

## AGREEMENT FOR CONSULTING SERVICES

**THIS AGREEMENT FOR CONSULTING SERVICES** (“Agreement”) is made and entered into as of May 15, 2018, by and between the City of Commerce, a California municipal corporation (“City”), and the California Choice Energy Authority, a public entity created pursuant to the Joint Exercise of Powers Act (Cal. Gov’t. Code § 6500 *et seq.*) (“CCEA”) (City and CCEA are individually referred to as “Party” and collectively “Parties”).

### RECITALS

**WHEREAS**, City desires to be a Community Choice Aggregator (“CCA”), as defined in Section 331.1 of the California Public Utilities Code, to provide energy to its residents and businesses; and

**WHEREAS**, City desires that CCEA undertake certain implementation support services; and

**WHEREAS**, CCEA desires to facilitate access to the professional, technical and other knowledge and expertise of certain CCEA members, their employees, contractors and/or consultants in connection with the formation of the City’s CCA.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are hereby incorporated into this Agreement by reference, as though set forth in full herein.
2. **Description of Work.** CCEA shall perform or facilitate performance of the services (“Services”) set forth in the “Scope of Services and Payment Schedule” attached hereto as Exhibit “A” and incorporated herein by this reference ( “Scope of Services”).
3. **Obligations of City.** City shall pay to CCEA an amount not to exceed \$63,000 in three (3) equal installments (\$21,000) with first billing to coincide with receipt of historical usage data from SCE. City shall pay CCEA within thirty (30) days of CCEA submitting an invoice to the City.
4. **Obligations of CCEA.** CCEA shall perform or facilitate performance of the Services. CCEA’s Board of Directors, or its designee, shall determine which CCEA employee(s), contractors and/or consultants shall perform the Services.
5. **Effective Date.** This Agreement shall become effective and binding upon the Parties at such time as all of the signatories hereto have signed the original or a counterpart original of this Agreement (“Effective Date”).
6. **Term; Termination.** The term of this Agreement shall commence as of the Effective Date and expire upon completion of and final payment for the Services, or upon the earlier termination of this Agreement as set forth herein. Either Party may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the other Party of such termination and specifying the effective date thereof. In the event of termination of this Agreement, CCEA shall be paid on a prorated basis for Services completed.
7. **Indemnification.**

a. City agrees to indemnify, defend and hold harmless CCEA, its board of directors, officers, employees, members, consultants and members' employees, contractors and/or consultants from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs of investigation and defense, settlement and awards, and attorney's fees, in connection therewith), based or asserted upon any alleged negligent or willful misconduct of City, its officers, employees, agents or representatives, arising out of or in any way relating to this Agreement.

b. CCEA agrees to indemnify, defend and hold harmless City its elected and appointed officials, officers, contractors, consultants and employees, (collectively, for purposes of this provision, "City Indemnified Parties") from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs of investigation and defense, settlement and awards, and attorney's fees, in connection therewith), incurred in or in any manner arising out of or related to CCEA's performance or non-performance of its obligations under this Agreement, except where caused by the sole active negligence or willful misconduct of the City Indemnified Parties.

**8. Force Majeure.** Notwithstanding the provisions of this section, CCEA shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove CCEA's work promptly, or by reason of delay or faulty performance by City, its contractors, governmental agencies, or Southern California Edison, or by reason of any other delays beyond CCEA's control, or for which CCEA is without fault.

**9. Ownership of Documents.** All reports, studies and other documents that are prepared by CCEA, its employees, contractors and/or consultants in the course of performing the Services required by this Agreement, and are specific to City's CCA, shall be the property of City upon City satisfying all payment obligations imposed pursuant to this Agreement.

**10. Data Provided to CCEA.** City shall provide to CCEA all data, including reports, records and other information, in City's possession, custody or control, which is reasonably necessary and requested by CCEA and which is required to facilitate the timely performance of the Services.

**11. Insurance Requirements.**

a. Prior to CCEA's commencement of any Services, CCEA, at CCEA's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies:

i. *General Liability Coverage.* CCEA shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury and property damage. CCEA shall provide insurance on an occurrence, not claims-made basis.

ii. *Automobile Liability Coverage.* CCEA shall maintain commercial automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the CCEA arising out of or in connection with the Services, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence, and one million dollars (\$1,000,000) in the aggregate.

b. As of the execution of this Agreement, City has reviewed the coverages secured by CCEA from Special District Risk Management Authority and has determined such coverages to be

satisfactory to City. CCEA agrees to ensure that the most current certification of coverage is on file with the City at all times during the term of this Agreement.

**12. Independent Contractor's Status of CCEA.** CCEA shall at all times during the term of this Agreement remain, as to City, a wholly independent contractor and shall perform the services described in this Agreement as an independent contractor and further, hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits. Neither City nor any of its agents shall have control over the conduct of CCEA or any of CCEA's employees or agents, except as herein set forth. Nothing contained in this Agreement shall be deemed, construed or represented by City or CCEA or by any third person to create the relationship of principal and agent and CCEA shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. CCEA shall have no authority, expressed or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall CCEA have any authority, expressed or implied, to bind City to any obligation whatsoever.

**13. Professional Ability of CCEA; Warranty; Familiarity with Work; Permits and Licenses.**

a. CCEA warrants that all Services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

b. By executing this Agreement, CCEA warrants that it has thoroughly investigated and considered the work to be performed, investigated the issues regarding the Scope of Services and carefully considered how the work should be performed.

c. CCEA represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement. The Parties agree that CCEA shall not be required to obtain a City business license.

**14. Notices.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, and addressed as listed below. All notices required by this Agreement are effective on the day of receipt, unless otherwise indicated herein.

CCEA: Mark Bozigian, Executive Director  
California Choice Energy Authority  
c/o City of Lancaster  
44933 North Fern Avenue  
Lancaster, California 93534

City: Edgar P. Cisneros, City Administrator  
2535 Commerce Way  
Commerce, California 90040

**15. Resolution of Disputes.** Disputes regarding the interpretation or application of any provision of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties.

**16. Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to CCEA in connection with the performance of this Agreement shall be held confidential by CCEA to the maximum extent permitted by law. Except to the extent that such information constitutes a public record pursuant to the California Public Records Act, such materials shall not, without prior written consent of City, be used by CCEA for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services. Nothing furnished to CCEA which is otherwise known to CCEA or is generally known, or has become known, to the related industry shall be deemed confidential. CCEA shall not use City's insignia or photographs relating to the project for which CCEA's Services are rendered without City's prior written consent.

**17. CCEA's Books and Records.** CCEA shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three years, or for any longer period required by law, from the date of termination or completion of this Agreement. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at reasonable times during regular business hours, upon written request by City's City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to City for inspection at City's address indicated for receipt of notices in this Agreement when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CCEA's address indicated for receipt of notices in this Agreement.

**18. Severability.** If any provisions of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**19. Amendment.** Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon mutual written approval by the Parties.

**20. Waiver.** No waiver of any provision of this Agreement shall be binding, unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

**21. Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Los Angeles County, California.

**22. Litigation Expenses and Attorneys Fees.** In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

**23. Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement. This Agreement contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party except those covenants and agreements embodied in this Agreement. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

**24. Non-Liability of Officers and Employees.** No officer or employee of CCEA or City shall be personally liable in the event of any default or breach of the terms of this Agreement.

**25. Captions and Headings.** The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**26. Counterparts.** This Agreement may be executed in counterparts by each of the Parties. Each such counterpart shall constitute an original and all such counterparts so executed shall constitute one Agreement, binding upon the Parties, notwithstanding that all of the Parties are or may not be a signatory to the original or the same counterpart. Each counterpart shall have the same force and effect as if all such signatures were contained in one instrument. A facsimile copy shall be considered an original for the purposes of this Agreement. Facsimile or e-mail transmissions shall be deemed effective as originals.

**27. No Third Party Beneficiaries.** The Parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

**28. Assignment and Subcontracting.**

a. The experience, knowledge, capability and reputation of CCEA, its principals and employees were a substantial inducement for City to enter into this Agreement. Assignments of any or all rights, duties or obligations of CCEA under this Agreement will be permitted only with the written consent of City.

b. CCEA shall not subcontract any portion of the work to be performed under this Agreement without the written consent of City. If City consents to such subcontract, CCEA shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as required by law. City expressly acknowledges that (i) CCEA is staffed by employees of the City of Lancaster, (ii) CCEA contracts with Pacific Energy Advisors for compiling data, load forecasting and preparation of pro formas and (iii) CCEA contracts with Bayshore Consulting Group Inc. for the preparation of implementation plans. City hereby expressly consents to performance of the Services pursuant to this Agreement by the persons and/or entities identified in the immediately preceding sentence.

**29. Principal Representatives.**

a. Jason Caudle is designated as CCEA's principal representative ("CCEA Principal Representative") and is the person responsible for undertaking, managing and supervising performance of the Services. CCEA Principal Representative's experience, knowledge, capability and reputation are a substantial inducement for City to enter into this Agreement, and as such, for the purposes of performing the Services, the duties of CCEA Principal Representative shall not be reassigned, without express written consent of both Parties.

b. Edgar P. Cisneros, City Administrator shall be City's principal representative ("City Principal Representative") for purposes of communicating with CCEA on any matter associated with the performance of the Services set forth in this Agreement.

**30. Representations of Parties and Persons Executing Agreement.** Each Party hereby represents that all necessary and appropriate actions of its governing body have been taken to make this Agreement a binding obligation. Each person executing this Agreement warrants that he or she is duly authorized to execute this Agreement on behalf of and bind the Party he or she purports to represent.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized.

**CITY:**

Dated: \_\_\_\_\_

**City of Commerce**

By: \_\_\_\_\_  
Edgar P. Cisneros, City Administrator

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CCEA:**

Dated: \_\_\_\_\_

**CALIFORNIA CHOICE ENERGY AUTHORITY**, a  
California joint powers authority

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

\_\_\_\_\_  
(Name, Title)

ATTEST:

\_\_\_\_\_  
CCEA Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
CCEA General Counsel

**EXHIBIT “A”**

**SCOPE OF SERVICES AND PAYMENT SCHEDULE**

**Phase 1 - Load Forecasting, Data Analysis, and Pro-forma Development** **\$48,000**

Aggregate load data requested from SCE. Once in receipt of the load data, a third party consultant, Pacific Energy Advisors (PEA), will provide the technical expertise to analyze the data, determine a load profile, estimate total usage, compare that to current market conditions, and prepare a pro-forma. Note that this is the initial pro-forma to submit in the Implementation Plan and only provides an estimate. The CCA cannot get the detailed load data from SCE until the Implementation Plan is certified by the CPUC.

**Phase 2 –**  
**Preparation of the Implementation Plan, Ordinance and Statement of Intent to Form a CCA** **\$15,000**

An Implementation Plan and Ordinance must be prepared and adopted declaring a city’s intent to form a CCA. This is a relatively straightforward process and does not commit the City of Commerce to any risk. The Implementation Plan will identify specific duties, address how the City of Commerce will interface with consultants and other third parties, and develop organizational structures which outline the operational functions and duties. This phase also includes incorporating and synthesizing all information created and obtained, and preparing the final Implementation Plan to be reviewed and approved by your City Council and thereafter submitted to the CPUC. Again, note that when approved, the City of Commerce still has no obligation to procure, sell or deliver energy.

As with all Ordinances, it requires a public hearing with two readings. The ordinance is non-specific to the price, terms and operations of the CCA. Proposal includes attendance at meetings with staff, City Council Study Sessions and City Council meetings as needed for a successful outcome.

***Total Costs for Formation Work..... \$63,000.00***

CCEA shall bill City in three (3) equal installments (\$21,000) with first billing to coincide with receipt of historical usage data from SCE. City shall pay CCEA within thirty (30) days of CCEA submitting an invoice to City.