

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN CITY OF AUSTIN, TEXAS  
AND CLEAN ENERGY INCUBATOR  
REGARDING SUPPORTING CLEAN ENERGY**

**THIS AGREEMENT** is entered into by and between The University of Texas at Austin, on behalf of Clean Energy Incubator (hereinafter “CEI”), a program of the Austin Technology Incubator (“ATI”), and the City of Austin, a Texas home-rule municipal corporation, acting by and through its electric utility department, Austin Energy (hereinafter “Austin Energy” or “AE”), shown below as contracting parties, pursuant to the authority granted and in compliance with the provisions of the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code.

**RECITALS**

**WHEREAS**, Section 791 of the TEXAS GOVERNMENT CODE authorizes local governments to contract with one another and with agencies of the state to increase the efficiency and effectiveness of local governments by jointly performing governmental functions in which the contracting parties are mutually interested;

**WHEREAS**, the Clean Energy Incubator and the City of Austin entered into that Interlocal Cooperation Agreement Regarding Supporting Clean Energy dated June 1, 2006, and the Second Interlocal Cooperation Agreement Regarding Supporting Clean Energy dated January 17, 2008, and the terms of these agreements have expired;

**WHEREAS**, the City of Austin’s municipally-owned electric utility, Austin Energy, is a nationally-recognized leader in clean energy; and clean energy technologies have the potential to become a key contributor to Austin local economic development efforts; and

**WHEREAS**, The mission of the Clean Energy Incubator is to help develop early stage clean energy companies (“Clean Energy Companies”) in Austin by helping these companies solidify management teams, secure adequate funding, and accelerate the time to market of each Clean Energy Company’s products; and

**WHEREAS**, Austin Energy and the Clean Energy Incubator participated with other sponsors and held annual Clean Energy Venture Summits in October of 2008 and in October of 2009, in which clean energy entrepreneurs presents their innovations to parties such as potential investors, Austin Energy experts, various utility executives, industry leaders and government leaders, and Austin Energy and the Clean Energy Incubator plan on sponsoring additional Clean Energy Venture Summits in October of 2010 and October of 2011; and

**WHEREAS**, the ability to provide technology innovation is a critical component in an emerging technology company’s ability to secure venture financing; and the Austin City Council has identified “Emerging Technologies”, including clean energy technologies, as the fourth pillar of Austin’s

economic development strategy; and

**WHEREAS**, on February 15, 2007, the City of Austin Council adopted Council Resolution 20070215 directing the City Manager to further Austin Energy's efforts to advance and expand the use of new clean energy and energy efficiency technologies by establishing Austin Energy as a "Beta Tester" for clean energy technologies; and by negotiating a new interlocal agreement with the Austin Technology Incubator to have the Clean Energy Incubator use an agreed-upon process to evaluate and refer potential projects, products or process to Austin Energy for beta testing;

**NOW, THEREFORE**, in consideration of the hereinafter set forth agreements, covenants, and payments, the amount and sufficiency of which are acknowledged, CEI and Austin Energy agree to the terms and conditions stated in this agreement ("Agreement").

## **1. CONTRACTING PARTIES**

The Clean Energy Incubator ("CEI") is a program of the Austin Technology Incubator ("ATI") and the IC<sup>2</sup> Institute at the University of Texas at Austin. CEI provides assistance to young Clean Energy Companies by providing resources and facilities for the development and furtherance of clean energy technologies ("Clean Energy Technologies"). ATI is a program of the IC<sup>2</sup> Institute at the University of Texas at Austin. ATI is housed by the University of Texas, and it is partially funded through member company fees. ATI is a business accelerator committed to advancing technology initiatives by advising early-stage, high-risk companies engaged in technology-based ventures. The IC<sup>2</sup> Institute of the University of Texas at Austin is a center for research and education. The City of Austin is a home rule municipality of the State of Texas, acting by and through its electric utility department, Austin Energy.

## **2. PURPOSE**

CEI is committed to providing service to Clean Energy Companies in the City of Austin. Austin Energy is committed to delivering clean energy to the citizens of Austin. CEI's goal is to create successful companies in the Austin marketplace that will bring economic dollars into the city, provide jobs for Austin residents, and increase clean energy consumption in the Austin community. Under this Agreement, CEI will partner with Austin Energy to help Austin Energy achieve its clean energy "Strategic Goals" (established by the City of Austin), and to formulate a strategy to move Austin forward towards becoming the nation's clean energy capital. Austin Energy intends to assist CEI in its goals by providing financial support that will increase the infrastructure and support services at CEI through the hiring of personnel experienced in the energy industry, to increase CEI's value to its member companies and to help expand the role of Austin as the headquarters of choice for Clean Energy Companies.

## **3. STATEMENT OF SERVICES TO BE PERFORMED**

- A. **Infrastructure Contribution.** Austin Energy agrees to provide funding to CEI for the purpose of increasing CEI infrastructure and support services through the hiring of personnel experienced in the energy industry as more fully described in the CEI Partnership Proposal Outline for the City of Austin, dated September 15, 2005 and attached hereto as Exhibit A.

CEI agrees to spend the Infrastructure Contribution Funding exclusively on the payment of salary, fringe benefits and travel expenses associated with the position(s) created. **Infrastructure Contribution Funding:** Austin Energy's infrastructure contribution hereunder shall be: 1) \$100,000 to be paid by Austin Energy to CEI within 30 days of the full execution of this Agreement; and 2) \$100,000 to be paid by Austin Energy to CEI on or before October 31, 2010.

- B. Clean Energy Company Incubation.** CEI was formed for the purpose of fostering the growth and development of new Clean Energy Companies by providing business advice and consultation and working space and other support services ("New Business Sponsorships") as necessary to launch new business ventures. CEI agrees to provide Austin Energy information regarding promising clean energy ventures headquartered in Austin, Texas that CEI considers worthy to be candidates for sponsorship. At its sole discretion, Austin Energy shall select a company to receive an AE New Business Sponsorship ("AE Sponsored Company") from among the candidates for the provision of New Business Sponsorship(s) funding. Austin Energy shall have no obligation to fund any New Business Sponsorship, but, should Austin Energy indicate in writing to CEI its selection of an AE Sponsored Company and AE's agreement to provide such funding, Austin Energy shall fund up to two annual New Business Sponsorships under this Agreement. Each New Business Sponsorship will be in the amount of \$30,000. **Sponsored Company Benefit:** CEI agrees that Austin Energy shall be allowed to negotiate with each AE Sponsored Company for some benefit to be provided Austin Energy that is associated with the business of the sponsored company ("Sponsored Company Benefit"). An AE Sponsored Company's agreement to provide Austin Energy a Sponsored Company Benefit shall be a condition of receiving Austin Energy's sponsorship hereunder. CEI agrees to support each AE Sponsored Company in a manner commensurate with the sponsorship historically provided by CEI. **Clean Energy Company Incubation Funding:** Austin Energy agrees to provide \$30,000 to CEI within within 30 days of Austin Energy's designation of an AE Sponsored Company. Austin Energy funding for New Business Sponsorships shall not exceed \$60,000 during the first twelve months of this Agreement, and shall not exceed \$120,000 during the term of this Agreement.
- C. Support of Austin Energy Beta Testing and Process Pipeline.** CEI agrees to provide the goods and services described herein ("Beta Testing Support Services") to support Austin Energy in Austin Energy's effort to become a Beta Tester for Clean Energy Technologies. Such Beta Testing Support Services, and to assist Austin Energy in the development of a process to identify and evaluate Clean Energy Companies and Clean Energy Technologies that would benefit from Beta Testing. Such Beta Testing Support Services shall include; 1) the provision of access to software and data as described below; 2) the requirement that its personnel travel as described below; and 3) obtaining subscriptions to information services. **Austin Energy Beta Testing and Process Pipeline Funding:** Austin Energy's obligation under this paragraph, shall not exceed \$75,000 annually, or exceed \$150,000 during the term of this Agreement. During each year of this Agreement, such funds shall be allocated as described below unless CEI obtains Austin Energy's written agreement to reallocate such

funds within the categories set forth below:

- i.* In consideration of Austin Energy's payment of \$25,000, CEI agrees to purchase software that shall be suitable for the tracking and recording of companies that have been identified as having promising Clean Energy Technologies under development. This software (hereinafter "Clean Energy Technology Software") is to be owned by CEI, and it is to be housed and supported within the facilities of CEI. Austin Energy shall be allowed access to the Clean Energy Technology Software and its databases through on-site access by Austin Energy personnel during normal business hours, or by CEI's generation of hard-copy or electronic copies of reports and data upon the request of Austin Energy. On-site access by Austin Energy personnel shall be allowed pursuant to a procedure that shall be mutually acceptable to Austin Energy and CEI.
  - ii.* In consideration of Austin Energy's payment of \$50,000, CEI personnel shall use such funds to pay for: 1) travel by CEI personal, as necessary, to recruit and support the beta-testing, incubation and other Austin Energy technology development processes; 2) staffing costs; and 3) internet service subscription and report fees. CEI shall document all travel funded hereunder in an annual report ("Annual Report") to be provided to Austin Energy on or before October 31st of each year of this Agreement. Such Annual Report shall record: the dates of travel and travel locations, the identity of parties traveling, the amount of all expenditures, the nature of all expenditures, the contacts made and a general assessment of the contacts made as a result of such travel. As additional consideration of the payment made under this paragraph, CEI shall obtain and maintain subscriptions to information services pertinent to the service performed hereunder including, but not limited to, Venture Source; Dow Jones CleanTech Wire; and analyst reports on Clean Energy Companies. CEI shall make such information services available to Austin Energy during normal business hours.
- D. Clean Energy Venture Summit.** In the event that annual Clean Energy Venture Summits ("Summit") are conducted during the term of this Agreement, Austin Energy agrees to sponsor each Summit conducted in the amount of \$120,000. CEI and Austin Energy agree that Austin Energy shall participate as a Premier Sponsor for each Summit sponsored by Austin Energy. Austin Energy designated representatives shall also participate as members of a panel of experts on clean energy technology at each Summit sponsored by Austin Energy. Austin Energy's \$120,000 sponsorship payment shall be due and payable prior to the opening of each annual Summit during the term of this Agreement. Austin Energy's obligation under this Section 3.D, shall not exceed \$240,000.

#### **4. PAYMENT**

- A.** Austin Energy's financial obligations under this Agreement shall not exceed: 1) \$ 325,417 during AE's fiscal year 2010; 2) \$355,000 during AE's fiscal year 2011; and 3) \$29,583 during AE's fiscal year 2012.

- B. CEI shall submit to Austin Energy an invoice or invoices for Austin Energy's payment obligations agreed to hereunder and for payment for the services requested in writing by Austin Energy under this Agreement.
- C. Austin Energy shall pay any proper invoice submitted hereunder within 30 days of Austin Energy's receipt of the invoice.
- D. Austin Energy's payment obligations are payable only and solely from funds appropriated by the Council of the City of Austin ("Appropriated") and available for the purpose of this purchase. The absence of Appropriated or other lawfully available funds shall render this Agreement null and void to the extent funds are not Appropriated or available. Within 45 days of the adoption of Austin Energy's annual budget, Austin Energy shall provide CEI written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under this Agreement, or the reduction of any Appropriation to an amount insufficient to permit Austin Energy to pay its obligations under this Agreement.

## **5. QUARTERLY AND ANNUAL REPORTS**

CEI shall provide quarterly reports (and/or other reports as reasonably requested by Austin Energy) reflecting CEI's progress in the fulfillment of all requirements under this Agreement. CEI shall also provide Austin Energy with a completed annual report in June of each year during the Agreement Term. Such annual report shall contain CEI's collected and consolidated data for the period beginning on July 1<sup>st</sup> of the preceding year. CEI shall create and maintain such records as necessary for Austin Energy to audit performance under this requirement, including documentation related to each employee paid with funds contributed by Austin Energy under this Agreement; the status of each workshop, assessment, conference, and Competition required hereunder; and any other information reasonably necessary to audit CEI's performance under this Agreement. CEI agrees that the representatives of the Office of the City of Austin Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of CEI related to the performance under this Agreement.

## **6. RECORD MAINTENANCE**

CEI shall maintain all records and reports required under this agreement for a period of three years after the termination date, or until all evaluations, audits and other reviews have been completed and all questions or issues, including litigation, are resolved satisfactorily, whichever occurs later.

## **7. LEGAL RESPONSIBILITIES**

This Agreement does not create any partnership, employee, fiduciary, insurance, or agency relationship between the parties or any of their agents or employees. No party to this Agreement will be responsible for the acts of the other party or any other employee of the other party by virtue of this Agreement, except as may be decreed against that party by a judgment of a court of competent jurisdiction. It is expressly understood and agreed that in the execution of this

Agreement, no party waives, nor shall be deemed to waive, any immunity or defense otherwise available to it against any claims by third parties. Each party to this Agreement waives all claims against every other party to the Agreement for compensation or any loss, damage, personal injury, or death, occurring as a consequence of the performance of this Agreement, except for acts in violation of the criminal laws.

## **8. TERM OF AGREEMENT**

This Agreement shall be effective upon its full execution and shall terminate on November 5, 2011. Austin Energy may terminate this Agreement for convenience at any time by giving 60 days advance notice to CEI. Sections 5, 6, 9 and 12 shall survive any termination of this Agreement.

## **9. NOTICE**

Any notice given hereunder by any party to the other party shall be in writing and may be effected by personal delivery in writing, by registered or certified mail, return receipt requested, when mailed to the addresses of the parties indicated below, in care of the official signing this Agreement, or by facsimile transmission as agreed to by the Parties and as evidenced by a confirming return facsimile transmission:

City of Austin c/o Chief Strategy Officer  
Austin Energy  
Town Lake Center  
721 Barton Springs Road  
Austin, Texas 78704-1194  
Fax: 512-322-6166

Clean Energy Incubator  
c/o Director  
3925 West Braker Lane  
Austin, Texas 78759  
Fax: 512-305-0009

The University of Texas at Austin  
c/o Office of the Vice President and CFO  
P.O. Box 8179  
Austin, Texas 78713  
Fax: 512-471-1422

## **10. LEGAL CONSTRUCTION**

Whenever the context of this Agreement requires, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others. Any portion of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

## **11. ENTIRE AGREEMENT**

This is the complete and entire Agreement between the parties with respect to the matters herein and supersedes all prior negotiations, agreements, representations, and understandings, if any. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the parties hereto. No official, representative, or employee of either party has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the governing body of the party.

## **12. COMPLIANCE**

A. **Federal, State and Local Laws.** CEI shall provide all services and activities performed under the terms of this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state, and local orders, laws, regulations, rules, policies, and certifications governing any activities undertaken during the performance of this Agreement.

B. **Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in the City of Austin, Texas or in Travis County, Texas. It is expressly understood that any lawsuit, litigation, or dispute arising out of or relating to this Agreement will take place in State Court in Travis County and the City of Austin.

C. **Immunity or Defense.** Each party expressly understands and agrees that, neither the execution of this agreement nor the conduct of any representative of the other party shall be considered to be a waiver of, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit. The parties shall have all remedies and defenses allowed by laws.

## **13. NO THIRD PARTY BENEFICIARY**

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. Nothing in this Agreement shall be construed as creating an obligation or duty of either party to any third party or any member of the public.

## **14. GRATUITIES**

Austin Energy may, by written notice to CEI, immediately cancel this Agreement without liability if it is determined by Austin Energy that gratuities were offered or given by CEI or any agent or representative of CEI to any officer or employee of the City of Austin with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such agreement. In the event the Agreement is canceled by Austin Energy pursuant to this provision, Austin Energy shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by CEI in providing such gratuities.

## **15. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**

No officer, employee, independent consultant, or elected official of the City of Austin who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from the solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of CEI shall render the Agreement voidable by Austin Energy.

## **16. AUTHORITY**

CEI warrants that CEI and the signors of this Agreement have the authority to enter into this Agreement.

## **17. MULTIPLE COUNTERPARTS**

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument.

**THE UNDERSIGNED CONTRACTING PARTIES** certify that: (1) the services specified above are necessary and essential for activities that are properly within their statutory functions, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, (3) each party has the necessary authority to enter into this Agreement, and (4) the services, supplies or materials contracted for are not required by Section 21 or Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

**IN WITNESS WHEREOF**, the **CITY OF AUSTIN** and **CLEAN ENERGY INCUBATOR**, through their duly authorized representatives, have made and executed this Agreement on the respective dates written below their signatures, and the effective date shall be the date of full execution of this Agreement.

**City of Austin**, a Texas home-rule  
Municipality acting by and through its  
Electric utility department,  
**AUSTIN ENERGY:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

The **University of Texas** at Austin,  
on behalf of the IC<sup>2</sup> Institute  
and the **CLEAN ENERGY INCUBATOR:**

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

Name: Debra Y Stevens

Title: Business Contracts Administrator

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