



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** January 24, 2017

From: Joseph Moon, Public Services Manager **Item No:** 8
Public Services Department

Subject: APPROVAL FOR EEI MASTER POWER PURCHASE AGREEMENTS, CONFIRMATIONS, ASSOCIATED LOCKBOX AGREEMENTS AND AUTHORIZATION RESOLUTION FOR THE APPLE VALLEY CHOICE ENERGY (AVCE) CCA

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

1. That the Town Council approve the EEI Master Power Purchase Agreements, Confirmations and Associated Lockbox Agreements for the Apple Valley Choice Energy (AVCE) CCA.
2. That the Town Council adopt a resolution authorizing the Town Manager to execute Master Agreements with each of the three (3) short listed power suppliers with terms consistent with those contained in the attached agreements.

BACKGROUND:

In July 2016, Town staff at the direction of the Council solicited Requests for Proposals (RFP) for energy supply necessary to operate the Town's Community Choice Aggregation program, Apple Valley Choice Energy ("AVCE"). In August 2016, we received five (5) proposals and after interviews, contract negotiations commenced with three (3) power suppliers. The power supply proposals contained indicative pricing with the understanding that pricing will be refreshed after other terms and conditions are finalized and prior to agreement on any specific power purchase transactions. This is expected to occur after authorization by the Town Council, in preparation for the commencement of power sales to AVCE customers in April 2017.

AVCE is basing its power supply agreements on the industry-standard Edison Electric Institute Master Power Purchase and Sale Agreement ("Master Agreement"). The Master Agreement is a widely used standard form agreement containing general terms and

conditions for electric power transactions. The first section of the Master Agreement, known as the “Cover Sheet”, enables election of certain optional provisions and allows for modifications to the standard terms agreed to between the parties. Generally speaking, the Cover Sheet represents the product of negotiations that have occurred among the parties as those relate to the Master Agreement.

DISCUSSION:

Staff, working in close coordination with outside legal counsel and AVCE consultants, has negotiated Master Agreements with three (3) power suppliers, which will enable AVCE to purchase energy from a diverse set of suppliers from the outset of AVCE operations. These power suppliers are listed as follows:

- Exelon Generation Company, LLC (a.k.a. Constellation)
- Energy America, LLC (a.k.a. Direct Energy)
- Shell Energy North America (US), L.P.

It is important to understand that execution of the Master Agreements does not itself obligate AVCE to purchase energy. Energy transactions will be made through written “Confirmations” setting forth the specific commercial terms associated with such purchase, including product, quantity, delivery term and price amongst other considerations. AVCE has negotiated Confirmations with each power supplier and anticipates finalizing the form of such Confirmations and any associated credit agreements after approval and authorization by the Town Council.

While the requested authority only relates to execution of the Master Agreements, it is helpful to have a contextual understanding of the full set of agreements that will be required to supply AVCE’s energy needs. The Power Supply Agreements include the following documents:

- The Edison Electric Institute Master Power Purchase & Sale Agreement: This is the master contract between AVCE and each power provider and includes standard, boilerplate terms and conditions, with modifications negotiated by the parties as well as certain global credit provisions.
- The Confirmations: These Agreements set forth the commercial terms and conditions of each separate energy purchase transaction. Once fully executed, the Confirmations will provide the price, quantity and delivery specifications for the energy, renewable energy and capacity being purchased by AVCE.
- The Intercreditor and Collateral Agency Agreement, the Security Agreement and the Deposit Account Control Agreement (“Lockbox Agreements”). These three (3) Agreements all relate to the creation of a “Multi-Party Lockbox”. Because AVCE is a new entity with few assets at this time, absent forms of credit assurance, power suppliers are generally unwilling to sell AVCE large volumes of energy. One form of assurance that AVCE can provide is agreeing to place ratepayer revenues into a “lockbox” with instructions that the power supplier has a priority interest in the ratepayer funds. The “Multi-Party Lockbox” will facilitate contracting with multiple power suppliers by allowing AVCE to authorize distribution of lockbox proceeds to more than one (1) power supplier. The lockbox is managed by a bank, acting as collateral agent for the benefit of the secured power suppliers.

Unlike the Master Agreements and Confirmations, which are negotiated and executed separately with each power supplier, there will be a single set of Lockbox Agreements for the benefit of all secured power suppliers. The three (3) power suppliers will be utilizing the lockbox credit structure and each of these, as well as the bank, must agree to the same set of Lockbox Agreements.

CONCLUSION:

Assuming Council authorization, the Town Manager intends to execute Master Agreements in substantially the same form as attached to this memorandum and AVCE will be well positioned to purchase energy from a diverse group of power suppliers. Following execution of the Master Agreements and once all terms and conditions of the other agreements are finalized, we will request updated pricing from the power suppliers and select among the best offers for execution of Confirmations.

FISCAL IMPACT:

There is no immediate fiscal impact with approval of the Master Agreement and Addendums for the lockbox. Future payments will be provided from funds collected from the operation of the AVCE program.

ATTACHMENTS:

1. Resolution No. 2017-03

The following documents are available to view in the Town Clerk's office:

2. The Edison Electric Institute Master Power Purchase & Sale Agreement
3. Confirmation Agreements for Commercial Terms and Conditions
4. Intercreditor and Collateral Agency Agreement

RESOLUTION NO. 2017-03

RESOLUTION OF THE APPLE VALLEY TOWN COUNCIL ON BEHALF OF APPLE VALLEY CHOICE ENERGY DELEGATING AUTHORITY TO THE TOWN MANAGER TO EXECUTE UNDER TERMS CONSISTENT WITH THOSE PREVIOUSLY PRESENTED TO THE COUNCIL EEI MASTER AGREEMENTS WITH EACH OF THE SHORT-LISTED ENERGY SERVICE PROVIDERS, CONFIRMATION AGREEMENTS WITH ONE OR MORE SHORT-LISTED ENERGY SERVICE SUPPLIERS, AND THE LOCKBOX AGREEMENTS WITH WILMINGTON TRUST BANK AND ONE OR MORE SHORT-LISTED ENERGY SERVICE SUPPLIERS

THE APPLE VALLEY TOWN COUNCIL ON BEHALF OF APPLE VALLEY CHOICE ENERGY HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Apple Valley Choice Energy (“AVCE”) was formed on September 13, 2016; and

WHEREAS, customer service commencement of the AVCE community choice aggregation program is planned for April 1, 2017; and

WHEREAS, AVCE administered a competitive process to select contractors capable of providing energy, renewable energy, and related products and services (the “Product”) from qualified energy service providers to support service commencement of the AVCE program with retail generation rates that are competitive to those currently offered by the incumbent utility, Southern California Edison; and

WHEREAS, as a result of this process, AVCE has identified three (3) energy service providers as having competitive proposals and the ability to meet the initial energy product and service requirements of the AVCE program: Energy America, LLC, Exelon Generation Company, LLC and Shell Energy North America (US), L.P. (each, an “Energy Service Provider” or “ESP” and, collectively, the “ESPs”);

WHEREAS, AVCE has negotiated a separate EEI Master Power Purchase and Sale Agreement (the “Master Agreement”) with each ESP;

WHEREAS, AVCE has also negotiated a form of Confirmation Agreement, which addresses the commercial terms and conditions associated with the anticipated energy product and service transaction that may be pursued with one (1) or more of the ESPs;

WHEREAS, a Confirmation Agreement is a financially binding agreement between an energy purchaser, such as AVCE, and an ESP, for the sale and purchase of specific quantities of designated types of energy products at specified prices for a defined period of time, and is subject to the terms and conditions of the Master Agreement;

WHEREAS, AVCE has agreed to create a “Multi-Party Lockbox”, into which AVCE customer payments will be deposited, as security for the power purchase obligations of AVCE;

WHEREAS, each of the ESPs has agreed to accept the Multi-Party Lockbox as security for power purchase obligations of AVCE under the Master Agreements;

WHEREAS, Wilmington Trust Bank was selected to administer the Multi-Party Lockbox;

WHEREAS, certain agreements with Wilmington Trust Bank are necessary to establish the Multi-Party Lockbox;

WHEREAS, the Multi-Party Lockbox is established pursuant to an Intercreditor and Collateral Agency Agreement, a Security Agreement and a Deposit Account Agreement (collectively, the “Lockbox Agreements”) and the forms of such agreements were negotiated with the ESPs as well as Wilmington Trust Bank and are intended to be entered into at the same time that AVCE enters into the Confirmation Agreement(s) with the ESPs that are participating in the Multi-Party Lockbox;

WHEREAS, staff is presenting to the Town Council for its review one (1) form of each of the Master Agreements and Confirmation Agreements for each ESP, and the Lockbox Agreements;

WHEREAS, there are minor differences in each form of Master Agreement and Confirmation Agreement based upon changes requested by each ESP, these differences are not material in the overall context of the proposed transaction;

WHEREAS, the Town Council wishes to delegate to the Town Manager authority to execute the Master Agreements with the ESPs;

WHEREAS, the Town Council wishes to delegate to the Town Manager authority to execute one (1) or more of the aforementioned Confirmation Agreements and the Lockbox Agreements for the reasons provided above and because of the timing of the execution of the Confirmation Agreement it is infeasible to bring the final Confirmation Agreement and Lockbox Agreements back to the Town Council and comply with the Brown Act;

WHEREAS, the Town Council has determined that (1) the approval of the Confirmation Agreements are not a project under the California Environmental Quality Act (CEQA), (2) if the approval of the Confirmation Agreements are a project under CEQA the Agreements do not have the potential for causing a significant impact on the environment under State CEQA Guidelines Section 15061(b)(3), and (3) if the approval of the Confirmation Agreements are a project under CEQA, the Agreements are categorically exempt under State CEQA Guidelines Section 15308 as actions for the protection of the environment.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Town Council delegates authority to the Town Manager to:

1. Execute the Master Agreements with the ESPs.
2. Execute one (1) or more Confirmation Agreements with terms consistent with those presented to the Apple Valley Town Council on behalf of AVCE Energy, for a term of up to fifty-seven (57) months subject to the condition that the average cost of power purchased in aggregate under all of the Confirmations shall not exceed a cost threshold of \$50.00 per MWh, with one (1) or more of the ESPs.
3. Execute the Lockbox Agreements with Wilmington Trust Bank, and in the case of the Intercreditor and Collateral Agency Agreement, with the participating ESP or ESPs, in a form containing terms consistent with those presented to the Apple Valley Town Council on behalf of AVCE, and transfer funds to Wilmington Trust Bank sufficient to meet contractual obligations under the foregoing agreements.
4. File with the San Bernardino County Clerk, a Notice of Exemption until CEQA.

APPROVED and **ADOPTED** by the Town Council of the Town of Apple Valley, California this 24th day of January, 2017

Scott Nassif, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk