

MONTEREY BAY COMMUNITY POWER AUTHORITY

STANDARD SERVICES AGREEMENT

This **Agreement** is made by and between the Monterey Bay Community Power Authority (“MBCP”) and _____ (hereinafter “CONTRACTOR”), a _____ with its principal place of business located at _____. MBCP and CONTRACTOR may be individually referred to herein as “Party” or collectively as “Parties.”

In consideration of the mutual covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. GENERAL DESCRIPTION

1.1. MBCP hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as: _____.

2. PAYMENT PROVISIONS

2.1. MBCP shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit B**, subject to the limitations set forth in this Agreement. The total amount payable by MBCP to CONTRACTOR under this Agreement shall not exceed the sum of \$_____.

3. TERM OF AGREEMENT

3.1. The term of this Agreement is from the date of execution until _____, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both the CONTRACTOR and MBCP, with MBCP’s execution to be last in time. CONTRACTOR may not commence work under this Agreement before MBCP signs this Agreement.

3.2. MBCP reserves the right to cancel this Agreement, or any extension of this Agreement, without cause with thirty (30) days written notice, or with cause immediately.

4. SCOPE OF SERVICES AND ADDITIONAL PROVISIONS

4.1. The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

4.1.1. **Exhibit A: Scope of Services**

4.1.2. **Exhibit B: Payment Terms**

4.1.3. **Exhibit C: Procedures for Unauthorized Release of Covered Information**

5. PERFORMANCE STANDARDS

- 5.1. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of MBCP or immediate family of an employee of MBCP.
- 5.2. CONTRACTOR and CONTRACTOR's agents, employees and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use MBCP premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS

- 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. MBCP does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by MBCP and the CONTRACTOR.
- 6.3. Invoices shall be submitted monthly on a form acceptable to MBCP and provide sufficient detail, as determined by MBCP, of services rendered for the invoiced period.
- 6.4. MBCP shall certify the invoice for payment in either the amount requested, or in such other amount as MBCP determines is due in conformity with this Agreement. Invoices shall be certified and paid within 45 days of submission to MBCP.

7. TERMINATION

- 7.1. During the term of this Agreement, MBCP may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.2. MBCP may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform

the required services at the time and in the manner provided under this Agreement. If MBCP terminates this Agreement for good cause, MBCP may be relieved of the payment of any consideration to CONTRACTOR, and MBCP may proceed with the work in any manner, which MBCP deems proper. The cost to MBCP shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. INDEMNIFICATION

8.1. CONTRACTOR shall indemnify, defend, and hold harmless MBCP, its Directors, Board members, officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by CONTRACTOR and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by MBCP. It is the intent of the parties to this Agreement to provide the broadest possible coverage for MBCP. The CONTRACTOR shall reimburse MBCP for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless MBCP under this Agreement.

8.1.1. The CONTRACTOR's selection of counsel to satisfy CONTRACTOR's defense and hold harmless obligation as set forth in section 8.1 above, shall be subject to review and approval by MBCP.

8.1.2. Notwithstanding any other provision of this Agreement, MBCP shall be entitled to participate fully in the defense of any claim or action.

9. INSURANCE REQUIREMENTS

9.1. Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to MBCP.

9.2. Without limiting CONTRACTOR's duty to defend and indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

9.2.1.1. **Commercial General Liability Insurance**, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, and cross-liability with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

9.2.1.2. **Business Automobile Liability Insurance**, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this

Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

9.2.1.3. **Workers' Compensation Insurance**, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

9.2.1.4. **Professional Liability Insurance**, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

9.3. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

9.4. Commercial general liability and automobile liability policies shall **provide an endorsement naming MBCP, its Directors, Board members, officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by MBCP and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance.

10. RECORD AND CONFIDENTIALITY

10.1. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from MBCP or prepared in connection with the performance of this Agreement, unless MBCP specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to MBCP any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.1.1. Confidential Information specifically includes Covered Information (as defined in **Exhibit C**), including Protected Personal Information (“PPI”) that identifies, relates to, describes, or is capable of being associated with, or could reasonably be linked, directly or indirectly, with a consumer, household, or customer account. All such Covered Information and PPI must fully be protected from disclosure as set forth in California Public Utility Commission Decision D.12-08.045. In the event of an unauthorized release of Covered Information and PPI, CONTRACTOR shall comply with Exhibit C, Procedures for Unauthorized Release of Covered Information.

10.2. Upon expiration or termination of this Agreement, CONTRACTOR shall return to MBCP any MBCP records which CONTRACTOR used or received from MBCP to perform services under this Agreement.

10.3. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and local rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.

10.4. MBCP shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of MBCP or as part of any audit of MBCP, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.5. MBCP shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of MBCP.

11. NON-DISCRIMINATION

11.1. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR’s employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and

regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. INDEPENDENT CONTRACTOR

12.1. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of MBCP. No offer or obligation of permanent employment with MBCP and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from MBCP any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold MBCP harmless from any and all liability which MBCP may incur because of CONTRACTOR's failure to pay such taxes.

13. NOTICES

13.1. Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to MBCP and CONTRACTOR'S contract administrators at the addresses listed below:

Monterey Bay Community Power Authority [INSERT VENDOR CONTACT INFO]
Attn: Director of Finance and Administrative Services
70 Garden Court, Suite 300
Monterey, Ca 93940

14. MISCELLANEOUS PROVISIONS

14.1. Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

14.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by MBCP and the CONTRACTOR.

14.3. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by MBCP and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

14.4. Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

- 14.5. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 14.6. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of MBCP. None of the services covered by this Agreement shall be subcontracted without the prior written approval of MBCP. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 14.7. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of MBCP and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 14.8. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 14.9. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 14.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 14.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 14.12. Non-exclusive Agreement. This Agreement is non-exclusive and both MBCP and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 14.13. Construction of Agreement. MBCP and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 14.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 14.15. Authority. Any individual executing this Agreement on behalf of MBCP or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 14.16. Integration. This Agreement, including the exhibits, represent the entire Agreement between MBCP and the CONTRACTOR with respect to the subject matter of this Agreement and

shall supersede all prior negotiations, representations, or agreements, either written or oral, between MBCP and the CONTRACTOR as of the effective date of this Agreement, which is the date that MBCP signs the Agreement.

14.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

[VENDOR NAME]

By: _____

PRINTED _____

ITS: Secretary / Asst. Secretary, CFO, Asst. Treasurer

Date: _____

[VENDOR NAME]

By: _____

PRINTED _____

ITS: Chair/President/Vice President

Date: _____

**Monterey Bay Community
Power Authority**

By: _____

Tom Habashi, CEO

Date: _____

APPROVED AS TO FORM:

MBCP General Counsel

Robert M. Shaw

Date: _____

Exhibit A: Scope of Services

Exhibit B: Payment Terms

Exhibit C: Procedures for Unauthorized Release of Covered Information

SCOPE

CONTRACTOR hereby agrees to adhere to these Procedures for detecting and reporting the unauthorized release of Covered Information, including Protected Personal Information (“PPI”).

These Procedures apply to the following unauthorized release activities:

1. Unauthorized access
2. Unauthorized destruction
3. Unauthorized use
4. Unauthorized modification
5. Disclosure to third parties for Secondary Purposes (see below)

DEFINITIONS

Covered Entity – (1) any Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers), or any third party that provides services to a Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) under contract, (2) any third party who accesses, collects, stores, uses or discloses covered information pursuant to an order of the Commission, unless specifically exempted, who obtains this information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers), or (3) any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information relating to 11 or more customers who obtains this information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers).

Covered Information -- any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify an individual, family, household, residence, or non-residential customer, except that covered information does not include usage information from which identifying information has been removed such that an individual, family, household or residence, or non-residential customer cannot reasonably be identified or re-identified. Covered information, however, does not include information provided to the California Public Utilities Commission (the “Commission”) pursuant to its oversight responsibilities.

Primary Purposes – The “primary purposes” for the collection, storage, use, or disclosure of covered information, as outlined in Rule 1(c) of Attachment B, are to:

1. Provide or bill for electrical power or gas,
2. Provide for system, grid, or operational needs,
3. Provide services as required by state or federal law or as specifically authorized by an order of the Commission, or
4. Plan, implement, or evaluate demand response, energy management, or energy efficiency programs under contract with a Community Choice Aggregator or and Electrical Service Provider (when providing service to residential or small commercial customers), under contract with the

Commission, or as part of a Commission authorized program conducted by a governmental entity under the supervision of the Commission.

Secondary Purposes – “Secondary purpose” means any purpose that is not a primary purpose.

Non-Covered Entity – “Non-Covered Entity” means any entity not defined as a Covered Entity.

Responsible Parties -- MBCP, CONTRACTOR, and any staff, employees, or sub consultants contracted by MBCP or CONTRACTOR.

PROCEDURE

Detecting and Reporting of Unauthorized Releases

1. All Responsible Parties are required to protect Covered Information from unauthorized release activities as set forth above.
2. Any request by any non-Covered Entities, for access to Covered Information must be reviewed and approved by an MBCP manager level employee to ensure no unauthorized or inadvertent release of Covered Information.
3. All authorized releases of Covered Information to Non-Covered Entities shall be logged and reported to MBCP on a quarterly basis.
4. Any discovery of any unauthorized release of Covered Information must be reported to MBCP within one week of detection.

Unauthorized Release Handling Procedure

1. The discovering party after detecting, or discovery of, the unauthorized release of Covered Information must contact MBCP’s Dir. of Finance and Administration (or another executive manager) immediately.
2. CONTRACTOR will quantify and validate the type and extent of unauthorized release and report that information to MBCP’s Dir. of Finance and Administration in writing with sufficient detail for MBCP to determine the extent and impact of the unauthorized release.
3. CONTRACTOR shall prepare a written annual report of all discoveries of unauthorized releases of Covered Information.

Review and Training

1. At least annually, CONTRACTOR will review these Procedures with its staff, employees, or sub consultants.
2. Any proposed changes to these Procedures shall be provided in writing to MBCP’s Dir. of Finance and Administration for their consideration.

