



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** May 10, 2016

From: Joseph Moon **Item No:** 10
Environmental & Transit Services Manager
Environmental & Transit Services Department

Subject: COMMUNITY CHOICE AGGREGATION (CCA) IMPLEMENTATION
PLAN PROPOSAL

T.M. Approval: _____

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

- 1) Staff recommends that the Town Council approve the Community Choice Aggregation (CCA) Implementation Plan proposal, authorize the Town Manager to execute the contract with Pacific Energy Advisors in the amount of \$265,000 and provide CCA Declaration to Southern California Edison of the Town's intent to pursue a CCA program for the Town.
- 2) Approve Budget Adjustment 16-23 in the amount of \$265,000.

SUMMARY:

The Town contracted with Pacific Energy Advisors in September 2015, to conduct a Community Choice Aggregation (CCA) feasibility study to determine if establishing a CCA would be viable for the Town. A previous CCA feasibility study conducted in 2010 determined that given the power purchase costs and associated fees, establishing a CCA was not in the best interest of the Town at that time. Subsequently, the feasibility study conducted in September 2015 has shown a much different result. The September study along with an updated study performed in December 2015, indicated that formation of a CCA is now very feasible for the Town. Based upon that study, Pacific Energy Advisors has prepared an Implementation Plan that will guide the Town in establishing a CCA. Staff recommends that the Town Council approve the Community Choice Aggregation (CCA) Implementation Plan proposal, authorize the Town Manager to execute the contract with Pacific Energy Advisors and provide CCA Declaration to Southern California Edison of the Town's intent to pursue a CCA program for the Town.

BACKGROUND:

In 2001 the Town Council recognized the deregulation of the utility industries in California and identified numerous potential benefits that would be derived from providing a municipally owned utility including additional revenues and competitive rates for citizens and businesses.

On April 10, 2001, the Town Council adopted a Resolution (2001-22) authorizing the creation and operation of a municipally owned utility for the purpose of providing various utility services to areas of the Town. This request is to authorize the implementation of a CCA program that will service all residents and businesses within the Town's boundaries.

The establishment of a CCA has the potential of lowering the electrical rates for customers within the CCA area, plus help spur job creation within the Town. The CCA implementation does not require the generation or transmission of electricity. Generation and transmission of power requires substantial start-up costs and maintenance. Instead, an Apple Valley CCA will allow for wholesale purchase of power thereby providing cost savings for residents and employers without the expense of costly transmission equipment, service personnel or meter reading. Those responsibilities would remain the obligation of Southern California Edison.

Upon implementation and establishment of the CCA, Apple Valley residents and customers will still receive their billing and services from Southern California Edison (SCE), however their rates would be determined by the Town based upon purchase contracts negotiated with electric power producers. In addition to anticipated savings by homeowners, an Apple Valley CCA will immediately elevate the competitiveness of the Town in job and business attraction by offering potential businesses substantial savings in lower energy rates.

All customers within the Town would be automatically enrolled in the CCA and the CCA becomes the community's default provider of electrical supply. However, each customer can choose to opt-out and return to Southern California Edison for generation service at any time. State law requires that customers receive several customer enrollment notifications prior to and immediately after a CCA program launches. At any time after the initial launch period, a CCA customer may return to Edison's utility generation service.

UTILITY PROVIDER BACKGROUND:

Californians generally receive their electricity service from one of three types of providers: investor-owned utilities (IOUs), local publicly owned electric utilities, or electric service providers (ESPs). These provide 68 percent, 24 percent, and 8 percent, respectively, of retail electricity service in the state.

Investor-Owned Utilities. The investor owned utilities are owned by private investors and provide electricity service for profit. The three largest electricity Investor owned utilities in the state are Pacific Gas and Electric (PG&E), Southern California Edison, and San Diego Gas and Electric. Each IOU has a unique, defined geographic service area and is required by law to serve customers in that area. The California Public Utilities Commission (CPUC) regulates the rates charged by Investor owned utilities and how they provide electricity service to their customers.

Publicly Owned Utilities. Publicly owned electric utilities are public entities that provide electricity service to residents and businesses in their local area. While not regulated by CPUC, publicly owned electric utilities are governed by locally elected boards which set their own terms of service, including the rates charged to their customers. Electricity service is currently provided by local governments through several different governmental structures authorized under state law, including:

- Utility departments of cities, such as the Los Angeles DWP.
- Municipal utility districts, such as the Sacramento Municipal Utility District (SMUD).
- Public utility districts, such as the Truckee Donner Public Utility District.
- Irrigation districts, such as the Imperial Irrigation District.

Electricity Service Providers. The ESPs provide electricity to customers who have chosen not to receive electricity from the IOU or publicly owned utility that would otherwise serve their geographic area. Under this approach, an electricity customer enters into what is termed a "direct access" contract with an ESP that delivers electricity to the customer through the local utility's transmission and distribution system.

Community Choice Aggregation. In addition to the electric service providers arrangements discussed above, State Assembly Bill 117 (AB 117) permits cities and counties to participate in Community Choice Aggregation (CCA). This law allows a city or a county, or a joint power authority, to arrange to provide electricity within their jurisdiction through a contract with an electricity service provider (ESP) other than the investor owned utility that would otherwise serve that local area.

According to LEAN Energy US., there are currently three options under which a CCA program can be managed in California. The most common approach is through an inter-jurisdictional joint powers agency (JPA) that serves as a public, non-profit agency on behalf of the municipalities that choose to participate in the CCA program. This is the model under which Marin Clean Energy and Sonoma Clean Power operate. A second option is a single city or county CCA structured through an Enterprise Fund; this is the model under which Lancaster Energy Choice operates. In this option, the CCA is managed "in house" as a separate program/fund within existing municipal operations. A third option involves commercial, third party management where the CCA's operations are delegated by contract to a private firm. It is important to note that regardless of administrative structure, the assets and liabilities of the CCA program remain separate from those of the County or City general funds, and financial liability is mitigated by

specific JPA ordinance and vendor contract language that protects municipal assets. The feasibility study conducted for the Town envisioned the single city option, similar to the Lancaster model.

CONCLUSION:

In summary, by creating a Community Choice Aggregation program, the Town will be in the unique position of being able to shop for the most competitive electricity rates, and be able to choose our own electrical power provider. In the long term, if the CCA is implemented, it may result in additional savings to the residents of our community as well as serve as an economic development incentive tool. The ability to control and be able to reduce rates to attract desirable industry and create substantial jobs would serve as a significant economic impetus.

The services that will be provided by Pacific Energy Advisors (PEA) are outlined in the attached Implementation Plan. PEA is a recognized leader in CCA establishment and has participated with the majority of currently operating CCA's. Also attached is the proposed contract between the Town and PEA authorizing a not to exceed amount of \$265,000. In addition, the Town is required to provide a CCA Declaration signed by the mayor to inform Edison of the Town's desire to pursue a CCA.

Staff recommends that the Town Council approve the Community Choice Aggregation (CCA) Implementation Plan proposal, authorize the Town Manager to execute the contract with Pacific Energy Advisors and provide CCA Declaration to Southern California Edison of the Town's intent to pursue a CCA program for the Town.

ATTACHMENTS:

1. CCA Implementation Plan Proposal
2. Pacific Energy Advisors Contract
3. CCA Declaration to Southern California Edison
4. Budget Amendment No. 16-23



February 24, 2016

Mr. Joseph Moon
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley CA 92307

Dear Mr. Moon,

Pacific Energy Advisors, Inc. ("PEA") is pleased to provide this letter proposal for consulting services to assist the Town of Apple Valley ("Town") in the design and implementation of a community choice aggregation (or "CCA") program.

Scope of Work

PEA will provide consulting and technical services during the Town's implementation of a CCA program, which is anticipated to culminate with the commencement of CCA service in the spring of 2017. It is anticipated that work would be separated into three phases, subject to separate task orders/work authorizations, and that progression to each subsequent phase would be contingent upon the successful outcome of prior phases. This phased approach reduces implementation risk to the Town and allows for greater control, as costs are only incurred if the program is progressing successfully.

PHASE 1 TASKS - PROGRAM DESIGN AND IMPLEMENTATION PLANNING

Task 1.1 Implementation Plan

Background

As specified in the California Public Utilities Code (Section 366.2.(c)(3)), the Community Choice Aggregation Implementation Plan and Statement of Intent is a prerequisite of CCA formation. This document will describe key elements of the CCA program, including:

- An organizational structure of the program, its operations, and its funding;
- Rate setting and other costs to participants;
- Provisions for disclosure and due process in setting rates and allocating costs among participants;
- The methods for entering and terminating agreements with other entities;
- The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures;
- Termination of the program; and

- A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

Tasks

PEA shall develop and complete the following key tasks in collaboration with Town staff to prepare a statutorily responsive plan:

- Facilitate discussion(s) with Town leadership to develop key elements of the Plan, including but not limited to retail product offerings (e.g., default product mix and voluntary green pricing option), customer phase-in and rate-related considerations;
- Develop and maintain an operating pro forma and cash flow financial model related to CCA operations;
- Prepare draft Implementation Plan document;
- Coordinate with designated staff of the California Public Utilities Commission ("CPUC") regarding any questions/comments that may arise in relation to the Implementation Plan; assist the Town in addressing such inquiries; and
- Monitor the CPUC certification process to ensure timely review.

The estimated budget for the Implementation Plan task is \$60,000.

PHASE 2 TASKS - POWER SUPPLY AND SERVICES CONTRACTING

Task 2.1 Supplier Selection and Contracting

Background

Prior to serving customers, the Town will need to secure requisite energy products and services, including shaped energy (i.e., a quantity of energy delivered by the supplier(s) according to an agreed upon schedule), resource adequacy capacity (i.e., reserve capacity required to meet mandatory compliance obligations for CCAs and other load serving entities), renewable energy, carbon-free energy (if applicable), scheduling coordinator services (which will be required to facilitate participation in California's wholesale energy market) and data management services (which will be required to facilitate customer service support, billing, data management and reporting among other important functions). For California's operating CCA programs, such energy products and services have typically been procured via competitive solicitation processes, which have resulted in the identification of highly qualified product and service providers at prevailing market prices. PEA has direct experience in assisting each operating CCA

program with such solicitation processes and related contract negotiations, successfully securing necessary energy products and services for each CCA program.

Tasks

PEA shall develop and complete the following key tasks in collaboration with Town staff related to supplier selection and related contracting:

- Develop a detailed load forecast utilizing recent SCE customer information for all eligible customers;
- Determine desired energy and capacity quantities, which would supply aggregate customer requirements, including anticipated participation in default and voluntary retail service options;
- Prepare draft solicitation materials, including a Request for Proposals/Offers document and related bid workbooks (which will provide an organized, uniform framework for bidder responses), to support the procurement of necessary energy and capacity products as well as scheduling coordinator services;
- Prepare draft solicitation materials, including a Request for Proposals/Offers document and related bid workbooks to support the procurement of necessary data management services;
- Assist the Town in developing and finalizing form transaction documents for desired products and services;
- Evaluate offers received in response to the aforementioned solicitation processes and assist the Town in selecting the preferred supplier(s) of such products and services;
- In conjunction with the Town's selected legal counsel, support contract negotiation for desired products and services;
 - Note: PEA recommends that the Town retain the services of qualified legal counsel to support pertinent contract negotiations; the provision of such services is not included in the following budget estimate.
- Support "go/no-go" decision to launch the CCA program based on final power supply prices and then-current SCE retail electric rates; and
- Perform necessary coordinative activities with the Town's selected supplier(s) during startup.

The estimated budget for the Supplier Selection and Contracting task is \$75,000.

Task 2.2 Start-up Funding

Background

Based on the Town's recently completed feasibility assessment, it is anticipated that various startup costs will be incurred prior to service commencement. Because the Town will not be receiving customer revenues during this startup period, it will be necessary to self-finance related expenses and/or secure third-party financing (via loan or access to a sufficient line of credit) to support a successful launch. PEA has assisted certain operating CCA programs with such efforts, providing insight regarding expected financial performance and general operations during meetings with prospective financiers. PEA has deep experience with California aggregation programs and has been effective in addressing various questions and concerns during such financing discussions.

Tasks

To support the Town's startup funding discussions, PEA will complete the following activities:

- Quantify initial financing requirements based on the selected customer phase-in schedule and other parameters; and
- Support negotiations with prospective financiers (for bank loans or other funding sources).

The estimated budget for the Startup Funding task is \$10,000.

PHASE 3 TASKS - RATESETTING AND PRE-LAUNCH SUPPORT

Task 3.1 Program Development

Background

The Town may wish to offer certain complementary programs that would be designed to support local distributed renewable infrastructure buildout, including customer-sited renewable generation (i.e., behind-the-meter rooftop solar, which would be installed for the primary purpose of reducing a customer's reliance on off-site energy sources) and smaller-scale wholesale renewable generators, which would supplement other wholesale supply sources. Both Marin Clean Energy (MCE) and Sonoma Clean Power (SCP) have been successful in developing and administering such programs, supporting expedited buildout of clean energy sources within the respective service territories of each program, and PEA has been instrumental in working with these programs during the design of related tariffs and program descriptions.

Tasks

To promote the successful development and administration of the Town's complementary energy programs, which are expected to include a Net Energy Metering ("NEM") and Feed-In Tariff ("FIT") offering, PEA will complete the following activities:

- Prepare a draft NEM tariff, including applicable tariff language and sample customer impact analyses;
- Prepare a draft FIT, including applicable project eligibility criteria, pricing schedules and an appropriate power purchase agreement (which will be developed in conjunction with the Town's designated power contracting counsel);
- Coordinate with the Town's selected data management services provider to ensure the effective implementation of NEM rates and related bill calculations; and
- Coordinate with the Town's selected Qualified Reporting Entity to ensure that energy production from FIT projects is appropriately communicated to and tracked within the Western Renewable Energy Generation Information System ("WREGIS").

The estimated budget for the Program Development task is \$20,000.

Task 3.2 Regulatory Registrations and Compliance Systems

Background

As a Load Serving Entity ("LSE") within the state of California, the Town will be required to comply with a variety of regulations, including participation in certain reporting programs administered by the CPUC and California Energy Commission ("CEC"). While certain of these reporting programs will not be applicable until the second year of operation, other programs will require attention prior to service commencement or shortly thereafter. In particular, the annual electric load forecast (as it relates to future reserve capacity, also known as "resource adequacy," compliance obligations), WREGIS account registration, preparation of joint cost comparisons (a customer communication requirement created by SB 790) and preliminary power source disclosures will all require pre-launch completion.

Tasks

To ensure compliance with these requirements, PEA shall complete the following activities:

- Prepare a regulatory compliance calendar and reporting matrix to ensure that management has a thorough understanding of currently applicable technical reporting requirements and related submittal deadlines;

- Prepare load forecast and related filings to ensure compliance with California's resource adequacy program;
- Assist in completing requisite registration materials to become a WREGIS account holder - a WREGIS account will be necessary to track and report on renewable energy purchases for purposes of complying with California's Renewables Portfolio Standard program and substantiating procurement of renewable energy, generally speaking;
- Assist in becoming a candidate Congestion Revenue Rights ("CRR") holder with the California Independent System Operator ("CAISO") - CRRs may help mitigate certain financial risks and reduce costs associated with energy delivery within the CAISO market; and
- Assist in preparing requisite customer cost comparisons, which indicate the cost comparative cost impact of taking service with the CCA program relative to SCE, and prospective power source disclosures.

The estimated budget for the Regulatory Registrations and Compliance Systems task is \$20,000.

Task 3.3 Rate Setting

Background

Establishing initial customer rates will be a key task during the pre-startup phase. Such rates will be established in consideration of SCE's then-effective rates schedules under which prospective customers currently receive electric service. PEA has considerable experience in CCA rate setting activities, having supported all of California's operating CCA programs in this important endeavor. Effective rate setting will ensure that the CCA program is financially sustainable and able to fulfill its financial obligations while remaining competitive with the incumbent utility.

Tasks

PEA shall develop and complete the following work items:

- Develop preliminary and final revenue requirements for the first year of program operation;
- Prepare preliminary and final rate schedules for the first year of program operation; and
- Prepare CCA/SCE cost comparisons to ensure an understanding of anticipated customer cost impacts.

The estimated budget for the Rate Setting task is \$50,000.

Task 3.4 General Implementation Support

Background

During the startup phase, there may be a need for technical support with regard to a variety of implementation activities. PEA has provided such support on an as-needed basis to California's other CCA programs, ensuring that sufficient expertise is available to address a broad range of potential needs.

Tasks

PEA's general support may include, but is not limited to the following:

- Coordination with staff, suppliers and other contractors to ensure effective program launch;
- Prepare for and participate in Town Council meetings, providing technical support during key discussions and decision making; PEA would be available to assist staff in preparing meeting materials and presenting such materials at meetings;
- Coordination with pertinent jurisdictional regulatory agencies: to the extent that jurisdictional regulatory agencies have questions regarding applicable reports/submittals and/or general questions regarding CCA operations, PEA would be available to address such inquiries and/or participate in related meetings or teleconferences;
- Coordination with key customers: PEA would be available to participate in discussions/meetings with key customer accounts, providing technical expertise related to rates, resource planning, power supply and anticipated environmental impacts; and
- General as-needed advisory services.

The estimated budget for the General Implementation Support task is \$30,000.

Schedule

It is anticipated that the proposed scope for Phase 1 will be completed within six weeks of execution of a professional services agreement between the Town and PEA. The schedule for Phases 2 and 3 is dependent upon actions by the Town and completion is expected to occur over an approximate twelve month period, following completion of Phase 1.

About PEA

PEA was formed in November 2013 for the purpose of providing specialized consulting services to the electric utility industry with a focus on resource planning and procurement, contract negotiation and administration, analytics and advisory services.

PEA's principal consultants and founders, John Dalessi and Kirby Dusel, have more than 40 years of collective experience advising public agencies and private businesses within California and throughout the U.S. PEA's service offerings are tailored to organizations engaged in competitive electric service alternatives, such as community choice aggregation and direct access, as well as local government entities (including municipal utilities).

PEA represents unparalleled technical expertise related to CCA. We pride ourselves on the success of our clientele, which includes Marin Clean Energy (California's first CCA), Sonoma Clean Power (California's second CCA) and Lancaster Choice Energy (California's third CCA), and CleanPowerSF (California's fourth CCA) as well as many other communities considering CCA formation. These organizations have enjoyed tremendous success thus far, and we are very grateful for the opportunity to have supported each organization through virtually all phases of CCA development, including preliminary evaluation, organization, implementation, and ongoing operation.

CCA is a key focus of our business and has been since Assembly Bill 117 was passed by the California legislature in 2002. Since that time, PEA's consultants have supported CCA exploration (through their key role in the California Energy Commission's CCA Pilot Project), early adoption (through the work of PEA's founders with the Kings River Conservation District and San Joaquin Valley Power Authority), initial operation (through PEA's work with the Marin Clean Energy and Sonoma Clean Power programs) and ongoing CCA expansion (through PEA's work with Lancaster Choice Energy, CleanPowerSF and other communities).

PEA is headquartered in Folsom, CA within close proximity to the State Capitol, the California Energy Commission, the California Independent System Operator and other resource management agencies. At present, Pacific focuses business operations within the state of California.

Pricing and Fee Schedule

PEA will provide the services described in this proposal on a time and materials basis at the following hourly rates for professional services, subject to negotiation of mutually acceptable contract terms. Pre-approved travel and related expenses incurred during the completion of project work will be billed monthly with no markup.

PEA Rate Schedule

Staff	Hourly Rate
John Dalessi	\$295
Kirby Dusel	\$250
Brian Goldstein	\$205

Total budget for the aforementioned tasks is estimated as follows:

Estimated Budget

Phase	Budget
Phase 1	\$60,000
Phase 2	\$85,000
Phase 3	\$120,000

PEA appreciates the opportunity to assist the Town with the successful implementation of its CCA program. If you should have any questions concerning this proposal, please contact me at (916) 936-3301.



John Dalessi
President
Pacific Energy Advisors, Inc.

TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT

PARTIES AND DATE.

This Agreement is made and entered into this 10th day of May, 2016 by and between the Town of Apple Valley, a municipal corporation organized under the laws of the State of California with its principal place of business at 14955 Dale Evans Parkway, Apple Valley, California 92307 (“Town”) and Pacific Energy Advisors, Inc, a Limited Liability Corporation with a principal place of business at 3941 Park Drive, Suite 20-201, El Dorado Hills, CA 95762 (“Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing consultation services to public clients, is licensed in the State of California, and is familiar with the plans of Town

2.2 Project.

Town desires to engage Consultant to render such services for technical services during the Town’s implementation of a CCA program, which is anticipated to culminate with the commencement of CCA service in the spring of 2017. It is anticipated that work would be separated into three phases, subject to separate task orders/work authorizations, and that progression to each subsequent phase would be contingent upon the successful outcome of prior phases. (“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 Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional 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 May 10, 2016 to May 30, 2017, 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. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. 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. Town 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 Town and shall at all times be under Consultant's exclusive direction and control. 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, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

3.2.4 Substitution of Key Personnel. Consultant has represented to Town 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 Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town 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 Town, or who are determined by the Town 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 Town. The key personnel for performance of this Agreement are as follows: John Dalessi.

3.2.5 Town's Representative. The Town hereby designates Frank Robinson, Town Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town and make any necessary non-substantive changes for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the Town's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates John Dalessi, or his or 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 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.

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

3.2.8 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, including a Town Business License, 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 Town, 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 Town 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 Town, 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.

3.2.9 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 the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Town, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Town, its officials, directors, officers, employees, and agents 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.

3.2.9.1 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 Workers' 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.

3.2.9.2 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.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the Town 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 Town that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: 1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. N/A

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Town to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Town, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) insurer shall endeavor to provide thirty (30) days prior written notice of cancellation, suspension or reduction of coverage to the Town; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. Consultant shall guarantee that, at the option of the Town, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the Town.

3.2.10.8 Verification of Coverage. Consultant shall furnish Town with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Town if requested. All certificates and endorsements must be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the Town, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

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 as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving 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 Accounting Records. 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 Town 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 three (3) years from the date of final payment under this Agreement.

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 "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed Two Hundred, Sixty Five Thousand Dollars (\$265,000) without written approval of the Town Manager. 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 Town a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Town shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town 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 Town's Representative.

3.3.5 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 1600, 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. Town shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. 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 Town, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. Town may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and 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 Town, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Town 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.

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

3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town 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"). All Documents & Data shall be and remain the property of the Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Town reproducible copies of all Documents & Data, in a form and amount required by Town. Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination

provisions of this Agreement, Consultant shall provide all Documents & Data to Town upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that Town 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 its subconsultants, or those provided to Consultant by the Town.

3.5.3 Right to Use. Town shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at Town's sole risk. If Town uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Town upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Town of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of Town, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that 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 Town's name or insignia, photographs of the Project, or any materials 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 Town.

3.6 General Provisions.

3.6.1 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:

John Dalessi
Pacific Energy Advisors
3941 Park Drive, Suite 20-201
El Dorado Hills, CA 95762

Town:

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307
Frank Robinson, Town 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.

3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the Town, 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, resulting in personal injury,

physical damage to property or wrongful death, caused by 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 consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of Town's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Town or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse Town for the cost of any settlement paid by Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Consultant shall reimburse Town and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Town, its directors, officials, officers, employees, agents, or volunteers.

3.6.3 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

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

3.6.5 Town's Right to Employ Other Consultants. Town reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.7 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 Town. 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.

3.6.8 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 Town 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.

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

3.6.10 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.

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

3.6.12 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.

3.6.13 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. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the Town's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 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.

3.6.15 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.

3.6.16 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.

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

3.6.18 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.

[SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE
TO
TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT

TOWN OF APPLE VALLEY

Pacific Energy Advisors, Inc.

By: _____

Frank Robinson

Town Manager

By: _____

John Dalessi

Principal

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

APPROVED AS TO CONTENT:

Joseph Moon

Environmental and Transit Services Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

John Brown, Town Attorney

EXHIBIT "A"

SCOPE OF SERVICES

The following describes the tasks that will be undertaken by Pacific Energy Advisors, Inc. (PEA) in performing an analysis of the Town of Apple Valley forming a Community Choice Aggregation program. PEA will provide advice and technical support to Town staff in implementing a CCA program.

Scope of Work

PEA will provide consulting and technical services during the Town's implementation of a CCA program, which is anticipated to culminate with the commencement of CCA service in the spring of 2017. It is anticipated that work would be separated into three phases, subject to separate task orders/work authorizations, and that progression to each subsequent phase would be contingent upon the successful outcome of prior phases. This phased approach reduces implementation risk to the Town and allows for greater control, as costs are only incurred if the program is progressing successfully.

PHASE 1 TASKS – PROGRAM DESIGN AND IMPLEMENTATION PLANNING

Task 1.1 Implementation Plan

Background

As specified in the California Public Utilities Code (Section 366.2.(c)(3)), the Community Choice Aggregation Implementation Plan and Statement of Intent is a prerequisite of CCA formation. This document will describe key elements of the CCA program, including:

- ☐ An organizational structure of the program, its operations, and its funding;
- ☐ Rate setting and other costs to participants;
- ☐ Provisions for disclosure and due process in setting rates and allocating costs among participants;
- ☐ The methods for entering and terminating agreements with other entities;
- ☐ The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures;
- ☐ Termination of the program; and

☒ A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

Tasks

PEA shall develop and complete the following key tasks in collaboration with Town staff to prepare a statutorily responsive plan:

- ☒ Facilitate discussion(s) with Town leadership to develop key elements of the Plan, including but not limited to retail product offerings (e.g., default product mix and voluntary green pricing option), customer phase-in and rate-related considerations;
- ☒ Develop and maintain an operating pro forma and cash flow financial model related to CCA operations;
- ☒ Prepare draft Implementation Plan document;
- ☒ Coordinate with designated staff of the California Public Utilities Commission (“CPUC”) regarding any questions/comments that may arise in relation to the Implementation Plan; assist the Town in addressing such inquiries; and
- ☒ Monitor the CPUC certification process to ensure timely review.

The estimated budget for the Implementation Plan task is \$60,000.

PHASE 2 TASKS – POWER SUPPLY AND SERVICES CONTRACTING

Task 2.1 Supplier Selection and Contracting

Background

Prior to serving customers, the Town will need to secure requisite energy products and services, including shaped energy (i.e., a quantity of energy delivered by the supplier(s) according to an agreed upon schedule), resource adequacy capacity (i.e., reserve capacity required to meet mandatory compliance obligations for CCAs and other load serving entities), renewable energy, carbon-free energy (if applicable), scheduling coordinator services (which will be required to facilitate participation in California’s wholesale energy market) and data management services (which will be required to facilitate customer service support, billing, data management and reporting among other important functions). For California’s operating CCA programs, such energy products and services have typically been procured via competitive solicitation processes, which have resulted in the identification of highly qualified product and service providers at prevailing market prices. PEA has direct experience in assisting each operating CCA.

program with such solicitation processes and related contract negotiations, successfully securing necessary energy products and services for each CCA program.

Tasks

PEA shall develop and complete the following key tasks in collaboration with Town staff related to supplier selection and related contracting:

- ☑ Develop a detailed load forecast utilizing recent SCE customer information for all eligible customers;
- ☑ Determine desired energy and capacity quantities, which would supply aggregate customer requirements, including anticipated participation in default and voluntary retail service options;
- ☑ Prepare draft solicitation materials, including a Request for Proposals/Offer document and related bid workbooks (which will provide an organized, uniform framework for bidder responses), to support the procurement of necessary energy and capacity products as well as scheduling coordinator services;
- ☑ Prepare draft solicitation materials, including a Request for Proposals/Offer document and related bid workbooks to support the procurement of necessary data management services;
- ☑ Assist the Town in developing and finalizing form transaction documents for desired products and services;
- ☑ Evaluate offers received in response to the aforementioned solicitation processes and assist the Town in selecting the preferred supplier(s) of such products and services;
- ☑ In conjunction with the Town's selected legal counsel, support contract negotiation for desired products and services;
 - Note: PEA recommends that the Town retain the services of qualified legal counsel to support pertinent contract negotiations; the provision of such services is not included in the following budget estimate.
- ☑ Support "go/no-go" decision to launch the CCA program based on final power supply prices and then-current SCE retail electric rates; and
- ☑ Perform necessary coordinative activities with the Town's selected supplier(s) during startup.

The estimated budget for the Supplier Selection and Contracting task is \$75,000.

Task 2.2 Start-up Funding

Background

Based on the Town's recently completed feasibility assessment, it is anticipated that various startup costs will be incurred prior to service commencement. Because the Town will not be receiving customer revenues during this startup period, it will be necessary to self-finance related expenses and/or secure third-party financing (via loan or access to a sufficient line of credit) to support a successful launch. PEA has assisted certain operating CCA programs with such efforts, providing insight regarding expected financial performance and general operations during meetings with prospective financiers. PEA has deep experience with California aggregation programs and has been effective in addressing various questions and concerns during such financing discussions.

Tasks

To support the Town's startup funding discussions, PEA will complete the following activities:

- ☑ Quantify initial financing requirements based on the selected customer phase-in schedule and other parameters; and
- ☑ Support negotiations with prospective financiers (for bank loans or other funding sources).

The estimated budget for the Startup Funding task is \$10,000.

PHASE 3 TASKS – RATESETTING AND PRE-LAUNCH SUPPORT

Task 3.1 Program Development

Background

The Town may wish to offer certain complementary programs that would be designed to support local distributed renewable infrastructure buildout, including customer-sited renewable generation (i.e., behind-the-meter rooftop solar, which would be installed for the primary purpose of reducing a customer's reliance on off-site energy sources) and smaller-scale wholesale renewable generators, which would supplement other wholesale supply sources. Both Marin Clean Energy (MCE) and Sonoma Clean Power (SCP) have been successful in developing and administering such programs, supporting expedited buildout of clean energy sources within the respective service territories of each program, and PEA has been instrumental in working with these programs during the design of related tariffs and program descriptions.

Tasks

To promote the successful development and administration of the Town's complementary energy programs, which are expected to include a Net Energy Metering ("NEM") and Feed-In Tariff ("FIT") offering, PEA will complete the following activities:

- ☐ Prepare a draft NEM tariff, including applicable tariff language and sample customer impact analyses;
- ☐ Prepare a draft FIT, including applicable project eligibility criteria, pricing schedules and an appropriate power purchase agreement (which will be developed in conjunction with the Town's designated power contracting counsel);
- ☐ Coordinate with the Town's selected data management services provider to ensure the effective implementation of NEM rates and related bill calculations; and
- ☐ Coordinate with the Town's selected Qualified Reporting Entity to ensure that energy production from FIT projects is appropriately communicated to and tracked within the Western Renewable Energy Generation Information System ("WREGIS").

The estimated budget for the Program Development task is \$20,000.

Task 3.2 Regulatory Registrations and Compliance Systems

Background

As a Load Serving Entity ("LSE") within the state of California, the Town will be required to comply with a variety of regulations, including participation in certain reporting programs administered by the CPUC and California Energy Commission ("CEC"). While certain of these reporting programs will not be applicable until the second year of operation, other programs will require attention prior to service commencement or shortly thereafter. In particular, the annual electric load forecast (as it relates to future reserve capacity, also known as "resource adequacy," compliance obligations), WREGIS account registration, preparation of joint cost comparisons (a customer communication requirement created by SB 790) and preliminary power source disclosures will all require pre-launch completion.

Tasks

To ensure compliance with these requirements, PEA shall complete the following activities:

- ☐ Prepare a regulatory compliance calendar and reporting matrix to ensure that management has a thorough understanding of currently applicable technical reporting requirements and related submittal deadlines;

- ☒ Prepare load forecast and related filings to ensure compliance with California’s resource adequacy program;
- ☒ Assist in completing requisite registration materials to become a WREGIS account holder – a WREGIS account will be necessary to track and report on renewable energy purchases for purposes of complying with California’s Renewables Portfolio Standard program and substantiating procurement of renewable energy, generally speaking;
- ☒ Assist in becoming a candidate Congestion Revenue Rights (“CRR”) holder with the California Independent System Operator (“CAISO”) – CRRs may help mitigate certain financial risks and reduce costs associated with energy delivery within the CAISO market; and
- ☒ Assist in preparing requisite customer cost comparisons, which indicate the cost comparative cost impact of taking service with the CCA program relative to SCE, and prospective power source disclosures.

The estimated budget for the Regulatory Registrations and Compliance Systems task is \$20,000.

Task 3.3 Rate Setting

Background

Establishing initial customer rates will be a key task during the pre-startup phase. Such rates will be established in consideration of SCE’s then-effective rates schedules under which prospective customers currently receive electric service. PEA has considerable experience in CCA rate setting activities, having supported all of California’s operating CCA programs in this important endeavor. Effective rate setting will ensure that the CCA program is financially sustainable and able to fulfill its financial obligations while remaining competitive with the incumbent utility.

Tasks

PEA shall develop and complete the following work items:

- ☒ Develop preliminary and final revenue requirements for the first year of program operation;
- ☒ Prepare preliminary and final rate schedules for the first year of program operation; and
- ☒ Prepare CCA/SCE cost comparisons to ensure an understanding of anticipated customer cost impacts.

The estimated budget for the Rate Setting task is \$50,000.

Task 3.4 General Implementation Support

Background

During the startup phase, there may be a need for technical support with regard to a variety of implementation activities. PEA has provided such support on an as-needed basis to California's other CCA programs, ensuring that sufficient expertise is available to address a broad range of potential needs.

Tasks

PEA's general support may include, but is not limited to the following:

- ☐ Coordination with staff, suppliers and other contractors to ensure effective program launch;
- ☐ Prepare for and participate in Town Council meetings, providing technical support during key discussions and decision making; PEA would be available to assist staff in preparing meeting materials and presenting such materials at meetings;
- ☐ Coordination with pertinent jurisdictional regulatory agencies: to the extent that jurisdictional regulatory agencies have questions regarding applicable reports/submittals and/or general questions regarding CCA operations, PEA would be available to address such inquiries and/or participate in related meetings or teleconferences;
- ☐ Coordination with key customers: PEA would be available to participate in discussions/meetings with key customer accounts, providing technical expertise related to rates, resource planning, power supply and anticipated environmental impacts; and
- ☐ General as-needed advisory services.

The estimated budget for the General Implementation Support task is \$30,000.

Deliverables:

- Presentation to Town Council as necessary summarizing Implementation results.

EXHIBIT "B"

SCHEDULE OF SERVICES

The scope of services of the Implementation Plan will be completed within one (1) year of execution of the professional services agreement.

EXHIBIT "C"

COMPENSATION

The scope of services in the Implementation Plan will be completed within one year of execution of the professional services agreement at a cost not to exceed \$265,000, plus direct travel expenses that are prior agreed upon by both parties.

**DECLARATION BY MAYOR OR CHIEF COUNTY ADMINISTRATOR
REGARDING PURSUIT OR IMPLEMENTATION OF COMMUNITY CHOICE
AGGREGATION SERVICE**

I, _____ [name], state as follows:

1. I am the mayor or chief county administrator of

_____ [name of city or county].

2. I am authorized to make this declaration on behalf of

_____.

a city, or

county,

which is investigating, pursuing or implementing community choice aggregation as a community choice aggregator as defined by Section 331.1 of the California Public Utilities Code.

3. I understand that all of the confidential information provided by Southern California Edison Company to _____ (city or county) is subject to the terms and conditions of the Nondisclosure Agreement between these two entities and is provided for the sole purpose of enabling _____ (city or county) to investigate, pursue or implement community choice aggregation under Section 366.2 of the California Public Utilities Code.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this ____ day of _____, _____, at _____, _____ (city, state).

[signature]

COMMUNITY CHOICE AGGREGATOR

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is entered into by and between Southern California Edison Company (“Utility”) and _____, a _____ [describe political entity] (“CCA”) as of _____, 2005 (“Effective Date”). This Agreement is executed pursuant to California Public Utilities Commission (“CPUC”) Order Instituted Rulemaking (“OIR”) 03-10-003, California Public Utilities Code (“PU Code”) Section 366.2 et seq., and applicable Utility tariffs (as modified hereafter from time to time). As used herein Utility and CCA may each be referred to individually as a “Party” and collectively as “Parties.”

The CPUC has determined that CCA may obtain specified confidential customer information from Utility pursuant to Tariff Schedule Community Choice Aggregation – Information Fees (as modified hereafter from time to time) (“CCA-INFO”) as a Community Choice Aggregator, as defined by PU Code Section 331.1, solely in order to investigate, pursue or implement community choice aggregation pursuant to PU Code Section 366.2, et seq. The provisions of this Agreement and CCA-INFO govern the disclosure of Utility’s confidential customer information to CCA (“Disclosure Provisions”).

The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of Utility regarding customers of Utility (“Utility Customers”) may be disclosed to CCA from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purpose of investigating, pursuing or implementing community choice aggregation pursuant to PU Code Section 366.2, et seq. as a CCA. Such disclosure is subject to the following legal continuing representations and warranties by CCA:
 - (a) CCA represents and warrants that, pursuant to PU Code Section 331.1,
 - (1) it is either (i) a city or county whose governing board has elected to combine the loads of its residents, businesses, and municipal facilities in a community wide electricity buyers program or (ii) a city or county that intends to actively investigate or pursue delivery of electric service to customers located within the geographic territory of the CCA, and
 - (2) that to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq., it requires certain Confidential Information, as defined in Section 2, below;
 - (b) CCA represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;

- (c) CCA represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the CCA; and
 - (d) CCA confirms its understanding that the information of Utility Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes of investigating, pursuing or implementing Community Choice Aggregation Service under PU Code Section 366.2 as a community choice aggregator and that any other use of the information may permit Utility to suspend providing further information hereunder.
2. The confidential and proprietary information disclosed to CCA in connection herewith may include, without limitation, the following information about Utility Customers: (a) names; (b) addresses; (c) meter and other identification numbers; (d) account numbers; (e) telephone numbers; (f) electricity usage; and (g) other similar information specific to Utility Customers individually or in the aggregate (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by CCA or its representatives that are derived from or based on Confidential Information disclosed by Utility, regardless of the form of media in which it is prepared, recorded or retained.
 3. Except for electric usage information provided to CCA pursuant to this Agreement, Confidential Information does not include information that CCA proves (a) was properly in the possession of CCA at the time of disclosure; (b) is or becomes publicly known through no fault of CCA, its employees or representatives; or (c) was independently developed by CCA, its employees or representatives without access to any Confidential Information.
 4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by CCA, or used for any purpose other than to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq. as a CCA as permitted under this Agreement and the Disclosure Provisions.
 5. CCA shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Specifically, CCA shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of CCA who have a "need to know" such Confidential Information in the course of their duties with respect to the CCA program and

who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement, provided, however, that, an Energy Service Provider, agent, or any other entity, including entities that provide both direct access (as codified in Assembly Bill No. 1890, Stats. 1996, ch. 854) and Community Choice Aggregation services shall limit their utilization of the information provided to the purposes for which it has been provided and shall not utilize such information, directly or indirectly, in providing other services, including but not limited to Direct Access services, in order to effectuate the obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, CCA shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree in writing to be bound by the terms of this Agreement by signing the "Non-Disclosure Agreement for CCA Employees or Representatives" form attached as Exhibit A hereto. CCA shall provide Utility with copies of the signed Exhibit A forms at Utility request. CCA shall also provide Utility with a list of the names, titles, and addresses for all persons or entities to which Confidential Information is disclosed in connection herewith ("Disclosure List"). This Disclosure List shall be updated by CCA on a regular basis, and will be provided to Utility once each quarter at a minimum.

6. CCA shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Utility directly against such employees or representatives for improper disclosure and/or use. In no event shall CCA or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. CCA shall immediately notify Utility in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by CCA or any of its employees or representatives. However, nothing in this Agreement shall obligate the Utility to monitor or enforce the CCA's compliance with the terms of this Agreement.
7. CCA acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Utility and/or Utility Customers, the amount of which may be difficult to assess. Accordingly, CCA hereby confirms that the Utility shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by CCA or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Utility, in law or equity.
8. In addition to all other remedies, CCA shall indemnify and hold harmless Utility, its affiliates, subsidiaries, parent company, officers, employees, or agents from and against claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and

disbursements) attributable to actions or non-actions of CCA and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.

9. If, at any time, CCA ceases its investigation, pursuit or implementation of community choice aggregation pursuant to PU Code Section 366.2 et seq., CCA shall promptly return or destroy (with written notice to Utility itemizing the materials destroyed) all Confidential Information then in its possession at the request of Utility. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
10. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
11. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
12. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.
13. This Agreement shall, at all times, be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

SOUTHERN CALIFORNIA EDISON COMPANY

BY: _____

TITLE: _____

_____ [CCA name]

BY: _____

TITLE: _____

EXHIBIT A
NON-DISCLOSURE AGREEMENT
FOR CCA EMPLOYEES OR REPRESENTATIVES

I, _____, declare under penalty of perjury that

(1) I am employed as _____ (title) at _____
_____ (employer and address); and

(2) I have personally reviewed the attached **COMMUNITY CHOICE AGGREGATOR
NON-DISCLOSURE AGREEMENT** relating to disclosure and use of Confidential
Information (as defined therein) and I agree to be bound by its provisions.

Signed: _____

Print Name: _____

Dated: _____

EXHIBIT A
NON-DISCLOSURE AGREEMENT
FOR CCA EMPLOYEES OR REPRESENTATIVES

I, _____, declare under penalty of perjury that

(1) I am employed as _____ (title) at _____
_____ (employer and address); and

(2) I have personally reviewed the attached **COMMUNITY CHOICE AGGREGATOR**
NON-DISCLOSURE AGREEMENT relating to disclosure and use of Confidential
Information (as defined therein) and I agree to be bound by its provisions.

Signed: _____

Print Name: _____

Dated: _____

