

**KAUA'I ISLAND UTILITY COOPERATIVE  
BOARD POLICY NO. 10  
(Reviewed 06/26/2018)**

**LEGAL REPRESENTATION AND USE OF ATTORNEYS**

**PURPOSE OF POLICY:**

The Board of Directors ("Board") of Kaua'i Island Utility Cooperative ("KIUC") recognizes that competent legal representation and effective use of attorneys are critical to the successful operation of KIUC. Although an attorney or law firms retained or employed by KIUC ("Attorney" or "Attorneys"), and the Attorneys' representation of KIUC, are governed by rules of professional conduct and other local, state, and federal law, the objective of this policy is to provide additional guidance for, and emphasize important aspects of, the representation of all Attorneys that represent KIUC, and KIUC's use of Attorneys. To the extent this policy is inconsistent with rules of professional conduct or similar requirements governing Attorneys, the rules or requirements govern.

**POLICY CONTENT:**

A. **Retention of Counsel**

1. **General Counsel**. The Board shall retain or employ an Attorney on behalf of KIUC to continually provide general legal services to KIUC ("General Counsel"). General legal services include, but are not limited to: (1) attending and drafting or reviewing the minutes of all meetings of the Board, and all annual and special meetings of KIUC members; (2) negotiating, drafting, and reviewing contracts; (3) providing legal services for the disposition or acquisition of real property and interests in real property; (4) providing legal

services for the borrowing or lending of money; and (5) providing legal services regarding general business, cooperative, tax, and electric utility law.

2. Special Counsel. As reasonably necessary, and following consultation with the General Counsel, KIUC may retain or employ Attorneys to provide special legal services to KIUC (“Special Counsel”). Special legal services require competence in a particular field of law and may include, but are not limited to: (1) representing KIUC in state or federal court, or before a local, state, or federal agency; and (2) providing legal services regarding labor, employment, tax, antitrust, environmental, or intellectual property law. In providing special legal services to KIUC, a Special Counsel shall provide the General Counsel copies of all communications, memoranda, briefs, notices, motions, and other documents prepared, filed, received, or sent by the Special Counsel. The General Counsel may also provide special legal services to KIUC in areas of the General Counsel's competency.

3. Board Counsel. As determined by the Board, upon the recommendation of the General Counsel or otherwise, the Board may retain, employ, direct, and discharge an attorney or law firm other than the General Counsel, or Special Counsel, or their law firms, to periodically provide legal services directly to the Board (“Board Counsel”), with the Board Counsel representing the Board as client. KIUC shall pay a Board Counsel a reasonable fee and reasonable expenses for such services. To the extent practical, a Board Counsel’s representation of the Board must be governed in a manner similar to the manner in which an Attorney’s representation of KIUC is governed under this policy.

B. **Competent Legal Representation and Conflicts of Interest**. An Attorney shall provide competent legal representation to KIUC, and shall have or acquire the appropriate knowledge,

skills, time, and qualifications necessary to provide competent legal representation. No Attorney, however, guarantees, promises, or warrants a successful or favorable outcome regarding legal services provided to KIUC. An Attorney shall comply with conflict of interest requirements prescribed in applicable local, state, and federal law and rules of professional conduct. An Attorney may provide legal services to an entity in which KIUC owns an interest (“Affiliated Entity”) only if the Attorney complies with these conflict of interest requirements. An Attorney shall inform KIUC’s President and Chief Executive Officer ("CEO"), or person authorized by the CEO in writing of any other entity engaged in generating, transmitting, distributing, marketing, or selling electric energy to which the Attorney provides legal services.

C. **Retaining, Employing, and Discharging Attorneys.** The Board shall make decisions regarding retaining, employing, and discharging the General Counsel and shall annually evaluate the performance of the General Counsel. Following consultation with the General Counsel, the CEO shall make decisions regarding retaining, employing, and discharging any other Attorney. By providing written notice to an Attorney, KIUC may discharge the Attorney, and terminate any attorney engagement agreement, at any time for any reason. By providing written notice to KIUC, and as required or allowed by applicable law and rules of professional conduct, an Attorney shall or may withdraw from representing KIUC and terminate any attorney engagement agreement.

D. **Hiring of Third Parties by an Attorney.** As part of providing legal services to KIUC, and with the CEO’s prior consent, an Attorney may retain another attorney or may use an attorney or paraprofessional associated with the Attorney in a law firm. As reasonably necessary or helpful in providing legal services to KIUC, and subject to any limitations stated in an attorney

engagement agreement, an Attorney may contract for a non-attorney and non-paraprofessional third party to provide goods or services.

E. **Directing Attorneys.** Only the Board, the Chair of KIUC, or the CEO may request that an Attorney provide legal services to KIUC; provided, however, if KIUC's General Counsel is requested to perform services that are thought by the general Counsel to be outside the scope of the General Counsel's General Retainer, the general Counsel shall so advise the requestor, and, if the requestor is not the Board, Chair or CEO, have the requestor obtain the necessary approval from the Board, Chair or CEO, as applicable, pursuant to this Policy prior to undertaking the requested services. As requested by an Attorney, and as reasonably necessary or helpful in providing legal services to KIUC, KIUC shall provide the Attorney reasonable access to its directors, officers, employees, consultants, agents, representatives, records, and documents. The CEO and Attorney shall keep the Board reasonably informed regarding any matter for which an Attorney is providing legal services to KIUC. In consultation with the Board or as directed by the Board, the CEO shall direct an Attorney. In providing legal services to KIUC, and subject to the Board or CEO's direction, an Attorney may act on KIUC's behalf in any manner reasonably believed to be in KIUC's best interest. Unless the CEO gives his or her prior consent, an Attorney may not make a statement outside of a tribunal regarding the Attorney's provision of legal services to KIUC, which statement the Attorney knows or reasonably should know will be disseminated by means of public communication. No KIUC director, officer, employee, consultant, agent, or representative may interfere with the Attorney's ability to exercise independent professional judgment and render candid advice.

F. **Attorney Fees and Expenses.** KIUC shall pay its Attorneys a reasonable fee and reasonable expenses. All Attorneys shall provide legal services to KIUC in a cost-effective and

efficient manner. The fees and expenses for Attorneys retained by KIUC must be specified in an appropriate attorney engagement agreement. A sample agreement for the engagement of a General Counsel, which shall be modified as necessary to meet specific circumstances, is attached to this policy as Exhibit "A". A sample agreement for the engagement of Special Counsel, including Board Counsel, which shall be modified as necessary to meet specific circumstances, is attached to this policy as Exhibit "B". KIUC shall indemnify its Attorneys for liability and expenses, including reasonable attorney fees, to which KIUC has exposed the Attorney without the Attorney's fault. The CEO shall cause KIUC's Attorneys to be paid appropriate monthly fees and expenses in accordance with their respective engagement agreements, and within budgeted and delegated authority.

G. **Unauthorized Practice of Law.** No KIUC director, officer, employee, consultant, agent, or representative may provide legal services to KIUC unless the individual is an attorney admitted to practice law in an appropriate jurisdiction.

H. **KIUC as Client.** In providing legal services to KIUC, an Attorney represents KIUC as client, acting through its authorized directors, officers, employees, and members. In representing KIUC, an Attorney does not represent KIUC's directors, officers, employees, or members. If the Board gives its informed, written, and prior consent, and if an Attorney complies with applicable conflict of interest requirements, then the Attorney may represent an Affiliated Entity and the Attorney may represent individual KIUC directors, officers, employees, and members in matters related to the Attorney's representation of KIUC.

I. **Attorney-Client Privilege.** Confidential communications between KIUC, or its agent or representative, and the Attorney, or the Attorney's agent or representative, made to facilitate the

Attorney's provision of legal services to KIUC are protected by the attorney-client privilege. KIUC directors, officers, employees, consultants, agents, and representatives shall not disclose these communications to third parties, other than those to whom disclosure is made in furtherance of this provision of legal services, or those reasonably necessary for transmitting the communications. To the extent these communications are disclosed to KIUC employees, consultants, agents, or representatives, they must only be disclosed to individuals who reasonably need to know of the communications.

J. **Attorney's Duty to Inform and Consult.** An Attorney shall keep the Board and the CEO reasonably informed regarding a matter for which the Attorney is providing legal services to KIUC. For decisions regarding the matter to be made by KIUC, the Attorney shall explain the matter to the Board and the CEO to the extent reasonably necessary to permit KIUC to make an informed decision. An Attorney shall promptly comply with KIUC's reasonable request for information.

K. **Reliance.** In providing legal services to KIUC, an Attorney may rely upon information provided by KIUC, unless the Attorney knows that the reliance is unwarranted. In performing his or her duties, a KIUC director, officer, or employee may rely upon information, opinions, reports, and statements prepared or presented by an Attorney. A director, officer, or employee's reliance, however, is only permitted regarding matters involving skills or expertise that he or she reasonably believes are within the Attorney's professional or expert competence. Further, this reliance is only permitted if the director, officer, or employee acts in good faith and reasonably believes that the reliance is warranted and that the Attorney merits confidence.

L. **Evidence of Violation of Law or Breach of Duty.** If an Attorney, other than the General Counsel, knows or reasonably should know of any evidence of an actual or intended material violation of law or material breach of duty, or evidence of an actual or intended violation of law or breach of duty likely to result in substantial injury to KIUC, by KIUC or by any KIUC director, officer, employee, consultant, agent, or representative (“Evidence”), then the Attorney shall report the Evidence to the General Counsel. If the General Counsel knows or reasonably should know of any Evidence, then the General Counsel shall report the Evidence to the CEO.

Within thirty (30) days of Evidence being first reported, the General Counsel or the CEO, as determined by the CEO, shall investigate the Evidence, respond appropriately to the Evidence, and inform the reporting Attorney regarding the investigation and the response. If an Attorney, other than the General Counsel, reasonably believes neither the General Counsel nor the CEO has investigated or responded appropriately to the Evidence, or if the Attorney believes it is reasonably necessary in the best interest of KIUC, then the Attorney shall report the Evidence to the Board or the audit committee of the Board (“Audit Committee”) in person and without the presence of any other person, except a person invited by the Attorney. If the General Counsel reasonably believes the CEO has not investigated or responded appropriately to the Evidence, or if the General Counsel believes it is reasonably necessary in the best interest of KIUC, then the General Counsel shall report the Evidence to the Board or the Audit Committee in person and without the presence of any other person, except a person invited by the General Counsel.

If a reporting Attorney reasonably believes the Attorney has been discharged because the Attorney reported Evidence, then the Attorney shall inform the Board or the Audit Committee of this belief. To encourage and facilitate the reporting and investigating of Evidence, and responding appropriately to Evidence, the Board or the Audit Committee should meet at least quarterly with

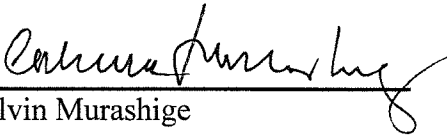
the General Counsel and without the presence of any other person, except a person invited by the General Counsel.

M. **Legal Programs, Publications, and Memberships.** KIUC shall encourage the General Counsel to: (1) attend legal programs sponsored by, and to subscribe to legal publications published by, the National Rural Electric Cooperative Association and any association of Electric Cooperatives located within the state; and (2) be a member of, and attend programs sponsored by, the Electric Cooperative Bar Association and any association of attorneys representing Electric Cooperatives located within the state. The payment of any fees and expenses related to a General Counsel retained by KIUC attending these legal programs, subscribing to these legal publications, or being a member of these associations must be specified in an attorney engagement agreement.

**RESPONSIBILITIES:**

The Board is responsible for compliance with this policy. The CEO is responsible for communicating with all Special Attorneys regarding such Attorneys' provision of legal services to KIUC.

Adopted on this 26<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
Calvin Murashige  
Secretary

Reviewed: 06/26/2018  
Reviewed: 10/25/2016  
Reviewed: 10/28/2014  
Revised: 12/20/2011  
Revised: 04/22/2008  
Original Adoption: 06/30/2004



## EXHIBIT "A"

### GENERAL COUNSEL ENGAGEMENT AGREEMENT

This AGREEMENT ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_, by and between Kaua'i Island Utility Cooperative. ("KIUC"), having its principal place of business at 4463 Pahee St., Lihue, HI 96766, and \_\_\_\_\_ ("Attorney"), having its principal place of business at \_\_\_\_\_, with the Agreement being effective on \_\_\_\_\_.

### RECITALS

1. KIUC is an electric cooperative organized under the provisions of the Chapter 421C of the Hawaii Revised Statutes which desires to engage a General Counsel to provide general legal services and any special legal services determined by the KIUC Board of Directors ("Board").
2. Attorney is a Hawaii \_\_\_\_\_ duly licensed and providing legal services in the State of Hawaii.
3. Attorney is able and willing to act as the General Counsel of KIUC under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of their mutual understandings, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. General Agreement. Pursuant to this Agreement, Attorney shall provide legal services to KIUC, and KIUC shall pay Attorney. In entering this Agreement, KIUC and Attorney have formed or continue an attorney-client relationship for the provision of the legal services stated in this Agreement.
  
2. Policy. Attorney and KIUC, respectively, shall comply with applicable provisions of KIUC Policy No. 10, entitled “Legal Representation and Use of Attorneys” (“Policy”), which Policy is incorporated in this Agreement by reference.
  
3. General Counsel. As described in the Policy, and as indicated below, Attorney shall provide legal services to KIUC as General Counsel. In such capacity Attorney shall provide KIUC with general legal services and any special legal services determined by the Board or KIUC's President and Chief Executive Officer ("CEO").
  
4. Staffing. \_\_\_\_\_ will be the attorney primarily responsible for providing general legal services to KIUC as General Counsel. Attorney may also utilize the services of other lawyers, legal assistants and law clerks employed by Attorney. Work assignments will be made, whenever possible, in a way that maximizes

Attorney's legal effectiveness and time efficiency, and minimizes KIUC's legal expenses.

5. General Retainer. KIUC shall pay Attorney as General Counsel \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per month plus Hawaii General Excise Tax (currently 4.16 percent) (“General Retainer”) for attending all regular meetings of the Board, all annual and special meetings of KIUC members, and reviewing all minutes thereof, and for providing the following general legal services:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

6. Non-Retainer Fees. Unless otherwise provided in this Agreement, KIUC shall pay Attorney, or other attorneys or paraprofessionals associated with Attorney, the following fees for each hour, or portion thereof rounded up to the nearest 1/10th of an hour (6 minutes), spent providing legal services to KIUC (“Hourly Fees”):

\_\_\_\_\_ dollars (\$ \_\_\_\_\_) per hour spent by Partners

\_\_\_\_\_ dollars (\$ \_\_\_\_\_) per hour spent by Counsel or Of Counsel Attorneys

\_\_\_\_\_ dollars (\$ \_\_\_\_\_) per hour spent by Associate Attorneys

\_\_\_\_\_ dollars (\$ \_\_\_\_\_) per hour spent by Legal Assistants

Attorney may from time-to-time modify the above Hourly Fees but only with KIUC's prior written consent. As an alternative to such Hourly Fees, KIUC and Attorney may agree upon a fixed fee for any appropriate increment of legal services provided by Attorney. Hawaii General Excise Tax (currently 4.16 percent) will be added to all such non-retainer fees.

7. Non-Legal Services. KIUC shall pay Attorney for non-legal, non-overhead goods or services provided to, by, or through Attorney as part of, and specifically for, Attorney's provision of legal services to KIUC ("Non-Legal Services"). Non-Legal Services include, but are not limited to: (a) extensive photocopying; (b) computerized legal research; (c) audio or video recording or transcription; (d) travel, including transportation, lodging, and meals; (e) long distance telephone; (f) document transmission or delivery services, including messenger, facsimile, and mail; (g) court costs; and (h) filing fees. Hawaii General Excise Tax (currently 4.16 percent) will be added to any taxable costs. The amount paid for a Non-Legal Service must be reasonable and may be based upon Attorney's direct costs associated with the Non-Legal Service, a reasonable allocation of Attorney's overhead expense associated with the Non-Legal Service, and competitive amounts paid for the Non-Legal Service. Non-Legal Services reasonably anticipated to cost more than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) during any month may not be provided to, by, or through Attorney without KIUC's prior consent.

8. Third Party Services. KIUC shall pay for goods or services provided by a third party as part of, and specifically for, Attorney's provision of legal services to KIUC ("Third Party Services"). As determined by Attorney, KIUC shall: (a) pay the third party for a Third Party Service or (b) reimburse Attorney for Attorney's payment to the third party for a Third Party Service. Third Party Services reasonably anticipated to cost more than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) may not be provided without KIUC's prior consent.
9. Invoices. Each month, Attorney shall send KIUC invoices as follows:
- (a) An invoice setting out the amount due as a General Retainer for the previous month as set forth in paragraph 4 above.
  - (b) An invoice describing any general legal services provided by Attorney, any Non-Legal Services provided to, by, or through Attorney, and any Third Party Services for which Attorney has paid during the previous month but not included in the General Retainer or part of any special legal services performed as requested by the Board or CEO.
  - (c) An invoice or invoices describing any special legal services requested by the Board or CEO and provided by Attorney, including any Non-Legal Services or Third Party Services for which Attorney has paid during the previous month associated with such special services.

10. Payment. After KIUC receives an invoice from Attorney, and unless KIUC disputes an Invoice Amount: (a) KIUC shall pay Attorney within thirty (30) days; (b) if KIUC does not pay an Invoice Amount within thirty (30) days, then the unpaid Invoice Amount is subject to a late payment fee of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per month and KIUC shall pay Attorney for all expenses, including reasonable attorney fees, incurred by Attorney to collect the unpaid Invoice Amount; (c) if KIUC does not pay an Invoice Amount within forty-five (45) days, then following fifteen (15) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC; and (d) if KIUC does not pay an Invoice Amount exceeding \_\_\_\_\_ dollars (\$ \_\_\_\_\_) within thirty (30) days, then following five (5) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC. These payment terms of this Agreement survive termination of the Agreement.
11. Disputed Amounts. If KIUC disputes all or part of an Invoice Amount, then KIUC shall notify Attorney in writing within thirty (30) days of receiving the invoice. If Attorney and KIUC do not resolve the dispute within thirty (30) days of Attorney's receipt of KIUC's notice of dispute, then Attorney and KIUC shall submit the dispute to binding arbitration administered by the Hawaii State Bar Association, or by another organization agreed upon by Attorney and KIUC. These disputed amount terms of this Agreement survive termination of the Agreement.

12. Publications, Memberships, Meetings, and Seminars. KIUC shall:

\_\_\_\_\_ On Attorney's behalf, pay for annual subscriptions to the *Legal Reporting Service* and *Personnel Practice Pointers*, publications by the National Rural KIUC Association ("NRECA")

\_\_\_\_\_ Pay for Attorney to become and remain a member of the Electric Cooperative Bar Association ("ECBA")

\_\_\_\_\_ Pay for Attorney to become and remain a member of any association of attorneys representing electric cooperatives located within the state

If Attorney provides legal services to KIUC as General Counsel, then, as indicated below and in the same manner as KIUC pays and reimburses members of the Board, KIUC shall pay and reimburse Attorney to attend:

\_\_\_\_\_ NRECA's annual member meeting

\_\_\_\_\_ NRECA's annual legal seminar

\_\_\_\_\_ NRECA's annual workplace law seminar

\_\_\_\_\_ ECBA's annual member meeting

\_\_\_\_\_ Any annual meeting of any association of electric cooperatives located within the state

\_\_\_\_\_ Any annual legal seminar for attorneys representing electric cooperatives located within the state

13. Termination of Agreement. As provided in this Agreement or the Policy, KIUC or Attorney shall or may terminate this Agreement.
  
14. Termination Payments and Refunds. Upon termination of this Agreement, and pursuant to the terms of this Agreement governing payment and disputed amounts: (a) KIUC shall pay Attorney all undisputed General Retainer, Hourly Fee, Non-Legal Service, and Third Party Service amounts for services provided prior to termination and (b) KIUC shall pay Attorney the undisputed, proportionate, and reasonable part of any Fixed Fee amount for services provided prior to termination. Within thirty (30) days of termination of this Agreement, and pursuant to the terms of this Agreement governing disputed amounts: (a) Attorney shall refund to KIUC any undisputed General Retainer, Non-Legal Service, and Third Party Service amounts representing payment for services not provided prior to termination and (b) Attorney shall refund to KIUC the undisputed, proportionate, and reasonable part of any Fixed Fee amount representing payment for services not provided prior to termination.
  
15. Governing Law. This Agreement will be governed by, and interpreted under, the law of Hawaii.



KAUA'I ISLAND UTILITY COOPERATIVE

[NAME OF ATTORNEY]

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

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

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

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

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

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

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

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

**EXHIBIT "B"**

**SPECIAL COUNSEL ENGAGEMENT AGREEMENT**  
**(May also be used for Board Counsel)**

**This AGREEMENT** ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_, by and between Kaua'i Island Utility Cooperative. ("KIUC"), having its principal place of business at 4463 Pahee St., Lihue, HI 96766, and \_\_\_\_\_ ("Attorney"), having its principal place of business at \_\_\_\_\_, with the Agreement being effective on \_\_\_\_\_.

**RECITALS**

1. KIUC is an electric cooperative organized under the provisions of the Chapter 421C of the Hawaii Revised Statutes which desires to engage Counsel to provide special legal services to it.
2. Attorney is a Hawaii \_\_\_\_\_ duly licensed and providing legal services in the State of Hawaii.
3. Attorney is able and willing to provide the requested special legal services to KIUC under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of their mutual understandings, the mutual covenants contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

16. General Agreement. Pursuant to this Agreement, Attorney shall provide legal services to KIUC, and KIUC shall pay Attorney. In entering this Agreement, KIUC and Attorney have formed or continue an attorney-client relationship for the provision of the legal services stated in this Agreement.

17. Policy. Attorney and KIUC, respectively, shall comply with applicable provisions of KIUC Policy No. 10, entitled “Legal Representation and Use of Attorneys” (“Policy”), which Policy is incorporated in this Agreement by reference.

18. Special Counsel. As described in the Policy, and as indicated below, Attorney shall provide legal services to KIUC as Special Counsel and provide KIUC the following special legal services, with Attorney’s representation of KIUC limited to providing these special legal services:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

19. Staffing. \_\_\_\_\_ will be the attorney primarily responsible for providing the above special legal services to KIUC as Special Counsel. Attorney may also utilize the services of other lawyers, legal assistants and law clerks employed by

Attorney. Work assignments will be made, whenever possible, in a way that maximizes Attorney's legal effectiveness and time efficiency, and minimizes KIUC's legal expenses.

20. Fees. Unless otherwise provided in this Agreement, KIUC shall pay Attorney, or other attorneys or paraprofessionals associated with Attorney, the following fees for each hour, or portion thereof rounded up to the nearest 1/10th of an hour (6 minutes), spent providing legal services to KIUC (“Hourly Fees”):

\_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour spent by Partners

\_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour spent by Counsel or Of Counsel Attorneys

\_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour spent by Associate Attorneys

\_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour spent by Legal Assistants

Attorney may from time-to-time modify the above Hourly Fees but only with KIUC’s prior written consent. As an alternative to such Hourly Fees, KIUC and Attorney may agree upon a fixed fee for any appropriate increment of legal services provided by Attorney. Hawaii General Excise Tax (currently 4.16 percent) will be added to all such non-retainer fees.

21. Non-Legal Services. KIUC shall pay Attorney for non-legal, non-overhead goods or services provided to, by, or through Attorney as part of, and specifically for, Attorney’s provision of legal services to KIUC (“Non-Legal Services”). Non-Legal Services

include, but are not limited to: (a) extensive photocopying; (b) computerized legal research; (c) audio or video recording or transcription; (d) travel, including transportation, lodging, and meals; (e) long distance telephone; (f) document transmission or delivery services, including messenger, facsimile, and mail; (g) court costs; and (h) filing fees. Hawaii General Excise Tax (currently 4.16 percent) will be added to any taxable costs. The amount paid for a Non-Legal Service must be reasonable and may be based upon Attorney's direct costs associated with the Non-Legal Service, a reasonable allocation of Attorney's overhead expense associated with the Non-Legal Service, and competitive amounts paid for the Non-Legal Service. Non-Legal Services reasonably anticipated to cost more than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) during any month may not be provided to, by, or through Attorney without KIUC's prior consent.

22. Third Party Services. KIUC shall pay for goods or services provided by a third party as part of, and specifically for, Attorney's provision of legal services to KIUC ("Third Party Services"). As determined by Attorney, KIUC shall: (a) pay the third party for a Third Party Service or (b) reimburse Attorney for Attorney's payment to the third party for a Third Party Service. Third Party Services reasonably anticipated to cost more than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) may not be provided without KIUC's prior consent.

23. Invoices. Each month Attorney shall send KIUC an invoice or invoices describing any special legal services provided by Attorney during the previous month, including any

Non-Legal Services or Third Party Services, which Attorney has provided or paid during the previous month associated with such special services.

24. Payment. After KIUC receives an invoice from Attorney, and unless KIUC disputes an Invoice Amount: (a) KIUC shall pay Attorney within thirty (30) days; (b) if KIUC does not pay an Invoice Amount within thirty (30) days, then the unpaid Invoice Amount is subject to a late payment fee of \_\_\_\_\_ percent (\_\_\_\_ %) per month and KIUC shall pay Attorney for all expenses, including reasonable attorney fees, incurred by Attorney to collect the unpaid Invoice Amount; (c) if KIUC does not pay an Invoice Amount within forty-five (45) days, then following fifteen (15) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC; and (d) if KIUC does not pay an Invoice Amount exceeding \_\_\_\_\_ dollars (\$ \_\_\_\_\_) within thirty (30) days, then following five (5) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC. These payment terms of this Agreement survive termination of the Agreement.

25. Disputed Amounts. If KIUC disputes all or part of an Invoice Amount, then KIUC shall notify Attorney in writing within thirty (30) days of receiving the invoice. If Attorney and KIUC do not resolve the dispute within thirty (30) days of Attorney's receipt of KIUC's notice of dispute, then Attorney and KIUC shall submit the dispute to binding arbitration administered by the Hawaii State Bar Association, or by another

organization agreed upon by Attorney and KIUC. These disputed amount terms of this Agreement survive termination of the Agreement.

26. Termination of Agreement. As provided in this Agreement or the Policy, KIUC or Attorney shall or may terminate this Agreement.
  
27. Termination Payments and Refunds. Upon termination of this Agreement, and pursuant to the terms of this Agreement governing payment and disputed amounts: (a) KIUC shall pay Attorney all undisputed General Retainer, Hourly Fee, Non-Legal Service, and Third Party Service amounts for services provided prior to termination and (b) KIUC shall pay Attorney the undisputed, proportionate, and reasonable part of any Fixed Fee amount for services provided prior to termination. Within thirty (30) days of termination of this Agreement, and pursuant to the terms of this Agreement governing disputed amounts: (a) Attorney shall refund to KIUC any undisputed General Retainer, Non-Legal Service, and Third Party Service amounts representing payment for services not provided prior to termination and (b) Attorney shall refund to KIUC the undisputed, proportionate, and reasonable part of any Fixed Fee amount representing payment for services not provided prior to termination.
  
28. Governing Law. This Agreement will be governed by, and interpreted under, the law of Hawaii.

KAUA'I ISLAND UTILITY COOPERATIVE

[NAME OF ATTORNEY]

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

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

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

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

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

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

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

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