

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (this “AGREEMENT”) is made and entered into this _____ day of _____, 2020, by and between the California Choice Energy Authority, a joint power authority (the “OWNER”), and _____ (the “CONSULTANT”).

RECITALS

WHEREAS, OWNER desires to engage CONSULTANT to perform certain technical and professional services, as provided herein, identified as:

[PROJECT DESCRIPTION]

WHEREAS, the principal members of CONSULTANT are qualified and duly registered/licensed under the laws of the State of California, and CONSULTANT desires to accept such engagement.

NOW, THEREFORE, the parties agree as follows:

1. **Parties.**

The parties to this AGREEMENT are:

- A. OWNER: California Choice Energy Authority
- B. CONSULTANT: _____

2. **Notices.** All written notices required by or related to this AGREEMENT shall be sent by Certified Mail, Return Receipt Requested, postage prepaid and addressed as listed below. Neither party to this AGREEMENT shall refuse to accept such mail; parties to this AGREEMENT shall promptly inform the other party of any changes of address. All notices required by this AGREEMENT are effective on the day of receipt, unless otherwise indicated herein.

OWNER Jason Caudle
 Executive Director
 California Choice Energy Authority
 44933 North Fern Avenue
 Lancaster, California 93534
 (661) 723-6035

CONSULTANT

3. **Successors and Assigns.** The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no party hereto shall assign

any of the benefits and burdens hereunder, whether voluntarily or by operation of law, without prior written consent of the other party, and any such assignments without said consent shall be void.

4. **No Guarantee of Result.** CONSULTANT does not guarantee any particular result arising out of CONSULTANT's representation of OWNER. OWNER acknowledges and agrees that any comments CONSULTANT makes about potential outcomes, including any timetables, budgets, or fee estimates, are expressions of opinion only, are neither promises nor guarantees, and are not binding.

5. **Description of Work.** OWNER hereby engages CONSULTANT, and CONSULTANT accepts such engagement, to perform professional legal services set forth in the "Scope of Services" attached hereto as Exhibit "A". CONSULTANT shall perform and complete, in a manner satisfactory to OWNER, all work and services set forth in the Scope of Services. The California Choice Energy Authority Executive Director or his or her designee shall have the right to review and inspect the work during the course of its performance at such times as may be specified by the California Choice Energy Authority Executive Director, or his or her designee.

6. **Obligations of the OWNER.**

A. The total compensation to be paid by OWNER to CONSULTANT for all work and services described in the Scope of Services is not to exceed \$_____. CONSULTANT'S fees and charges for the work and services performed shall in no event exceed those set forth in Exhibit "B" attached hereto and made a part hereof.

B. No payment made hereunder by OWNER to CONSULTANT, other than the final payment, shall be construed as an acceptance by OWNER of any work or materials, nor as evidence of satisfactory performance by CONSULTANT of its obligations under this AGREEMENT.

7. **Obligations of the CONSULTANT.**

A. CONSULTANT shall perform as required by this AGREEMENT. CONSULTANT also warrants on behalf of itself and all subcontractors engaged for the performance of this AGREEMENT.

B. CONSULTANT shall be responsible for payment of all employees' and subcontractor's wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

8. **Audit.** OWNER shall have the option of inspecting and/or auditing all records and other written materials used by CONSULTANT in preparing its statements to OWNER as a condition precedent to any payment to CONSULTANT.

9. **Hold Harmless and Indemnification.** CONSULTANT agrees to indemnify and hold harmless the OWNER, its officers and employees, from and against any and all claims, losses, obligations, or liabilities whatsoever, including reasonable Attorney's fees, incurred in or in any manner arising out of or related to CONSULTANT'S negligent or willful wrongful acts, errors or omissions, or those of its employees or agents. CONSULTANT agrees to defend OWNER, its officers and employees, from and against any and all claims arising from any alleged negligent or wrongful acts, errors or omissions on the part of CONSULTANT or on the part of its employees.

10. **Amendments.** 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 California Choice Energy Authority Executive Director and CONSULTANT.

11. **Non-Discrimination and Equal Employment Opportunity.**

A. In the performance of this AGREEMENT, CONSULTANT shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, religion, ancestry, sex, national origin, physical or mental disability or age. CONSULTANT will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

B. The provisions of subsection A above shall be included in all solicitations or advertisements placed by or on behalf of CONSULTANT for personnel to perform any services under this AGREEMENT. OWNER shall have access to all documents, data and records of CONSULTANT and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section.

12. **Termination for Convenience.** Either party may terminate this AGREEMENT at any time without cause by giving written notice to the other of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents, research and other materials shall, at the option of the OWNER, become the OWNER's property.

13. **Independent Contractor.** CONSULTANT is an independent contractor and shall have no power or authority to incur any debt, obligation or liability on behalf of the OWNER. It is expressly understood between the parties to this AGREEMENT that no employee/employer relationship is intended; CONSULTANT is an independent contractor.

14. **Insurance.**

A. (1) The CONSULTANT, at its expense, shall maintain in effect at all times during the performance of work under this AGREEMENT not less than the following coverage and limits of insurance, which shall be maintained with insurers listed "A-, VIII" or better in the Best's Key Rating Guide and that are admitted insurers in the State of California:

Commercial General Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Including Products/Completed Operations	
Including Contractual Liability/Independent Contractors	
Including Broad Form Property Damage	
Commercial Automobile Liability	
Combined Single Limit per Accident for Bodily Injury and Property Damage	\$1,000,000
Workers Compensation	
As Required by the State of California	Statutory Limits
Employer's Liability	
Each Accident	\$1,000,000
Bodily Injury by Disease	\$1,000,000
Each Employee	\$1,000,000
Professional Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Cyber Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

B. Insurance shall be at least as broad as ISO form CG 20 10 11 85 or CG 20 10 10 01 and CG 20 37 10 01 covering Commercial General Liability. Commercial Automobile coverage shall be at least as broad as ISO form CA 00 01.

C. The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

D. A Waiver of Subrogation must be provided on behalf of the Certificate Holder for the Workers Compensation/Employers Liability policies and a copy of the endorsement must accompany the certificate.

E. Any deductibles or self-insurance retentions must be declared and approved by the OWNER. At the option of the OWNER, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the OWNER insured entities or the insurer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

F. All insurance shall be primary and non-contributory as respects the OWNER insured entities. Any insurance or self-insurance maintained by the OWNER insured entities shall be in excess of the CONSULTANT'S insurance and shall not contribute with it.

G. The coverage provided under this contract shall not contain any special limitations on the scope of protection afforded to the OWNER insured entities.

H. Insurance provided and maintained by CONSULTANT must be placed with insurers with a rating of A-, VIII or better by Best's Key Rating Guide, latest edition, and that are admitted insurers in the State of California.

I. Insurance written on a "claims made" basis must be renewed for a period of five (5) years after this contract expires or is terminated. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this contract and will cover CONSULTANT for all claims made by the OWNER insured entities arising out of any acts or omissions of CONSULTANT or its officers, employees, or agents during the time this AGREEMENT was in effect.

J. CONSULTANT shall furnish the OWNER with Certificates of Insurance and with original endorsements effecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the OWNER before work commences. The OWNER reserves the right to require complete, certified copies of all required insurance policies at any time.

K. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the OWNER insured entities.

L. Certificates of Insurance must be deposited with the OWNER for all coverage required by this contract. Certificates shall meet the following requirements:

(1) Show that the insurance policy has been endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after 30 days prior written notice (10 days written notice for non-payment) by Certified Mail, return receipt requested to the OWNER.

(2) List in the "Descriptions of Operations/Locations/Vehicles/Special Items" section:

[PROJECT NAME]

California Choice Energy Authority, its board of directors, officers, employees, contractors and representatives are included as additional covered parties, but only insofar as the operations under this contract are concerned.

(3) List in the "Certificate Holder" section:

California Choice Energy Authority, 44933 Fern Avenue, Lancaster, California 93534

(4) List in the "Cancellation" section:

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 written notice (10 days written notice for non-payment) to the Certificate Holders named to the left.

M. CONSULTANT shall include all subcontractors as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. Subcontractors are subject to the same insurance requirements as the CONSULTANT.

N. The coverage shall contain no special limitations on the scope of protection afforded to the insured entities. The CONSULTANT'S insurance coverage shall be primary insurance as respects the OWNER's insured entities.

15. **Commencement and Completion of Work.** The services of CONSULTANT commence on _____ and will terminate, unless amended by mutual agreement of the PARTIES, on _____.

16. **Ownership of Documents.** All reports and other documents prepared by CONSULTANT pursuant to this AGREEMENT shall become the property of OWNER. OWNER is entitled to full and unrestricted use of such contracts, drafts, correspondence, pleadings, reports and other documents.

17. **Data Provided to CONSULTANT.** OWNER shall provide to CONSULTANT, without charge, all data, including reports, records, maps and other information, now in the OWNER's possession which may facilitate the timely performance of the work described in the Scope of Services.

18. **CONSULTANT's Warranties and Representations.**

CONSULTANT warrants and represents to OWNER as follows:

A. CONSULTANT has not employed or retained any person or entity, other than a bona fide employee working exclusively for CONSULTANT, to solicit or obtain this AGREEMENT.

B. CONSULTANT has not paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this AGREEMENT. Upon any breach or violation of this warranty, OWNER shall have the right, in its sole discretion, to terminate this AGREEMENT without further liability, or, in the alternative, to deduct from any sums payable hereunder the full amount or value of any such fee, commission, percentage or gift.

C. CONSULTANT has no knowledge that any officer or employee of the OWNER has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of the CONSULTANT, and that if any such interest comes to the knowledge of CONSULTANT at any time, a complete written disclosure of such interest will be made to OWNER, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws.

D. Upon the execution of this AGREEMENT, CONSULTANT has no interest, direct or indirect, in any transaction or business entity which would conflict with or in any manner hinder the performance of services and work required by this AGREEMENT, nor shall any such interest be acquired during the term of this AGREEMENT.

19. **Resolution of Disputes.**

A. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

B. If the parties cannot resolve the dispute through good faith negotiations, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator. Mediation shall be conducted in Lancaster, California. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within 45 days after Notice of Dispute, or the parties are unable to agree to a mediator, within 15 days after Notice of Dispute, then, the dispute may, upon agreement of the parties be resolved by binding arbitration.

C. If any action at law or in equity is brought to enforce or interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to reasonable attorney's fees, cost and necessary disbursements, in addition to such other relief as may be sought and awarded.

20. **Exhibits.**

The following exhibits to which reference is made in this AGREEMENT are deemed incorporated herein in their entirety:

Exhibit "A" Scope of Services

Exhibit "B" Payment Clause

21. **Governing Law.**

This AGREEMENT shall be governed by the laws of the State of California.

22. **Effective Date.**

This AGREEMENT shall become effective as of the date set forth below on which the last of the parties, whether OWNER or CONSULTANT, executes this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed and attested by their respective officers thereunto duly authorized.

"CONSULTANT"

By: _____

Dated: _____

“OWNER”
CALIFORNIA CHOICE ENERGY AUTHORITY
LANCASTER, CALIFORNIA

By: _____
Jason Caudle, Executive Director

Dated: _____

ATTEST:

Andrea Alexander, Board Secretary

APPROVED AS TO FORM:

Allison Burns, General Counsel

EXHIBIT "A"

SCOPE OF SERVICES

The work to be performed under this contract shall include:

DRAFT

EXHIBIT "B"

**TERM, PAYMENT AND TIME FOR COMMENCEMENT AND COMPLETION
CLAUSE**

Term. This Agreement shall commence on _____. This Agreement shall continue in full force and effect until _____ ("Term"), unless the Agreement is sooner terminated in accordance with the Terms and Conditions in the Agreement; provided, however, that the OWNER and the CONSULTANT may mutually agree in writing to extend the Term of this Agreement.

Payment. The OWNER shall compensate the CONSULTANT based upon the following hourly rate schedule:

DRAFT
