

**COST SHARING AGREEMENT
BETWEEN
MONTEREY BAY COMMUNITY POWER AUTHORITY
AND
THE CITY OF GOLETA**

This Cost Sharing Agreement (“Agreement”) is made and entered into effective October __, 2019 by and between the Monterey Bay Community Power Authority (“MBCP”), a joint powers authority established under Government Code section 6500 *et. seq.* and the City of Goleta, a California general law city (“City”). MBPC and City may be individually referred to herein as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, MBCP was established in or about February 2017 through the execution of a Joint Exercise of Powers Agreement (the “JPA Agreement”) following the adoption ordinances as required by Public Utilities Code Section 366.2(c)(12), and;

WHEREAS, on December 5, 2018 the JPA Agreement was amended to expand MBCP’s members to the Cities of Morro Bay and San Luis Obispo, and;

WHEREAS, the City adopted an ordinance to establish a community choice energy program as required by Public Utilities Code Section 366.2(c)(12) and a resolution establishing its intent to join MBCP, and;

WHEREAS, MBCP’s Policy Board of Directors have directed staff to prepare a resolution, for approval at its regularly scheduled December 4, 2019 meeting, to amend the JPA Agreement to further expand MBCP membership to include the City, and;

WHEREAS, Public Utilities Code Section 366.2(c) requires that in certain circumstances, such as the change in MBCP’s organizational structure, MBCP update and approve a further addendum to its Implementation Plan and submit the revised Implementation Plan to the California Public Utilities Commission for certification, and;

WHEREAS, Parties agree that the City is responsible for its equal share of costs associated with joining MBCP, including but not limited to MBCP staff costs; costs related the required Implementation Plan amendments, and certain California Public Utilities Commission and Secretary of State filings, and;

WHEREAS, MBCP has engaged Pacific Energy Advisors, Inc., (“PEA”) to analyze data related to MBCP’s proposed addition of eleven new jurisdictions from both Pacific Gas and Electricity and Southern California Edison service territories and to update the Monterey Bay Community Power Implementation Plan accordingly.

WHEREAS, the Parties desire to set forth their respective rights, duties, and obligations regarding the work being conducted on their behalf by PEA.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. **RECITALS:** The Recitals stated above are true and correct and are incorporated by this reference into this Agreement.

2. **MBCP RESPONSIBILITY:**
 - 2.1. MBCP shall be responsible to engage PEA; prepare the scope of work for services to be provided by PEA; manage the PEA contract for the benefit of MBCP; make timely payments to PEA pursuant to the terms of the Contract; directly supervise PEA staff; evaluate and accept deliverables.

 - 2.2. MBCP shall be responsible for sending a timely and accurate invoice to the City that reflects the City's equal share of the costs incurred by MBCP related to: (1) the inclusion of the City into MBCP; (2) PEA's provision of services related to the required Implementation Plan amendments; and (3) further staff and filing costs associated with additional California Public Utility Commission or Secretary of State filing requirements.

 - 2.3. The City shall not be responsible, in any way, for costs incurred by, or owed to PEA, except for their equal share as set forth in section 3.2.1 below.

3. **CITY'S RESPONSIBILITY:**
 - 3.1. City shall work cooperatively with MBCP in MBCP's administration and management of the PEA contract, including but not limited to the provision of data necessary for PEA's provision of services.

 - 3.2. Reimburse, on an equal-share basis, MBCP for the payments made by MBCP to PEA pursuant to the PEA contract.
 - 3.2.1. The City's equal share is \$6,000.

 - 3.2.2. Reimbursement is due within 30 days of receipt of an invoice from MBCP, but in no event later than December 4, 2019.

 - 3.3. Except as set forth in Article 5, the City shall have no obligation for any costs or liabilities beyond the equal share as set forth in section 3.2.1 or amended by the mutual agreement as set forth in section 4.2.1 below.

4. **TERM and TERMINATION:**
 - 4.1. The term of this Agreement will commence on the date first written above and, absent earlier termination pursuant to the provisions below, terminate on December 31, 2019.

 - 4.2. Parties may terminate this Agreement upon mutual written agreement.
 - 4.2.1. Termination of this Agreement in its entirety shall not excuse the City to make any outstanding reimbursement payments owed to MBCP.

5. Hold Harmless and Indemnification:

5.1. Each Party shall defend, hold harmless and indemnify the other Party and its directors, officers, agents and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions or other wrongful conduct of the indemnifying Party, its directors, officers, agents and/or employees.

5.2. This mutual and reciprocal hold harmless and indemnity obligation shall survive expiration or termination of this Agreement.

6. Amendment and Waiver: No change or modification of this Agreement shall be valid unless the same is in writing and signed by both Parties, and no verbal understanding, or agreement not incorporated herein shall be binding on any Party hereto.

7. Governing Law and Venue: This Agreement shall be construed and governed by the laws of the State of California, and any suit or action initiated by any Party shall be brought in the Superior Court for the County of Monterey, California, or the United States District Court for the Northern District of California.

8. Time of Essence: Time is of the essence in each and all of the provisions of this Agreement.

9. Benefit of Parties: The terms of this Agreement shall be binding and inure to the benefit of the Parties hereto and their successors and assigns.

10. Entire Agreement: This Agreement supersedes any and all agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement and contains all of the representations, covenants, and agreements between the Parties with respect to the subject matter of this Agreement.

11. Independent Counsel: Each Party has had the opportunity to consult with its own attorney with respect to this Agreement, and in the event that any language contained herein is construed to be vague or ambiguous, this Agreement shall not be strictly construed against any Party.

12. Notice: Notice given under or regarding this Agreement shall be deemed given upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), or reputable overnight commercial delivery service. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

Tom Habashi, CEO
Monterey Bay Community Power Authority
70 Garden Court, 3rd Floor
Monterey, CA 93940
thabashi@mbcommunitypower.org


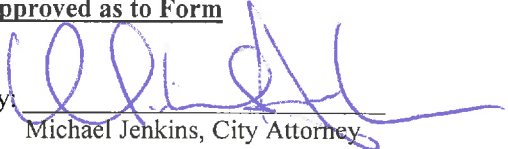
City Clerk's Office
City of Goleta
130 Cremona Drive
Goleta, CA 93117

13. **Invalid Provision:** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

14. **Headings and Captions:** The headings and captions used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of the Agreement or any part thereof.

15. **Counterparts:** This Agreement may be executed in counterpart originals, each of which is deemed to be an original for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement below, to be effective on the date first written above.


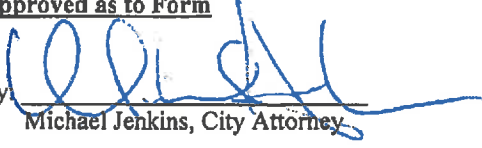
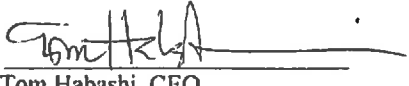
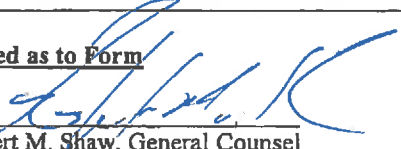
Date: _____	<u>City of Goleta</u> By:  Michelle Greene, City Manager
Date: _____	<u>Approved as to Form</u> By:  Michael Jenkins, City Attorney
Date: _____	<u>Monterey Bay Community Power Authority</u> By: _____ Tom Habashi, CEO
Date: _____	<u>Approved as to Form</u> By: _____ Robert M. Shaw, General Counsel

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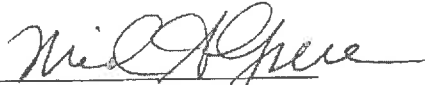
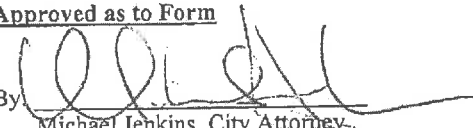
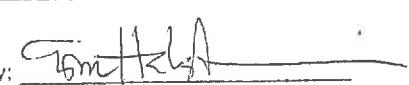
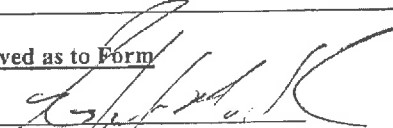
Date: _____	City of Goleta By:  Michelle Greene, City Manager
Date: _____	Approved as to Form By:  Michael Jenkins, City Attorney
Date: _____	Monterey Bay Community Power Authority By:  Tom Habashi, CEO
Date: <u>October 31 2019</u>	Approved as to Form By:  Robert M. Shaw, General Counsel

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Date: <u>October 31, 2019</u>	<u>Approved as to Form</u> By:  Robert M. Shaw, General Counsel