITIES IN SOUTHERN CALIFORNIA, COMPARABLE IN SIZE TO SAN CLEMENTE, THAT HAVE CONVERTED TO CCE INDEPENDENTLY, AS OPPOSED TO PARTNERING WITH OTHER JURISDICTIONS.

EXHIBIT "B"
SCHEDULE OF SERVICES

- 1) A MEMORANDUM SUMMARIZING MRW'S FINDINGS – DUE TO CITY STAFF 4 WEEKS
FROM EXECUTION OF THIS CONTRACT**

- 2) A PRESENTATION TO THE CITY COUNCIL OF MRW'S FINDINGS – DUE AT CITY
COUNCIL MEETING TENTATIVELY SCHEDULED FOR OCTOBER 19, 2021**

- 3) ANSWERING ANY QUESTIONS FROM THE COUNCIL ON CCE FORMATION AND
ADVISEMENT ON POSSIBLE NEXT STEPS – DUE AT CITY COUNCIL MEETING
TENTATIVELY SCHEDULED FOR OCTOBER 19, 2021**

EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance.

3.2.12.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.2.12.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

3.2.12.5 Workers' Compensation:

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.12.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its officials, officers, employees, agents, and volunteers, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.12.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention greater than \$5,000 must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.12.9 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.12.10 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement effective upon notice.

3.2.12.11 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.12.12 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.12.13 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.12.14 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and

volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

EXHIBIT "D"
COMPENSATION
\$5,000

55452.0110031193624.5

10-19-21 / 8B-46

WORKER'S COMPENSATION INSURANCE CERTIFICATION

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)



I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.



I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier Hartford Property & Casualty

Policy Number 57WECAA8M63




I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: August 27, 2021

MRW & Associates, LLC
Consultant

By: 
MARK FULMER
President
Title

1736 Franklin St Ste 700
Address
Oakland CA 94612