

**AGREEMENT BETWEEN THE EAST BAY COMMUNITY ENERGY
AUTHORITY AND RICHARDS, WATSON & GERSHON, A PROFESSIONAL
CORPORATION, FOR INTERIM GENERAL COUNSEL SERVICES**

This Agreement, dated January 30, 2017, is by and between the East Bay Community Energy Authority ("EBCEA"), and Richards Watson & Gershon, a professional corporation, engaged in the practice of law in California, hereinafter referred to as "General Counsel." EBCEA and General Counsel agree as follows:

1. SCOPE OF SERVICES: General Counsel will furnish legal services to EBCEA described in **Exhibit "A"** to this Agreement.

2. TERM: The term of this Agreement shall begin on January 1, 2017 and shall expire on June 30, 2017 unless extended with the approval of the Board of Directors of EBCEA.

3. COMPENSATION: The hourly rate of compensation shall be as described in **Exhibit "B"**, attached hereto and by this reference made a part hereof. The total amount of fees and expenses under this Agreement shall not exceed \$75,000. This compensation amount shall not be increased without the prior approval of the EBCEA Board of Directors.

4. PAYMENT: Unless otherwise directed by EBCEA, all billing statements shall be directed to the Office of the Alameda County Counsel for review and provided on a monthly basis detailing each person performing service and a brief description of the work performed. In addition to applicable approved hourly rates, General Counsel will be reimbursed for those out-of-pocket expenses, including travel expenses, copying expenses, word processing expenses, telephone expenses, postage expenses, and court reporter's costs as outlined in **Exhibit "B"**. After review for compliance with the terms of this Agreement, County Counsel will forward billing statements to the Alameda County Community Development Agency (CDA) for payment pursuant to Section 6.3.2 of the Joint Powers Agreement or as otherwise directed by the EBCEA.

5. DIRECTION: General Counsel's work under this Agreement shall be under the direction of the Board of Directors.

6. TERMINATION: EBCEA shall have the right, at any time in its best judgment, with or without reason, to terminate this Agreement, and to obtain new General Counsel, or take such other steps as EBCEA deems proper. In the event that this Agreement is so terminated, EBCEA shall pay to General Counsel the rates, fees and charges accrued for satisfactory work to the time of termination. Authority shall be entitled to electronic and written copies of files maintained concerning this representation and to the return of all documents submitted to General Counsel. General Counsel shall have the right, with or without reason, to terminate this Agreement upon thirty (30) days written notice to EBCEA.

7. PROFESSIONAL SKILL: General Counsel is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement, and EBCEA relies upon the skill of General Counsel to do and perform the work in a professional and skillful manner, and General Counsel agrees to perform the work in accordance with this standard.

9. INSURANCE:

a. During the term of this Agreement, General Counsel shall maintain comprehensive general liability coverage with aggregate limits in an amount not less than \$5 Million, and automobile coverage with combined single limits in an amount not less than \$1 Million. Upon EBCEA request, General Counsel shall provide EBCEA a certificate evidencing this insurance. EBCEA shall be named as an additional insured on each liability and automobile policy providing such coverage. General Counsel' coverage shall be primary to any insurance maintained by EBCEA. Unless the policy is simultaneously replaced with a new policy providing the same coverage, General Counsel shall immediately forward to EBCEA any notice of the cancellation or non-renewal of any such coverages, or any other policy changes that materially affect coverage.

b. During the term of this Agreement, General Counsel also shall maintain professional liability insurance coverage with primary limits in an amount not less than \$1 Million per person and \$3 Million per incident. Such insurance shall insure General Counsel' work to be performed under this Agreement. Upon EBCEA's request, General Counsel shall provide EBCEA a certificate evidencing this insurance. General Counsel' professional liability coverage shall be primary to any insurance maintained by EBCEA. Unless the policy is simultaneously replaced with a new policy providing the same or greater coverage and limits, General Counsel shall provide 30 days advanced written notice to the EBCEA of the cancellation or non-renewal of General Counsel' professional liability coverage, or any other policy changes that materially affect such coverage.

c. During the term of this Agreement, General Counsel shall also maintain workers' compensation insurance as required by law. At EBCEA's request, General Counsel shall provide EBCEA a certificate evidencing this insurance. General Counsel' workers' compensation insurance shall be primary to any insurance maintained by EBCEA. Unless the policy is simultaneously replaced with a new policy providing the same coverage, General Counsel shall provide 30 days advanced written notice to the EBCEA of the cancellation or non-renewal of said General Counsel's workers' compensation insurance, or any other policy changes that materially affect such coverage.

10. EMPLOYER/EMPLOYEE RELATIONSHIP: No relationship of employer and employee is created by this Agreement, it being understood that General Counsel shall act hereunder as independent contractors; that General Counsel shall not have any claim under this Agreement or otherwise against EBCEA for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers', Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind; that General Counsel shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, and in connection therewith General Counsel shall indemnify and hold EBCEA harmless from any and all liability which EBCEA may incur because of General Counsel' failure to pay such taxes; that General Counsel do, by this Agreement, agree to perform their said work and functions at all times in strict accordance with currently approved methods and practices in their field and that the sole interest of EBCEA is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the agency concerned.

11. ASSIGNMENT OF CONTRACT: Nothing contained in this Agreement shall be construed to permit assignment or transfer by General Counsel of any rights under this Agreement and such assignment or transfer is expressly prohibited and void, unless expressly approved in writing in advance by EBCEA.

12. CONFLICT OF INTEREST: No officer, member, or employee of EBCEA and no member of their governing bodies shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Neither of General Counsel shall serve on a EBCEA board, committee, or hold any such position which either by rule, practice or action nominates, recommends, supervises General Counsel' operations, or authorizes funding to General Counsel.

13. RECORDS AND AUDITS: General Counsel will retain all records concerning this Agreement, or microfilm records of them, except original documents concerning telephone, copy, postage, telecopy and messenger charges, for a period of at least five years from the date of service and shall make such records available to EBCEA upon request.

14. INDEMNITY: General Counsel shall indemnify and hold and save EBCEA harmless from any and all claims, expenses and damages arising from General Counsel' performance under this Agreement, including, but not limited to, third-party claims for injury to persons or property damage, to the extent General Counsel negligently or intentionally failed to perform such services in accordance with the standard of care applicable to General Counsel.

15. BREACH: In the event that General Counsel fails to perform any of the services described in this Agreement or otherwise breaches this Agreement, EBCEA shall have the right to pursue all remedies provided by law or equity. Disputes relating to the performance of this Agreement shall not be subject to non-judicial arbitration.

16. MODIFICATION: No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

After having had the opportunity to review this Agreement and Exhibits, and after having the language in form of this Agreement approved as containing the agreement between the parties, as shown below, and by signing this Agreement, the undersigned agrees to the terms of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written below.

**EAST BAY COMMUNITY ENERGY
AUTHORITY**
A Joint Powers Authority

DATED: _____

By: _____
Chair, Board of Directors

RICHARDS WATSON & GERSON
A Professional Corporation

DATED: _____

By: _____

Gregory W. Stepanicich,
General Counsel

Exhibit A

SCOPE OF SERVICES

As Interim General Counsel for EBCEA, Richards, Watson & Gershon shall provide the general legal services typically required by a joint powers authority in addition to those general legal services related more specifically to the operation of a community choice aggregation program as described below. These legal services shall include the following:

- Advice and preparation of documents in connection with the start up of operations for EBCEA including but not limited to the following:
 - Prepare any required filings with County or state agencies that may be required by law.
 - Prepare a conflict of interest code
 - Prepare operating rules and regulations
- Attendance at the monthly EBCEA Board of Directors (“Board”) meetings and any special meetings and workshops as required by the Chief Executive Officer or Chair of the Board
- Brown Act, Conflict of Interest and Public Records Act advice and representation
- Preparation or review of consultant and vendor contracts
- Advice and preparation of documents related to personnel matters
- Advice to the Chief Executive Officer and designated staff on administrative and operational matters
- Research and advice on legal questions asked by the Board, Chief Executive Officer and designated staff
- Advice and assistance on other legal matters as may be assigned by the Chief Executive Officer

Legal services will not include matters in which Richards, Watson & Gershon has a conflict of interest that precludes the law firm from representing EBCEA. General Counsel services also will not include energy contracts or regulatory matters before the CPUC that require specialized legal services in these areas of law.

Exhibit B

I. STATEMENT OF WORK

A. INTENT

It is the intent of these terms and conditions to describe legal representation required by the EBCEA.

B. SPECIFIC REQUIREMENTS

1. Gregory Stepanicich and Inder Khalsa are designated as the primary attorneys providing General Counsel legal services. Gregory Stepanicich will provide overall direction and supervision of the services provided and Inder Khalsa will attend Board meetings and be the day to day contact for EBCEA staff and consultants.
2. General Counsel agrees that all work product including but limited to legal research, contracts and opinion letters are the property of the client, the EBCEA. This provision is not a waiver of the attorney/client privilege.
4. General Counsel, as requested, shall provide the EBCEA representative copies of all information and correspondence relating to each matter.
5. General Counsel shall not charge the EBCEA for any client development costs.
6. Should either the General Counsel or the EBCEA choose to terminate the services under this Agreement, General Counsel shall, at EBCEA's discretion, continue to provide legal services as to any matter referred to them prior to the notice of termination and shall be compensated upon the same terms and conditions as herein set forth.
7. General Counsel promptly shall disclose any malpractice claims incurred by any member of General Counsel in connection with services performed under this Agreement.

B. BILLING PRACTICES

1. General Counsel shall invoice EBCEA only following the provision of legal services.
2. Payment will be generally made within thirty (30) days following receipt of invoice and upon satisfactory performance of services. EBCEA will identify any questions regarding fees or costs no later than ten (10) days after receiving General Counsel's invoice containing those fees and costs, and will use its best efforts to pay any undisputed amounts within 30 days following receipt of invoice.

3. Invoices shall include, but not be limited to:
 - a. Invoice date.
 - b. Project name and number.
 - c. Name of attorney providing services.
 - d. An individual entry for each legal task performed, and time billed for each individual task. "Block billing" for all tasks performed in one day, without designation of time for each task, will not be accepted by EBCEA.
 - e. Date of each legal task and total time for each task performed.
 - f. Name, or acronym, for each attorney/paralegal performing the task and hourly rate of the person performing each legal task.
 - g. Time billed for each legal task must be charged in increments of a tenth of an hour increments.
 - h. Fees billed for each legal task must be listed under each attorney performing said tasks by the day, broken out as set forth in (g) above.
 - i. Individually itemized disbursements for costs must be illustrated on bill.
 - j. A summary of services, including the total time and fees per attorney/paralegal, per invoice.
 - k. Total fees and costs billed to date and credits paid by EBCEA to date.
 - l. On all fee bills or billing statements, actual time in units of one-tenth (1/10th) of an hour shall be charged instead of using minimum transaction times.

4. Expenses and Costs

General Counsel shall not bill for the following expense items at more than the specified guidelines:

- a. Photocopying: No more than actual cost, without mark-up, per page or the actual charge of a copy service. Large copying jobs shall be sent to a capable but economical outside copy service.
- b. Telephone: Actual charges only for long distance calls.
- c. Fax Machines: No more than actual cost, without mark-up, only for outgoing facsimile transmission.
- d. Postage: Actual cost of postage for mailing.
- e. Computerized legal research: Is considered overhead costs of General Counsel and will not be paid by EBCEA.
- f. Messenger and Delivery: For an outside messenger, the EBCEA will pay actual costs without mark-up. For General Counsel's internal messenger service (between General

Counsel's offices in other cities), charge no more than for an outside service.

- g. Travel: General Counsel shall describe in detail on the invoice any travel expenses incurred by counsel. General Counsel need not attach supporting receipts. EBCEA retains the right to audit travel expenses. General Counsel should retain receipts and other documentation for at least one (1) year following the conclusion of the case. It is not anticipated that General Counsel will incur any travel expenses under this Agreement unless approved in advance by EBCEA.

5. Billing – Miscellaneous

- a. General Counsel shall bill only at approved rates.
- b. General Counsel shall not charge for overhead items such as costs of seminars, books, association dues, etc.

C. SPECIFIC BILLING REQUIREMENTS

- 1. Where correspondence or phone conversations are charged, the specific identify of the other party shall be included with the time entry. Likewise, if a conference is held, the bill shall identify all participants or attendees.
- 2. Charges for activities such as a file creation, or training of General Counsel's personnel are considered overhead items and shall not be billed to the file.
- 3. When standardized forms are used, actual time needed by an attorney or paralegal to prepare the pleadings or form for typing shall be billed, not the time originally used to draft the standardized documents or the time needed to type the form or pleading.
- 4. General Counsel shall not bill for bill preparation tasks, bill explanations, bill disputes and bill corrections.
- 6. General Counsel shall not bill for word processing time. General Counsel shall bill only for the attorney's time not the secretarial or word processing time.
- 7. Legal research, when needed, must be carefully directed by partners or senior associates. Routine legal issues shall not be the subject of legal research. A copy of General Counsel's research product must be maintained in the attorney's file and forwarded to EBCEA, upon request, for future reference. Status reports shall indicate how the research on a substantive issue impacts the project.

D. POSITIONS (ATTORNEY/PARALEGAL) WITH THE GENERAL COUNSEL DESIGNATED FOR BILLING PURPOSES

If a person is designated as a paralegal, the EBCEA retains the right to audit the work performed and determine whether such work was performed by a paralegal and doing paralegal activities, e.g., a paralegal should not customarily do clerical work which is overhead expense. The same rule will apply to partners versus associates. If a person's position is incorrectly designated (in the opinion of the EBCEA's auditors), bills will be reduced accordingly.

E. AUDITING

1. The EBCEA has the right to audit General Counsel's books and records related to any EBCEA matter. The audit applies to all matters referred from or handled for or on behalf of the EBCEA.
2. The EBCEA reserves the right to seek reimbursement for services or costs for invoices inappropriately billed and paid.

F. Rate of Compensation

Richards Watson & Gershon shall bill the EBCEA for the following personnel at the following rates:

Greg Stepanicich	\$325 per hour
Inder Khalsa	\$300 per hour
Whitney McDonald	\$300 per hour
Casey Strong	\$250 per hour