

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 5

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Sustainability Manager, City of Davis  
Eric May, Senior Deputy County Counsel, Acting Co-General Counsel for VCEA

**SUBJECT:** Transfer of LEAN Contract from City of Davis to VCEA

**DATE:** January 17, 2017

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### RECOMMENDATION:

1. Approve Agreement to Assign Contract transferring the existing LEAN Energy contract to provide CCE formation services from the City of Davis to VCEA and authorize the VCEA Board Chair to sign the Agreement.

### BACKGROUND & DISCUSSION:

In September 2016 the City of Davis entered into a contract with LEAN Energy to provide support services for the formation of a local CCE program. The City maintained its contract with LEAN Energy during the VCEA JPA formation stage with the understanding that the contract would be transferred to VCEA once the JPA was established. This transfer would occur with no interruption of services currently being provided by LEAN Energy. Approximately \$38,000 remains on the original \$75,000 contract. The remaining contract amount would be funded through VCEA's start-up budget of \$1 million dollars jointly loaned to VCEA by Yolo County and the City of Davis; no direct expenditures of the start-up budget have been made to date.

The attached Agreement to Assign would transfer the obligations and responsibilities of the original contract to VCEA. LEAN's specific work tasks are included in the original contract that is attached to the Agreement to Assign (Exhibit A). The Agreement was drafted by VCEA legal counsel in coordination with the Davis City Attorney. If approved by the VCEA Board, the Agreement to Assign would be considered by the Davis City Council in late April/early May.

### Attachment

Agreement to Assign Contract

**AGREEMENT TO ASSIGN CONTRACT**

**THIS AGREEMENT** is made and entered into this 11th day of April, 2017, by and between the CITY OF DAVIS, a municipal corporation existing under the laws of the State of California, hereinafter referred to as “City”; the VALLEY CLEAN ENERGY ALLIANCE, a joint power authority existing under the laws of the State of California, hereinafter referred to as “VCEA”; and Local Energy Aggregation Network, a California Corporation, hereinafter referred to as “Consultant.”

**RECITALS**

**WHEREAS**, the City and Consultant entered into a contract on or about September 13, 2106 (“Original Agreement”), attached hereto as Exhibit A, whereby City engaged Consultant to render services in connection with the Davis Community Choice Energy (CCE) project (“Project”).

**WHEREAS**, the City and the County of Yolo joined to create VCEA, a CCE Joint Powers Agency (JPA) for the purposes of forming and operating a local CCE program.

**WHEREAS**, the Original Agreement included a provision allowing the transfer of the agreement to such a JPA upon mutual written agreement by the City and Consultant, which read:

6.2 Assignment; Successors. Upon mutual written consent, the City and Consultant may assign this agreement and its obligations to a Joint Powers Agency formed for the purpose of forming and operating a CCE program. Otherwise, Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the City. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**WHEREAS**, City and Consultant wish hereby to assign City’s rights and obligations under the Original Agreement to VCEA, and VCEA wishes to accept such assignment.

NOW, THEREFORE, City, VCEA, and Consultant agree as follows:

**1. ASSIGNMENT.**

1.1 Pursuant to Paragraph 6.2 of the Original Agreement, the City assigns the Original Agreement to VCEA. VCEA accepts, and Consultant consents to such assignment. All representations, covenants, and warranties set forth in the Original Agreement, by or on behalf of, or for the benefit of the City, shall be binding upon and inure to the benefit of VCEA. All representations, covenants, and warranties set forth in the Original Agreement, by or on behalf of, or for the benefit of Consultant, shall continue to be binding upon and inure to the benefit of Consultant.

**2. FURTHER AMENDMENTS TO ORIGINAL AGREEMENT.**

**Change from City to VCEA:**

Every reference to “City” in the Original Agreement shall be replaced by “VCEA.”

**Paragraph 2.1 of the Original Agreement is hereby amended as follows:**

2.1 VCEA’s Representative. VCEA hereby designates the ~~City Manager~~ **VCEA CEO** to act as its representative for the performance of this Agreement. The ~~City Manager~~ **VCEA CEO** shall have the power to act on behalf of VCEA for all purposes under this Agreement. VCEA hereby designates Mitch Sears as the “Project Manager,” who shall supervise the progress and day-to-day performance of this Agreement. VCEA, at its discretion, may change the person designed as Project Manager as VCEA moves forward to employ a CEO and, potentially, other staff.

**Paragraph 6.3 of the Original Agreement is hereby amended as follows:**

**6.3 Indemnification.**

**6.3.1 Indemnity.** To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the VCEA, its **JPA members (as may change from time to time)**, directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind,

in law or equity, to property or persons, including wrongful death, in any manner to the extent arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and reasonable attorneys fees and other related costs and expenses, other than to the extent caused by the negligence or willful misconduct of any Indemnified Party. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above defense and indemnity obligations 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.

6.3.2. Additional Indemnity Obligations. Consultant shall defend, with counsel reasonably approved by VCEA and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 6.3.1 that may be brought or instituted against VCEA or its **JPA members (as may change from time to time)** directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the VCEA or its **JPA members (as may change from time to time)**, directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse VCEA for the cost of any settlement paid by VEA or its **JPA members (as may change from time to time)**, directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. VCEA shall not enter into any settlement for any claim, suit, action or other proceeding without the prior written approval of Consultant. Such reimbursement shall include payment for VCEA's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse VCEA and its **JPA members (as may change from time to time)**, directors, officials, officers, employees, agents, and/or volunteers, for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

6.3.3 Survival of Obligation. 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 VCEA, its **JPA members (as may change from time to time)**, directors, officials officers, employees, agents, or volunteers.

### **3. MISCELLANEOUS.**

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

3.2 Entirety of Agreement. The Original Agreement, as modified by this Agreement, contains the entire agreement of the City, VCEA, and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the City, VCEA, and Consultant have entered into this Agreement as of the date first stated above.

**CITY OF DAVIS**

**LOCAL ENERGY AGGREGATION NETWORK**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Harriet A. Steiner  
City Attorney

**VALLEY CLEAN ENERGY ALLIANCE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Eric May  
Senior Deputy County Counsel  
Acting Co-General Counsel for VCEA

# EXHIBIT A

**AGREEMENT FOR CONSULTANT SERVICES**

**THIS AGREEMENT** is made and entered into this 13th day of September, 2016, by and between the CITY OF DAVIS, a municipal corporation existing under the laws of the State of California, hereinafter referred to as “City,” and Local Energy Aggregation Network (LEAN), a California Corporation, hereinafter referred to as “Consultant.”

**RECITALS**

**WHEREAS**, Consultant desires to perform and assume responsibility for the provision of certain services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing energy advisory services to public clients and is familiar with the plans of the City with respect to the Project, as defined below.

**WHEREAS**, the City desires to engage Consultant to render such services in connection with the Davis Community Choice Energy (CCE) project (“Project”) as set forth in this Agreement.

**WHEREAS**, the City anticipates that a CCE Joint Powers Agency (JPA) will be formed for the purposes of forming and operating a local CCE program and that the services set forth in this agreement will be required by the JPA. Therefore, the agreement includes a provision allowing the transfer of this agreement to such a JPA upon mutual written agreement by the City and LEAN Energy.

**NOW, THEREFORE**, City and Consultant agree as follows:

**1. SCOPE OF SERVICES AND TERM.**

1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, services, and incidental and customary work necessary to fully and adequately perform the Energy Advisory services necessary for the Project (“Services”). The Services are more particularly described in **Exhibit A**. 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. In the event of a conflict between a



provision in this Agreement and a provision in **Exhibit A** or in any other exhibit to this Agreement, the provision in this Agreement shall control.

1.2 Facilities, Equipment, and Other Materials. Except as specifically provided in **Exhibit B**, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other materials necessary for performing the Services pursuant to this Agreement. The City shall furnish to Consultant only those facilities, tools, equipment, and other materials specifically listed in **Exhibit B**, according to the terms and conditions set forth in that exhibit.

1.3 Schedule of Services. Consultant shall perform the Services expeditiously and in accordance with the Schedule of Services set forth in **Exhibit C** and any updates to the Schedule of Services approved by the City. Time is of the essence in the performance of this Agreement. Consultant's failure to perform any Service required under this Agreement within the time limits set forth in **Exhibit C** shall constitute a material breach of this Agreement.

1.4 Term. The term of this Agreement shall begin on the date the City approves this Agreement and shall expire upon completion of and final payment for the Services or when terminated as provided in Article 5.

## **2. PROJECT COORDINATION.**

2.1 City's Representative. The City hereby designates the City Manager to act as its representative for the performance of this Agreement. The City Manager shall have the power to act on behalf of the City for all purposes under this Agreement. The City Manager hereby designates Mitch Sears as the "Project Manager," who shall supervise the progress and day-to-day performance of this Agreement.

2.2 Consultant's Representative. Consultant hereby designates Shawn Marshall 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 Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services to be performed under this Agreement.

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

Should the Consultant's Representative need to be substituted for any reason, the proposed new Consultant's Representative shall be subject to the prior written acceptance and approval of the Project Manager. The Consultant shall not assign any representative to whom the City has a reasonable objection.

2.3 Coordination of Services. Consultant agrees to work closely with City staff in the performance of the Services and shall be available to City staff at all reasonable times.

### **3. RESPONSIBILITIES OF CONSULTANT.**

3.1 Independent Contractor. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of the City; such personnel shall at all times be under Consultant's exclusive direction and control. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2 Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant 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.

3.3 Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager's review and reasonable approval. Consultant shall furnish City with every reasonable opportunity to determine that Consultant's services are being performed in accordance with this Agreement. The City's review of Consultant's services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

3.4 Substitution of Key Personnel. Consultant has represented to the City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon the City's written approval. In the event that the City and Consultant cannot agree as to the substitution of key personnel, the City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Shawn Marshall, Seth Baruch, Kim Malcolm, Susan Bierzychudek and Alison Elliott.

3.5 Licenses and Permits. 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 City of Davis Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement, at Consultant's sole cost and expense.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7 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 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 by Consultant in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City,

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the extent arising out of any failure or alleged failure of Consultant to comply with such laws, rules or regulations.

3.8 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.

3.9 Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person's race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth.

3.10 Insurance.

3.10.1 Time for Compliance. Consultant shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by 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 this Agreement. Such insurance shall meet at least the following minimum levels of coverage:

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

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

3.10.2.2 Minimum Limits of Insurance. Consultant shall maintain limits no less than: (a) *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; (b) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (c) *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.

3.10.3 Professional Liability. Consultant shall procure and maintain, and require its subconsultants to procure and maintain, for a period of five (5) years following completion of the Project errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

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

3.10.4.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) the City, 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 Consultant or for which Consultant is responsible; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

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

3.10.5 Separation of Insureds; No Special Limitations. All insurance required herein 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 City, its directors, officials, officers, employees, agents, and volunteers.

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

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

3.10.7 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 City.

3.10.8 Verification of Coverage. Consultant shall furnish the City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. 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 City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

3.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, 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.

3.12 Records. Consultant shall allow a representative of the City during normal business hours to examine, audit and make transcripts of copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data,

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.13 Use of Recycled Paper. Consultant shall comply with the City's policy on the use of recycled paper, as set forth in **Exhibit E** of this Agreement.

#### **4. FEES AND PAYMENT.**

4.1 Compensation. This is a "time and materials" based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed Seventy-Five Thousand Dollars (\$75,000) without written approval of the City. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2 Payment of Compensation. The City shall, within 45 days of receiving an invoice for services rendered by CONSULTANT in accordance with this Agreement, review the invoice and pay all approved charges thereon.

4.3 City's Right to Withhold Payment. The City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services past the milestones established in the Schedule of Services (**Exhibit C**), or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement if City properly withholds payment pursuant to this Section 4.3, provided that the City continues to make payment of undisputed amounts.

4.4 Payment Disputes. If the City disagrees with any portion of a billing, the City shall promptly notify Consultant of the disagreement, and the City and Consultant shall attempt to resolve the disagreement. The City's payment of any amounts shall not constitute a waiver of any disagreement and the City shall promptly pay all amounts not in dispute.

4.5 The City recognizes that the Consultant will invest substantial time and money in performing the work hereunder for City. In consideration of such facts and the other agreements and obligations of the Consultant hereunder, the City agrees that in the event that the City



Local Energy Aggregation Network  
COE JPA Agreement  
9/13/16

terminates this Agreement and either retains a third party consultant to perform all or part of the Services as defined herein, or City performs all or part of the Services itself, and subsequently enters into an Energy Services Performance Contract or equivalent agreement as contemplated in the Scope of Services, during the period of time beginning on the date of this Agreement and continuing for three (3) years thereafter, the City shall compensate Consultant for the Services provided to the City prior to termination in the manner set forth in **Exhibit D** on a pro rated basis, as follows: (i) In the event that Consultant has completed the Scope of Services through Item 1.5 as listed therein, City shall pay to Consultant 20% of the total payments to be made pursuant to this Agreement, following completion of the milestones as set forth in Exhibit D by the City or its representative. (ii) In the event that Consultant has completed the Scope of Services through Item 1.8, City shall pay to Consultant 50% of the total payments to be made pursuant to this Agreement, following completion of the milestones as set forth in Exhibit D by the City or its representative. (iii) In the event that Consultant has completed the Scope of Services through Item 2.3, City shall pay to Consultant 80% of the total payments to be made pursuant to this Agreement, following completion of the milestones as set forth in Exhibit D by the City or its representative. (iv) In the event that Consultant has completed the Scope of Services through Item 3.2.6, City shall pay to Consultant 90% of the total payments to be made pursuant to this Agreement, following completion of the milestones as set forth in Exhibit D by the City or its representative.

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

**4.7 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"

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

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. City 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 available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services, and shall post copies at the Consultant's principal place of business and at the Project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the extent arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

#### 4.8 Living Wage Ordinance.

4.8.1 Consultant agrees to comply with Davis Municipal Code Chapter 15.20, the City of Davis Living Wage Ordinance. If Consultant employs six (6) or more employees, and receives \$25,000 or more from the City pursuant to this Agreement and any other contracts with the City during a twelve month period, Consultant shall be required to provide all employees eligible under Chapter 15.20 with the minimum compensation set forth in Davis Municipal Code Section 15.20.060 during the term of this Agreement.

4.8.2 Prior to commencement of any work under this Agreement, Consultant and all subconsultants that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the City that Consultant and subconsultants are providing all eligible employees the minimum compensation required pursuant to Davis Municipal Code Section 15.20.060. Additionally, prior to commencement of any work, Consultant shall notify in writing all employees that are eligible for minimum compensation of their rights under Chapter 15.20.

4.8.3 Consultant shall maintain all records and documents necessary to establish whether Consultant is subject to Chapter 15.20. If Consultant is subject to the requirements of Chapter 15.20, Consultant shall further be required to maintain monthly records of Consultant's employees, including records showing the hourly rate paid to each employee, the amount paid by

Local Energy Aggregation Network  
CCB JPA Agreement  
9/13/16

Consultant for health benefits, if any, and the amount of days off provided per year for sick leave, vacation, or personal necessity. The records described in this subsection shall be made available to the City upon request. The failure to produce these records within three (3) business days following request by the City shall be a default under this Agreement.

4.8.4 Consultant shall include the requirements of Chapter 15.20 in any and all agreements with subconsultants hired to provide services pursuant to this Agreement. Any and all subconsultants retained by Consultant to provide services pursuant to this Agreement that employ six or more employees and receive \$25,000 or more for services provided to the City pursuant to this and any other City contracts during a 12-month period shall be required to comply with the terms of Chapter 15.20. Failure by a subconsultant subject to the requirements of Chapter 15.20 to comply with the terms of Chapter 15.20 shall constitute a default of the Consultant under this Agreement.

## 5. SUSPENSION AND TERMINATION.

5.1 Suspension. The City may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any material provision of this Agreement. Consultant will be paid for satisfactory services performed hereunder through the date of temporary suspension pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and the City working together in good faith. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant may terminate this Agreement and collect payment for any satisfactory services provided through the date of temporary suspension pro rating for any payment in connection with the next milestone as described above.

### 5.2 Termination for Cause.

5.2.1 If Consultant at any time refuses or neglects to prosecute its services in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without the City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

fails in any material respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the material agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within thirty (30) days after written notice thereof, the City may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared for City or used by Consultant exclusively in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

5.2.3 In the event the City elects to terminate, the City shall have the right to immediate possession of all documents and data and work in progress prepared by Consultant pursuant to this Agreement, whether located at the Project, at Consultant's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses reasonably incurred by the City in obtaining the Services necessary to complete the Project exceed such unpaid balance, then Consultant shall promptly pay to the City the amount by which such expense exceeds the unpaid balance of the not-to-exceed amount reflected in Section 4.1. The expense referred to in the previous sentence shall include expenses incurred by the City in causing the Services called for under this Agreement to be provided by others, and for any costs or damages sustained by the City by reason of Consultant's default or defective work.

5.2.4 If the City fails to make timely payment to the Consultant or otherwise fails to perform fully any and all of the material agreements herein contained, the City shall be in default. If such default is not cured within thirty (30) days after written notice thereof, the Consultant may, at its sole option, terminate this Agreement and the City shall pay the

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

Consultant all amounts due for services satisfactorily provided to the City as of the date of Consultant's written notice of default.

### 5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, the City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by the City pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and the City working together in good faith, plus (2) payment for Additional Work satisfactorily completed and accepted by the City, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against the City or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2 If this Agreement is terminated by the City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

5.3.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency (a "Force Majeure Event"). The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

## 6. OTHER PROVISIONS.

### 6.1 Documents and Data.

6.1.1 Ownership of Documents. The City shall be the owner of the following items produced exclusively pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of the City.

6.1.2 Copyright. No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of the City. The City shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

6.1.3 Release of Documents to City. Consultant shall deliver to the City all materials prepared by Consultant exclusively in connection with this Agreement, including all drafts, memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from the City.

6.1.4 Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with its performance under this Agreement are confidential until released by the City to the public, and Consultant shall not make any of

Local Energy Aggregation Network  
COE JPA Agreement  
9/13/16

these documents or information available to any individual or organization not employed by Consultant or the City without the written consent of the City before any such release, unless Consultant is required to do so under applicable law.

6.2 Assignment; Successors. Upon mutual written consent, the City and Consultant may assign this agreement and its obligations to a Joint Powers Agency formed for the purpose of forming and operating a CCE program. Otherwise, Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the City. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

6.3 Indemnification.

6.3.1 Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner to the extent arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and reasonable attorneys fees and other related costs and expenses, other than to the extent caused by the negligence or willful misconduct of any Indemnified Party. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above defense and indemnity obligations 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.

6.3.2 Additional Indemnity Obligations. Consultant shall defend, with counsel reasonably approved by the City and at Consultant's own cost, expense and risk, any and all

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

claims, suits, actions or other proceedings of every kind covered by Section 6.3.1 that may be brought or instituted against the City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse the City for the cost of any settlement paid by the City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. The City shall not enter into any settlement for any claim, suit, action or other proceeding without the prior written approval of Consultant. Such reimbursement shall include payment for the City's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse the City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

6.3.3 Survival of Obligation. 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 City, its directors, officials officers, employees, agents, or volunteers.

6.4 Consultant Not Agent. Except as the City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever.

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by the Parties hereunder. If no such Government Code claim is submitted,



Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

6.6 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: LEAN Energy US  
P.O. Box 961  
Mill Valley, CA 94941

Attn: Shawn Marshall

City: City of Davis  
23 Russell Boulevard  
Davis, CA 95616  
Attn: Mitch Sears

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.

6.7 Incorporation by Reference. All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

6.8 City's Right to Employ Other Consultants. The City reserves the right to employ other consultants in connection with the Project, provided that such other consultants shall not be performing the work set forth in the Scope of Services of this Agreement.

6.9 Construction; References; Captions. 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. The captions of the various sections 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.

Local Energy Aggregation Network

COE JPA Agreement

9/13/16

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

6.11 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.

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

6.13 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.

6.14 Interest of Consultant. Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City.

6.15 Interest of Subconsultants. Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided City with a list of all subconsultants and the key personnel for such subconsultants that are retained or to be retained by Consultant in connection with the performance of the Services, to assist the City in affirming compliance with this Section.

6.16 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

Local Energy Aggregation Network  
COE JPA Agreement  
9/13/16

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

6.17 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.

6.18 Attorneys' 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 attorneys' fees and all other costs of such action.

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

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

6.21 Entirety of Agreement. This Agreement contains the entire agreement of the City and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

*[Signatures on following page]*

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

SIGNATURE PAGE TO CONSULTANT SERVICES AGREEMENT

IN WITNESS WHEREOF, the City and Consultant have entered into this Agreement as of the date first stated above.

CITY OF DAVIS

By: [Signature]  
Its: City Manager

CONSULTANT

By: [Signature]  
Its: Executive Director  
9/29/16

Approved as to form:

[Signature]  
Harriet A. Steiner  
City Attorney

Local Energy Aggregation Network  
 CCE JPA Agreement  
 9/13/16

**EXHIBIT A**

**SCOPE OF SERVICES**

**Phase 2 and 3 Scope of Services  
 City of Davis and Yolo County CCE Formation**

Below is the proposed scope and set of tasks to be performed by LEAN Energy US covering CCE formation activity from July 1, 2016 - June 30, 2017. Tasks will be accomplished in support of the local government efforts to accomplish Phase II (JPA and CCE Program Development) and Phase III (Preparing for Launch) activities as outlined in the table below. The timeline and specific tasks associated with each phase can be tailored or amended according to local needs at the discretion of the sponsoring agency, i.e. the City of Davis, pending transfer of agreement sponsorship and management to JPA staff.

<b>Phase I</b>	<b>Phase II</b>	<b>Phase III</b>
<b>Pre-Planning &amp; Due Diligence</b>  (June 2015-June 2016)	<b>JPA and CCA Program Development</b>  (July -December 2016)	<b>Preparing for Launch</b>  (January – June 2017)
<p><b>Internal Planning &amp; Design:</b>            Internal planning and research; funding allocations/authorizations; consulting and staff team; CCA workplan, program goals, budget and strategy for Phases II and III</p> <p><b>Technical:</b> Load data request; tech study scope/RFP and completion of study</p> <p><b>Community Engagement:</b>            Outreach to partner jurisdictions, basic brochure, initial stakeholder meetings, program branding/website, list-serve/database; form advisory committee if desired, develop communications</p>	<p><b>Management Structure:</b>            Search and hiring by the JPA of full-time manager to lead and coordinate all activities required for Phases II and III and Initial period of CCE operation. Formation of volunteer citizen advisory committee representing the jurisdictions included in the JPA to advise and support manager, city/county staff and JPA Board.</p> <p><b>Program Planning &amp; Design:</b>            JPA formation (legal, staff, governance, et al), CCA program design, local ordinances, long-term working capital/credit</p>	<p><b>Program Planning &amp; Design:</b>            Finalize JPA launch including Board meetings/policies, vendor contracts, office space, banking relationships, etc.</p> <p><b>Technical:</b> Finalize energy supply and related energy service contracts, prepare utility service agreement and regulatory registrations; final rate design/rate setting</p> <p><b>Community Engagement:</b>            Continued marketing and outreach; establish call center, customer enrollment</p>

strategy for phases II and III	<p><b>Technical:</b> Implementation Plan and other foundational documents; RFP and bidding process for energy purchase and related services</p> <p><b>Community Engagement:</b> Robust public outreach, enhanced website and materials, community meetings and events, social media/press, etc.</p>	
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Consultant tasks and activities under this Scope of Work will include but are not limited to the following:

**Task 1: Program Planning and Design**

- 1a. Advise and support City and County staff and full-time manager once that individual is identified and hired by the JPA in aspects of CCE planning and project management, including but not limited to Tasks 1 through 3 of this scope of work; common to all existing and emerging CCE programs; Participate in planning sessions and conference calls and handle any follow up as required.
- 1b. Support staff in preparation of staff reports, key documents such as position description for full-time CCE manager, vendor RFPs, and development of presentations including county board and council meetings, committee and/or stakeholder meetings as needed.
- 1c. Assist with development of the JPA agreement and related governance policies, as well as operational steps required to form a new Joint Powers Agency for the purpose of administering a CCE program.
- 1d. Maintain and provide updates re: CCE program work plan, timeline, , and assist with development of long term operating budget.
- 1e. As needed, assist with process of securing working capital/line of credit for JPA operations. This could include the issuance of an RFP for banking and credit services and assistance with vendor selection and credit arrangements including necessary municipal guarantees.
- 1f. Advise and support JPA organizational development activities including preparation for Board meetings, creation of Board policies, committees, staff planning and recruitment (including organizational chart, job descriptions, HR policies), and any other tasks required to operationalize the new Agency.
- 1g. Advise on regulatory and statutory activities that may affect longer-term CCE operations and assist with regulatory compliance issues.

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

**Task 2: Technical and Data Management Services**

- 2a. Assist CCE manager, once hired by the JPA, and technical services vendors, if applicable, with development of CCE implementation plan, energy services RFP, utility service agreement, and perform utility and Commission liaison services as needed.
- 2b. Work with selected data management vendor to ensure integration of customer relationship management systems, smooth customer account switching and enrollment process, and effective call center operations.
- 2c. Identify existing optional templates Provide research and implementation support for ancillary energy programs such as net energy metering, feed in tariff, electric vehicle programs, community-based solar projects, energy efficiency programs, energy storage, etc.

**Task 3: Community Engagement/Customer Enrollment**

- 3a. Work with CCE manager, internal staff team, advisory committee, and designated marketing firm to support all aspects of Phase II and III community engagement and customer enrollment process. This could include but is not limited to activities such as: content review for website and program collateral, maintain and update program FAQs and other instructional documents, participate in public marketing and communications planning, work with staff and vendor team to ensure full integration of customer enrollment and opt-out requirements/procedures.

Local Energy Aggregation Network  
COE JPA Agreement  
9/13/16

**EXHIBIT B**

**FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY CITY**

**NOT APPLICABLE**



Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

**EXHIBIT C**

**SCHEDULE OF SERVICES**

The scope of this contract commences on the date of signature and runs through June 30, 2017.  
The schedule may be extended by mutual agreement in writing by both parties.

EXHIBIT C

Local Energy Aggregation Network  
CCE JPA Agreement  
9/13/16

**EXHIBIT D**

**PAYMENT**

LEAN bills its clients monthly and will keep the Client apprised of our time to make the most of the City's budget allocation. Our billable rates, offered at our public agency rate-scale are:

Shawn Marshall, Executive Director	\$165/hr
Kim Malcolm and Seth Baruch, Project Mangers	\$155/hr
Susan Bierzychudek, Communications and Marketing Advisor	\$150/hr
Alison Elliott, Administrative Coordinator	\$ 50/hr

Fees include a flat 10% for indirect costs. LEAN will bill other direct costs (such as travel) as they are incurred and provide receipts as requested.

These rates include all indirect expenses such as office rent, insurance, communications, and supplies.

EXHIBIT D

27

**EXHIBIT E**

**USE OF RECYCLED PAPER**

All paper used for any reports that are required to be submitted under this Agreement shall be produced on recycled paper conforming to the minimum content standards as specified herein. All such reports shall have the front cover labeled in such a way as to clearly identify that the report was produced on recycled paper. Where practicable, the pages of all such reports shall be produced double-sided.

**Definitions.**

Postconsumer Material means only those paper products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid wastes for the purpose of collection, recycling, and disposition.

Recovered Paper Material means paper waste generated after the completion of a papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing wastes, cutting and other converting wastes, butt rolls and mill wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous wastes generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residues such as bark.

Minimum Content Standard. The following categories of paper must contain the minimum percentages of material listed under both "Recovered Material" and "Postconsumer Material" included within the total "Recovered Material" percentage. When utilizing a category of paper not listed below, the paper shall contain the highest percentage of recycled paper available.

<b>Paper Category</b>	<b>Minimum Percentage of "Recovered Material"</b>	<b>Minimum Percentage of "Postconsumer Material"</b>
High-speed Xerographic	50	10
Bond Paper	50	10
Cover Stock	50	10
Envelopes	50	10

EXHIBIT E