

City of Oberlin, Ohio

ORDINANCE No. 13-39 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE CLEAN ENERGY COALITION TO PROVIDE FLEET MANAGEMENT AND ALTERNATIVE FUEL CONSULTING SERVICES IN ACCORDANCE WITH THE LOCAL GOVERNMENT INNOVATION FUND GRANT AWARD AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a contract with Clean Energy Coalition of Ann Arbor, MI to provide fleet consulting services, fuel analysis and strategies, and shared solutions analysis and workshops in accordance with the terms and conditions set forth in the proposed contract attached hereto as **Exhibit A** and incorporated herein by reference, and in an amount not to exceed \$86,170.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit: to commence the Fuel Forward Fleet Analysis project with local partners at the earliest possible date to perform work in accordance with the time frame associated with the Local Government Innovation Fund grant, and shall take effect immediately upon passage.

PASSED: 1st Reading: July 1, 2013 (E, F)
 2nd Reading: _____
 3rd Reading: _____

ATTEST:


BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL


SHARON F. SOUCY
PRESIDENT OF COUNCIL

POSTED: 07/02/2013

EFFECTIVE DATE: 07/01/2013



07-24-13A11:58 RCVD

CONSULTING SERVICES AGREEMENT

This consulting services agreement ("Agreement"), dated July 1, 2013, is between **City of Oberlin**, ("Client"), with its principal office at 85 S. Main Street, Oberlin, Ohio, 44074 and Clean Energy Coalition, ("Contractor"), a Michigan non-profit corporation with its principal office at 924 N. Main Street, Suite 2, Ann Arbor, MI, 48104, individually the "Party" and together the "Parties".

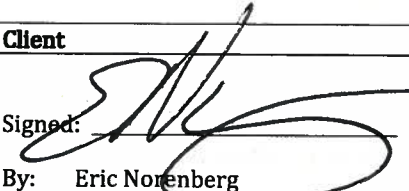
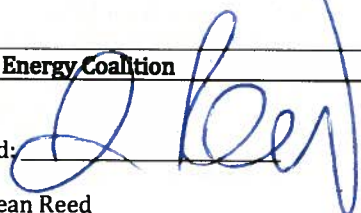
The Parties agree as follows:

1. **Scope of Work.** Contractor agrees, subject to the following terms and conditions, to perform the Work identified in the Addendum. Any changes to the Agreement must be in writing, agreed upon by both Parties.
2. **Terms of Payment; Expenses.** Client agrees to pay for Contractor's Work according to the compensation terms in the Addendum. All monetary compensation shall be remitted in United States Dollars.
3. **Incorporation of Standard Terms and Conditions and Addendum.** The Agreement consists of this one-page document, the Standard Terms and Conditions, and the Addendum. These last two documents are incorporated by this reference and made a part of this Agreement.
4. **Notices.** Any notices pertaining to this Agreement shall be in writing, shall be sent via hand delivery, via nationally recognized overnight courier service, via certified or registered mail, or via electronic mail and shall be addressed with attention to:

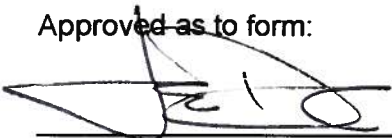
If to City of Oberlin:
 Eric Norenberg
 City Manager
 enorenberg@cityofoberlin.com

If to Clean Energy Coalition:
 Sean Reed
 Executive Director
 reed@cec-mi.org

The parties have executed this Agreement as of the effective date set forth above.

Client	Clean Energy Coalition
Signed: 	Signed: 
By: Eric Norenberg	By: Sean Reed
Its: City Manager	Its: Executive Director
Email: enorenberg@cityofoberlin.com	reed@cec-mi.org
Phone: 440-775-7206	734-585-5720 ext. 31

Approved as to form:



 Jon Clark, Law Director

STANDARD TERMS AND CONDITIONS

1. **Term of Agreement; Termination.** (a) Once both parties execute this Agreement, the term shall begin as of the effective date specified on the first page of the Agreement. Unless terminated sooner, the duration of the Work shall be as set forth in the Addendum, provided that such term shall continue until Client receives all Deliverables from Contractor in connection with the Work, and Client pays Contractor the full consideration as set forth in the Agreement.

(b) If Contractor fails to comply with any of the terms and conditions of the Agreement and if such failure is not cured within thirty (30) days after the delivery of written notice from Client specifying such failure and requesting cure of same, then Client shall be entitled to terminate the Agreement at any time following the expiration of such 30-day period. Client may use its reasonable discretion to extend the 30-day period.

(c) In the event of any material breach of this Agreement by Contractor, Client may terminate Contractor's performance of the Work immediately, provided that Client first notifies Contractor in writing.

(d) In the event of termination, Client will compensate Contractor for Work completed, provided it is approved by the Client, in accordance with the terms and conditions of this Agreement through the effective date of termination.

2. **Independent Contractor.** It is understood and agreed that the relationship created by the Agreement is that of an independent contractor and that nothing in the Agreement shall be construed as constituting Contractor as an employee or agent of Client for any purpose. In addition, the Agreement shall not be construed as creating any employment relationship, partnership or joint venture between Contractor and Client. Contractor shall abide by the policies, rules, regulations or working requirements reasonably established by Client and shall carry out and complete the Work in the manner reasonably specified by Client. Contractor shall be responsible for all life, health or disability insurance; federal, state or local withholding taxes; unemployment insurance benefits; social security; worker's compensation and similar expenses and/or deductions based on performance of the Work for Client.

3. **Deliverables; Delivery.** (a) As described in detail in the Addendum, Contractor shall prepare and periodically deliver to Client certain reports, analyses, models, pictorial diagrams, charts, etc., either in an executable electronic format acceptable to Client, in PDF electronic format and in hard copy (collectively "Deliverables"). Subject to the provisions of Sections 9 and 10 below, all Deliverables and all related documents, whether electronic or hard copy, as prepared by Contractor pursuant to this Agreement shall become the property of Client.

(b) Delivery under this Agreement means delivery to the Client's authorized contact or delivery location as identified in the Addendum. Client may: (i) replace its authorized contact, (ii) cancel or reschedule the delivery date, or (iii) change the delivery location upon reasonable prior notice to Contractor.

(c) Deliverables will be delivered as specified in the Addendum. If Contractor fails to comply with a delivery commitment, Contractor will promptly notify Client in writing of a revised delivery date. If this happens, Client may take such reasonable steps in law or equity to protect its business, but will use its best efforts to work with Contractor to achieve a fair result.

4. **Indemnity.** Contractor agrees to indemnify and to hold Client harmless: (i) from any and all third party claims against Client arising out of Contractor's negligent performance under this Agreement and, (ii) for any injuries to persons or property caused by the negligent acts

or omissions of Contractor while performing Work under this Agreement.

5. **Risk of Loss.** Contractor assumes all risk of personal injury and all risk of damage to, or loss of, personal property belonging to Client when such loss is caused by Contractor under this Agreement. Contractor assumes all risk of damage to, or loss of, personal property belonging to Contractor, unless such loss or damage is caused solely by Client.

6. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, LOST PROFITS, OR FOR ANY CLAIM OR DEMAND MADE BY ANY THIRD PARTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. **Confidentiality; Proprietary Rights.** (a) As used in the Agreement, "Confidential Information" shall mean: (a) if disclosed in writing, identified as Confidential Information at the time of disclosure by an appropriate mark or legend, or (b) if disclosed orally, identified as Confidential Information at the time of disclosure, and within thirty (30) days, written confirmation, appropriately marked, shall be sent to the recipients indicating that the subject matter disclosed is confidential and is covered by this Agreement, whether of a technical, business, or other nature (including, without limitation, writings, trade secrets, know-how and information relating to the Work, business plans, promotional and marketing activities, finances and other business affairs of Client). Confidential Information may be contained in tangible materials, such as writings, drawings, models, data, specifications, reports, compilations and computer applications. Confidential Information shall not be: (i) information already known to Contractor, (ii) information in, or that becomes in, the public domain, or (iii) information acquired by Contractor from a third party entitled to disclose such information. Contractor agrees to maintain the confidentiality of information designated by Client as confidential during and after the term of this Agreement.

(b) All Deliverables created by Contractor pursuant to the Agreement shall become the property of Client and Contractor shall not copy or communicate any such documentation to any third party without the prior written consent of Client.

(c) Nothing in the Agreement shall be construed as granting, either expressly or by implication, estoppel or otherwise, any license to Contractor regarding any trademark, copyright, or other intellectual property now or later owned or controlled by Client. Any materials, ideas or expressions developed by Contractor in any medium during the course of performing Work under the Agreement that relate to the Work or any invention, discovery or intellectual property owned or controlled by Client shall become the property of Client. The Contractor shall not retain any copies of the foregoing without Client's prior written permission. Upon requested by Client, the Contractor shall immediately deliver to the Company all such files, records, documents, images, information, and other items in its possession or under its control.

8. **Non-Solicitation.** (a) Client agrees that for a period of one (1) year following the termination of this Agreement, Client will not employ, solicit or seek to employ any person who, at the time this Agreement is terminated, is employed by Contractor.

9. **Copyrights.** (a) Contractor agrees that all rights and title to Deliverables under this Agreement whether in written form, pictorial or other documentary or reproducible form, and in any medium whatsoever, belong exclusively to Client and shall be considered works made for hire. Any and all copyrights in and to such Deliverables are and shall be the sole property of Client. To the extent that any



Deliverables may not by operation of law be works made for hire, this Agreement will constitute an irrevocable assignment by Contractor to Client of the ownership of and all rights of copyright in such items, and Client will have the right to obtain and hold in its own name all registrations which may be available in the Deliverables. Contractor agrees to execute all documents reasonably requested by Client and to render, at Client's sole expense, whatever reasonable assistance Client may request to enable Client to perfect its ownership interest in and to such copyrights whether in the United States of America, its territories and possessions, or elsewhere in the world.

(b) Contractor agrees that Client would be irreparably harmed by Contractor's breach of this Section or Sections 8 or 10.

10. **Patents.** To the extent that any Deliverable described in the Addendum may be patentable, Client may take such steps as it deems reasonably appropriate, at its expense, to file and prosecute any applications for patents in the United States and elsewhere, and the Contractor shall, on request, assign to Client any such applications and any patents resulting therefrom. The Contractor shall take all such further steps as Client reasonably may request to perfect Client's sole and exclusive ownership of the Deliverable set forth under the Addendum.

11. **Warranties.** (a) Contractor makes the following ongoing representations and warranties as may be applicable to the Work: (i) it has the right and authorization to enter into this Agreement and its performance of this Agreement will not violate the terms of any contract, obligation, law, regulation or ordinance to which it is or becomes subject; (ii) no claim, lien, or action exists or is threatened against Contractor that would interfere with Client's rights under this Agreement; (iii) Contractor is the sole author/creator of the Deliverables; (iv) Work performed by Contractor will conform to professional standards and quality within the industry and will comply with all applicable laws; and (v) Deliverables and Work do not infringe any privacy, publicity, reputation or intellectual property right of a third party.

(b) If any Deliverable or Work does not comply with the warranties in this Agreement, Contractor will replace the Deliverable or re-perform Work, without charge and in a timely manner.

12. **IP Indemnity.** Contractor will, at its expense, indemnify, defend and hold Client harmless against and, subject to the limitations set forth herein, pay all costs (including paying all reasonable attorneys' fees and costs of litigation) and damages made in settlement or awarded against Client resulting from any claim based on an allegation that a Deliverable as supplied by Contractor infringes a U.S. patent, trademark, or copyright or misappropriates a U.S. trade secret of a third party, provided that Client: (i) gives Contractor prompt written notice of any such claim; (ii) allows Contractor to direct the defense and settlement of the claims; and (iii) provides Contractor with the information and assistance necessary for the defense and settlement of the claim. If a final injunction is obtained in an action based on any such claim against Client's use of a Deliverable by reason of such infringement, or if in Contractor's opinion such an injunction is likely to be obtained, Contractor may, with Client's concurrence, either (i) obtain for Client the right to continue using the Deliverable; (ii) replace or modify the Deliverable so that it becomes non-infringing.

13. **Entire Agreement; Modification; Severability.** The Agreement constitutes the entire understanding of the Parties, supersedes all prior negotiations, representations, discussions, or agreements, and may be

modified or amended only with the mutual written agreement of the Parties. The Agreement may be executed in counterparts, and facsimile copies of signatures shall be treated as original signatures for all purposes. The Agreement is binding on and shall inure to the benefit of the parties and their respective successors and permitted assigns. If any of the provisions of the Agreement are in conflict with any applicable statute or rule of law or otherwise unenforceable, such offending provisions shall be null and void only to the extent of such conflict or unenforceability, but shall be deemed separate from and shall not invalidate any other provision of the Agreement.

14. **No Other Promises or Inducements.** There are no promises or inducements which have been made to any Party to the Agreement to cause such Party to enter into the Agreement other than those which are set forth in the Agreement.

15. **Governing Law; Jurisdiction; Venue.** The Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to its conflicts of law principles. Contractor shall comply with all applicable laws during the performance of the Work. Any legal action, suit or proceeding arising out of or in connection with this Agreement may be brought only in a court of competent jurisdiction located in Lorain County, Ohio. This Agreement will benefit and be binding upon the Parties and their successors and assigns.

16. **Assignment.** Neither Party may assign its rights or obligations under the Agreement without the prior written consent of the other Party.

17. **Survival.** The provisions of Section 7 through 21 shall survive the termination of the Agreement or the completion of Work under this Agreement.

18. **No Third-Party Beneficiaries.** The Agreement is made for the sole benefit and protection of the Parties to the Agreement. No other person or entity shall have any rights whatsoever under the Agreement.

19. **Force Majeure.** Neither Party will be liable under the Agreement for failure to perform any obligations thereunder if such failure is attributable to an act of God, war, insurrection, terrorism or riot; the inability to obtain necessary governmental approvals or licenses; fire, casualty, labor disputes, or other similar causes beyond the reasonable control of the respective Party.

20. **Attorney's Fees.** In any suit, action or proceeding commenced by either Party to enforce any rights under the Agreement or for breach of any term or condition, the prevailing Party shall be entitled to recover reasonable fees and disbursements of its counsel and other professionals retained in connection with such suit, action or proceeding.

21. **Headings.** The headings of the various Sections in the Agreement are for convenience of reference only and shall not be deemed to modify or restrict any terms or provisions.

22. **Errors and Omissions.** The Contractor shall carry Errors and Omissions insurance of \$1,000,000 per incident and \$1,000,000 cumulative and name the Client as additionally insured. A copy of said insurance policy shall be provided to Client.

ADDENDUM

Client: City of Oberlin
Location of Project: 85 S. Main St.
Oberlin, OH 44074
Delivery Location: Same as above
Project Start Date: July 1, 2013
Completion Date: February 28, 2014

Project Description:

Clean Energy Coalition will work with the Oberlin Fuel Forward planning advisory committee representing each of the ten project partners (City of Oberlin, Oberlin City Schools, New Russia Township, Kendal at Oberlin, Lorain County Joint Vocational School, Lorain County Community College, Lorain County Metroparks, Oberlin College, Republic Services and Custom Cleaning Services) to define strategies to reduce fleet fuel costs and emissions by 15% over three years. The project will result in ten fleet-specific Fuel Forward® reports, an infrastructure development financial feasibility report, and a summary report of collaborative opportunities for the City of Oberlin.

Scope of Work:

Task Area 1 – Fleet Consulting Services

- **Subtask 1.1 – Fleet Manager Meetings**
Clean Energy Coalition will coordinate with the advisory committee to schedule a project introductory call and to schedule site visits to each partner organization. Two Clean Energy Coalition staff members will visit Oberlin for three consecutive days in early August 2013 for on-site interviews with the ten fleet managers at each of the partner organizations. The purpose of the meetings will be to tour facilities, meet fleet users and technicians, learn about current operations, past and present approaches to improving fleet efficiency and driver behaviors, vehicle replacement schedule, fuel management and maintenance logistics, experience with alternative fuels, and other considerations for alternative fuel vehicle use.
- **Subtask 1.2 – Fleet Data Analysis**
Clean Energy Coalition will ask the fleet manager at each partner organization to provide data before September 1, 2013 for all fleet vehicles including make, model, year, annual mileage, current odometer, annual fuel use, departmental/driver assignments, and annual maintenance costs. The data will be used to create a baseline of fuel and maintenance costs, GHG emissions, and petroleum use. The fleet partners and Clean Energy Coalition will work together to identify priority scenarios for replacing conventional vehicles with alternative fuel vehicles, including biofuels, natural gas, propane, electric, and hybrid technology.
- **Subtask 1.3 – Fleet Reports**
Clean Energy Coalition will provide a customized report to each fleet partner that details the baseline, analysis of each scenario, payback analysis, and recommendations for action. Recommendations for improving fleet efficiency through driver behaviors will also be addressed. The collective results and recommendations will be compiled in a summary report. Clean Energy Coalition will present draft reports to the fleet partners for a two-week review period in November 2013 and deliver finalized reports in December 2013.

Task Area 2 – Fueling Strategies



- **Subtask 2.1 – Alternative Fuel Demand Map**
Clean Energy Coalition will use mapping software to create visual guidelines for potential alternative fuel facility locations based on potential demand by all fleet partners. The distance from each partner’s fleet operations will be considered when creating the demand map in order to maximize efficiency and support shared use. Clean Energy Coalition will schedule a site visit in early November 2013 to verify the map data and visit potential sites.
- **Subtask 2.2 – Feasibility Study**
Clean Energy Coalition will use the results of the fleet analysis reports, demand map, and workshop feedback to estimate potential demand for alternative fuels and identify high-potential locations for shared infrastructure. The study will include financial analysis to compare the estimated costs, payback times, and safety considerations for moving forward with an infrastructure development project in the future. Clean Energy Coalition will provide a draft report to the City of Oberlin for review in December 2013 and will complete the final report in January 2014.

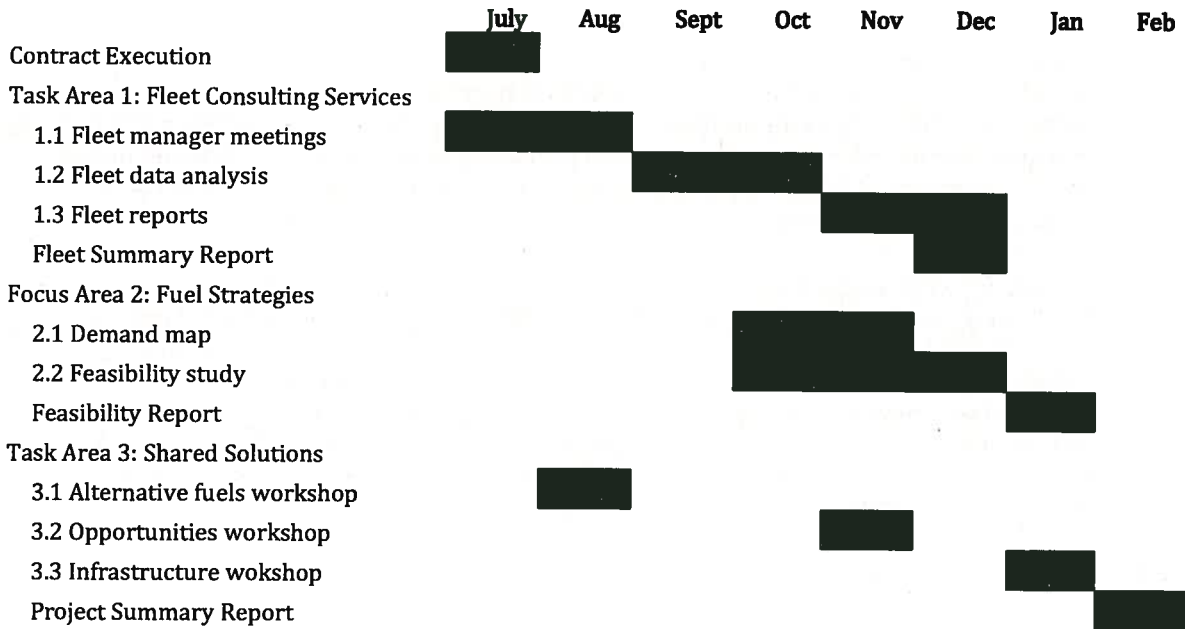
Task Area 3 – Shared Solutions

- **Subtask 3.1 – Alternative Fuel Workshop**
This workshop will occur in August 2013 and will provide project partners with an overview of alternative fuels and fuel saving strategies for fleets. The workshop will cover Clean Energy Coalition’s Fuel Forward methodology and other information available through the U.S. Department of Energy Clean Cities program, including fuel-efficient driving habits, alternative fuel properties, calculating GHG emissions, facility safety, and maintenance considerations for alternative fuel vehicles. Workshop materials will be provided to participants so that they may educate others within their organization and community.
- **Subtask 3.2 – Opportunities Workshop**
Fleet partners will have an opportunity to identify barriers and/or preferred strategies for alternative fuel adoption based on the options analyzed in their fleet analysis reports. The workshop will occur in November 2013 and will assist fleet managers in setting fuel reduction goals, creating partnerships, and defining strategies for successful alternative fuel vehicle deployment through shared services, such as facilities, maintenance, and training.
- **Subtask 3.3 – Infrastructure Workshop**
This workshop will occur in January 2014 and will focus on the findings of the fueling strategy feasibility study and identify the needs and next steps for moving forward with infrastructure development. Participants’ comments, questions, and concerns will be included in a project summary report. The final report will be submitted for review by February 1, 2014, and finalized by February 28, 2014, which will conclude the project.

Budget

Personnel:	\$81,670
Travel Expenses:	<u>\$4,500</u>
Total:	\$86,170

Timeline



Client's Contact: Laura Palombi, Project Manager
 734-585-5720 x22 | laura@cec-mi.org

Compensation:
 City of Oberlin will pay to Clean Energy Coalition as compensation for consulting services up to the not-to-exceed sum of \$86,170 (based on 1,005 hours) on a Time and Material basis. Invoices for services rendered will be submitted to City of Oberlin and paid within thirty (30) days of receipt. Consultant's invoices shall comply with all requirements of the Ohio Development Services Agency's Local Government Innovation Fund Grant Disbursement Manual.

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BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL


SHARON F. SOUCY
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