Agenda Item 8A

Approvals:

City Manager

Dept. Head

Attorney

Finance

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 21, 2022

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

Subject: ***RESOLUTION AND ORDINANCE AUTHORIZING THE CITY OF SAN CLEMENTE TO IMPLEMENT COMMUNITY CHOICE ENERGY AS A MEMBER OF THE CLEAN ENERGY ALLIANCE***

Fiscal Impact: To be determined. San Clemente will be responsible for one third of the cost to update the Clean Energy Alliance Implementation Plan, sharing the cost with two other cities. There are existing funds of $6,000 in account #001-151-43690-000-00000 for Community Choice Energy; staff would return to Council if an appropriation for additional funds is necessary.

Summary: Staff recommends that City Council introduce an Ordinance authorizing the City to implement Community Choice Energy pursuant to State law; and adopt a Resolution authorizing the City's membership in the Clean Energy Alliance through execution of its Joint Powers Agreement as amended, and to ratify the Mayor's appointment of a Councilmember and alternate to the Clean Energy Alliance Board of Directors.

Background: **Overview of Community Choice Energy**

Community Choice Energy (CCE) or Community Choice Aggregation (CCA) enables local jurisdictions to form a separate agency that purchases energy directly from power suppliers rather than Investor-Owned Utilities (IOUs), such as San Diego Gas and Electric (SDG&E). The IOU maintains the electricity grid, delivery of energy, and bills customers. However, with CCA, local jurisdictions have control over energy procurement to purchase power, set completive rates, and collect revenue. Revenue is often used to fund special programs such as rebates for solar panels.

Summary of Recent Steps

Although the City has considered CCE several times, the City Council has taken steps more recently to move towards implementation of CCE in San Clemente. On August 17, 2021, the City Council authorized Phase I of a CCA Feasibility Study. On October 19, 2021, the consultant presented the findings of Phase I (Attachment 3) and Council directed:

1. City staff to engage with Clean Energy Alliance (CEA) regarding next steps to join CEA;
2. Establish a Council subcommittee to be involved;
3. City staff to request SDG&E data; and
4. Offer meetings to keep Council apprised of the status.

Mayor James and Mayor Pro Tem Duncan make up the Council subcommittee, and City staff requested SDG&E data in January 2022. After CEA analyzed the data, CEA

presented their findings to the subcommittee in April 2022. CEA identified that, although energy costs fluctuate, there would be savings to San Clemente customers and this report provides an opportunity for City Council to pursue next steps to join CEA.

Requirements to Join

In order to join CEA, the City must adopt an Ordinance pursuant to California Public Utilities Code Section 366.2(c)(12) to implement CCE. In addition, the City must adopt a Resolution to execute the CEA's Joint Powers Agreement, and ratify the Mayor's appointment of a Councilmember and alternate to represent San Clemente on the CEA Board of Directors. If the City Council introduces and adopts an Ordinance and Resolution, the earliest launch of service is April 2024 (see Table 2 for additional timeline details).

Discussion: **Financial Analysis**

CEA conducted a financial analysis utilizing the City's 2021 SDG&E aggregate electrical load data. The analysis forecasts customer electricity rates, compares rates to SDG&E, and considers net operating costs and revenues with San Clemente's customers.

The full financial analysis and assessment was presented to the CEA Board on May 26, 2022 (Attachment 4). The financial analysis found savings to San Clemente customers would range from 0.82% to 2.80% over SDG&E costs depending the percent of renewable energy (Table 1 below). San Clemente's forecasted savings are in the range of customer savings in existing CEA members Cities of Carlsbad, Del Mar, and Solana Beach range from 0.6% to 3.64%; the Carlsbad and Del Mar 100% Renewable Green energy choice costs 1% more than SDG&E costs.

Table 1. Estimated Savings for Average San Clemente Household

	SDG&E 31% Renewable	CEA 50% Renewable	CEA 75% Renewable	CEA 100% Renewable
Generation	$60.94	$44.85	$44.85	$44.85
75%/100% Premium	-	-	$0.40	$2.97
PCIA+FFS*	-	$11.90	$11.90	$11.90
Generation Costs	$60.94	$56.74	$57.14	$59.71
SDG&E Delivery	$89.32	$89.32	$89.32	$89.32
Total Avg. Monthly Bill	$150.27	$146.07	$146.47	$149.04
$ Savings	-	($4.20)	($3.80)	($1.23)
% Savings	-	**2.80%**	**2.53%**	**0.82%**

*PCIA + FFS is the Power Charge Indifference Adjustment and Franchise Fee Surcharge
**Average 396 kWh Usage

CEA strives for a minimum of 5% reserve contributions each year from electricity sales. The financial analysis notes that due to recent volatility and wholesale price increases in the energy market, reserve contributions would be lower than 5% without a 2.5% rate increase. The estimated savings in Table 1 above reflect the assumption of a 2.5% rate increase.

Ordinance
California Public Utilities Code Section 366.2 requires that the City adopt an Ordinance (Attachment 1) to implement CCE. The ordinance states the City's intention to join CEA and identifies a customer's right to opt out of the program at any time if the customer wants to maintain power procured by SDG&E.

Resolution
In order to join CEA, the City must adopt a Resolution to execute an agreement with CEA (Attachment 2). If the City Council approves the resolution, the CEA Board of Directors will ratify San Clemente as a new member to the Joint Powers Authority (JPA) at a future CEA Board meeting.

As part of the resolution, the Mayor must appointment a Councilmember and alternative Councilmember to CEA's Board of Directors. The City of San Clemente will have authority in decisions regarding CEA operations and priorities.

Once San Clemente is ratified as a new member, CEA will amend its Implementation Plan to include the City. The City is required to provide a portion of up to $50,000 for the Implementation Plan. The Plan amendment would cost up to $50,000 and the cost would be shared with two other cities planning a 2024 implementation year – Oceanside and Vista. (Note: The last Plan amendment, conducted in 2021, cost $14,000). In addition, the cost will be reimbursed. CEA must submit the Plan to the California Public Utilities Commission (CPUC) for approval.

Next Steps
After the City of San Clemente introduce and adopt an Ordinance and Resolution, the CEA Board would approve San Clemente's membership. The CEA Board would consider and adopt the Implementation Plan later this year to submit to the CPUC in December. Table 2 below identifies the key dates and steps.

Table 2. Timeline to Launch Community Choice Energy

Date	Activity
March 2022	CEA Board Reviews/Approves Assessment
June/July 2022	San Clemente adopts Resolution to join CEA and Ordinance to implement CCE
July 2022	CEA approves San Clemente membership
October 2022	CEA considers Draft Implementation Plan Amendment
November 2022	CEA approves Implementation Plan Amendment
December 2022	CEA files Implementation Plan Amendment with CPUC
March 2023	CPUC approves Implementation Plan Amendment
April 2024	Launch CEA service in San Clemente

Plan and Policy Consistency: The project is consistent with the following General Plan Goals Policies:

- Natural Resources Goal: Reduce consumption of non-renewable energy sources and ensure efficient use development and conservation of sustainable, non-polluting energy sources.

- Policy NR-6.07. Renewable Energy Resources. We work with other agencies and utility providers to develop safe, economical and renewable energy resources, and we help reduce non-renewable energy use through public education and participation in energy conservation programs.
- Energy Goal: Maintain a reliable, safe, and economically sustainable energy system that incorporates conservation and alternative energy resources to help decrease reliance on fossil fuels and reduce the impacts of global climate change.
- Policy PSFU-9.07. Renewable Energy Resources. We work with other agencies and utility providers to develop safe, economical, and renewable energy resources in San Clemente.

Strategic Priority: None.

Recommended Action: STAFF RECOMMENDS THAT the City Council:

1. Introduce Ordinance No. ____ entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM; and
2. Adopt Resolution No. ___ entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE EXECUTION OF THE JOINT EXERCISE OF POWERS AGREEMENT FOR MEMBERSHIP IN THE CLEAN ENERGY ALLIANCE, A COMMUNITY JOINT POWERS AUTHORITY, with Agreement.

Attachments:
1. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM
2. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE EXECUTION OF THE JOINT EXERCISE OF POWERS AGREEMENT FOR MEMBERSHIP IN THE CLEAN ENERGY ALLIANCE, A COMMUNITY JOINT POWERS AUTHORITY, with Agreement
3. October 19, 2021 Agenda Report with Attachments
4. May 26, 2022 CEA Board Report

Notification: Clean Energy Alliance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM

WHEREAS, California Public Utilities Code (the "Act") Section 366.2 authorizes cities and counties to individually or jointly provide retail electric service to an aggregation of customers with their jurisdictions, which is referred to as community choice aggregation (CCA); and

WHEREAS, the City completed Phase I of a feasibility study which determined that a CCA program could result in local benefits including the use of renewable energy at levels above the State Renewables Portfolio Standard, the provision of competitive rates to consumers, and economic opportunity for the City; and

WHEREAS, pursuant to Section 366.2 of the Act, if each entity adopts the ordinance required by Public Utilities Code Section 366.2(c)(12), two or more public entities authorized to be a community choice aggregator under Section 331.1 of the Act may participate jointly in a CCA program through a Joint Powers Authority established pursuant to Government Code Section 6500 et seq.; and

WHEREAS, the City wishes to implement to CCA program at this time joining as a member to the Joint Powers Authority known as Clean Energy Alliance, consisting of the member agencies of Carlsbad, Del Mar, and Solana Beach; and

WHEREAS, under section 366.2 of the Act, customers have the right to opt out of the CCA program and continue to receive bundled electric service from the incumbent utilities; and

WHEREAS, 366.2(c)(12) of the Act provides that an entity which elects to implement a CCA program within its jurisdiction must do so by ordinance; and

WHEREAS, this ordinance is exempt from the requirements of the California Environmental Quality Action (CEQA) pursuant to the State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment (Section 15061(b)(3)). The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment (Section 15308); and

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

Section 1: The above recitals are true and correct.

Section 2: In order to provide businesses and residents within the jurisdictional boundaries of the City with a choice of electric service providers and with the benefits described in the recitals above, the City Council hereby elects pursuant to Section 366.2(c)(2) of the Act to implement a CCA program within the jurisdiction of the City of San Clemente by participating in the CCA program of the Clean Energy Alliance, under the terms and conditions provided in its Joint Powers Agreement, on file with the City Clerk.

Section 3: This Ordinance shall take effect and be in force thirty (30) days after its passage.

Section 4: The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

* Uncodified Ordinance

APPROVED AND ADOPTED this _____day of _____, 2022.

ATTEST:

_____	_____
City Clerk of the City of San Clemente, California	Mayor of the City of San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the _____day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, 2022.

_____
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

_____
CITY ATTORNEY

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE EXECUTION OF THE JOINT EXERCISE OF POWERS AGREEMENT FOR MEMBERSHIP IN THE CLEAN ENERGY ALLIANCE, A COMMUNITY JOINT POWERS AUTHORITY

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

WHEREAS, Public Utilities Code Section 366.2(c)(12)(B) specifically authorizes two or more cities and/or counties to conduct a Community Choice Aggregation (CCA) program through the creation of a Joint Powers Agency if each public entity adopts an ordinance; and

WHEREAS, an existing JPA, known as Clean Energy Alliance (CEA) and currently including the Cities of Solana Beach, Del Mar, and Carlsbad, allows its members to share resources and jointly provide and achieve the environmental and economic benefits of a CCA program on a regional basis; and

WHEREAS, on October 19, 2021, the City Council received Phase I of a Community Choice Aggregation Feasibility Study, dated October 2021; and

WHEREAS, on October 19, 2021, the City Council directed City staff to pursue joining the Clean Energy Alliance; and

WHEREAS, this Resolution and the creation of the CEA is exempt from the requirements of the California Environmental Quality Action ("CEQA"), as it involves organizational and administrative activities of government that will not result in direct or indirect physical changes on the environment, and therefore is not considered a "project" (Section 15378(b)(5)); and

WHEREAS, the City desires to enter into the existing JPA Agreement ("Agreement") to join the CEA along with the current Members identified in the Agreement, and any additional members approved by the JPA Board in the future.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby resolve as follows:

Section 1. All the recitals are true and correct.

Section 2. The Clean Energy Alliance Joint Powers Agreement, including any amendments creating and governing the CEA, which is attached hereto as Exhibit A and is incorporated.

Section 3. The City Manager or his designee is further authorized to prepare, negotiate and execute such other related applications, agreements and written documents

as may be required by CEA and related entities to implement the intent and purpose of this Resolution and State law.

Section 4. Councilmember _____ is appointed to serve on the CEA Board of Directors, and Councilmember _____ is appointed as alternate.

Section 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of _____, 2022.

ATTEST:

_____
City Clerk of the City of
San Clemente, California

_____
Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, 2022.

_____
CITY CLERK of the City of
San Clemente, California

Approved as to form:

_____
City Attorney

Clean Energy Alliance Joint Powers Agreement

Effective: November 4, 2019

As amended by Resolution 2021-012 dated September 30, 2021

As further amended by Resolution 2021-014 dated November 18, 2021 and attached Amendment No. 1.

As further amended by Resolution 2021-015 dated December 17, 2021

CLEAN ENERGY ALLIANCE JOINT POWERS AGREEMENT

This Joint Powers Agreement (the "Agreement"), effective as of November 4, 2019, is made by the Parties of the Clean Energy Alliance and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the public agencies set forth in **Exhibit B.**

RECITALS

1. The Parties are public agencies sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their customers.

2. SB 350, adopted in 2015, mandates a reduction in greenhouse gas emissions to 40 percent below 1990 levels by 2030 and to 80 percent below 1990 levels by 2050. In 2018, the State Legislature adopted SB 100, which directs the Renewable Portfolio Standard to be increased to 60% renewable by 2030 and establishes a policy for eligible renewable energy resources and zero-carbon resources to supply 100 percent of electricity retail sales to California end-use customers by 2045.

3. The purposes for the Founding Members (as such term is defined in Exhibit A) entering into this Agreement include procuring/developing electrical energy for customers in participating jurisdictions, addressing climate change by reducing energy-related greenhouse gas emissions, promoting electrical rate price stability and cost savings, and fostering consumer choice and local economic benefits such as job creation, local energy programs and local power development. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to state, regional, and local solar and wind energy production and energy storage.

4. The Parties to this Agreement desire to establish a separate public agency, known as the Clean Energy Alliance ("Authority"), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

5. The Founding Members have each adopted an ordinance electing to implement through the Authority a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2 ("CCA Program"). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program on behalf of participating jurisdictions.

6. By establishing the Authority, the Parties seek to:

   (a) Provide electricity service to residents and businesses located within the jurisdictional boundaries of the public agencies that are members of the Authority in a responsible, reliable, innovative, and efficient manner;

(b) Provide electric generation rates to all ratepayers that are competitive with those offered by the Investor Owned Utility, San Diego Gas & Electric (SDG&E), for similar products with a target generation rate at least 2 percent below SDG&E's base product generation rate;

(c) Offer a mix of energy products for standard commodity electric service that provide a cleaner power portfolio than that offered by SDG&E for similar service and other options, including a 90 percent and a 100 percent renewable content options in which communities and customers may "opt-up" and voluntarily participate, with the ultimate objective of achieving— and sustaining—the Climate Action Plan goals of the Parties, at competitive rates;

(d) Develop an aggregate electric supply portfolio with overall lower greenhouse gas (GHG) emissions than SDG&E, and one that supports near-term achievement of the Parties' greenhouse gas reduction goals and renewable electricity goals;

(e) Promote an energy portfolio that incorporates energy efficiency and demand response programs and pursues ambitious energy consumption reduction goals;

(f) Pursue the procurement of local generation of renewable power developed by or within member jurisdictions with an emphasis on local jobs, where appropriate, without limiting fair and open competition for projects or programs implemented by the Authority;

(g) Provide a range of energy product and program options, available to all Parties and customers, that best serve their needs, their local communities, and support regional sustainability efforts;

(h) Support low-income households having access to special utility rates including California Alternative Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs;

(i) Use discretionary program revenues to support the Authority's long-term financial viability, enhance customer rate stability, and provide all Parties and their customers with access to innovative energy programs, projects and services throughout the jurisdiction of the Authority; and

(j) Create an administering Authority that seeks to maximize economic benefits and is financially sustainable, well-managed and responsive to regional and local priorities.

AGREEMENT

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

1. DEFINITIONS AND EXHIBITS

1.1 Definitions. Capitalized terms used in this Agreement shall have the meanings specified in **Exhibit A,** unless the context requires otherwise.

1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement:

Exhibit A: Definitions

Exhibit B: List of Founding Members and Parties added on or after October 1, 2020, per Section 2.4

2. FORMATION OF THE COMMUNITY CHOICE ENERGY AUTHORITY

2.1 Effective Date and Term. This Agreement shall become effective and the Authority shall exist as a separate public agency on the date this Agreement is executed by at least three Founding Members after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until the Agreement is terminated in accordance with Section 8.4 (Mutual Termination), subject to the rights of the Parties to withdraw from the Authority under Section 8.1.

2.2 Formation of the Authority. Under the Act, the Parties hereby create a separate joint exercise of power agency named the Clean Energy Alliance. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The jurisdiction of the Authority shall be all territory within the geographic boundaries of the Parties; however, the Authority may, as authorized under applicable law, undertake any action outside such geographic boundaries as is necessary to the accomplishment of its purpose.

2.3 Purpose. The purpose of this Agreement is to establish the Authority, to provide for its governance and administration, and to define the rights and obligations of the Parties. This Agreement authorizes the Authority to provide opportunities by which the Parties can work cooperatively to create economies of scale and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources in the region for the benefit of all the Parties and their constituents, including, but not limited to, establishing and operating a CCA Program.

2.4 Addition of Parties. After the initial formation of the Authority and prior to October 1, 2020, any incorporated municipality, county, or other public agency authorized to be a community choice aggregator under Public Utilities Code Section 331.1 and located within the service territory of SDG&E may become a member of the Authority if it has completed a positive CCE Feasibility Study, adopted a CCA ordinance pursuant to Public Utilities Code Section 366.2(c)(12), approved and executed this Agreement, and paid or agrees to pay its share of the

Initial Costs pursuant to Section 7.3.2 of this Agreement. Notwithstanding the foregoing, such public agency may be denied membership in the Authority if the Board determines within 60 days after the submittal of the CCE Feasibility Study that the addition of the public agency would create an undue risk or financial burden to the Authority or to the achievement of the CAP goals of the Parties.

On or after October 1, 2020, any incorporated municipality, county, or other public agency authorized to be a community choice aggregator under Public Utilities Code Section 331.1 and located within the service territory of SDG&E may apply to and become a member of the Authority if all the following conditions are met:

2.4.1 Adoption of a resolution by a two-thirds vote of the entire Board authorizing membership in the Authority;

2.4.2 Adoption by the proposed member of a CCA ordinance as required by Public Utilities Code Section 366.2(c)(12) and approval and execution of this Agreement and other necessary program agreements by the proposed member;

2.4.3 Payment of a membership fee, if any, as may be required by the Board to cover Authority costs incurred in connection with adding the new party; and

2.4.4 Satisfaction of any other conditions established by the Board.

2.5 Continuing Participation. The Parties acknowledge that membership in the Authority may change by the addition, withdrawal and/or termination of Parties. The Parties agree to participate with such other Parties as may later be added by the Board, as described in Section 2.4 (Addition of Parties) of this Agreement. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

3. POWERS

3.1 General Powers. The Authority shall have the powers common to the Parties which are necessary or appropriate to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 3.4 (Limitation on Powers) of this Agreement.

3.2 Specific Powers. Specific powers of the Authority shall include, but not be limited to, each of the following powers, which may be exercised at the discretion of the Board:

3.2.1 make and enter into contracts;

3.2.2 employ agents and employees, including but not limited to a Chief Executive Officer;

3.2.3 acquire, own, contract, manage, maintain, and operate any buildings, public works, improvements or other assets including but not limited to public electric generation resources;

3.2.4 acquire property for the public purposes of the Authority by eminent domain, or otherwise, except as limited under Section 6508 of the Act and Sections 3.6 and 4.12.3 of this Agreement, and to hold or dispose of any property; provided, however, the Authority shall not exercise the power of eminent domain within the jurisdiction of a Party without its affirmative vote under Section 4.12.2;

3.2.5 lease any property;

3.2.6 sue and be sued in its own name;

3.2.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers authorized by law pursuant to Government Code Section 53850 et seq. and authority under the Act;

3.2.8 issue revenue bonds and other forms of indebtedness;

3.2.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;

3.2.10 form independent corporations or entities, if necessary, to carry out energy supply and energy conservation programs;

3.2.11 submit documentation and notices, register, and comply with applicable orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

3.2.12 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority;

3.2.13 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services;

3.2.14 receive revenues from sale of electricity and other energy-related programs; and

3.2.15 Partner or otherwise work cooperatively with other CCA's on the acquisition of electric resources, joint programs, advocacy and other efforts in the interests of the Authority.

3.3 Additional Powers to be Exercised. In addition to those powers common to each of the Parties, the Authority shall have those powers that may be conferred upon it by law and by subsequently enacted legislation.

3.4 Limitation on Powers. As required by Section 6509 of the Act, the powers of the Authority are subject to the restrictions upon the manner of exercising power possessed by the City of Solana Beach and any other restrictions on exercising the powers of the Authority that may be adopted by the Board.

3.5 Obligations of the Authority. The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of any of the Parties unless a Party agrees in writing to assume any of the debts, liabilities, and obligations of the Authority with the approval of its Governing Body, in its sole discretion. A Party that has not agreed in writing, as duly authorized by its Governing Body, to assume an Authority debt, liability, or obligation shall not be responsible in any way for such debt, liability, or obligation, regardless of any action by the Board. Further, the debts, liabilities and obligations of the City of Solana Beach related to or arising from its existing CCA program, commonly known as the Solana Energy Alliance, shall not be the debts, liabilities or obligations of the Authority or any of the Parties except the City of Solana Beach unless the Board approves assuming specific contracts entered into by the City of Solana Beach. Any such contracts assumed by the Authority shall be obligations of the Authority only and not of any of the Parties. Notwithstanding Sections 4.12.1 and 9.8 of this Agreement, this Section 3.5 shall not be amended or its liability limitations otherwise modified by an amendment to another part of this Agreement unless such amendment is approved by the Governing Body of each Party.

3.6 Compliance with Local Zoning and Building Laws. Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings, structures or other projects (the "project") developed, constructed or installed or caused to be developed, constructed or installed by the Authority within the territory of the Authority (which consists of the territorial jurisdiction of the Parties) shall comply with the General Plan, zoning, land use regulations, building laws and any applicable local Coastal Plan of the local jurisdiction within which the project is located.

3.7 Compliance with the Political Reform Act and Government Code Section 1090. The Authority and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 et seq.) and Government Code Section 1090 et seq. The Board shall adopt a Conflict of Interest Code pursuant to Government Code Section 87300. The Board may

adopt additional conflict of interest regulations in the Operating Policies and Procedures.

4. GOVERNANCE

4.1 Board of Directors.

4.1.1 The Governing Body of the Authority shall be a Board of Directors ("Board") consisting of one Director for each Party appointed in accordance with Section 4.2 (Appointment and Removal of Directors) of this Agreement.

4.1.2 Each Director must be a member of the Governing Body of the appointing Party. Each Director shall serve at the pleasure of the Governing Body of the Party that appointed such Director and may be removed as Director by such Governing Body at any time. If at any time a vacancy occurs on the Board, then a replacement shall be appointed to fill the position of the previous Director within 45 days after the date that position becomes vacant.

4.1.3 The Governing Body of each Party also shall appoint an alternate to serve in the absence of the primary Director. The alternate also shall be a member of the Governing Body of the appointing Party. The alternate shall have all the rights and responsibilities of the primary Director when serving in his/her absence.

4.1.4 Any change to the size and composition of the Board other than what is described in this section shall require an amendment of this Agreement in accordance with Section 4.12.

4.2 Appointment and Removal of Directors. The Directors shall be appointed and may be removed as follows:

4.2.1 The Governing Body of each Party shall appoint and designate in writing one regular Director, who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The Governing Body of each Party shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The alternate Director may vote on matters in committee, chair committees, and fully participate in discussion and debate during meetings. All Directors and alternates shall be subject to the Board's adopted Conflict of Interest Code.

4.2.2 A Director may be removed by the Board for cause in accordance with procedures adopted by the Board. Cause shall be defined for the purposes of this section as follows:

a. Unexcused absences from three consecutive Board meetings.

b. Unauthorized disclosure of confidential information or documents from a closed session or the unauthorized disclosure of information or documents provided to the Director on a confidential basis and whose public disclosure may be harmful to the interests of the Authority.

c. Violation of any ethics policies or code of conduct adopted by the Board.

Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director has been removed may appoint a replacement.

4.3 Director Compensation. The Board may adopt by resolution a policy relating to the compensation or expense reimbursement of its Directors.

4.4 Terms of Office. Each Party shall determine the term of office for its regular and alternate Director.

4.5 Purpose of Board. The general purpose of the Board is to:

4.5.1 Provide structure for administrative and fiscal oversight;

4.5.2 Retain a Chief Executive Officer to oversee day-to-day operations of the Authority;

4.5.3 Retain legal counsel;

4.5.4 Identify and pursue funding sources;

4.5.5 Set policy;

4.5.6 Optimize the utilization of available resources; and

4.5.7 Oversee all Committee activities.

4.6 Specific Responsibilities of the Board. The specific responsibilities of the Board shall be as follows:

4.6.1 Formulate and adopt an annual budget prior to the commencement of the fiscal year;

4.6.2 Develop and implement a financing and/or funding plan for ongoing Authority operations and capital improvements, if applicable;

4.6.3 Retain necessary and sufficient staff and adopt personnel and compensation policies, rules and regulations;

4.6.4 Adopt policies for procuring electric supply and operational needs such as professional services, equipment and supplies;

4.6.5 Develop and implement a Strategic Plan to guide the development, procurement, and integration of renewable energy resources consistent with the intent and priorities identified in this Agreement;

4.6.6 Establish standing and ad hoc committees as necessary;

4.6.7 Set retail rates for power sold by the Authority and set charges for any other category of retail service provided by the Authority;

4.6.8 Wind down and resolve all obligations of the Authority in the event the Authority is terminated pursuant to Section 8.2;

4.6.9 Conduct and oversee Authority operational audits at intervals not to exceed three years including review of customer access to Authority programs and benefits, where applicable;

4.6.10 Arrange for an annual independent fiscal audit;

4.6.11 Adopt such bylaws, rules and regulations necessary or desirable for the purposes set forth in this Agreement and consistent with this Agreement;

4.6.12 Exercise the Specific Powers identified in Sections 3.2 and 4.6 except as those which the Board may elect to delegate to the Chief Executive Officer; and

4.6.13 Discharge other duties as appropriate or necessary under this Agreement or required by law.

4.7 Startup Responsibilities. The Authority shall promptly act on the following matters:

4.7.1 Oversee the preparation of, adopt, and update an implementation plan for electrical load aggregation pursuant to Public Utilities Code Section 366.2(c)(3);

4.7.2 Prepare a statement of intent for electrical load aggregation pursuant to Public Utilities Code Section 366.2(c)(4);

4.7.3 Obtain financing and/or funding as is necessary to support start up and ongoing working capital for the CCA Program; and

4.7.4 Acquire and maintain insurance in accordance with Section 9.3.

4.8 Meetings and Special Meetings of the Board. The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular

meetings at more frequent intervals. The date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board. The location of regular meetings may rotate for the convenience of the Parties, subject to Board approval and availability of appropriate meeting space. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. Board meeting agendas generally shall be set, in consultation with the Board Chair, by the Chief Executive Officer appointed by the Board pursuant to Section 5.5. The Board itself may add items to the agenda upon majority vote pursuant to Section 4.11.1.

4.9 **Brown Act Applicable.** All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.).

4.10 **Quorum.** A simple majority of the Directors shall constitute a quorum. No actions may be taken by the Board without a quorum of the Directors present.

4.11 **Board Voting.** Except for matters subject to Special Voting under Section 4.12, Board action shall require the affirmative votes of a majority of the Directors on the entire Board. The consequence of a tie vote shall be "no action" taken.

4.12 Special Voting.

4.12.1 The affirmative vote of two-thirds of the Directors of the entire Board shall be required to take any action on the following:

a. Issuing bonds or other forms of debt;

b. Adding or removing Parties or removing Directors; and

c. Amending or terminating this Agreement or adopting or amending the bylaws of the Authority except as provided in Sections 3.5 and 4.12.3. At least 30 days advance written notice to the Parties shall be provided for such actions. Such notice shall include a copy of any proposed amendment to this Agreement or the bylaws of the Authority. The Authority shall also provide prompt written notice to all Parties of the action taken and attach the adopted amendment, resolution or agreement.

4.12.2 An affirmative vote of three-fourths of the entire Board shall be required to initiate any action for Eminent Domain and no eminent domain action shall be approved within the jurisdiction of a Party without the affirmative vote of such Party's Director.

4.12.3 An unanimous vote of the entire Board shall be required to amend the following provisions in this Agreement:

a. Section 2.3 (Purpose of Agreement)

b. Section 3.6 (Compliance with Local Zoning)

c. Sections 4.11 and 4.12 (Voting Requirements)

d. Section 4.12.2 (Eminent Domain)

e. Section 6.5 (Power Supply Requirements)

f. Section 6.6 (Solana Energy Alliance Transition)

5. INTERNAL ORGANIZATION

5.1 Elected and Appointed Officers. For each fiscal year, the Board shall elect a Chair and Vice Chair from among the Directors and shall appoint a Secretary and a Treasurer as provided in Government Code section 6505.5. No Director may hold more than one such office at any time. Appointed officers shall not be elected officers of the Board.

5.2 Chair and Vice Chair. For each fiscal year, the Board shall elect a Chair and Vice Chair from among the Directors. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. The Chair shall perform duties as may be required by the Board. In the absence of the Chair, the Vice-Chair shall perform all of the Chair's duties. The office of the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board, or (b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement. Upon a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter.

5.3 Secretary. The Board shall appoint a qualified person who is not on the Board to serve as Secretary. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other office records of the Authority. If the appointed Secretary is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Secretary of the Authority, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.

5.4 Treasurer/Chief Financial Officer and Auditor. The Board of Directors shall appoint a Treasurer who shall function as the combined offices of Treasurer and Auditor and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer for the

Authority shall be the depository and have custody of all money of the Authority from whatever source and shall draw all warrants and pay demands against the Authority as approved by the Board. The Treasurer shall cause an independent audit(s) of the finances of the Authority to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any qualified person or entity as the law allows at the time. The duties and obligations of the Treasurer are further specified in Section 7. The Treasurer shall serve at the pleasure of the Board. If the appointed Treasurer is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Treasurer of the Authority, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.

5.5 **Chief Executive Officer.** The Board shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer may not be an elected member of the Board or otherwise represent any Party to the Authority. The Chief Executive Officer may exercise all powers of the Authority, except those powers specifically reserved to the Board, including but not limited to those set forth in Section 4.6 (Specific Responsibilities of the Board) of this Agreement or the Authority's bylaws, or those powers which by law must be exercised by the Board. The Chief Executive Officer may enter into and execute power purchase agreements and other contracts, in accordance with criteria and policies established by the Board.

5.6 **General Counsel.** The Board shall appoint a qualified person to act as the Authority's General Counsel, who shall not be a member of the Board, or an elected official or employee of a Party.

5.7 **Bonding of Persons Having Access to Property.** Pursuant to the Act, the Board shall designate the public officer or officers or person or persons who have charge of, handle, or have access to any property of the Authority exceeding a value as established by the Board, and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the Board.

5.8 **Privileges and Immunities from Liability.** All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of the Authority to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Agreement. None of the officers, agents or employees directly employed by the Board shall be deemed, by reason of their employment by the Authority to be

employed by the Parties or by reason of their employment by the Authority, to be subject to any of the requirements of the Parties.

5.9 **Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, related energy programs, and the provisions of this Agreement. To the extent possible, the commissions, boards, and committees should have equal representation from each Party. The Board may establish criteria to qualify for appointment on its commissions, boards, and committees. The Board may establish rules, regulations, policies, or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be entitled to reimbursement for expenses. The meetings of the commissions, boards, or committees shall be held in accordance with the requirements of the Ralph M. Brown Act, as applicable.

6. IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

6.1 Preliminary Implementation of the CCA Program.

6.1.1 Enabling Ordinance. In addition to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

6.1.2 Implementation Plan. The Authority shall secure Board approval of an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations, and consistent with the terms of this Agreement, as soon after the Effective Date as reasonably practicable but no later than December 31, 2019.

6.2 **Authority Documents.** The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution or minute action, including but not necessarily limited to operational procedures and policies, the annual budget, and specific plans such as a local renewable energy development and integration plan and other policies defined as the Authority Documents by this Agreement. All such Authority Documents shall be consistent with and designed to advance the goals and objectives of the Authority as expressed in this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Section 8 (Withdrawal and Termination) of this Agreement.

6.3 **Integrated Resource Plan and Regulatory Compliance.** The Authority shall cause to be prepared an Integrated Resource Plan in accordance with California Public Utilities Commission regulations, and consistent with the terms of this Agreement, that will ensure the long-term development and administration of a variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency, while maintaining compliance with other regulatory requirements including the State Renewable Portfolio Standard (RPS) and customer rate competitiveness.

6.4 **Renewable Portfolio Standards.** The Authority shall provide its customers energy primarily from Category 1 and Category 2 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCA Program. The Authority shall avoid the procurement of energy from Category 3 eligible renewable resources (unbundled Renewable Energy Credits or RECs) to the extent feasible. The Authority's ultimate objective shall be to achieve— and sustain—a renewable energy portfolio with 100 percent renewable energy availability and usage, at competitive rates, within the Authority service territory by no later than 2035, and then beyond.

6.5 **Power Supply Requirements.** The Authority's power supply base product will be greater than or equal to 50% qualified renewable resources. The Board shall establish product options with higher renewable and/or GHG-free content that each Party may select (such as 75% or 100% renewable content). In no event will the Authority's power supply base product contain a lesser amount of renewable resources than the base product provided by SDG&E to its customers. Power supply options established by the Board will allow each Party the flexibility to achieve its CAP goals without impeding any other Party from doing the same.

6.6 **Continuation and Transition of City of Solana Beach's Existing CCA Program.** The City of Solana Beach has been operating a CCA program within its jurisdiction since 2018. The City of Solana Beach shall be permitted to continue to operate its existing CCA program until the Authority's CCA Program commences service to customers within the jurisdiction of the City of Solana Beach. The transition of CCA customers within the City of Solana Beach to the Authority's CCA Program shall be implemented in accordance with the Authority's implementation plan approved by the Board and certified by the CPUC and any policies and requirements established by the Board.

7. FINANCIAL PROVISIONS

7.1 **Fiscal Year.** The Authority's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

7.2 **Depository.**

7.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

7.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection and duplication by the Parties at all reasonable times. Annual financial statements shall be prepared in accordance with Generally Accepted Accounting Principles of the United States of America within 6 months of the close of the fiscal year. The Board shall contract with a certified public accountant to make an annual audit of the financial statements of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

7.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its policies and procedures.

7.3 Budget and Recovery Costs.

7.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of the Authority shall be prepared and approved by the Board in accordance with its fiscal management policies that should include a deadline for approval.

7.3.2 Funding of Initial Costs. The Initial Costs of establishing the Authority and implementing its CCA Program shall be divided equally among the Founding Members. In the event that the CCA Program becomes operational, these Initial Costs paid by the Founding Members shall be included in the customer charges for electric services to the extent permitted by law. The Authority may establish a reasonable time period over which such costs are recovered and reimbursed to the Founding Members. In the event that the CCA Program does not become operational, the Founding Members shall not be entitled to any reimbursement of the Initial Costs they have paid from the Authority or any Party.

7.3.3 CCA Feasibility and Governance Report Costs. In the event that the CCA Program becomes operational, any costs incurred by the Parties in preparing CCA Feasibility or Governance Reports in connection with establishing the Authority shall be included in the customer charges for electric services to the extent permitted by law. The Authority may establish a reasonable time period over which such costs are recovered and reimbursed to the Parties that incurred such costs. In the event that the

CCA Program does not become operational, no Party shall be entitled to any reimbursement of these costs from the Authority or any Party.

7.3.4 Program Costs. The Parties intend that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric or other services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through appropriate charges to CCA customers receiving such services.

7.3.5 No Requirement for Contributions or Payments. Parties are not required under this Agreement to make any financial contributions or payments to the Authority, and the Authority shall have no right to require such a contribution or payment unless expressly set forth herein (for example, as provided in Section 2.4.3, with respect to Additional Members, Section 7.3.2 with respect to Initial Costs and Section 8.1, with respect to Withdrawal), or except as otherwise required by law.

Notwithstanding the foregoing, a Party may voluntarily enter into an agreement with the Authority to provide the following:

a. contributions of public funds for the purposes set forth in this Agreement;

b. advances of public funds for the purposes set forth in this Agreement, such advances to be repaid as provided by such written agreement; or

c. its personnel, equipment or property in lieu of other contributions or advances.

No Party shall be required, by or for the benefit of the Authority, to adopt any local tax, assessment, fee or charge under any circumstances.

7.4 Accounts and Reports. The Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by the Authority. The books and records of the Authority in the hands of the Treasurer shall be open to inspection and duplication at all reasonable times by duly appointed representatives of the Parties. The Treasurer, within 180 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Parties. The Treasurer shall cooperate with all audits required by this Agreement.

7.5 Funds. The Treasurer shall receive, have custody of and/or disburse Authority funds in accordance with the laws applicable to public agencies and generally accepted accounting practices, and shall make the disbursements required by this Agreement in order to carry out any of the purposes of this Agreement.

7.6 **Discretionary Revenues.** The Board shall establish policies concerning the expenditure of discretionary revenues. As determined by the Board in such policies, discretionary revenues may be used to (1) provide programs and develop projects of the Authority or (2) allow Parties to direct funds into qualified Authority programs and projects, or provide other ratepayer benefits. The Board shall endeavor to achieve a balanced distribution of program and project benefits substantially commensurate with each Party's energy load ("balanced distribution"). The Board shall conduct periodic audits no less than every two years in order to verify the balanced distribution of program and project benefits and take any corrective action necessary to achieve or continue to maintain a balanced distribution.

7.7 **Rate Related Programs.** The Authority will maintain residential net energy metering and low-income rate discount programs.

8. WITHDRAWAL AND TERMINATION

8.1 Withdrawal

8.1.1 Withdrawal by Parties. Any Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than one year advance written notice of its election to do so, which notice shall be given to the Authority and each Party. The Board, in its discretion, may approve a shorter notice period on a case by case basis. In addition, a Party may immediately withdraw its membership in the Authority upon written notice to the Board at any time prior to the Authority filing its first year-ahead load forecast with the CPUC that included the Party's load (anticipated to occur in April 2020) without any financial obligation other than its share of Initial Costs that shall not be reimbursed and any costs directly related to the resulting amendment of the Implementation Plan. Withdrawal of a Party shall require an affirmative vote of the Party's Governing Body.

8.1.2 Amendment. Notwithstanding Section 8.1.1 (Withdrawal by Parties) of this Agreement, a Party may withdraw its membership in the Authority upon approval and execution of an amendment to this Agreement provided that the requirements of this Section 8.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in the Authority effective one year (or earlier if approved by the Board) after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority, should the amendment be approved by the Board.

8.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in the Authority may be subject to certain continuing

liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement, including, but not limited to, power purchase agreements and other Authority contracts and operational obligations. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. The Board shall also consider, pursuant to Section 3.2.12, adoption of a policy that allows a withdrawing Party to negotiate assignment to the Party of costs of electric power or other resources procured on behalf of its customers by the Authority upon its withdrawal. In the implementation of this Section 8.1.3, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.

8.2 **Termination of CCA Program.** Nothing contained in Section 6 or elsewhere in this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

8.3 **Involuntary Termination.** This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or Authority Documents upon a two-thirds vote of the entire Board excluding the vote of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or the Authority Documents that the Party has allegedly violated. The Party, subject to possible termination, shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement.

8.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 8.1 (Withdrawal) of this Agreement.

8.5 **Continuing Liability; Refund.** Upon a withdrawal or involuntary termination of a Party, the Party shall be responsible for any claims, demands, damages, or liabilities attributable to the Party through the effective date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities commencing or arising after the effective date of the Party's withdrawal or involuntary termination. Notwithstanding the foregoing or any other provisions of this Agreement, such Party also shall be liable to the Authority for (a) any damages, losses, or costs incurred by the Authority which result directly from the Party's withdrawal or termination, including but not limited to costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party's load; and (b) any costs or obligations associated with the Party's participation in any program in accordance with the program's terms, provided such costs or obligations were incurred prior to the withdrawal of the Party. From and after the date a Party provides notice of its withdrawal or is terminated, the Authority shall reasonably and in good faith seek to mitigate any costs and obligations to be incurred by the withdrawing or terminated Party under this Section through measures reasonable under the circumstances, provided that this obligation to mitigate does not impose any obligation on the Authority to transfer any cost or obligation directly attributable to the membership and withdrawal or termination of the withdrawing or terminated party to the ratepayers of the remaining members. Further, the liability of the withdrawing or terminated Party shall be based on actual costs or damages incurred by the Authority and shall not include any penalties or punitive charges imposed by the Authority. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. The withdrawing or terminated Party agrees to pay any such deposit determined by the Authority. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party. In the implementation of this Section 8.5, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself. The liability of a withdrawing Party under this Section shall be only to the Authority and not to any other Party.

8.6 **Disposition of Authority Assets.** Upon termination of this Agreement and dissolution of the Authority by all Parties, after payment of all obligations of the Authority, the Board may sell or liquidate Authority property and shall distribute any remaining assets to the Parties in proportion to the contributions made by the existing Parties. Any assets provided by a Party to the Authority shall remain the asset of that Party and shall not be subject to distribution under this section.

9. MISCELLANEOUS PROVISIONS

9.1 **Dispute Resolution.** The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or the Parties and the Authority shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and the Authority. The Parties agree that each Party may specifically enforce this section. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 60 days after the demand for mediation is made, any Party and the Authority may pursue any remedies provided by law.

9.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees. In addition, pursuant to the Act, no Director shall be personally liable on the Authority's bonds or be subject to any personal liability or accountability by reason of the issuance of bonds.

9.3 **Insurance and Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority and the Parties. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective governing board members, officers, agents and employees, from any and all claims, losses, damages, deductibles or self-insured retentions, costs, fines, penalties, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, errors, omissions or negligence of the Authority or its officers, employees, agents, contractors, licensees or volunteers.

9.4 **No Third Party Beneficiaries.** The provisions of this Agreement are for the sole benefit of the Parties and the Authority and not for the benefit of any other person or entity. No third party beneficiary shall be created by or arise from the provisions of this Agreement.

9.5 **Notices.** Any notice required or permitted to be made hereunder shall be in writing and shall be delivered in the manner prescribed herein at the principal place of business of each Party. The Parties may give notice by (1) personal delivery; (2) e-mail; (3) U.S. Mail, first class postage prepaid, or a faster delivery method; or (3) by any other method deemed appropriate by the Board.

Upon providing written notice to all Parties, any Party may change the designated address or e-mail for receiving notice.

All written notices or correspondence sent in the described manner will be deemed given to a party on whichever date occurs earliest: (1) the date of personal delivery; (2) the third business day following deposit in the U.S. mail, when sent by "first class" mail; or (3) the date of transmission, when sent by e-mail or facsimile.

9.6 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of each Party.

9.7 **Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the approved assigns of the Parties. This section does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of the proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

9.8 **Amendment.** This Agreement may be amended by a written amendment approved by the Board in accordance with the Special Voting requirements of Section 4.12.

9.9 **Severability.** If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were adjudged invalid or void by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

9.10 **Governing Law.** This Agreement is made and to be performed in the State of California, and as such California substantive and procedural law shall apply.

9.11 **Headings.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language of this Agreement.

9.12 **Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

The Parties hereto have executed this Joint Powers Agreement establishing the Clean Energy Alliance.

CITY OF CARLSBAD

By: _____
City Manager

DATE: 10 OCT 19

ATTEST:

By: _____
for City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

CITY OF Del Mar

By: _____
Scott W. Huth, City Manager

DATE: 11/4/2019

ATTEST:

By: _____
Ashley Jones, City Clerk

APPROVED AS TO FORM:

By: _____
Leslie E. Devaney, City Attorney

6/21/22 / 8A-34

CITY OF SOLANA BEACH

By: _____
City Manager

DATE: 11-4-19

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

6/21/22 / 8A-35

CLEAN ENERGY ALLIANCE JOINT POWERS AGREEMENT

CITY OF ESCONDIDO

By: _____

Sean McGuire, City Manager

DATE: 12/16/2021

ATTEST

By: _____

Zack Beck, City Clerk

APPROVED AS TO FORM:

By: _____

Michael McGuinness, City Attorney

CLEAN ENERGY ALLIANCE JOINT POWERS AGREEMENT

CITY OF SAN MARCOS

By: Jack Griffin
Jack Griffin, City Manager

DATE: 1/13/2022

ATTEST:

By: DocuSigned by: Phillip Scollick
Phillip Scollick, City Clerk

APPROVED AS TO FORM:

By: Helen Holmes Peak
Helen Holmes Peak, City Attorney

Exhibit A: Definitions

"AB 117" means Assembly Bill 117 (Stat. 2002, Ch. 838, codified at Public Utilities Code Section 366.2), which created Community Choice Aggregation.

"Act" means the Joint Exercise of Powers Act of the State of California (Chapter 5, Division 7, Title 1 of the Government Code commencing with Section 6500).

"Agreement" means this Joint Powers Agreement.
"Authority" means the Clean Energy Alliance.

"Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Policies and Procedures, the annual budget, and plans and policies.

"Board" means the Board of Directors of the Authority.

"Community Choice Aggregation" or "CCA" means an electric service option available to cities, counties, and other public agencies pursuant to Public Utilities Code Section 366.2.

"CCA Program" means the Authority's Community Choice Aggregation program established, conducted and operated under Public Utilities Code Section 366.2.

"Days" shall mean calendar days unless otherwise specified by this Agreement.

"Director" means a member of the Board representing a Party appointed in accordance with Sections 4.1 (Board of Directors) and 4.2 (Appointment and Removal of Directors) of this Agreement.

"Effective Date" means the date on which the Agreement shall become effective and the

Authority shall exist as a separate public agency, as further described in Section 2.1 (Effective Date and Term) of this Agreement.

"Founding Member" means any jurisdiction that becomes a member of the Authority before October 1, 2020, as identified in Exhibit B.

"Governing Body" means for any city, its City Council; and for any other public agency, the equivalent policy making body that exercises ultimate decision-making authority over such agency.

"Initial Costs" means reasonable and necessary implementation costs advanced by the Founding Members in support of the formation of the Authority and approved by the Board for reimbursement, which are (a) directly related to the establishment of the

Authority and its CCA program, and (b) incurred by the Authority or its Members relating to the initial operation of the Authority, such as the hiring of the executive and operations staff, any required accounting, administrative, technical and legal services in support of the Authority's initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements, and activities associated with drafting and obtaining approval of the Authority's implementation plan. Initial Costs do not include costs associated with the investigation of the CCA model, attendance at routine planning meetings, or a Party's pre-formation reports related to their decision to pursue CCA or join the Authority. Initial costs also do not include the costs incurred by the City of Solana Beach relating to the termination of its CCA program. The Authority Board shall determine the repayment timing and termination date for the Initial Costs.

"Investor Owned Utilities" means a privately-owned electric utility whose stock is publicly traded and is subject to CPUC regulation.

"Parties" means, collectively, the signatories to this Agreement that have satisfied the conditions as defined above for "Founding Members" or in Section 2.4 (Addition of Parties) of this Agreement, such that they are considered members of the Authority.

"Party" means, singularly, a signatory to this Agreement that has satisfied the conditions as defined above for "Founding Members" or in Section 2.4 (Addition of Parties) of this Agreement, such that it is considered a member of the Authority.

Exhibit B: List of Founding Members and Parties added on or after October 1, 2020, per Section 2.4

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

City of Carlsbad

City of Del Mar

City of Solana Beach

Any public agency that becomes a member after October 1, 2020

City of Escondido

City of San Marcos

AMENDMENT NO. 1 TO CLEAN ENERGY ALLIANCE JOINT POWERS AGREEMENT

This Amendment No. 1 to the Clean Energy Alliance Joint Powers Agreement, dated November 4, 2019, by and among the Parties (hereinafter referred to as the "Agreement") amends the Agreement as follows:

1. Section 5.1 Elected and Appointed Officers is hereby amended to amend the first sentence of this section to read:

"For each calendar year, the Board shall elect a Chair and Vice Chair from among the Directors and for each fiscal year shall appoint a Secretary and a Treasurer as provided in Government Code Section 6505.5.

2. Section 5.2 Chair and Vice Chair is hereby amended to amend the first sentence of this section to read:

"For each calendar year, the Board shall elect a Chair and Vice Chair from among the Directors."

3. Except as specifically amended above, all other provisions of the Agreement shall remain in full force and effect.

This proposed Amendment No. 1 was presented to the Board of Directors of the Clean Energy Alliance on July 29, 2021, and was adopted as amended by the Board at its September 30, 2021, meeting per Resolution 2021-012, attached hereto.

CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2021-012

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CLEAN ENERGY ALLIANCE APPROVING AMENDMENT NO. 1 TO THE JOINT POWERS AUTHORITY AGREEMENT REGARDING TERM OF CHAIR AND VICE CHAIR

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

WHEREAS, Sections 5.1 and 5.2 of the Clean Energy Alliance Joint Powers Agreement (JPA) provides that for each fiscal year, the Board shall elect a Chair and Vice Chair from among the Directors; and

WHEREAS, the calendar year aligns the term of Chair and Vice Chair to coincide with the term of elected office for each Board Director; and

WHEREAS, proposed Amendment No. 1 to the JPA was presented to the Board at its July 29, 2021, meeting for review and the Board directed that this amendment be presented to the Board for adoption at its September 30, 2021, meeting; and

WHEREAS, the member cities were provided a minimum 30-days advance written notice of the proposed amendment, including a copy of the Amendment No. 1.

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

Section 1. The Board of Directors of the Clean Energy Alliance hereby adopts Amendment No. 1 to the Clean Energy Alliance Joint Powers Agreement amending Sections 5.1 and 5.2 as follows:

"Section 5.1. Elected and Appointed Officers. For each ~~fiscal~~ **calendar** year, the Board shall elect a Chair and Vice Chair from among the Directors and **for each fiscal year** shall appoint a Secretary and Treasurer as provided in Government Code section 6505.5. "

"Section 5.2. Chair and Vice Chair. For each ~~fiscal~~ **calendar** year, the Board shall elect a Chair and Vice Chair from among the Directors. "

The foregoing Resolution was passed and adopted this 30th day of September 2021, by the following vote:

AYES: Druker, Bhat-Patel, Becker

NOES: None

ABSENT: None

APPROVED:

DocuSigned by:
Kristi Becker
7E04F23CDAA04F8...

Kristi Becker, Chair

ATTEST:

DocuSigned by:
Sheila R. Cobian, MMC
23A7871B710246C...

Sheila Cobian, Interim Board Secretary

6/21/22 / 8A-43

ATTACHMENT 3

Agenda Item 8B

Approvals:

City Manager

Dept. Head

Attorney

Finance

AGENDA REPORT

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

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.

ATTACHMENT 3

ATTACHMENT 1

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.

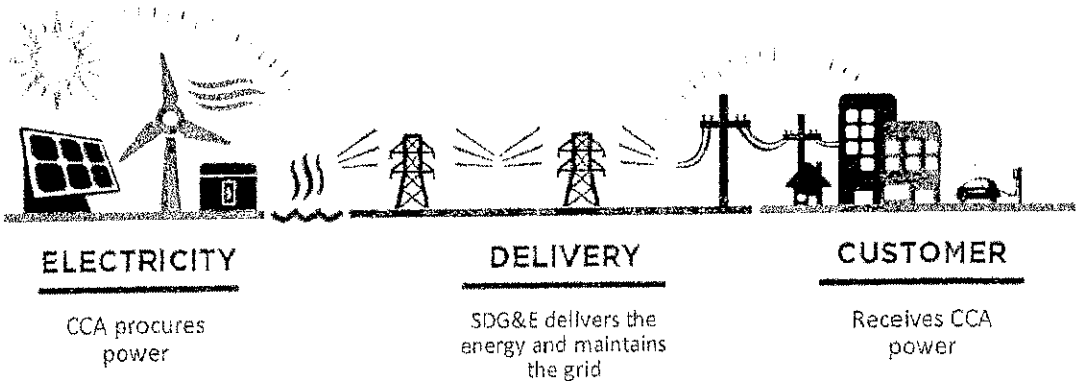
Table of Contents

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://californiachoiceenergyauthority.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.

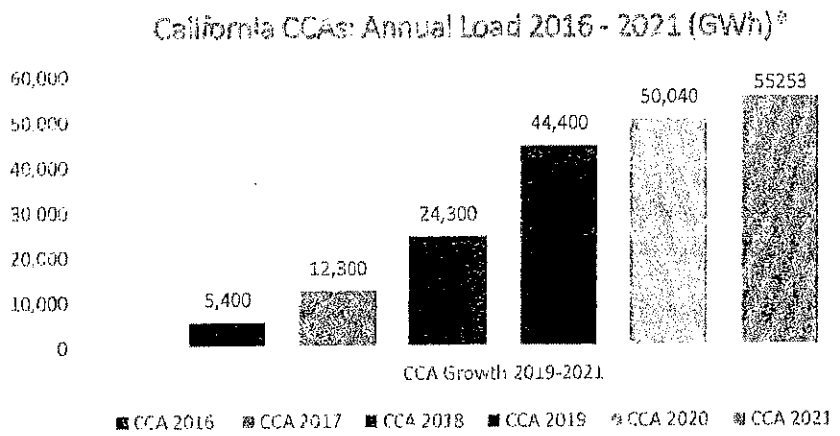
Per California law, when a CCA is formed, all of the residential electric customers within its boundaries will be placed, by default, onto CCA service. The CCA may offer service to commercial and industrial customers, too, but also on the same "opt-out" basis. However, customers retain the right to return 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 Growth[4]



*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.

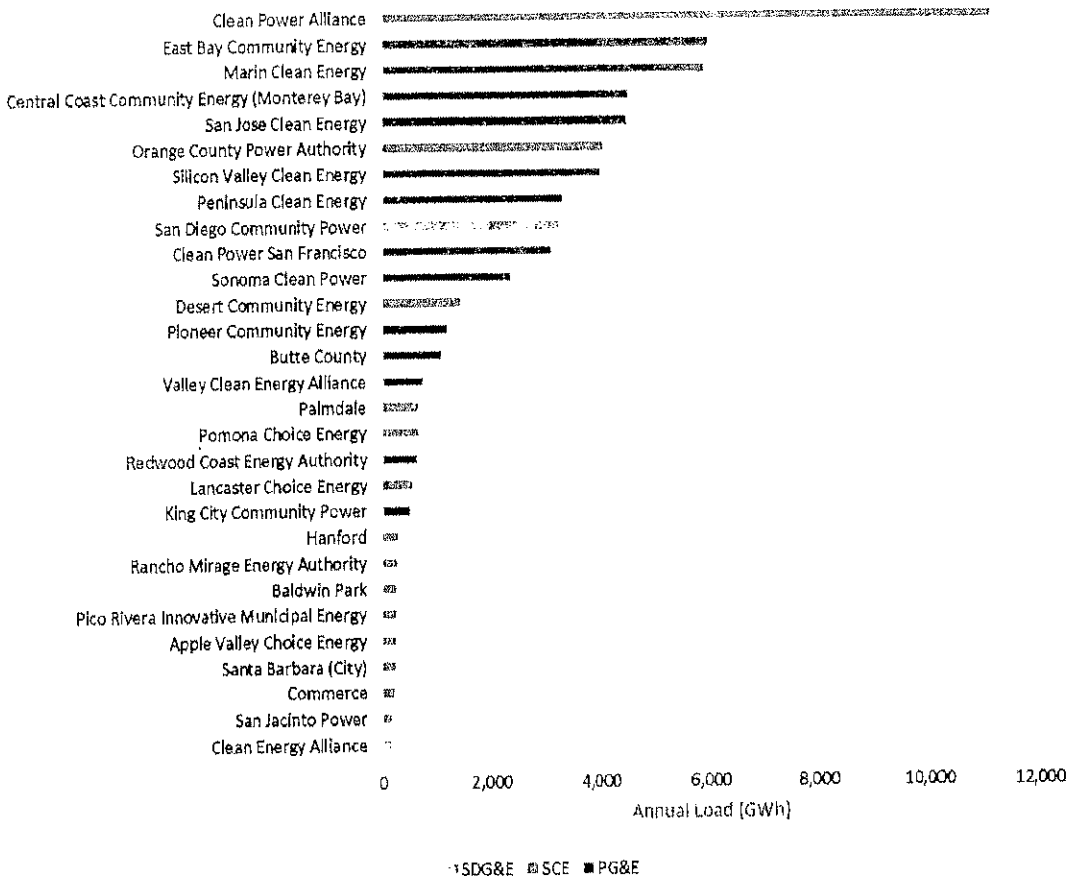
Table 1. CCAs in California

CCA	IOU	Type	Formed	Load, GWh[5]
CCAs delivering power in California				
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]
Planned Launch				
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://theclimatecenter.org/the-business-of-local-energy-symposium-2019-presentations/

Table 2. Sample California CCA Program Offerings[17]

CALCCA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Budget Billing				▨			▨												
Battery Storage Rate				▨	▨			▨								▨		▨	
Battery Storage Incentives								▨								▨		▨	
Demand Response		▨	▨	▨				▨	▨							▨		▨	▨
EV Rate		▨	▨	▨	▨		▨	▨	▨	▨	▨		▨		▨	▨	▨	▨	▨
[illegible]		▨		▨			▨		▨									▨	
EV Incentives (vehicles and/or chargers)		▨					▨	▨	▨				▨		▨	▨		▨	▨
EV Load Shifting								▨								▨		▨	
Energy Efficiency				▨			▨	▨		▨			▨			▨		▨	▨
[illegible]					▨														
Feed-in Tariff		▨		▨				▨					▨					▨	
Building Electrification		▨			▨			▨	▨				▨			▨		▨	▨
Low-Income & Multifamily EV		▨						▨	▨		▨		▨						
Solar Incentives												▨	▨						
On-bill Repayment				▨				▨										▨	
Education, Outreach, and/or Innovation Grants			▨		▨				▨	▨						▨		▨	
Low-Income Solar Incentives		▨	▨	▨	▨	▨		▨	▨		▨								

---

[17] https://cal-cca.org/cca-programs/

CALCCA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Customer Load Solutions																			
Microgrid Development																			
Green Sourcing																			
Solar Education in Local Schools																			
Dividend Program																			
Solar Referral Service																			
Solar Storage Offerings																			
Advancing Reach Codes																			
Advanced Energy Rebates																			
TOU Rates																			
Customer CAI 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.

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.

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

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 nest 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 it 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 member[21], 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 **CEE** 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: _____

Its: CITY MANAGER

Dated: 9/2, 2021

ATTEST:

_____
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

_____
City Attorney

APPROVED AS TO AVAILABILITY OF FUNDING:

_____
Finance Authorization

MRW & Associates LLC

_____
("CONSULTANT")

By: MARK FULMER

Its: President

Dated: Aug 27, 2021

56452.01100\31193624.5

6/21/22 / 8A-83

10-19-21 / 8B-39

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

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.

55452.01100\31193624.5

Dated: August 27, 2021

MRW & Associates, LLC
Consultant

By: Mark Fulmer
MARK FULMER
President
Title
1736 Franklin St Ste 700
Address
Oakland CA 94612

55452.01100\31193624.5

CLEAN ENERGY ALLIANCE

Staff Report

DATE: May 26, 2022

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 10: Receive Update and Assessment Report Related to the cities of Oceanside, San Clemente, and Vista Joining Clean Energy Alliance

---

RECOMMENDATION

Receive update and assessment report related to the cities of Oceanside, San Clemente and Vista joining Clean Energy Alliance.

BACKGROUND AND DISCUSSION

Clean Energy Alliance's New Member Addition Policy states the Board will consider adding new agencies under the following conditions:

1. The analysis of the proposed member usage data results in a positive feasibility study using CEA's financial pro forma model;
2. The addition of the new member does not create an undue risk or financial burden to CEA;
3. Does not create an undue risk to the achievement of the goals of CEA, including the achievement of the Climate Action Plan goals of the current Members.

In order to analyze the financial impact of Oceanside, San Clemente, and Vista (Cities) joining CEA for purposes of complying with condition 1 above, CEA received the 2021 usage data for the three cities. The electric usage was analyzed and input into CEA's current financial pro forma model, using current approved customer rates and updated energy costs, the results of which have been summarized in the attached Assessment Report.

Customer Information

The chart above provides information on the number of accounts and annual energy usage in 2021 for the Cities, CEA's current base (Carlsbad, Del Mar and Solana Beach) and the 2023 expansion into Escondido and San Marcos. Adding the Cities in 2024 more than doubles the number of accounts that CEA services and increases energy usage by 81% (not adjusted for any opt-out assumption).

City	Accounts	Annual Energy (MWh)	Average Customer Usage (kWh/Mo.)	Peak Demand (MW)
Oceanside	73,295	568,725	647	124
Vista	39,593	353,719	744	74
San Clemente	34,478	253,731	613	58
Total	**147,366**	**1,176,175**	**665**	**256**
CEA Base Forecast	*59,153*	*626,927*	*883*	*136*
2023 Expansion Forecast	*86,400*	*826,410*	*797*	*196*
Total Current Forecast	***145,553***	***1,453,337***	***832***	***332***
Total Combined	***292,919***	***2,629,512***	***898***	
% Increase	***101%***	***81%***		

Financial Assessment

The financial assessments used the following assumptions:

- Customers enrolled in April 2024
- 10% of eligible customers would opt-out
- Current CEA rates
- Current Forward Price Curve of Energy

a base assumption of enrolling customers in April 2024, which was determined to be the optimal enrollment date, and serving 90% of eligible customers, the assessment concluded that with the addition of Oceanside, CEA's net operating margin would increase by approximately 85% beginning in FYE 2025, which would be the first full fiscal year of service.

The projected incremental revenues, costs, and net operating margin are shown in Table 1 below:

Incremental Net Margins from Expansion (in $MM) City of Oceanside

	FYE 2024[1]	FYE 2025	FYE 2026
Revenue	$9.86	$53.55	$53.82
Power Supply Costs	-$8.88	-$50.54	-$49.50
Staffing	-$0.17	-$0.17	-$0.17
Billing and Other Costs	-$0.48	-$1.43	-$1.44
Net Operating Margin	**$0.35**	**$1.42**	**$2.72**
5% Reserve Contribution	**$0.49**	**$2.68**	**$2.69**
Reserve Shortfall/Excess	-$0.14	-$1.26	$0.03

Based on the assumptions listed above, sufficient revenue related to serving Oceanside would be generated to cover operating costs, however, for Fiscal Years ending 2024 and 2025, the net operating margin falls short of the 5% reserve contribution. Fiscal year 2026 projects sufficient revenue to cover all costs and the 5% operating reserve contribution.

Incremental Net Margins from Expansion (in $MM) City of San Clemente

	FYE 2024[21]	FYE 2025	FYE 2026
Revenue	$4.45	$23.83	$23.95
Power Supply Costs	-$3.99	-$22.40	-$21.94
Staffing	-$0.08	-$0.08	-$0.08
Billing and Other Costs	-$0.15	-$0.59	-$0.59
Net Operating Margin	**$0.24**	**$0.75**	**$1.34**
5% Reserve Contribution	$0.22	$1.19	$1.20
Reserve Shortfall/Excess	$0.02	-$0.44	$0.14

[1] Reflects partial year of service for fiscal year ending June 30, 2024, with enrollments assumed to commence on April 1, 2024.
[2]

Based on the assumptions listed above, sufficient revenue related to serving San Clemente would be generated to cover operating costs, however, for Fiscal Year ending 2025, the net operating margin falls short of the 5% reserve contribution. Fiscal years 2024 and 2026 projects sufficient revenue to cover all costs and the 5% operating reserve contribution.

Incremental Net Margins from Expansion (in $MM) City of Vista

	FYE 2024[31]	FYE 2025	FYE 2026
Revenue	$6.19	$32.96	$33.12
Power Supply Costs	-$5.62	-$31.49	-$30.85
Staffing	-$0.11	-$0.11	-$0.11
Billing and Other Costs	-$0.21	-$0.74	-$0.74
Net Operating Margin	**$0.26**	**$0.62**	**$1.43**
5% Reserve Contribution	$0.31	$1.65	$1.66
Reserve Shortfall/Excess	-$0.05	-$1.02	-$0.23

Incremental Net Margins from Expansion (in $MM) Combined

	FYE 2024[41]	FYE 2025	FYE 2026
Revenue	$20.51	$110.34	$110.89
Power Supply Costs	-$18.48	-$104.43	-$102.29
Staffing	-$0.35	-$0.35	-$0.35
Billing and Other Costs	-$0.83	-$2.76	-$2.77
Net Operating Margin	**$0.85**	**$2.79**	**$5.48**
5% Reserve Contribution	$1.03	$5.52	$5.54
Reserve Shortfall/Excess	-$0.18	-$2.72	-$0.06

The combined financial assessment determines sufficient revenue is generated at current rates to cover operating costs but fall short of the 5% reserve contribution. The reserve contribution for FYE 2024 is projected to be 4%, 2025 2.5% and 2026 4.9%.

Resource Availability

The following is taken from the Assessment Report (attached) prepared by Pacific Energy Advisors:

Changes in market prices for electricity represent the single greatest uncertainty that could impact the projected benefits related to expansion. Electricity commodity, traded in a highly volatile market, and prices could materially change before CEA is ready to contract for the power supply needed to serve

3

[41] Reflects partial year of service for fiscal year ending June 30, 2024, with enrollments assumed to commence on April 1, 2024.

anticipated Cities' loads. Commodity price risk is inherent in the electric utility industry and is not unique to expansion, but expansion imposes challenges with respect to the timing of electricity purchase as well as the timing associated with a final/definitive determination regarding the expansion itself. This is not unlike the challenges CEA (or any Community Choice Aggregator) faced during its initial startup period. CEA utilizes professional risk management approached and forward hedging contracts to mitigate commodity price risk for its existing customers; however, adverse price movements that may occur before CEA initiates power purchases for the Cities' load could drive up costs and result in negative margins.

In addition to the impact of the volatility of the energy market, CEA must take into consideration regulatory compliance procurement as it relates to the expansion. Under existing regulation, CEA must have a certain percentage of its renewable energy requirements in long-term contracts. This requirement must be met as of the end of 2024 for the expansion load. Realistically, CEA will only be able to meet this requirement through procurement of existing contracts from San Diego Gas & Electric (SDG&E). SDG&E would have entered into long-term renewable energy contracts on behalf of the Cities' load, which would be excess at the time the energy transfers to CEA. Through California Public Utilities Commission Decision 21-05-030, CEA has access to SDG&E excess long-term renewable energy through an allocation process. To the extent CEA can arrange such as allocation related to the expansion load, the incremental obligation related to the new load is diminished.

Resource adequacy (RA) is another power supply product that CEA will need to plan for in preparing for serving the expansion cities load. RA is a constrained product, and SDG&E will have been required to have 100% of the RA associated with the Cities' load in 2022. Due to constraints in RA availability, CEA will be required to work with SDG&E in procuring its excess RA capacity to meet the additional requirements.

The ability of work with SDG&E successfully will be key in CEA meeting its regulatory procurement compliance. CEA will need to take this into account in determining whether a 2024 enrollment is achievable or postponing to 2025 results in less risk.

Average Residential Bill Comparison

Using CEA's current adopted rates and SDG&E's current rates, the following reflects the average monthly bill comparison for a residential customer on rate Schedule DR for each of the three cities.

City of Oceanside Residential: DR	SDG&E 31% Renewable	CEA 50% Renewable Clean Impact	CEA Clean Impact Plus 75% Carbon Free	CEA Green Impact 100% Renewable
Generation	$ 49.86	$ 35.80	$ 35.80	$ 35.80
Clean Impact Plus/Green Impact Premium	$ -	$ -	$ 0.32	$ 2.43
SDG&E PCIA+FFS - 2022 Vintage	$ -	$ 9.73	$ 9.73	$ 9.73
Generation Related Costs	$ 49.86	$ 45.53	$ 45.85	$ 47.96
SDG&E Delivery	$ 73.08	$ 73.08	$ 73.08	$ 73.08
Total Average Monthly Bill	**$ 122.94**	**$ 118.61**	**$ 118.93**	**$ 121.04**
Average 324 kWh Usage				
$ Savings to SDG&E		$ (4.33)	$ (4.01)	$ (1.90)
% Savings to SDG&E		-3.52%	-3.26%	-1.55%

City of San Clemente Residential: DR	SDG&E 31% Renewable	CEA 50% Renewable Clean Impact	CEA Clean Impact Plus 75% Carbon Free	CEA Green Impact 100% Renewable
Generation	$ 60.94	$ 43.75	$ 43.75	$ 43.75
Clean Impact Plus/Green Impact Premium	$ -	$ -	$ 0.40	$ 2.97
SDG&E PCIA+FFS - 2022 Vintage	$ -	$ 11.90	$ 11.90	$ 11.90
Generation Related Costs	$ 60.94	$ 55.65	$ 56.05	$ 58.62
SDG&E Delivery	$ 89.32	$ 89.32	$ 89.32	$ 89.32
Total Average Monthly Bill	**$ 150.27**	**$ 144.97**	**$ 145.37**	**$ 147.94**
Average 396 kWh Usage				
$ Savings to SDG&E		$ (5.29)	$ (4.89)	$ (2.32)
% Savings to SDG&E		-3.52%	-3.26%	-1.55%

City of Vista Residential: DR	SDG&E 31% Renewable	CEA 50% Renewable Clean Impact	CEA Clean Impact Plus 75% Carbon Free	CEA Green Impact 100% Renewable
Generation	$ 52.63	$ 37.79	$ 37.79	$ 37.79
Clean Impact Plus/Green Impact Premium	$ -	$ -	$ 0.34	$ 2.57
SDG&E PCIA+FFS - 2022 Vintage	$ -	$ 11.90	$ 11.90	$ 11.90
Generation Related Costs	$ 52.63	$ 49.69	$ 50.03	$ 52.25
SDG&E Delivery	$ 77.14	$ 77.14	$ 77.14	$ 77.14
Total Average Monthly Bill	**$ 129.77**	**$ 126.83**	**$ 127.17**	**$ 129.39**
Average 342 kWh Usage				
$ Savings to SDG&E		$ (2.95)	$ (2.60)	$ (0.38)
% Savings to SDG&E		-2.27%	-2.01%	-0.29%

For comparison, current CEA customers are realizing the following results compared to SDG&E:

2020 PCIA Vintage Carlsbad & Del Mar	50% Renewable Clean Impact	75% Carbon Free Clean Impact Plus	100% Renewable Green Impact
$ (Savings)/Premium to SDG&E – Total Bill	($1.42)	($.97)	$1.64
% (Savings)/Premium to SDG&E – Total Bill	(0.9%)	(0.6%)	1.0%

2017 PCIA Vintage Solana Beach	50% Renewable Clean Impact	75% Carbon Free Clean Impact Plus	100% Renewable Green Impact
$ (Savings)/Premium to SDG&E – Total Bill	($5.57)	($5.17)	($2.51)
% (Savings)/Premium to SDG&E – Total Bill	(3.64%)	(3.38%)	(1.64%)

Staff will continue to monitor the energy market, and its impact on the financial assessment of the service expansion and provide an update to the CEA Board in July 2022 when the next action is needed by the CEA Board related to the additions.

Next Steps

ACTIVITY	TIMING
Assessment Report Results to CEA Board	May 26, 2022
Cities - Resolution to Join CEA and 1st Reading of Ordinance to Establish a CCA	June 2022
Cities - 2nd Reading of Ordinance	June/July 2022
CEA - Resolution approving Cities joining CEA/Direct preparation of Implementation Plan Amendment	July 2022
Draft Implementation Plan Amendment to CEA Board	October 2022
File Implementation Plan Amendment with CPUC	December 2022

FISCAL IMPACT

There is no fiscal impact related to this report.

ATTACHMENTS

Pacific Energy Advisors Assessment Report – Oceanside, San Clemente, Vista Expansion

Clean Energy Alliance New Membership Assessment

Cities of Oceanside, San Clemente, and Vista

May 2022

SUMMARY

The cities of Oceanside, San Clemente, and Vista ("Cities") have engaged with the Clean Energy Alliance ("CEA") to explore the possibility of joining CEA. On behalf of CEA, Pacific Energy Advisors, Inc. ("PEA") conducted assessments of the financial and resource planning implications associated with extending CEA service to electric customers within the Cities (which are currently receiving bundled electric service from the incumbent utility, San Diego Gas & Electric, or "SDG&E"). The assessments involved studies to understand the potential increase in electric load and the additional energy resources that would be needed to serve the Cities. The studies also estimated the incremental revenues that would be derived from electricity sales to the Cities' customers, as well as the incremental costs associated with energy resource procurement and other items/services that would be necessary to support CCA service expansion to the Cities' customers. These factors were jointly evaluated to determine whether any operating surpluses could be generated, on a projected basis, for the benefit of CEA and its customers.

In consideration of the prospective timing associated with amended implementation plan submittal and in accordance with existing regulatory rules, the earliest possible enrollment date for Cities customers would be January 1, 2024.[1] For this assessment, PEA modeled various enrollment start times in 2024 and found that April 2024 would be optimal from a financial perspective. Thus, enrollment would be expected to occur toward the end of CEA's fiscal year ending 2024; the first full year reflecting Cities load would be CEA's fiscal year ending 2025.

Under current base case assumptions, the analysis indicates that expansion would yield positive operating margins (revenue net of incremental cost) and reserve additions, but not at a level sufficient to meet CEA's targeted 5% reserve contribution. The projected incremental revenues, costs, operating margin, and net deficit (i.e., shortfall in reserve contribution) is shown in Table 1.

Table 1: Incremental Net Margins from Expansion (in $MM)

	FYE 2024[2]	FYE 2025	FYE 2026
Revenue	$20.51	$110.34	$110.89
Power Costs	-$18.48	$104.43	-$102.29
Staffing	-$0.35	-$0.35	-$0.35
Other Costs	-$0.83	-$2.76	-$2.77
Subtotal: **Operating Margin**	$0.85	$2.79	$5.48
Reserves (targeted)	-$1.03	-$5.52	-$5.54
Net Deficit	**-$0.18**	**-$2.72**	**-$0.06**

[1] Achieving the prospective early enrollment date for Cities customers would require submittal of an amended CCA implementation plan no later than December 31, 2022.

[2] Reflects partial year of service for fiscal year ending June 30, 2024, with enrollments assumed to commence on April 1, 2024.

Electric resource requirements associated with the expansion would be significant, and close coordination between CEA and SDG&E would be important to achieve an appropriate allocation of resources needed to serve the transferred load. Such coordination and cooperation would be especially important for resource adequacy and long-term renewable energy supply. Without cooperation from SDG&E to sell excess resources, or alternatively, a regulatory mechanism to ensure transfer of resources as load shifts from SDG&E to CEA, it may not be possible for CEA to obtain the necessary resources in the near term to meet its resource adequacy and long-term Renewable Portfolio Standards ("RPS") obligations.

ANALYSIS

PEA conducted three individual analyses of the Cities' prospective electric accounts, as well as an aggregate outlook, to estimate the revenues and costs associated with extending CEA service to the Cities. The analyses incorporated historical monthly electric usage data provided by SDG&E for all current electric accounts located within the Cities. PEA reviewed load data from 2019 and 2021 to formulate its load projections.[3]

Table 2 summarizes the account and electric usage data for the major customer classifications represented within the Cities. Available data indicate the potential to serve 147,366 new CEA customer accounts, which are expected to use approximately 1,176,175 MWh of electric energy per year. This would be an approximate 81% increase in size for CEA, relative to the anticipated retail sales volume associated with CEA's current membership. The aggregate peak demand of these prospective accounts is estimated at 256 MW.[4]

Table 2: 2021 Cities' Electric Data

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (kWh)
Residential	132,398	549,373	346
Commercial/Industrial	14,333	610,171	3,548
Agricultural	115	7,937	5,751
Street Lighting	520	8,695	1,393
Total	147,366	1,176,175	665
[redacted]			

*Estimate based on CEA customer hourly usage profiles.

As compared to the current CEA customer base, summarized in Table 3 below, the Cities have a slightly larger residential sector and a smaller commercial sector. The Cities' residential customers tend to be

[3] 2020 data were excluded due to customer usage anomalies introduced by the Covid-19 pandemic.

[4] These figures reflect bundled electric customers of SDG&E and exclude customers taking service from non-utility energy providers (namely, direct access service providers) as well as certain accounts on generation service contracts that are not expected to transition to CEA service. These figures are unadjusted for expected customer attrition (customer elections to "opt-out").

lesser users of energy than those in CEA's current service area, with 13% lower average monthly consumption, whereas the commercial customers are similar in total average consumption.

Table 3: Projected Annual CEA Electricity Data – Current Membership

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (kWh)
Residential	125,372	597,177	397
Commercial/Industrial	19,382	827,998	3,560
Agricultural	280	18,147	5,401
Street Lighting	519	10,015	1,608
Total	145,553	1,453,337	832
Peak Demand (MW)			332

As illustrated in Figures 1 and 2 below, electricity usage within the Cities shows slightly less seasonality relative to the current CEA customer base, with a flatter shape of overall consumption across the year. These usage characteristics are likely due to cooling loads driven by climate differences between the two geographic areas.

Figure 1: 12-Month Hourly Load Profile (kW) for the Cities

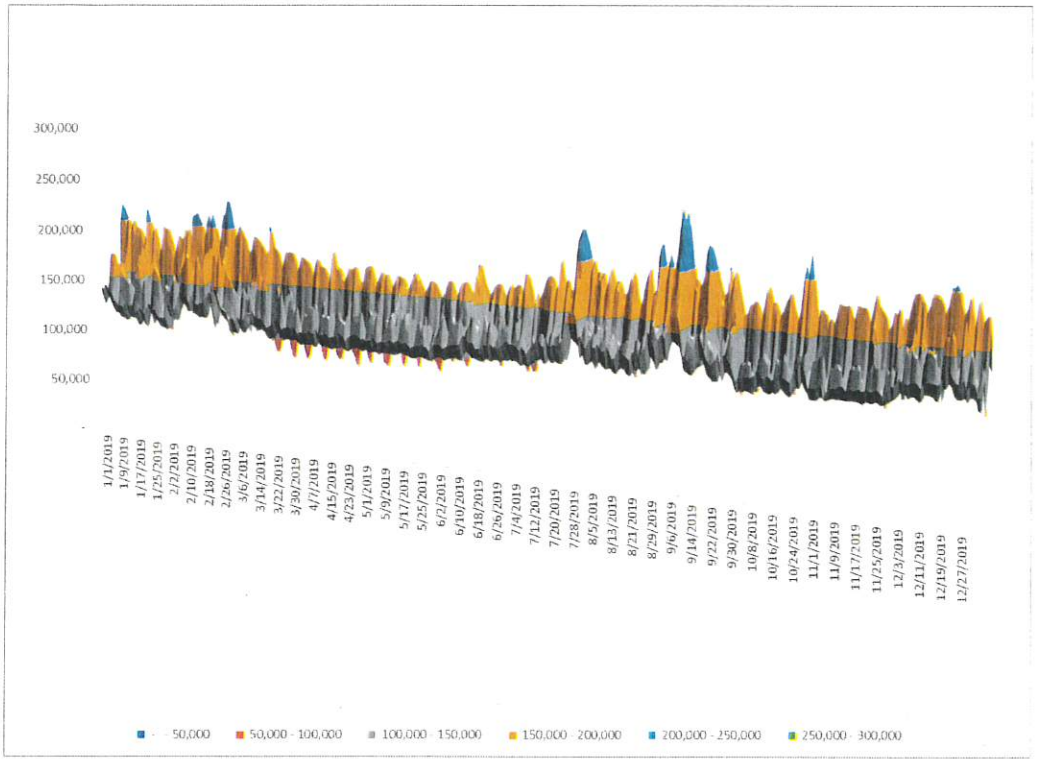
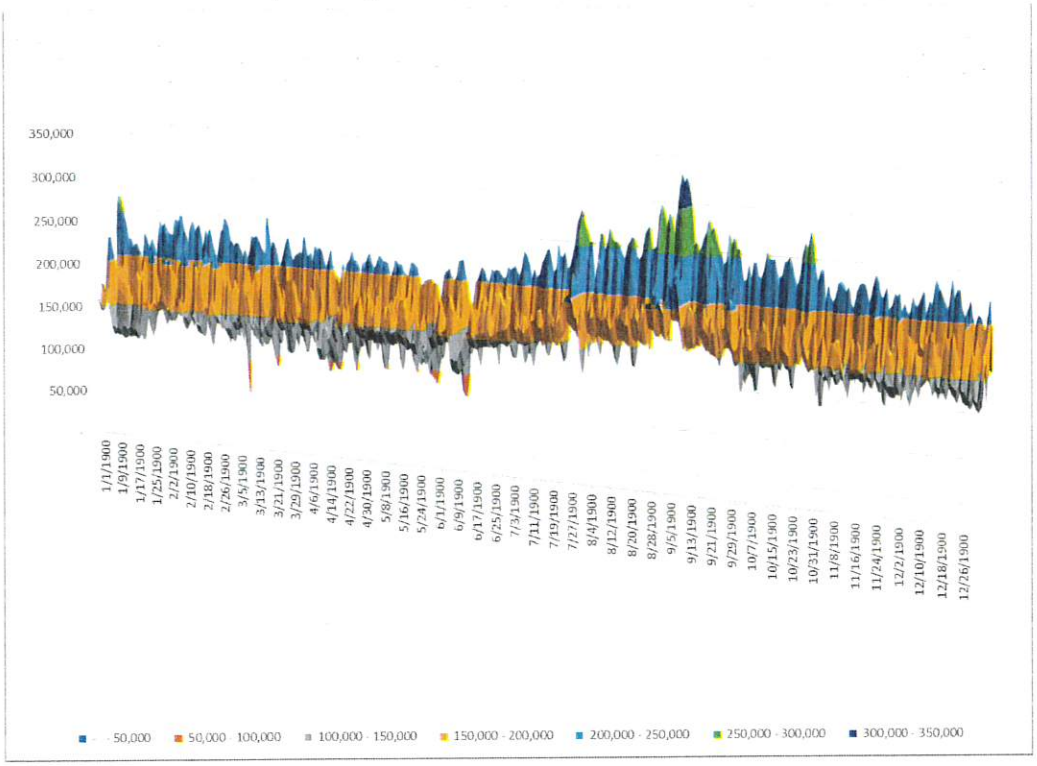


Figure 2: 12-Month Hourly Load Profile (kW) of CEA's Current Customer Base



FISCAL IMPACTS

For purposes of the fiscal impact analysis, it was assumed that service would be initiated to the Cities in April 2024 and that 90% of eligible accounts would choose to participate (with the remaining 10% electing to opt-out, continuing to receive bundled electric service from the incumbent utility). The exception to this opt-out assumption is reflected in the Street Lighting class, which is assumed at a 100% enrollment rate. This would equate to an increase in annual CEA electricity sales of 1,070 GWh, or approximately 74% relative to pre-2024 expansion sales. In order to quantify anticipated financial impacts to CEA, the incremental revenues and costs associated with the prospective service expansion were examined. More specifically, the year of enrollment and the next two fiscal years following expanded service, i.e., the period beginning April 1, 2024, through June 30, 2026, were analyzed to determine likely fiscal impacts over a multi-year planning period.

The incremental revenue surplus - based on the difference between projected revenues and costs directly related to the addition of the Cities' accounts - represents the expected fiscal benefit related to expansion. Incremental revenues were projected based on forecasted electricity sales and current CEA rates. The incremental cost analysis accounts for requisite power supplies that would be required to serve accounts within the Cities, increased customer billing charges, customer service support (call center), additional CEA staffing, SDG&E service fees, and required customer notices associated with serving additional customers.

Table 4 reflects the estimated incremental fiscal impact during each of the first three fiscal years commencing with (and immediately following) enrollment of the Cities' accounts.

Table 4: Incremental Fiscal Impact Related to Prospective Expansion

	FYE 2024[5]	FYE 2025	FYE 2026
Revenue ($MM)	$20.51	$110.34	$110.89
Power Costs ($MM)	-$18.48	-$104.43	-$102.29
Staffing ($MM)	-$0.35	-$0.35	-$0.35
Other Costs ($MM)	-$0.83	-$2.76	-$2.77
Subtotal: Operating Margin	**$0.85**	**$2.79**	**$5.48**
Reserves (targeted)	-$1.03	-$5.52	-$5.54
Net Deficit ($MM)	**-$0.18**	**-$2.72**	**-$0.06**
Incremental Sales Volume (MWh)	204,081	1,072,587	1,077,950

In consideration of current market conditions and assuming continuation of current CEA rates, adding the Cities accounts to CEA's current customer base is projected to generate a revenue surplus when compared to anticipated operating expenses; however, the operating margin would not be at a level that meets CEA's current 5% reserve contribution targets. It is estimated that expanding CEA service to the Cities would increase reserves by $9.12 million across the first three fiscal years impacted by the expansion, equivalent to a 3.8% reserve contribution. It is worth noting that power supply costs and CEA rates may change over time, and to the extent such changes occur, actual net revenues could materially differ from the net revenue projections reflected in Table 4 (above).

WHOLESALE POWER PRICE SENSITIVITY

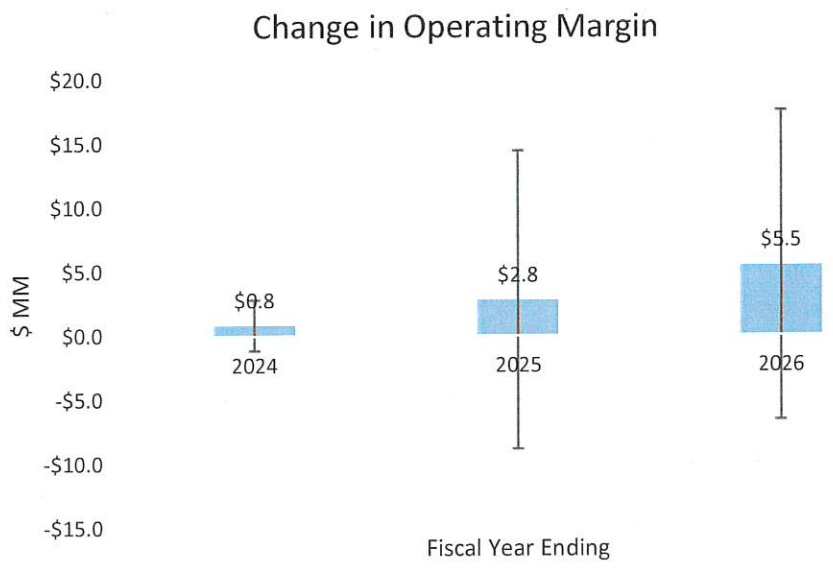
Changes in market prices for electricity represent the single greatest uncertainty that could impact the projected benefits related to expansion. Electricity is a commodity, traded in a highly volatile market, and prices could materially change before CEA is ready to contract for the power supply needed to serve anticipated Cities' electric loads. Commodity price risk is inherent in the electric utility industry and is not unique to expansion, but expansion imposes challenges with respect to the timing of electricity purchases as well as the timing associated with a final/definitive determination regarding the expansion itself. This is not unlike the challenges CEA (or any Community Choice Aggregator) faced during its initial startup period. CEA utilizes professional risk management approaches and forward hedging contracts to mitigate commodity price risk for its existing customers; however, adverse price movements that may occur before CEA initiates power purchases for the Cities' load, could drive up costs and result in negative margins.

Utilizing historical volatility in wholesale power market prices, a likely range of potential power supply costs and resulting net margins can be calculated. Figure 3 shows the base case operating margins and error bars representing one standard deviation in power supply costs, assuming CEA does not initiate procurement until March 2023, the month during which the CPUC would be expected to certify CEA's Implementation Plan amendment addressing expansion to the Cities. Over this eleven-month period

[5] Reflects partial year of service for fiscal year ending June 20, 2024, with enrollments assumed to commence on April 1, 2024.

(between the date of this Expansion Assessment and March 2023), the estimated change in market prices at one standard deviation of variation is approximately 10% relative to base case assumptions. As reflected in Figure 3 (below), the likely range of operating margin outcomes is wide, ranging from negative $9 million to positive $17 million.

Figure 3: Net Surplus Sensitivity to Changes is Power Prices



RESOURCE IMPACTS

Similar to the procurement approach used to support CEA's current customers, CEA would need to acquire various energy products to serve the Cities – it is assumed that the proportionate acquisition of such resources would occur over time through the application of a laddered hedging strategy, as followed under CEA's risk management program. These energy products include Renewable Energy, Other Carbon Free Energy (e.g., large hydro-electric), System Energy, and Resource Adequacy capacity. The quantities will vary over time and are summarized in Table 5 below for a representative year.

Table 5: Summary of Resources Needed to Serve the Cities

Product	Quantity	Units	Notes
Renewable Energy	630 GWh	GWh Per Year	Approx. half must be from long-term commitments (>= 10 years) per RPS rules
Other Carbon Free	110 to 200 GWh	GWh Per Year	Higher end of range would be needed to offset emissions attributed to PCC2 renewable energy products; lower use of PCC2 products will reduce need for Other Carbon Free volumes
Resource Adequacy, System	195 MW	MW per Month, September Peak	
Resource Adequacy, Local	160 MW	MW Per Month	

Under California's RPS rules, a significant portion of renewable energy purchases must be secured through contractual commitments of at least ten years in duration. Compliance with the RPS program is measured over multi-year compliance periods, and the earliest the expansion could occur would be during Compliance Period 4 (2021-2024). As shown below, RPS compliance would require an increase in renewable energy purchases during Compliance Period 4 of 337 GWh, of which 219 GWh would have to be associated with long-term commitments. Note that CEA has voluntarily adopted higher renewable energy targets than required by the RPS program, so the total renewable energy needed to meet CEA policy is greater than the figures shown below.

Current CEA Membership					
Compliance Period 4	**2021**	**2022**	**2023**	**2024**	**Total**
Retail Sales (GWh)	399	662	1,267	1,489	3,816
Gross RPS %	35.8%	38.5%	41.3%	44.0%	*41.3%*
Required RPS (GWh)	143	255	523	655	1,576
Gross RPS LT %	65.0%	65.0%	65.0%	65.0%	65.0%
Gross LT RPS	***93***	***166***	***340***	***426***	***1,024***

Current CEA Membership Plus the Cities					
Compliance Period 4	**2021**	**2022**	**2023**	**2024**	**Total**
Retail Sales (GWh)	399	662	1,267	2,255	3,816
Gross RPS %	35.8%	38.5%	41.3%	44.0%	*41.7%*
Required RPS (GWh)	143	255	523	992	1,913
Gross RPS LT %	65.0%	65.0%	65.0%	65.0%	65.0%
Gross LT RPS	***93***	***166***	***340***	***645***	***1,243***

RESOURCE AVAILABILITY

Accommodating the Cities' expansion will require careful consideration of resource availability, particularly for resource adequacy and long-term renewable energy products. An important element of resource procurement will be the ability to access resources currently held by SDG&E for the benefit of the Cities' customers. When Cities customers transition to CEA service, SDG&E should have surplus resource adequacy and long-term renewable energy supply, so CEA will need to arrange for the acquisition of such supply to facilitate applicable compliance mandates. If no transfer of resources occurs, either by sale or some form of allocation, CEA would risk being unable to meet its regulatory obligations associated with the increased load associated with Cities' expansion.

Under existing regulation, SDG&E is required to have 100% of the local resource adequacy capacity associated with its current customer base two years forward and 50% in the third year. With the well-known shortages of local resource adequacy capacity in the San Diego/Imperial Valley area, this virtually assures that accessing local RA resources held by SDG&E will be required if CEA is to meet its increased local RA obligations associated with the Cities' load.

With respect to renewable energy availability, the resource constraint would primarily relate to the long-term renewable energy requirement for Compliance Period 4. PEA understands that CEA will soon have an opportunity to pursue an allocation of SDG&E's existing RPS portfolio, as described in Commission Decision 21-05-030, which was adopted on May 20, 2021. Participation in this allocation process is voluntary and certain volumes would be eligible to satisfy long-term renewable energy procurement mandates pertaining to CEA. Additional details related to this process are forthcoming with initial allocations expected to occur during the 2023 calendar year. To the extent that CEA can arrange such an allocation to address the increased renewable energy requirements relating to the Cities' expansion, incremental procurement obligations would be somewhat diminished. If CEA chooses to forgo the aforementioned allocation opportunity, CEA would need to enter into long-term contracts for renewable energy starting in 2024, coincident with (or shortly after) the enrollment of Cities customers. Development timelines for new renewable generating projects, however, would likely extend a minimum of 24 to 36 months following the administration of a related solicitation for such supply. Depending on how early CEA begins its procurement efforts, this could mean that new-build renewable projects may

not commence operation until the 2025 or 2026 calendar years (if CEA waited until it received the CPUC's implementation plan certification before pursuing long-term renewable energy solicitation efforts related to Cities expansion). If the earliest delivery for new long-term contracts occurs after 2024, associated renewable energy deliveries could not be used in Compliance Period 4. The RPS program makes no accommodations for significant load increases, and there are severe penalties for not meeting the long-term contracting obligation.

In light of the resource availability issues described above, it would be advisable to engage with SDG&E early in the process to ensure that appropriate resource transfers and/or the previously described renewable energy allocation process can be timely accommodated. Postponing mass enrollment of the Cities customers into the early timeframe of Compliance Period 5 (2025-2027) would be advised if it is deemed that sufficient resources would not be available for CEA to achieve its Compliance Period 4 requirements.

CAPITAL AND LIQUIDITY IMPACTS

Although relatively minimal, additional costs related to the prospective expansion would be incurred during the fiscal year preceding enrollment of the Cities' accounts. These costs would relate to marketing and outreach activities, customer noticing, regulatory and legal representation, internal operations, resource planning and electric procurement activities that would be necessary to successfully integrate the Cities and their customers in CEA's organization. There would also be increased working capital requirements to address changes in cash flow. It is currently projected that CEA will not have sufficient cash liquidity to internally fund pertinent activities related to the prospective expansion; the current analysis projects a minimum of $7.6 million in additional funding would be needed.

CONCLUSIONS

This assessment concludes that under current base case assumptions the expansion would yield positive operating margins and reserve contributions, but at a level below CEA's 5% reserve contribution target. Due to wholesale market volatility, the likely range of outcomes is wide under scenarios reflecting typical power price variability. Extending service to the Cities could increase CEA's sales volume by over 80% and would require a meaningful increase in CEA resource acquisition. Advance coordination with SDG&E for resource adequacy and long-term renewable energy resource transfers would be strongly advised to ensure CEA has the resources necessary to meet its regulatory obligations associated with an increase in load. Among other resource implications, the expansion would increase CEA's long-term RPS compliance obligations, and meeting these heightened obligations during Compliance Period 4, which spans 2021-2024, would be of immediate importance. Postponing mass enrollment of the Cities customers into the early timeframe of Compliance Period 5 (2025-2027) should be considered to reduce the risk that sufficient resources might not be available for CEA to achieve its Compliance Period 4 requirements. It is highly likely that local resource adequacy and long-term renewable energy would need to be obtained from SDG&E to facilitate the transfer of customers to CEA.