

# VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

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TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Sustainability Manager, City of Davis  
Regina Espinoza, Sustainability Manager, Yolo County  
Shawn Marshall, LEAN Energy US

SUBJECT: City of Woodland Cooperation and Administrative Services Agreement

DATE: July 25, 2017

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## RECOMMENDATION

Adopt a resolution approving a Cooperation and Administrative Services Agreement between VCEA and the City of Woodland.

## BACKGROUND & DISCUSSION

At its first Board meeting in December 2016, VCEA adopted Cooperation Agreements with Yolo County and the City of Davis to develop its operational capacity and perform the initial work of VCEA. The City of Woodland was approved for VCEA membership in June 2017. The recommended Cooperation Agreement between VCEA and Woodland memorializes the shared commitments to support the launch and operation of VCEA made by its member agencies.

As with the Cooperation Agreements with Yolo County and the City of Davis, reimbursements under the agreement to the City of Woodland will include staffing costs, inclusive of salaries and benefits, for general staff and administrative support as well as public outreach efforts.

In addition, like Yolo and Davis, the City of Woodland previously advanced funding to VCEA 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. All amounts due to the City of Woodland under the attached Agreement, and owed to the County and City of Davis under its separate Agreements, 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)).

VCEA Legal Counsel have reviewed and approved the Cooperation Agreement as to form.

Attachments:

- Resolution

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2017- \_\_\_\_\_

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

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 (“Davis”) and the City of Woodland (“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, with the City of Davis and the County as member agencies, became effective December 13, 2016, and the City of Woodland joined VCEA on June 13, 2017; and

WHEREAS VCEA has 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 to conduct the business of VCEA; and

WHEREAS, VCEA has entered into Cooperation Agreements with the City of Davis and the County of Yolo to provide administrative and support services to VCEA; and

WHEREAS, with Woodland joining VCEA, Woodland and VCEA desire to enter into a cooperation and administrative service agreement with the City of Woodland 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 Woodland (“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 \_\_\_\_\_, 2017, 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 \_\_\_\_\_, 2017, by and between the VALLEY CLEAN ENERGY ALLIANCE (the "VCEA") and the CITY OF WOODLAND (the "City").

### Recitals

A. The City of Davis, by Resolution No. 16-153, adopted on October 25, 2016, and the County of Yolo, by Resolution No. 16-100, adopted on October 25, 2016, authorized Davis and the 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").

B. The City of Woodland by Resolution No. 6842, adopted on May 16, 2017, joined the Valley Clean Energy Alliance as a member. The City of Woodland adopted Ordinance No. 1616 on June 6, 2017, authorizing the implementation of the Community Choice Aggregation Program through a Community Choice Energy Program ("CCE Program") to be operated by VCEA, pursuant to California Public Utilities Code section 366.2(c)(12);

C. The parties to the JPA Agreement are currently the County of Yolo and the cities of Davis and Woodland (each referred to herein as member or members).

D. 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 a member for the provision of administrative services to the VCEA.

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

F. 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 monthly 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 has entered into a similar Cooperation and Administrative Services Agreements 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 with the City of Davis, which provides for reimbursements to the City of Davis for any costs and funds advanced to or on behalf of VCEA by the City of Davis ( the "Davis Agreement") and that this Agreement, the Davis City Cooperation Agreement

Agreement and the County Agreement shall each have equal priority for such reimbursement. Unless otherwise agreed to between the VCEA, the Cities, and County, all reimbursement payments made by the VCEA shall be prorated so that the Cities 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 Cities and County under this Agreement, the Davis Agreement, and the County Agreement, respectively.

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 VCEA'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 that 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 VCEA 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 WOODLAND

\_\_\_\_\_  
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