**AGREEMENT BETWEEN THE CALIFORNIA COMMUNITY POWER AGENCY AND**

**NAME OF LAW FIRM**

**FOR**

**GENERAL COUNSEL SERVICES**

THIS AGREEMENT, is entered into this DAY day of MONTH, YEAR, by and between the CALIFORNIA COMMUNITY POWER AGENCY, a California Joint Powers Authority ("Agency"), and CONSULTANT’S NAME, a ENTITY TYPE (hereinafter referred to as "Attorney") (collectively referred to as the “Parties” and individually as a “Party”).

RECITALS:

A. Agency is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq*.) with the power to conduct its business and enter into agreements.

B. Agency desires to retain Attorney to serve as General Counsel to the Agency.

C. Agency and Attorney desire to enter into an agreement for General Counsel Services upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on BEGINNING OF TERM, and shall terminate on END OF TERM, unless terminated earlier as set forth herein.

1. **SERVICES TO BE PERFORMED**

Attorney shall perform the services set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference. \_\_\_\_\_\_\_\_\_\_\_\_\_ will be the attorney with the primary responsibility for the services provided by Attorney under this Agreement and shall be designated as General Counsel. Attorney shall identify the other attorneys who also will be providing legal services. Agency retains the right to approve or disapprove any and all attorney assignments.

1. **COMPENSATION TO ATTORNEY**

Attorney shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed AMOUNT OF COMPENSATION IN WORDS dollars ($AMOUNT OF COMPENSATION IN NUMERALS.00) based on the rates and terms set forth in Exhibit "B," which is attached hereto and incorporated herein by this reference.

1. **INDEPENDENT PARTIES**

Agency and Attorney intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Attorney, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Attorney's services. None of the benefits provided by Agency to its employees, including but not limited to, unemployment insurance, workers’ compensation plans, vacation and sick leave are available from Agency to Attorney, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Attorney. Payments of the above items, if required, are the responsibility of Attorney. Attorney shall indemnify and hold harmless Agency and its elected officials, officers, employees, servants, designated volunteers, and agents from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Attorney’s personnel practices. Agency shall have the right to offset against the amount of any fees due to Attorney under this Agreement any amount due to Agency from Attorney as a result of Attorney’s failure to promptly pay to Agency any reimbursement or indemnification arising under this section.

1. **NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AGENCY**

Agency is organized as a Joint Powers Agency in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated January 29, 2021, and is a public entity separate from its constituent members. Agency shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Attorney shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Agency’s constituent members in connection with this Agreement.

1. **NON-DISCRIMINATION**

In the performance of this Agreement, Attorney shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law.

1. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. To the fullest extent permitted by law, Attorney shall, at its sole cost and expense, defend, hold harmless and indemnify Agency and its elected officials, officers, attorneys, agents, employees, volunteers, successors, and assigns (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively “Liabilities”) which arise out of or relate to the negligent acts or omissions or willful misconduct of Attorney in its performance of this Agreement, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees. Attorney shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Attorney shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

B. The acceptance of the services by Agency shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

C. Attorney’s indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

1. **INSURANCE**

A. General Requirements. On or before the commencement of the term of this Agreement, Attorney shall furnish Agency with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "C," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Attorney’s indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the Agency by certified mail, Attention: General Manager." Attorney shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Agency and licensed to do insurance business in the State of California. Endorsements naming the Agency as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Attorney agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Attorney shall look solely to its insurance for recovery. Attorney hereby grants to Agency, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Attorney or Agency with respect to the services of Attorney herein, a waiver of any right to subrogation which any such insurer of Attorney may acquire against Agency by virtue of the payment of any loss under such insurance.

C. Failure to secure or maintain insurance. If Attorney at any time during the term hereof should fail to secure or maintain the foregoing insurance, Agency shall be permitted to obtain such insurance in the Attorney's name or as an agent of the Attorney and shall be compensated by the Attorney for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. Agency, its members, officers, employees, agents and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

1. **REPORTS**

A. All reports, drafts, work product, and other documents reproduced, prepared or caused to be prepared by Attorney pursuant to or in connection with this Agreement, shall be the exclusive property of Agency.

B. Attorney shall, at such time and in such form as Agency may require, furnish reports concerning the status of services required under this Agreement.

C. No report, information or other data given to or prepared or assembled by Attorney pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Attorney without prior approval by Agency.

1. **RECORDS**

Attorney shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Agency that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Attorney shall provide free access to such books and records to the representatives of Agency or its designees at all proper times, and give Agency the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Attorney receives final payment from Agency for all services required under this agreement

1. **PARTY REPRESENTATIVES**

The General Manager (“Agency Representative”) shall represent Agency in all matters pertaining to the services to be performed under this Agreement. NAME OF CONSULTANT REPRESENTATIVE (Attorney Representative”) shall represent Attorney in all matters pertaining to the services to be performed under this Agreement.

1. **NOTICES**

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Attorney’s and Agency’s regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO AGENCY:

Attention: General Manager

TO ATTORNEY:

CONSULTANT NAME

COMPANY NAME

STREET ADDRESS

CITY, STATE, ZIP

1. **TERMINATION**

 Agency may terminate this Agreement at any time. Agency shall be responsible for payment of those legal services rendered by Attorneys prior to notice of termination. All files, written material, and documents will be transferred to Agency upon request after such termination. Attorneys will be available to consult with Agency or with Agency’s new attorneys with respect to facts and circumstances of any legal matter for a reasonable time following such period of termination.

 Attorney may terminate this Agreement upon sixty (60) days notice to Agency consistent with its obligations under the California Rules of Professional Conduct. All files, written material, and documents will be transferred to Agency upon request after such termination. Attorneys will be available to consult with Agency or with Agency’s new attorneys with respect to facts and circumstances of any legal matter for a reasonable time following such period of termination.

1. **APPLICABLE LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Monterey, State of California.

1. **WAIVER**

A waiver by Agency of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

1. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Agency and Attorney.

1. **AUTHORITY TO EXECUTE**

The individual(s) executing this Agreement represent and warrant that they have the legal authority to do so on behalf of their respective legal entities.

1. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

1. **EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Attorney’s proposal, the provisions of this Agreement shall control.

1. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

1. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

1. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

1. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

ATTORNEY NAME

ENTER CONSULTANT’S NAME

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

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

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

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

CALIFORNIA COMMUNITY POWER AGENCY

A Joint Powers Agency

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

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

Title: General Manager

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

**Exhibit A**

**Scope of Services**

Perform the legal services of General Counsel to the Agency, including the following:

1. Review the agendas and related documents for Board of Director (“Board”) meetings.

2. Attend all Board meetings and the meetings of committees as requested.

3. Provide on-going advice on Brown Act, Public Records Act and conflict of interest laws.

4. Provide advice on any legal requirements specifically applicable to joint powers authorities.

5. Prepare and review contracts.

6. Provide advice on contracting and procurement.

7. Research and provide advice on legal questions asked by the Board or General Manager.

8. Provide advice on regulatory requirements applicable to Agency projects and programs.

9. Supervise and coordinate with other legal counsel retained by Agency.

10. Provide any other legal services requested by the Board or General Manager.

**Exhibit B**

**Billing Rates and Reimbursable Expenses**

Agency shall compensate Attorney for professional services in accordance with the terms and conditions of this Agreement. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Attorney under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of DOLLAR AMOUNT IN WORDS dollars ($DOLLAR AMOUNT IN NUMERALS.00). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Agency unless previously approved in writing by Agency.

Billing Rates

| **Name of Personnel** | **Title** | **Hourly Rate**  |
| --- | --- | --- |
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Monthly Invoicing: In order to request payment, Attorney shall submit monthly invoices to the Agency describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, and hours worked). Agency shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein.

Reimbursable Expenses

Agency shall reimburse Attorneys for all usual and customary costs and expenses incurred by Attorneys in providing services under this Agreement, including but not limited to, photocopying, long distance telephone calls, messenger and other delivery fees, administrative filing fees and court costs. All such expenses shall be billed to the Agency at actual cost.

Administrative, overhead, secretarial time or overtime, and word processing costs are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Agency.

**Exhibit C**

**Insurance Requirements and Proof of Insurance**

Attorney shall maintain the following minimum insurance coverage:

1. **COVERAGE**:

(1) **Workers' Compensation**:
 Statutory coverage as required by the State of California.

(2) **Liability**:

Commercial general liability coverage with minimum limits of $1,000,000 per

occurrence and $2,000,000 aggregate for bodily injury and property damage.

ISO occurrence Form CG 0001 or equivalent is required.

(3) **Automotive**:

 Comprehensive automotive liability coverage with minimum limits of $1,000,000 per

 accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.

 (4) **Professional Liability**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Attorney in the amount of at least $1,000,000.