

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mike Webb, Assistant City Manager, City of Davis
Mitch Sears, Sustainability Manager, City of Davis

SUBJECT: Cooperation and Administrative Services Agreement with the City of Davis

DATE: December 13, 2016

Recommendations

1. Adopt a resolution approving a Cooperation and Administrative Services Agreement with the City of Davis

Analysis and Discussion

The Valley Clean Energy Alliance (“VCEA”) became effective October 25, 2016, and will require time to develop its operational capacity, including the hiring of staff to perform the work of VCEA. In the meantime, VCEA will utilize a combination of local member agency staff and consultant support to conduct the business of VCEA.

VCEA was established as a result of the multi-jurisdictional collaboration of the City of Davis and the County of Yolo, authorizing the implementation of a Community Choice Aggregation Program through a Community Choice Energy Program (“CCE Program”), pursuant to California Public Utilities Code Section 366.2(c)(12). Both the City and County provided key human resources and community outreach services to support the work of the CCE Program and are well positioned to continue to provide key support to the VCEA Board and when hired, its Executive Officer, as VCEA conducts the initial activities of launching the CCE Program and develops its organizational capacity.

Reimbursements to the City will include staffing costs, inclusive of salaries and benefits, for the following interim support services provided to VCEA, as well as any other expenses incurred by the City for or on behalf of the VCEA: 1) Overall project management, JPA development, and Board Administration, 2) Advisory Committee work, 3) Technical and energy-related services, and 4) General Counsel/legal services.

In addition, the City previously advanced to the VCEA funding in the amount of \$500,000 to assist with funding of initial activities necessary to implement the CCE Program, and the City may provide additional funding in the future, in addition to staff costs and other expenses. All of these costs and

expenses, and amounts advanced to VCEA, will be reimbursed to the City as per the JPA Agreement and under the proposed Cooperation and Administrative Services Agreement.

The County also previously advanced funding to VCEA, and is expected to enter into a similar agreement with the VCEA to provide certain administrative and staff services, as well as additional expenditures on behalf of VCEA. All amounts due to the City under the attached Agreement, and owed to the County under its separate Agreement, will be repaid on a pro rata basis as funding is available to the VCEA for such purposes.

Environmental Review

The approval and execution of a Cooperation and Administrative Services Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the CEQA guidelines as it is not a “project” but is an organization or administrative activity that will not result in direct or indirect physical changes in the environment (14 Cal Code Regs, 15378(b)).

County Counsel/City Attorney have reviewed and approved the Resolution as to form.

Attachments

1. Resolution
2. Cooperation and Administrative Services Agreement (City)

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2016- _____

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING A COOPERATION
AND ADMINISTRATIVE SERVICES AGREEMENT WITH THE CITY OF DAVIS**

WHEREAS, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”) and the City of Davis (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate and manage energy programs; and

WHEREAS, the VCEA is an independent joint powers authority with the power to conduct its business and enter into agreements; and

WHEREAS, VCEA became effective _____, 2016, and will require time to develop its operational capacity, including the hiring of staff to perform the work of VCEA, and in the meantime, VCEA will utilize a combination of local member agency staff and consultant support under the direction of an Executive Officer to conduct the business of VCEA; and

WHEREAS, VCEA desires to enter into a cooperation and administrative service agreements with the City of Davis whereby the City will provide administrative and support services, and provide certain financial assistance to VCEA, and VCEA will reimburse the City for such costs and financial assistance; and

WHEREAS, Section 2.5 of the JPA Agreement provides the VCEA with the power to make and enter into contracts, employ agents and employees, and make and enter into services agreements relating to the provisions of services necessary to plan, implement, operate and administer the CCE Program.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Board of Directors hereby approves a Cooperation and Administrative Services Agreement with the City of Davis (“City Cooperation Agreement”) in substantially the form attached hereto as Exhibit A and incorporated herein by reference. The Chairperson is hereby authorized and directed to execute the City Cooperation Agreement in substantially the form attached hereto, subject to any minor, clarifying and conforming changes as may be approved by the Chairperson.

ADOPTED, this _____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson

Secretary

EXHIBIT A

COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

("City Cooperation Agreement")

COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

THIS COOPERATION AGREEMENT is entered into as of _____, 2016, by and between the VALLEY CLEAN ENERGY ALLIANCE (the "VCEA") and the CITY OF DAVIS (the "City").

Recitals

A. The City Council of the City of Davis, by Ordinance No. _____, adopted on November 1, 2016, and the Board of Supervisors of the County of Yolo (the "County"), by Ordinance No. _____, adopted on _____, authorized the implementation of a Community Choice Aggregation Program through a Community Choice Energy Program ("CCE Program") to be operated by the Valley Clean Energy Alliance Joint Powers Authority ("VCEA"), pursuant to California Public Utilities Code Section 366.2(c)(12).

B. The City Council, by Resolution No. _____, adopted on October 25, 2016, and the Board of Supervisors of County, by Resolution No. _____, adopted on _____, 2016, authorized the City and County, respectively, to enter into a Joint Powers Agreement Relating to and Creating the Valley Clean Energy Alliance (the "JPA Agreement") pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the "Act").

C. Section 2.5 of the JPA Agreement authorizes the VCEA to make and enter into contracts and accept loans or other aids from any federal, state or local public agency. Section 3.10 of the JPA Agreement authorizes the VCEA to enter into an Administrative Services Agreement with the City and County for the provision of administrative services to the VCEA.

D. Section 5.3 of the JPA Agreement acknowledges that the County and City have funded certain activities necessary to implement the CCE Program, and if the CCE Program becomes operational, the costs paid by the County and the City shall be reimbursed from the payment of such charges by customers of VCEA.

E. The VCEA and City desire to enter into this Agreement for the following purposes:

(1) To set forth activities, services and facilities that the City will render for and make available to the VCEA in furtherance of the activities and functions of the VCEA under the JPA Agreement and in furtherance of the CCE Program. These interim support services shall include, but not be limited to: 1) Project management, JPA development and Board administration, 2) Advisory Committee work, 3) Technical and energy-services support, and 4) General Counsel/legal services; and,

(2) To provide that the VCEA will reimburse the City for actions undertaken and costs and expenses incurred by it for and on behalf of the VCEA.

Agreements

1. The City agrees to provide for the VCEA such staff assistance, supplies, technical services and other services and facilities of the City as the VCEA may request from time to time in carrying out its functions under the JPA Agreement and in furtherance of the CCE Program. Such assistance and services may include the services of officers, employees and special consultants.

2. The City agrees to advance necessary funds to the VCEA or expend funds on behalf of the VCEA for the implementation of the JPA Agreement and the CCE Program, including, but not limited to, the costs of preparation of an Implementation Plan, and the planning, studies and environmental assessments for the implementation of the CCE Program, the costs of acquisition and management of energy, equipment, facilities and property as necessary to implement the CCE Program.

3. The City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof so that an accurate determination of the VCEA's liability to the City can be made. The City shall provide a quarterly invoice to the VCEA providing a breakdown of the costs and expenses incurred by the City in rendering activities and services of the City to or on behalf of the VCEA pursuant to this Agreement, together with documentation satisfactory to the VCEA of such costs. Such statement of costs may include a proration of the City's administrative and salary expense attributable to services of City officials, employees and departments rendered for the VCEA.

4. The VCEA agrees to reimburse the City for all costs incurred for services by the City pursuant to this Agreement from and to the extent that funds are available to the VCEA from charges to CCE customers receiving electric services from the VCEA, or from revenues from grants or other third-party sources; provided, however, that the VCEA shall have the sole and exclusive right to pledge any such sources of funds to the repayment of other indebtedness incurred by the VCEA in implementing the CCE Program. The costs of the City under this Agreement will be shown on statements submitted to the VCEA pursuant to Section 3 above. Although the parties recognize that payment may not occur for a few years and that repayment may also occur over a period of time, it is the express intent of the parties that the City shall be entitled to repayment of the expenses incurred by the City under this Agreement, consistent with the VCEA's financial ability, in order to make the City whole as soon as practically possible.

5. The parties acknowledge and agree that the VCEA is entering into a similar Cooperation and Administrative Services Agreement with the County (the "County Agreement") which provides for reimbursement to the County for any costs and funds advanced to or on behalf of the VCEA by the County, and that this Agreement and the County Agreement shall each have equal priority for such reimbursement. Unless otherwise agreed to between the VCEA, City and County, all reimbursement payments made by the VCEA shall be prorated so that the City and County shall each receive a portion of such reimbursement payment equal to its proportionate share of the total aggregate amount owed, from time to time, by VCEA to the City and County under this Agreement and the County Agreement, respectively. [Example: If

the total outstanding amount owed to the City under this Agreement is \$40,000, and the total outstanding amount owed to the County under the County Agreement is \$60,000, then the reimbursement payment being made by VCEA shall be split, 40% to the City and 60% to the County.]

6. The City shall be reimbursed for costs described in this Agreement incurred by City. The parties agree that the City previously advanced to the VCEA funding in the amount of \$500,000, to assist with funding of Initial Costs as referenced in Section 5.3.2 of the JPA Agreement. Said amount shall be deemed the initial amount owed to VCEA under this Agreement, and further costs incurred by the City, or funding provided to VCEA, pursuant to this Agreement shall be added to such amount, as incurred from time to time.

7. The City agrees to perform all services required by this Agreement in a manner commensurate with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement.

8. Under no circumstances shall the employees of City be considered employees of the VCEA. The City shall be solely responsible and liable for paying all compensation and benefits owed to its employees for the service provided by the City under this Agreement.

9. The VCEA is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to the JPA Agreement, and is a public entity separate from its constituent members. The VCEA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. The City shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the CEA's constituent members in connection with this Agreement.

10. Each party shall defend, indemnify and hold harmless the other party (including its officers, employees and agents) against any claim, loss or liability arising out of the performance of this Agreement by such party. Nothing contained herein shall be construed as a waiver of any immunities or defenses that a party may have under applicable provisions of the law, including the provisions of the California Tort Claims Act (Government Code Section 801 et seq.). This mutual indemnification agreement is adopted pursuant to Government Code Section 895.4 and in lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6. This provision shall survive expiration or termination of this Agreement.

11. The City shall make all documentation and records concerning all services performed under this Agreement available to the VCEA for inspection and copying at any reasonable time. The City shall maintain such records for a period of five (5) years following completion of work hereunder.

12. Either party may terminate this Agreement by providing no less than sixty (60) days written notice to the other party. The VCEA shall pay the City for services satisfactorily

performed up to the effective date of termination; provided, however, that the terms and conditions set forth in Sections 5 and 6 of this Agreement shall continue in effect following such termination until all amounts due and owing the City hereunder have been repaid in full. In the event of termination, the City, within fourteen (14) days following the date of termination, shall deliver to the authority all records and work products generated by the City under this Agreement.

13. This Agreement and obligations of the parties hereunder are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successor of those authorities). Any suits brought pursuant to this Agreement shall be filed in the Superior Court of the County of Yolo, State of California. A waiver by any party of any breach of any term, covenant, or conditions contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or conditions contained herein, whether of the same or a different character.

14. The Initial Costs contribution by the City, as referenced in Section 5.3.2 of the JPA Agreement, shall constitute a contribution, payment and advance of funds, and use of personnel, equipment and property as authorized under Government Code Section 6504, to be repaid to the City by the VCEA as authorized under Government Code Section 6512.1, with a simple interest rate of Average Yield plus one percent (1%) per annum.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:

CITY OF DAVIS

City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

"CITY"

City Attorney

ATTEST:

VALLEY CLEAN ENERGY ALLIANCE

Secretary

By: _____
Chairperson

APPROVED AS TO FORM:

"VCEA"

Legal Counsel