



**SPECIAL MEETING**

**of the Policy Board of Directors**

Thursday, October 11, 2018

1:30 p.m.

**Monterey Bay Community Power**

**70 Garden Court, Suite 300**

**Monterey, CA 93940**

**REMOTE LOCATION VIA TELECONFERENCE**

Any interested parties or community members may attend the meeting at the following address where **Chair Bruce McPherson** is joining the meeting from:

**County of Santa Cruz**

**Office of Fifth District Supervisor Bruce McPherson**

**County of Santa Cruz**

**701 Ocean Street, Suite 500**

**Santa Cruz, CA 95060**

**AGENDA**

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Bren Lehr, Board Clerk, at 831-641-7203 or [blehr@mbcommunitypower.org](mailto:blehr@mbcommunitypower.org). Requests should be made as soon as possible but at least 72 hours prior to the scheduled meeting.

If you have anything that you wish to be distributed to the Board please hand it to a member of MBCP staff or Bren Lehr, Board Clerk who will distribute the information to the Board members and other staff.

**1. Welcome & Roll Call**

**2. Pledge of Allegiance**

*The presiding officer will lead the pledge of allegiance.*

**3. Public Comment on Matters Not Listed on the Open Session**

*The public may provide comments on any item not on the Agenda but the Board may not take action at this meeting on any item not listed on the Agenda other than to refer the matter to staff or set it for a future meeting. Speakers are limited to 3 minutes each.*

**4. Board Member Disqualifications (If Any)**

*A Board member may announce the purpose of a disqualification from discussion of an item on the agenda.*

**5. Set Agenda**

*This item is to set the final regular agenda. The consideration of any late additions are subject to Brown Act urgency and/or emergency findings.*

**REGULAR AGENDA**

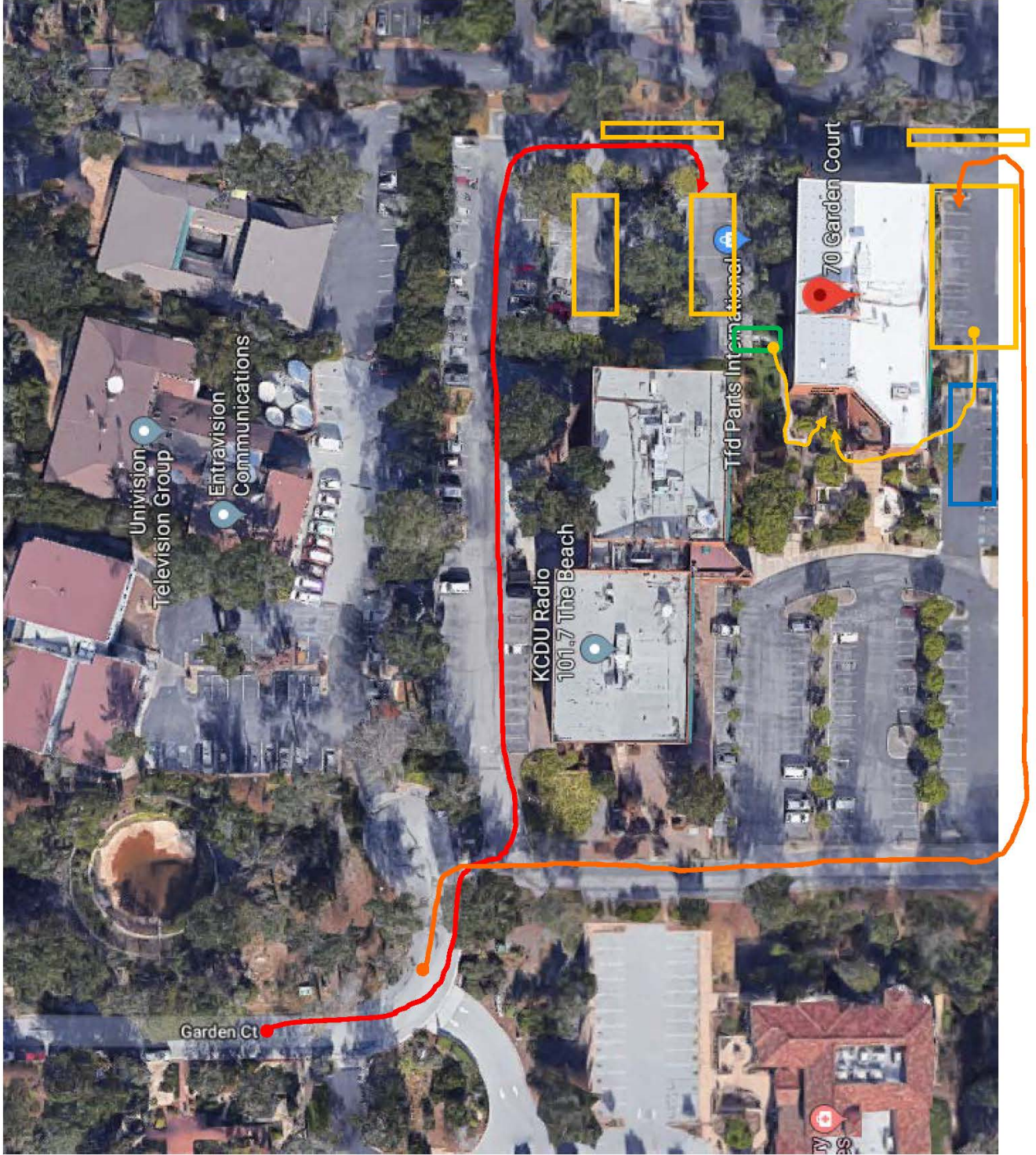
**6. Approval of Contract with County of Monterey for General Counsel Services (Action Item)**

**7. Adjournment to Next Policy Board Meeting on Wednesday, December 5, 2018**

*The public may comment on a specific item listed on this agenda when the Board considers that item. When the Board considers the agenda item entitled "Public Comments," the public has the right to comment on any matter that is within the Board's jurisdiction. In addition, the members of the public may request and receive copies without undue delay of any documents that are distributed to the Board, unless there is a specific exemption under the Public Records Act that prevents the disclosure of the record. (Cal. Gov't Code Section 54957.5)*

*In compliance with Government Code Section 54957.5, non-exempt writings that are distributed to a majority or all of the Board in advance of a meeting and that relate to an agenda item will be made available at MBCP's offices located at 70 Garden Court, Suite 300, Monterey, CA 93940 during normal business hours and are also available on the [MBCP website](http://www.mbcommunitypower.org/about/meetings/) located at: <http://www.mbcommunitypower.org/about/meetings/>.*

## PARKING AND LOCATION OF OFFICE



When arriving at office location, follow the red arrow and enter drive into parking lots for buildings 60, 70 & 80 Garden Court.

Immediately turn left before building marked 60 Garden Court. Follow drive to end of parking lot and turn right.

Parking is available in the two upcoming parking courts or along the drive path perpendicular to the two courts (marked in yellow).

After parking, walk down the stairs (marked in green) and follow the yellow arrow down sidewalk path to 70 Garden Court. Take stairs or elevator to 3rd Floor, Suite 300.

Handicap parking is noted in blue to the right of the building.

You can also enter the parking areas by driving straight after entering the parking lot from the street. Please park in spaces marked with a "70" then follow the path from the parking lot to the front entrance of the building. THANK YOU!

**Directional signs will also be posted throughout the parking lot.**

### Staff Report Item 6

**TO:** MBCP Policy Board of Directors

**FROM:** Tom Habashi, Interim Chief Executive Officer

**SUBJECT:** Approval of Contract with County of Monterey for General Counsel Services

**DATE:** October 11, 2018

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#### **RECOMMENDATION:**

Approve contract with County of Monterey and appoint Rob Shaw, Esq. to serve as MBCP's General Counsel on a part-time, in-house basis.

#### **BACKGROUND:**

Section 3.3.3 (h) of the Joint Exercise of Powers Agreement creating the Monterey Bay Community Power Authority provides that the Policy Board shall approve the selection of the Agency's General Counsel. To date, Angela Lipanovich from Estriatus Law, PC has filled this role on an interim basis while working remotely. At its meeting on June 6, 2018, the Policy Board approved the replacement of the MBCP General Counsel contract position with a full-time employee position, effective October 1, 2018. After an extensive search, MBCP has not yet found a qualified candidate to fill the permanent position. Ms. Lipanovich has performed the duties of interim General Counsel excellently. However, given MBCP's need for an in-house attorney, we reached out to the County of Monterey for in-house legal support. The County of Monterey has agreed to contract with MBCP to provide in-house legal support and to provide such services at a lower hourly rate than Ms. Lipanovich's rate. Accordingly, we recommend the approval of the contract with the County of Monterey to provide general counsel services to MBCP. The contract provides that Deputy County Counsel Robert Shaw will be assigned as the primary attorney providing such services, and the maximum payable under the contract shall not exceed \$132,000 per year, which the parties expect to be incurred at roughly \$11,000 per month.

#### **Attachment**

Contract for Legal Services

# AGREEMENT FOR PROFESSIONAL SERVICES

between the

**MONTEREY BAY COMMUNITY POWER AUTHORITY**

and the

**COUNTY COUNSEL'S OFFICE OF MONTEREY COUNTY**

This Professional Services Agreement (“Agreement”) is made and entered into by and between the Monterey Bay Community Power Authority (the “Authority”) and the Office of the County Counsel, County of Monterey (“Attorney”) for the provision of general counsel services.

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

1. **SERVICES TO BE PROVIDED.** Authority hereby engages Attorney, and Attorney hereby agrees to perform the services described in Exhibit B in conformity with the terms of this Agreement. These services are generally described as the provision of as-needed general counsel legal services for the Authority. Deputy County Counsel Robert Shaw will be the primary attorney assigned as general counsel. Services may be provided by any member of the County Counsel's Office.

2. **PAYMENTS BY THE AUTHORITY.** The Authority shall pay Attorney in accordance with the payment provisions set forth in Exhibit A (Standard Provisions). Compensation shall be payable at an hourly rate as specified in Exhibit C.

2.01. **Maximum Liability.** Subject to the Payment Conditions set forth in Exhibit A, Standard Provisions, Authority shall pay to Attorney amounts provided in Exhibit C, Hourly Rates for work completed pursuant to this Agreement. The maximum amount payable to the Attorney shall not exceed \$132,000 per year, which the parties expect to be incurred at roughly \$11,000 per

month. The parties expect attorney to provide an average of 10 hours of service per week. If attorney time regularly exceed 10 hours per week, the parties agree to amend this agreement to account for additional time.

3. **TERM OF AGREEMENT.** The term of this Agreement is from November 1, 2018 until terminated pursuant to the terms of this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement.

Exhibit A	Standard Provisions
Exhibit B	Scope of Services
Exhibit C	Hourly Rates

5. **CONTRACT ADMINISTRATORS.**

**FOR AUTHORITY:**

Tom Habashi, CEO  
Tiffany Law, Director of Internal Operations  
Monterey Bay Community Power Authority  
70 Garden Court, Suite 300  
Monterey, CA 93940  
(831) 641-7222

**FOR ATTORNEY:**

Charles J. McKee, County Counsel  
Leslie J. Girard, Chief Asst. County Counsel  
Office of the County Counsel  
County of Monterey  
168 W. Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901  
(831) 755-5045

**IN WITNESS WHEREOF**, Authority and Attorney have executed this Agreement as of the last date opposite the respective signatures below.

**MONTEREY BAY COMMUNITY POWER  
AUTHORITY**

**OFFICE OF THE COUNTY COUNSEL  
COUNTY OF MONTEREY**

By: \_\_\_\_\_  
Tom Habashi, CEO

By: \_\_\_\_\_  
Charles J. McKee, County Counsel

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

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

## **EXHIBIT A**

### **STANDARD PROVISIONS**

#### **1. PERFORMANCE STANDARDS**

Attorney warrants that Attorney and Attorney's employees performing services hereunder are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this agreement.

Attorney and its employees 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.

Attorney 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. Attorney shall not use Authority's premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

#### **2. PAYMENT CONDITIONS**

Attorney shall submit to the Authority's Contract Administrator an invoice on a form acceptable to the Authority. Such invoice shall be submitted monthly. The invoice shall set forth the amounts claimed by Attorney for the previous month, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the Authority may require. The Contract Administrator or designee shall certify the invoice, either in the requested amount or in such other amount as the Authority approved in conformity with this Agreement. A check shall be issued in the certified amount, within 30 days of receiving the invoice, to Attorney.

Attorney shall not receive reimbursement for travel expenses unless set forth in Exhibit C.



### 3. **TERMINATION**

- 3.01. During the term of this Agreement, either party may terminate the Agreement by giving written notice of termination to the other party 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 Authority shall pay to Attorney all sums due for services rendered prior to the date of termination.
- 3.02. The Authority may cancel and terminate this Agreement for good cause effective immediately upon written notice to Attorney. "Good cause" includes but is not limited to the failure of Attorney to perform the required services at the time and in the manner provided herein. If the Authority terminates this Agreement for good cause, the Authority shall pay to Attorney all sums due for services rendered prior to the date of termination.

### 4. **INDEMNIFICATION**

Attorney shall indemnify, defend, and hold harmless the Authority, its Policy Board of Directors, Operations Board of Directors, Board Officers as identified in the Monterey Bay Community Power Authority JPA Agreement, the Chief Executive Officer, and employees from and against the following:

- (a) Any and all claims or legal actions of whatever kind or nature that are made or threatened by any third party, and all related damages, liabilities, and losses whatsoever (together with any expenses related thereto, including but not limited to damages, court costs, and attorneys' fees), to the extent that such damages, liabilities, or losses arise out of, are alleged to arise of, or connected with any of the following: (1) any negligent act or omission by Attorney; or (2) any breach in a representation, convent or obligation of Attorney contained in this Agreement.

### 5. **INSURANCE**

- 5.01. The Authority recognizes that Attorney is a constituent part of a public entity, the County of Monterey. The County maintains general liability coverage that will also

provide coverage for professional negligence, with a self-insured retention of \$1.5 million per occurrence. Attorney shall inform the Authority of any changes in the insurance coverage.

## **6. RECORDS AND CONFIDENTIALITY**

- 6.01. Authority Confidentiality. Attorney and its officers, employees and agents shall comply with any and all federal, state, and local laws which provide for the confidentiality of records and other information. Attorney shall not disclose any confidential records or other confidential information received from the Authority or prepared in connection with the performance of this Agreement, unless the Authority specifically permits Attorney in writing to disclose such records or information. Attorney shall promptly transmit to the Authority any and all requests for disclosure of any such confidential records or information. Attorney shall not use any confidential information gained by Attorney in the performance of this Agreement except for the sole purpose of carrying out Attorney's obligations under this Agreement.
- 6.02. Authority Records. When this Agreement expires or terminates, Attorney shall return to the Authority any records which Attorney utilized or received from the Authority to perform services under this Agreement.
- 6.03. Maintenance of Records. Attorney shall prepare, maintain, and preserve all reports and records that may be required by federal, state, county and Authority rules and regulations related to services performed under this Agreement. Attorney 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 Attorney shall retain said records until such action is resolved.
- 6.04. Access to and Audit of Records. The Authority shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Attorney

related to services provided under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involved the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the Authority or as part of any audit of the Authority, 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.

**7. INDEPENDENT CONTRACTOR**

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

**8. NOTICES**

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the Authority's and Attorney's Contract Administrators at the addresses listed at page 3 of this Agreement.

**9. GENERAL PROVISIONS**

9.01. Conflict of Interest. Attorney covenants that he or she presently has no financial interest and shall not acquire any financial 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 professional services required to be rendered under this Agreement.

The Authority acknowledges that Attorney represents other clients, including the County of Monterey, LAFCO of Monterey County, the Transportation Agency of Monterey County, the Water Resources Agency of Monterey County, and the Monterey Bay Unified Pollution Control Agency, which representation may, from time-to-time, present a conflict of interest with the representation of the Authority. Attorney shall promptly inform the Authority of any situation giving rise to a conflict of interest in the representation of the Authority, and the parties shall confer in good faith regarding a potential waiver of any conflict. Should any conflict not be waived, the Authority shall seek legal services from a different attorney of its choice regarding that matter.

- 9.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by all the parties hereto.
- 9.03. Waiver. Any waiver of any terms and conditions hereof must be in writing and signed by the parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 9.04. The term “Attorney” as used in this Agreement includes Attorney’s officers, agents, and employees acting on Attorney’s behalf in the performance of this Agreement.
- 9.05. Assignment and Subcontracting. Attorney shall not assign, sell, mortgage, hypothecate or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the Authority. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the Authority. Notwithstanding any such subcontract, Attorney shall continue to be liable for the performance of all requirements of this Agreement.

- 9.06. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the parties hereunder, 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.
- 9.07. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 9.08. Headings. The section and paragraph headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 9.09. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 9.10. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 9.11. Non-exclusive Agreement. This Agreement is non-exclusive and both parties expressly reserve the right to contract with other entities for the same or similar services.
- 9.12. Construction of Agreement. The parties 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 hereto.
- 9.13. 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.
- 9.14. Authority. Any individual executing this Agreement on behalf of an entity represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such entity and bind the entity to the terms and conditions of the same.

9.15. Integration. This Agreement, including the exhibits hereto, shall represent the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements either written or oral, between the parties as of the effective date hereof.

END OF EXHIBIT A

## **EXHIBIT B**

### **SCOPE OF SERVICES**

- Serve as the Authority's general legal counsel on an as-needed basis, except where special counsel is required;
- Review agenda items and assist in preparation of agenda documents on an as needed basis (staff reports, resolutions, administrative items, etc.);
- Attend, on an as needed basis, the regular and special meetings of the Authority's Policy Board of Directors, Operations Board of Directors, and Community Advisory Council;
- Provide professional services that may include investigation, research and analysis of legal and factual issues, analysis of applicable law, negotiations with other parties, drafting and preparation of documents, review and comment on documents prepared by others, and written and oral communications with other parties and with the CEO of MBCP;
- Attend in-person meetings with the Authority's officers and employees when requested, and maintain frequent telephone and e-mail contact;
- Provide general advice to the Authority's officers and employees, officers and employees as requested;
- Perform additional or other services beyond the engagement described above, by mutual agreement, which may include:
  - o Review CEQA documents and assist in preparation of environmental documents as requested;
  - o Prepare legal opinions as necessary;
  - o Provide labor and employment law advice;
  - o Prepare and/or review legal documents, communiques, contracts and indemnification agreements as requested;
  - o Represent the Authority in litigation matters, unless the Authority retains special counsel for this purpose. Matters requiring litigation may require a separate agreement.

**END OF EXHIBIT B**

## **EXHIBIT C**

### **HOURLY RATES**

Attorney is providing the Authority a blended rate of \$250.00 per hour for all services provided pursuant to this Agreement.

Rates may be adjusted by Attorney yearly, and Attorney shall notify the Authority of any change in rates.

### **TRAVEL**

If travel, outside of Santa Cruz, Monterey, or San Benito counties, is required pursuant to any request for services by the Authority, travel rates shall be assessed as follows:

- (a) At the current IRS reimbursement rate as approved by the County Auditor-Controller.

END OF EXHIBIT C