

## AGREEMENT FOR CONSULTING SERVICES

**THIS AGREEMENT FOR CONSULTING SERVICES** (“Agreement”) is made and entered into as of March 3, 2020, by and between the City of Desert Hot Springs, a California municipal corporation (“City”), and the California Choice Energy Authority, a public entity created pursuant to the Joint Exercise of Powers Act (Cal. Gov’t. Code § 6500 *et seq.*) (“CalChoice”) (City and CalChoice are individually referred to as “Party” and collectively “Parties”).

### RECITALS

**WHEREAS**, City desires to be a Community Choice Aggregator (“CCA”), as defined in Section 331.1 of the California Public Utilities Code, to provide energy to its residents and businesses; and

**WHEREAS**, City desires that CalChoice undertake certain implementation support services; and

**WHEREAS**, CalChoice desires to facilitate access to the professional, technical and other knowledge and expertise of certain CalChoice members, their employees, contractors and/or consultants in connection with the formation of the City’s CCA.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are hereby incorporated into this Agreement by reference, as though set forth in full herein.
2. **Description of Work.** CalChoice shall perform or facilitate performance of the services (“Services”) set forth in the “Scope of Services and Payment Schedule” attached hereto as Exhibit “A” and incorporated herein by this reference (“Scope of Services”).
3. **Obligations of City.** City shall pay to CalChoice an amount not to exceed 63,000 for and in consideration of CalChoice’s performance of the Services. City shall pay CalChoice within thirty (30) days of CalChoice submitting an invoice to City.
4. **Obligations of CalChoice.** CalChoice shall perform or facilitate performance of the Services. CalChoice’s Board of Directors, or its designee, shall determine which CalChoice employee(s), contractors and/or consultants shall perform the Services.
5. **Effective Date.** This Agreement shall become effective and binding upon the Parties at such time as all of the signatories hereto have signed the original or a counterpart original of this Agreement (“Effective Date”).
6. **Term; Termination.** The term of this Agreement shall commence as of the Effective Date and expire upon completion of and final payment for the Services, or upon the earlier termination of this Agreement as set forth herein. Either Party may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the other Party of such termination and specifying the effective date thereof. In the event of termination of this Agreement, CalChoice shall be paid on a prorated basis for Services completed.
7. **Indemnification.**

a. City agrees to indemnify, defend and hold harmless CalChoice, its board of directors, officers, employees, members, consultants and members' employees, contractors and/or consultants from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs of investigation and defense, settlement and awards, and attorney's fees, in connection therewith), based or asserted upon any alleged negligent or willful misconduct of City, its officers, employees, agents or representatives, arising out of or in any way relating to this Agreement.

b. CalChoice agrees to indemnify, defend and hold harmless City from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs of investigation and defense, settlement and awards, and attorney's fees, in connection therewith), based or asserted upon any alleged negligent or willful misconduct of CalChoice arising out of or in any way relating to this Agreement or performance of the Services.

**8. Force Majeure.** Notwithstanding the provisions of this section, CalChoice shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove CalChoice's work promptly, or by reason of delay or faulty performance by City, its contractors, governmental agencies, or Southern California Edison, or by reason of any other delays beyond CalChoice's control, or for which CalChoice is without fault.

**9. Ownership of Documents.** All reports, studies and other documents that are prepared by CalChoice, its employees, contractors and/or consultants in the course of performing the Services required by this Agreement, and are specific to City's CCA, shall be the property of City upon City satisfying all payment obligations imposed but this Agreement.

**10. Data Provided to CalChoice.** City shall provide to CalChoice all data, including reports, records and other information, in City's possession, custody or control, which is reasonably requested by CalChoice and which is required to facilitate the timely performance of the Services.

**11. Insurance Requirements.**

a. Prior to CalChoice's commencement of any Services, CalChoice, at CalChoice's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies:

i. *General Liability Coverage.* CalChoice shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury and property damage. CalChoice shall provide insurance on an occurrence, not claims-made basis.

ii. *Automobile Liability Coverage.* CalChoice shall maintain commercial automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the CalChoice arising out of or in connection with the Services, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence, and one million dollars (1,000,000) in the aggregate.

b. As of the execution of this Agreement, City has reviewed the coverages secured by CalChoice from Special District Risk Management Authority and has determined such coverages to be satisfactory to City. CalChoice agrees to ensure that the most current certification of coverage is on file with the City at all times during the term of this Agreement.

**12. Independent Contractor's Status of CalChoice.** CalChoice shall at all times during the term of this Agreement remain, as to City, a wholly independent contractor and shall perform the services described in this Agreement as an independent contractor and further, hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors. Neither City nor any of its agents shall have control over the conduct of CalChoice or any of CalChoice's employees or agents, except as herein set forth. Nothing contained in this Agreement shall be deemed, construed or represented by City or CalChoice or by any third person to create the relationship of principal and agent and CalChoice shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. CalChoice shall have no authority, expressed or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall CalChoice have any authority, expressed or implied, to bind City to any obligation whatsoever.

**13. Professional Ability of CalChoice; Warranty; Familiarity with Work; Permits and Licenses.**

a. CalChoice warrants that all Services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

b. By executing this Agreement, CalChoice warrants that it has thoroughly investigated and considered the work to be performed, investigated the issues regarding the Scope of Services and carefully considered how the work should be performed.

c. CalChoice represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement. The Parties agree that CalChoice shall not be required to obtain a City business license.

**14. Notices.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, and addressed as listed below. All notices required by this Agreement are effective on the day of receipt, unless otherwise indicated herein.

CalChoice: Jason Caudle, Executive Director  
California Choice Energy Authority  
c/o City of Lancaster  
44933 North Fern Avenue  
Lancaster, California 93534

City: Charles Maynard, City Manager  
City of Desert Hot Springs  
11999 Palm Drive  
Desert Hot Springs, CA 92240

**Resolution of Disputes.** Disputes regarding the interpretation or application of any provision of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties.

**15. Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other

documents and data either created by or provided to CalChoice in connection with the performance of this Agreement shall be held confidential by CalChoice to the maximum extent permitted by law. Except to the extent that such information constitutes a public record pursuant to the California Public Records Act, such materials shall not, without prior written consent of City, be used by CalChoice for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services. Nothing furnished to CalChoice which is otherwise known to CalChoice or is generally known, or has become known, to the related industry shall be deemed confidential. CalChoice shall not use City's insignia or photographs relating to the project for which CalChoice's Services are rendered without City's prior written consent.

**16. CalChoice's Books and Records.** CalChoice shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three years, or for any longer period required by law, from the date of termination or completion of this Agreement. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at reasonable times during regular business hours, upon written request by City's City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to City for inspection at City's address indicated for receipt of notices in this Agreement when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CalChoice's address indicated for receipt of notices in this Agreement.

**17. Severability.** If any provisions of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**18. Amendment.** 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 Parties.

**19. Waiver.** No waiver of any provision of this Agreement shall be binding, unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

**20. Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Los Angeles County, California.

**21. Litigation Expenses and Attorneys Fees.** In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

**22. Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement. This Agreement

contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party except those covenants and agreements embodied in this Agreement. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

**23. Non-Liability of Officers and Employees.** No officer or employee of CalChoice or City shall be personally liable in the event of any default or breach of the terms of this Agreement.

**24. Captions and Headings.** The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**25. Counterparts.** This Agreement may be executed in counterparts by each of the Parties. Each such counterpart shall constitute an original and all such counterparts so executed shall constitute one Agreement, binding upon the Parties, notwithstanding that all of the Parties are or may not be a signatory to the original or the same counterpart. Each counterpart shall have the same force and effect as if all such signatures were contained in one instrument. A facsimile copy shall be considered an original for the purposes of this Agreement. Facsimile or e-mail transmissions shall be deemed effective as originals.

**26. No Third Party Beneficiaries.** The Parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

**27. Assignment and Subcontracting.**

a. The experience, knowledge, capability and reputation of CalChoice, its principals and employees were a substantial inducement for City to enter into this Agreement. Assignments of any or all rights, duties or obligations of CalChoice under this Agreement will be permitted only with the written consent of City.

b. CalChoice shall not subcontract any portion of the work to be performed under this Agreement without the written consent of City. If City consents to such subcontract, CalChoice shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as required by law. City expressly acknowledges that (i) CalChoice is staffed by employees of the City of Lancaster, (ii) CalChoice contracts with Pacific Energy Advisors for compiling data, load forecasting and preparation of pro formas and (iii) CalChoice contracts with Bayshore Consulting Group Inc. for administration and the preparation of implementation plans. City hereby expressly consents to performance of the Services pursuant to this Agreement by the persons and/or entities identified in the immediately preceding sentence.

**28. Principal Representatives.**

a. Barbara Boswell is designated as CalChoices's principal representative ("CalChoice Principal Representative") and is the person responsible for undertaking, managing and supervising performance of the Services. CalChoice Principal Representative's experience, knowledge, capability and reputation are a substantial inducement for City to enter into this Agreement, and as such, for the purposes of performing the Services, the duties of CalChoice Principal Representative shall not be reassigned, without express written consent of both Parties.

b. Luke Rainey, Deputy City Manager, shall be City's principal representative ("City Principal Representative") for purposes of communicating with CalChoice on any matter associated with the performance of the Services set forth in this Agreement.

**29. Representations of Parties and Persons Executing Agreement.** Each Party hereby represents that all necessary and appropriate actions of its governing body have been taken to make this Agreement a binding obligation. Each person executing this Agreement warrants that he or she is duly authorized to execute this Agreement on behalf of and bind the Party he or she purports to represent.

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**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized.

**CITY:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
City Manager

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

\_\_\_\_\_  
(Name, Title)

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CalChoice:**

Dated: \_\_\_\_\_

**CALIFORNIA CHOICE ENERGY AUTHORITY**, a  
California joint powers authority

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

Jason Caudle, Executive Director  
By: Barbara Boswell, Treasurer

ATTEST:

\_\_\_\_\_  
CalChoice Secretary

APPROVED AS TO FORM:

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## EXHIBIT “A”

### SCOPE OF SERVICES AND PAYMENT SCHEDULE

#### **Phase I: Load Forecasting, Data Analysis, and Pro-forma Development**

**\$45,000**

CalChoice will request load data from Southern California Edison and with technical assistance from Pacific Energy Advisors (PEA), will provide the technical expertise to analyze the data, determine a load profile, estimate total usage, compare that to current market conditions, and prepare a pro-forma. Note that this is the initial pro-forma to project estimated financial results and submit in the Implementation Plan. Once an Implementation Plan is filed, the City can request more detailed load data from SCE for more precise pro-forma development. The fee includes three in-person meetings:

- Initial kick-off meeting to discuss pro-forma assumptions
- Meeting with staff to review results
- Attendance at City Council meeting to review results and determine direction

This fee does not include travel expenses, which are billed at actual costs.

#### **Phase II: Preparation of the Implementation Plan & Statement of Intent and Ordinance**

**\$18,000**

CalChoice and its partners will prepare an Implementation Plan & Statement of Intent in compliance with California Public Utilities Commission (CPUC) Resolution E-4907 and Public Utilities Code Section 366.2 and related ordinance establishing a community choice aggregation program. Other actions included:

- Preparation of a draft customer notice
- Assistance with execution of Southern California Edison Service Agreement
- Assistance with submittal of the CCA Bond Payment (aka Financial Security Requirement)

CalChoice will work with the CPUC on behalf of the City to ensure all steps are satisfied to receive a certification of the Implementation Plan and registration as a Community Choice Aggregator.

CalChoice support throughout the formation process including interfacing with Southern California Edison, California Public Utilities Commission and technical consultants, coordination of meetings with staff and City Council, maintaining project schedule and ensuring that all deliverables are met according to CCA launch timeline.

This fee does not include travel expenses, which are billed at actual costs.